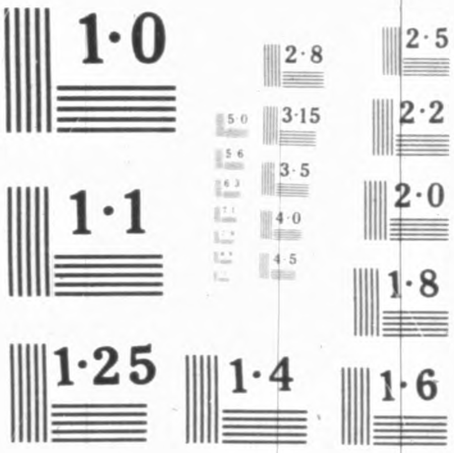
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# START

# GREAT BRITAIN
# LAW OFFICERS' OPINIONS

Clive Parry
Editor

Erwin C. Surrency
Microfilm Editor

Dobbs Ferry, New York
Trans - Media Publishing Company
1976

# GREAT BRITAIN
# LAW OFFICERS'
# OPINIONS

# REEL

# 3

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# REPORTS

BY THE

# LAW OFFICERS OF THE CROWN.

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*Printed for the use of the Foreign Office. November 1879.*

CONFIDENTIAL.

# LAW OFFICERS' REPORTS: 1876.

## Africa.

### No. 1.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May 16.)*

*Temple, May* 16, 1876.

My Lord,

Dahomey outrage.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence in print, from which we should learn the circumstances under which Commodore Hewett, the officer in command of Her Majesty's naval forces on the West Coast of Africa, had imposed a fine of 500 puncheons of oil or its equivalent in sterling (about 6,000*l.*) on the King of Dahomey for an outrage committed by the Dahomian authorities at Whydah on a British subject named Turnbull, the agent of Messrs. F. and A. Swanzy, a British firm established at that place.

That we should perceive that the Commodore had published a Notification, which would be found at page 10 of the accompanying papers, to the effect that if the fine was not paid by the 1st June next he would institute a blockade of the whole of the Dahomian coast, and would enforce it until the fine was paid.

Proposed blockade of Whydah.

That Lord Tenterden was also to inclose a copy of a letter addressed to the Admiralty, authorizing Commodore Hewett to establish a blockade of the Dahomian coast from the 1st July next in the event of the fine imposed on the King of Dahomey not having been paid by that date, and that Lord Tenterden was to request that we would take that case into our consideration, and furnish your Lordship at our earliest convenience with our opinion whether any and what notification should be given with regard to the blockade.

That a Memorandum on blockades, drawn up in the Foreign Office, was also inclosed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Notice should be published in "Gazette" and communicated to foreign Governments. Date of blockade postponed.

That, in the peculiar circumstances of this case, we are of opinion that notice should be published in the "Gazette" to the effect that Her Majesty's Government has received a communication from the Commodore on the station that the coasts of Whydah will be blockaded on the 1st June next; Her Majesty's Government have sent orders to the Commodore and officers on the station that no blockade of the coast of Whydah shall be established till the 1st July next.

Notice to the same purport should be communicated, in our opinion, to the Ministers of foreign Governments.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 2.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May 19.)*

*Temple, May 19,* 1876.

My Lord,

Dahomey blockade.

WE were honoured with your Lordship's commands signified in Mr. Wylde's letter of the 16th May instant, stating that, with reference to our Report of that day's date respecting the blockade to be established on the Dahomian coast, he was directed by your Lordship to request that we would prepare and forward to the Foreign Office at our early convenience a form of notice for insertion in the "Gazette."

Mr. Wylde was also pleased to say that the printed papers were therewith returned to us for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Notice for "Gazette."

That we have prepared and forward to the Foreign Office a form of notice for insertion in the "Gazette."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Inclosure in No. 2.

*Form of Notice.*

*Foreign Office, May 23,* 1876.

Notice.

IT is hereby notified that the Lords Commissioners of the Admiralty having received a despatch from Commodore Sir W. Hewett, the officer in command of Her Majesty's Naval Forces on the West Coast of Africa, containing a declaration that on and after the 1st June next that portion of the sea-coast of the Kingdom of Dahomey comprised between the longitude of 1° 32′ west, and the longitude of 2° 35′ east, including the ports of Porto Seguro, Little Popo, Aghwey, Great Popo, Whydah, Godomy or Jackin, and Custannee or Appi Vista, would be placed in a state of blockade, Her Majesty's Government have given orders to the said Sir W. Hewett and the officers under his command that no blockade of the said coasts, or of any part thereof, shall be established till after the 30th day of June next.

J. H.
H. S. G.
J. P. D.

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## No. 3.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received June 2.)*

*Temple, June* 1, 1876.

My Lord,

Dahomey blockade.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 25th May ultimo, stating that, with reference to our letter of the 19th ultimo, he was directed by your Lordship to inform us that the notice of blockade of the coast of Dahomey prepared by us had been inserted in the "London Gazette" of the 23rd May; that he was, however, to request us to favour your Lordship with our opinion whether a further and positive notification of blockade, to take effect from the 1st July next, should not also appear in the "Gazette," or whether the further notification should be delayed until Her Majesty's Government had received information of the actual establishment of the blockade.

In obedience to your Lordship's commands we have the honour to report—

No further notice necessary till actual establishment of blockade.

That in our opinion a further and positive notification of blockade, to take effect from the 1st July next, should not appear in the "Gazette," and the further notification should be delayed until Her Majesty's Government has received information of the actual establishment of the blockade.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 4.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received June 16.)*

*Temple, June* 15, 1876.

My Lord,

Dahomey blockade. Exemptions for French vessels.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 8th instant, stating that the French Ambassador called at the Foreign Office on the 24th April, and in the course of a conversation, which was recorded in the inclosed draft of a despatch to Mr. Adams, Her Majesty's Minister at Paris, stated that he was instructed to ask that consideration might be given to French shipping interests in respect of the proposed blockade of the coast of Dahomey.

That the views of the French Government on the matter were contained in the inclosed note, subsequently received from the Marquis d'Harcourt, and that he (Mr. Lister) was directed by your Lordship to request our opinion at our early convenience whether the inclosed draft of a reply which your Lordship proposed to his Excellency would be a right and proper answer to make to the request of the French Government.

That, for convenience of reference, Mr. Lister was further to inclose a Memorandum drawn in the Foreign Office respecting certain points alluded to in the note of the French Ambassador of the 27th ultimo.

In obedience to your Lordship's commands we have the honour to report—

Approving draft reply to French Ambassador, declining to grant.

That the reply which your Lordship proposes to address to the Marquis d'Harcourt is, in our opinion, a right and proper answer to make to the French Government.

We suggest, however, the addition, after the word "at," for the sake of clearness, of the words "Commodore Hewett" in page 2, line 5, of the draft, and the omission of the word "it," page 6, line 8, of the draft, and substitution for "it" of the words "such blockade."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex to No. 4.

*The Earl of Derby to the Marquis d'Harcourt.*

*Foreign Office, June* 16, 1876.

M. l'Ambassadeur,

I HAVE had the honour to receive your Excellency's communication of the 27th ultimo, relative to the blockade which Her Majesty's Government propose to establish on the coast of Dahomey, and from the provisions of which your Excellency requests that, if possible, favourable exception may be made in behalf of the French commercial marine, whose interests are threatened by the proposed blockade.

I would beg leave, in the first place, to call your Excellency's attention to the circumstances under which the determination to establish the blockade was arrived at. Commodore Hewett, the Senior Naval Officer of Her Majesty's forces on the West Coast of Africa, finding that the King of Dahomey declined to pay a fine which had been imposed upon him for an outrage committed on a British subject, gave notice on the 4th March last of his intention to establish a blockade on the 1st instant. This notification allowed the King a period of nearly three months for the payment of the fine imposed upon him, and it also afforded a reasonable interval for the firms trading to that part of the coast to make suitable arrangements for the future.

But with the view to cause as little injury as possible to commercial interests, and to afford additional time to the King to pay the fine if he should be disposed to do so, Her Majesty's Government, on being informed of the decision thus arrived at by Commodore Hewett, lost no time in sending him instructions to delay the blockade until after the 30th instant, and I trust that your Excellency will recognize in this further delay in the enforcement of the blockade the earnest desire of Her Majesty's Government to mitigate, as far as lies in their power, the severity of the measures which, in the interests of British subjects, they have been compelled to take on this occasion.

A formal notification respecting the blockade has been inserted in the "Gazette" and communicated to the Representatives of foreign Powers in London, and it is

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probable that any alteration of these arrangements, in the sense of further deferring the enforcement of the blockade, would now be productive of as much inconvenience as the actual establishment of the blockade at the date notified, and Her Majesty's Government would not, therefore, feel themselves justified in making any further concession as to the date at which it is to be enforced.

Your Excellency will also perceive that it would be out of the power of Her Majesty's Government to grant any exceptional privileges in favour of French vessels in regard to this matter, since, the validity of the blockade depending on its strict and impartial enforcement, such blockade would be *de facto* vitiated by any permission to foreign vessels to escape from its operation.

I have, &c.
(Signed) DERBY.

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## No. 5.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 11.)

*Temple, July* 10, 1876.

**Dahomey blockade.**

My Lord,

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 3rd instant, stating that, with reference to previous correspondence on the subject of the proposed blockade of the coast of Dahomey, and more especially to our letter of the 19th May last, he was directed by your Lordship to transmit to us the accompanying letter from the Admiralty respecting an error in the notification of the intended blockade, which was inserted in the "London Gazette" of the 23rd May last.

**Error in notice, as to its extent.**

That that notification described the line of coast to be blockaded as "that portion of the sea-coast of the King of Dahomey comprised between the longitude of 1° 32′ west, and the longitude of 2° 35′ east," whereas it would be seen that the blockade should be described as commencing at 1° 32′ east longitude, since it would otherwise extend along the British line of coast from Elmina and Cape Coast Castle eastward.

That the previous papers relating to the question were also inclosed, and that he, Lord Tenterden, was to request that we would take that correspondence into our consideration, and favour your Lordship with our opinion as to the propriety of issuing an amended notice upon the subject in the "London Gazette."

That Lord Tenterden was further to request that we would furnish the draft of such fresh notification in the event of our considering it advisable that one should be published.

In obedience to your Lordship's commands we have the honour to report—

That the error of 1° 32′ west for 1° 32′ east occurred originally in the official notice signed by Commodore Hewett, upon which the notice for the "London Gazette" was drafted.

**No fresh notice necessary.**

Since the notice was confined to a delay of the blockade till the 30th June, we think it is unnecessary to issue an amended notice at the present time.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER. DEANE.

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## No. 6.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 17.)

*Temple, July* 12, 1876.

**Dahomey blockade.**

My Lord,

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 6th of July instant, stating that with reference to the letter from the Foreign Office of the 3rd instant, he was directed by your Lordship to transmit to us the accompanying letters from the Colonial Office and from the Admiralty relative to the blockade of the coast of Dahomey.

That although the towns of Porto Seguro, Little Popo, and Aghwey, to which allusion was made with reference to the objections against the blockade, were doubtless independent of Dahomey, as pointed out by the French authorities, his Lordship was

to state that it would be useless to blockade Dahomey if those places were exempted from blockade, and your Lordship proposed, therefore, to inform both the Colonial Office and the Admiralty that the blockade should be enforced from the eastern limits of the British protected territory on the Gold Coast at Adaffi to the western limits of the British possessions at Lagos, in the neighbourhood of Badagry, which would include the three towns in question.

That as regards Cotenoo his Lordship was to add that until the receipt of the Marquis d'Harcourt's communication of the 9th of June last Her Majesty's Government had no notice whatever of the pretensions of the French to have acquired possession of that place; on the contrary, so recently as the 26th of December, 1875, a distinct disclaimer was received from the French Government of any pretension to sovereignty or protectorate over Porto Novo, of which Cotenoo was the shipping station.

That under these circumstances your Lordship proposed to ignore the claim put forward on the part of the French until such time as your Lordship shall have received proofs of the *bona fides* of the transaction, and even then, as Her Majesty's Government had been kept in ignorance of the alleged acquisition of the place by the French, your Lordship would not propose to acknowledge the claim until after the difficulty with Dahomey had been settled.

Lord Tenterden was, therefore, pleased to request that we would take the inclosed papers into our consideration, and favour your Lordship with our opinion as to the propriety of the communication which it was proposed to make to the Colonial Office and to the Admiralty, to the effect that the blockade should be enforced from the eastern limits of the British possessions on the Gold Coast to the western limits of the Lagos Lagoon, and thus include Porto Novo and Cotenoo, as well as Porto Seguro, Little Popo, and Aghwey.

In obedience to your Lordship's commands we have the honour to report—

**Illegal to blockade ports independent of Dahomey, as Porto Seguro, &c.**

That a blockade of a line of coast which would include ports that are independent of the enemy would be illegal, and we are, therefore, of opinion that the blockade suggested from the eastern limits of the British-protected territory to western limits of British possessions, which would include the independent towns of Porto Seguro, Little Popo, and Aghwey, would be illegal and cannot properly be established.

**French claim to Porto Novo and Cotenoo. If well founded, neutrals may disregard a blockade of those ports.**

As regards Cotenoo and the French claim over Porto Novo, we suggest for your Lordship's consideration that the question is one of fact and not of courtesy or want of good faith on the part of the French Government. If, therefore, Porto Novo or Cotenoo be under the sovereignty or protectorate of France, any neutral Power, for instance, the United States, or Germany, or Russia, would be justified in disregarding the blockade which purported to interfere with their trade to those places. And we are unable to advise your Lordship that you can properly ignore the claim put forward on the part of the French.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 7.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received August* 16.)

*Temple, August* 16, 1876.

**Dahomey blockade.**

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th ultimo, stating that, with reference to our letter of the 12th ultimo, in relation to the blockade of Dahomey, he was directed by your Lordship to request that we would favour your Lordship with our opinion on the following question:

That the portion of the coast comprised in the blockade which had been established from the 1st July included certain places not forming part of the territory of the King of Dahomey, and under ordinary circumstances the blockade of a neutral coast would, as we had pointed out, be illegal; but looking to the fact that the places in question are not under the Government or Dominion of any civilized State, your Lordship desired to be informed whether, in our opinion, the establishment of that blockade would not be held to constitute such a state of hostility between Her Majesty and the Chiefs of

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those places as would justify the exercise of belligerent rights by Her Majesty's naval forces against neutral vessels.

In obedience to your Lordship's commands we have the honour to report—

Neutrals may object to blockade of independent coasts without just cause against them.

That in our opinion neutral nations might with reason object to a blockade of parts of the coast occupied by independent tribes, such blockade having for its object the pressure thus brought to bear on the King of Dahomey. We are, therefore, unable to advise your Lordship that a blockade of parts of the coasts as suggested in the letter of Sir Julian Pauncefote could properly be established without any just cause for the exercise of hostile rights against the tribes occupying those parts of the coasts.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 8.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received September* 12.)

*Temple, September* 12, 1876.

My Lord,

Dahomey blockade.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st August ultimo, stating that he was directed by your Lordship to transmit to us the accompanying Rules which have been laid down by Commodore Sir William Hewett for enforcing the blockade of the coast of Dahomey, and that he was to request that we would take them into our consideration and favour your Lordship with our opinion thereupon.

Sir Julian Pauncefote also stated that at the same time he was to request that we would be good enough to report whether we consider that the amended notice of blockade issued by Commodore Hewett on the 3rd July, of which a printed copy accompanied his letter, should be inserted in the "London Gazette," and, if so, that we would furnish the Foreign Office Department with a form of notification duly prepared for that purpose.

In obedience to your Lordship's commands we have the honour to report—

No objection to Rules, if no neutral or independent territory is blockaded.

That the Rules laid down by Commodore Sir W. Hewett for enforcing the blockade of the coast of Dahomey are, in our opinion, open to no objection, provided no neutral territory or territories independent of the King of Dahomey is made subject to the blockade.

Fresh notice for "Gazette."

An amended notice of blockade should, we think, be inserted in the "London Gazette," provided the limits in Sir W. Hewett's notice do not include any independent or neutral territory.

The notice of blockade may be as follows:—

It is hereby notified that on the day of that portion of the sea-coast of the Kingdom of Dahomey comprised within the longitude 1° 32′ east and the longitude of 2° 35′ east, including the ports tributary or otherwise, &c., was placed in a state of blockade, and that such blockade is and will be maintained by a competent force of Her Britannic Majesty's ships.

All measures, therefore, which are authorized by the law of nations and the respective Treaties between Her Britannic Majesty and the different neutral Powers will be enforced on behalf of Her Britannic Majesty against all vessels which may attempt to violate the blockade.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 9.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 1.)

*Temple, October* 31, 1876.

My Lord,

Dahomey blockade.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 17th instant, stating that, with reference to our Report of the 12th ultimo, respecting the form for insertion in the "Gazette" of a notification of the actual establishment of the blockade of the coast of Dahomey, he was directed by your Lordship to state to us that, in view of certain circumstances connected with the detention of the European prisoners by the King, your Lordship deemed it expedient to suspend the insertion of the notice in the "Gazette" until the course of action to be pursued in regard to the continuation of the blockade had been finally decided upon in consultation with the Lords Commissioners of the Admiralty.

Fresh notice in "Gazette" not being necessary for naval purposes,

That, as we should perceive from the inclosed letter, their Lordships now stated that the insertion of such a notice of blockade in the "Gazette" was not necessary for naval purposes, and that Mr. Lister was to request our opinion whether, looking to the state of the case generally (which would be gathered from the inclosed volume of printed correspondence), and to the length of time which had now elapsed since the actual enforcement of the blockade in the beginning of July, the insertion of such a notice was requisite or desirable for international purposes.

In obedience to your Lordship's commands we have the honour to report—

it is not requisite for international purposes.

That, in our opinion, the insertion of a notice of the blockade is at this moment neither requisite nor desirable for international purposes.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Argentine Confederation.

### No. 10.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received August* 14.)

*Temple, August* 14, 1876.

My Lord,

London and River Plate Bank. Outrage of Rosario authorities upon, for refusal to lend them money.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th July last, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, as marked in the margin, relative to the proceedings of the authorities at Rosario, the capital of the province of Santa Fé, Argentine Confederation, towards the branch of the London and River Plate Bank established in that city; and that he was to request that we would take those papers into our immediate consideration, and favour your Lordship, with as little delay as possible, with our opinion upon the case.

That a summary of the acts complained of by the bank would be found in the letter from Mr. Smithers, the Manager, dated the 6th July, of which a printed copy was inclosed.

Lord Tenterden was also pleased, on the 19th day of July last, to forward to us the accompanying despatch, from Her Majesty's Consul at Rosario, to be taken into consideration in conjunction with the papers inclosed in his letter of the 12th July ultimo.

We were also honoured with a further letter from Lord Tenterden, dated the 22nd July last, stating that he was directed by your Lordship to transmit to us the accompanying further paper relating to the proceedings of the Government of Santa Fé towards the Rosario branch of the London and River Plate Bank, and to request us to take it into consideration with the papers forwarded to us on the 12th July last.

In obedience to your Lordship's commands we have the honour to report—

That, assuming the facts to be correctly stated in the papers transmitted to us, the conduct of the authorities at Rosario was, if not justifiable by any misconduct on the part of the London and River Plate Bank, an outrage upon the rights of the British partners in that Bank, unwarranted by the usage and practice of civilized Governments, having for its only motive a spirit of revenge for the refusal by the Bank to lend a

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large sum of money, and rival interests of an unsuccessful Bank, supported by the Government of Santa Fé.

May demand explanation and redress.

Your Lordship may therefore, in our opinion, properly demand from the Government of the Argentine Confederation a full explanation of the proceedings of the authorities at Rosario; with a strong intimation that, if that explanation be not satisfactory, and ample redress made for the injurious acts committed against British subjects and British interests, Her Majesty's Government will be compelled to resort to further measures.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 11.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received August* 16.)

*Temple, August* 16, 1876.

My Lord,

London and River Plate Bank.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th August instant, stating that with reference to Lord Tenterden's letters of the 12th, 19th, 22nd, and 29th ultimo, he was directed by your Lordship to transmit to us the accompanying further despatches from Her Majesty's Chargé d'Affaires at Buenos Ayres relative to the case of the Rosario Branch of the London and River Plate Bank (Mr. F. St. John, Nos. 62 and 63 of June 30), and to request that we would take these papers into our consideration, together with those already before us.

In obedience to your Lordship's commands we have the honour to report—

That since our first Report was drawn, the further papers transmitted by Sir Julian Pauncefote have been considered by us.

Pending legal proceedings, diplomatic action may be delayed; but representation may be made.

The Bank having taken legal proceedings, we are of opinion that, for the present, direct diplomatic action should not be employed. Her Majesty's Chargé d'Affaires at Buenos Ayres may, however, properly be instructed to state to the Argentine Minister for Foreign Affairs, that Her Majesty's Government expects that ample satisfaction will be made by the Argentine Government for the outrage and injury inflicted upon British subjects and British interests by the acts of that Government, in relation to the Rosario branch of the London and River Plate Bank.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Belgium.

### No. 12.

*Memorandum respecting the Extradition of Bourdiol.*

Case of Bourdiol's extradition.

SOME papers on this subject were sent to me a short time ago by the Home Office, but at that time I had not before me the Treaty with Belgium, and my attention was called to the case with reference solely to the Act of 1870.

Surrender by England to Belgium, then by Belgium to France.

If the case depended merely on the Act of 1870, I should have thought that a surrender of Bourdiol to France was contrary to the spirit and letter of Sub-Section 2 of Section 3 of the Act, because, undoubtedly, in such a case, Bourdiol would be "detained" by Belgium for an offence committed prior to his surrender other than the extradition crime. He would be thus detained in order to and until his extradition to France, and he would be detained for an offence committed prior to his surrender to Belgium other than the extradition crime on which this country surrendered him.

In other words, if Bourdiol could, before he was surrendered to Belgium, have shown on a return to a writ of *habeas corpus* that Belgium intended and claimed the right, after she had punished him for the extradition offence, to detain him further and hand him over to France, I think the Judge might, having regard to Section 3 of the Statute of 1870, have discharged Bourdiol.

Contrary to Act of 1870, but not contrary to terms of Treaty with Belgium.

But this is not now the question. Bourdiol has been surrendered to and is now under the control of Belgium, and we cannot exact from Belgium anything more than is stipulated by the Treaty of 1872. This Treaty may not in its wording come up, as it ought to have done, to the Act of 1870, but that is no affair of the Belgian Government. They are entitled to stand on the wording of the Treaty. Now, the VIth Article of the Treaty merely provides that Bourdiol shall not, until he has been restored or had an opportunity of returning to England, "*be triable or tried for any offence committed in the other country,*" that is to say, in Belgium, prior to the surrender, other than the particular offence on account of which he was surrendered.

Under this Belgium may say to us: "We adhere to every word of our engagement; we are not going to try Bourdiol for any other offence committed in Belgium; in fact, we are not going to try him for any other offence whatever; but, being in Belgium, he has become subject to our international engagements with France, and under these he is a person that we are bound to surrender to France."

I think if the Belgians take this view we cannot object. The result is not very satisfactory, because undoubtedly the Treaty, by departing from the words of the Act of 1870, has left a loophole by which the obvious purpose of the Act of 1870 is frustrated.

It may deserve consideration whether something should be done to remedy this for the future; but on the present occasion I do not see that we can interfere.

(Signed) CAIRNS.

*August* 15, 1876.

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## Brazil.

### No. 13.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 16.)

*Temple, March* 15, 1876.

My Lord,

"Queen" Insurance Company. Refusal of Brazil to compensate Taylor and Lyde.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 24th January last, stating that, with reference to the Law Officers' Report of the 27th August last relative to the case of the "Queen" Insurance Company in Brazil, he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Chargé d'Affaires at Rio de Janeiro, inclosing copy and translation of the answer to the Brazilian Minister for Foreign Affairs to his note of the 24th May, which answer we would see was unfavourable to the claims to compensation of Messrs. Taylor and Lyde, the Agents of the Company.

That Lord Tenterden was to request that we would take Mr. Drummond's despatch into our consideration, together with the former papers, which were sent therewith, and favour your Lordship with our opinion as to whether these claims should be pressed further, or whether, as suggested in the Law Officers' above-mentioned Report, instructions should now be sent to Mr. Drummond to take no further steps in the matter.

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In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

**No further steps should be taken.**

That we are still of opinion no further steps should be taken in this matter.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 14.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 20.)

*Temple, March* 18, 1876.

My Lord,

**Case of the "Liguria." Brazilian law as to embargo on British vessels. Brazilian Jurist's opinion.**

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 6th December last, stating that, with reference to the Law Officers' Report of the 5th August last, he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Chargé d'Affaires at Rio de Janeiro (Mr. Drummond, No. 157), forwarding the opinion of the Brazilian Jurist whom he had consulted in regard to the Brazilian law as regards embargo being placed on British vessels in Brazilian ports; and that he (Lord Tenterden) was to request that we would take those papers into our consideration, and favour your Lordship with any observations we might have to make thereupon. Lord Tenterden was also pleased to add that the previous papers, respecting the intention of the Brazilian Government to place an embargo on the British vessel "Liguria," were returned to us therewith.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

**"Liguria" not being arrested, no notice need be taken.**

That we have no observation to make upon the opinion of the Brazilian Jurist. But we submit, for your Lordship's consideration, that, as the arrest of the "Liguria" did not take place, Mr. Drummond might properly be instructed to take no further notice of the case, beyond keeping, for future use, if the necessity should arise, the opinion of the Brazilian Jurist.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 15.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 18.)

*Temple, May* 18, 1876.

My Lord,

**Ceará Water Company. Approving answer to.**

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 28th March last, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, as marked in the margin, relative to a complaint put forward by the Ceará Water Company against certain regulations passed by the Municipality of that town which the Company consider injurious to their interests and in contravention of the terms of their contract.

Lord Tenterden was also pleased to inclose draft of a letter which your Lordship proposed to address to the Company upon the subject, and to request that we would be good enough to inform your Lordship whether we concur in the views expressed therein, and that we would also favour your Lordship with any observations we might have to offer upon the subject.

In obedience to your Lordship's commands we have the honour to report—

That we concur in the views expressed in the draft letter.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex to No. 15.

*Lord Tenterden to the Ceará Water Company.*

*Foreign Office, May* 23, 1876.

Sir,

WITH reference to my letter of the 4th December last, I am directed by the Earl of Derby to state to you that his Lordship has received, through Her Majesty's Minister at Rio de Janeiro, a Report from the British Vice-Consul at Ceará, relative to your complaint against certain rules affecting your interests which have been passed by the Municipality of that town.

**Municipal rules for insuring purity of water are not a breach of their contract. Diplomatic action can only be undertaken where there is a failure of justice on part of local Tribunals.**

Lord Derby has had this Report under his consideration, together with the former papers, and, after consulting the Law Officers of the Crown, his Lordship is unable to see that there is anything in the terms of your contract to preclude the Municipality of Ceará from passing the rules of which you complain, those rules being framed, as it appears to Lord Derby, solely with a view to insure the purity of the water supplied by your Company, an object which a Municipality is clearly justified in seeking to attain.

I am to add that, in a case of the alleged violation of a contract entered into by a British Company, or by British subjects, for an undertaking in a foreign country, redress must always, in the first instance, be sought from the legal Tribunals of the country in which the undertaking is intended to be carried out, and that Her Majesty's Government can only interfere diplomatically when there has been a manifest failure of justice.

I have, &c.
(Signed) TENTERDEN.

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## No. 16.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 17.)

*Temple, June* 16, 1876.

My Lord,

**Exterior crimes against Brazil.**

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 22nd April last, stating that with reference to the Law Officers' Report of the 4th November last, he was directed by your Lordship to transmit to us the accompanying further papers relative to the law lately published in Brazil, providing for the trial and judgment of crimes against Brazil and Brazilians committed in a foreign country. And that he, Mr. Lister, was to request that we would take those papers into our consideration, together with the previous correspondence which was also inclosed, and that we would favour your Lordship with our opinion as to the answer that Her Majesty's Chargé d'Affaires at Rio de Janeiro should be instructed to return to the note of the Brazilian Minister for Foreign Affairs of the 2nd February last, copy and translation of which were inclosed in Mr. Drummond's No. 26 of the 20th February last.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

**Her Majesty's Government will protect British subjects against operation of Brazilian law.**

That Her Majesty's Chargé d'Affaires at Rio de Janeiro may in our opinion properly be instructed to say in answer to the note of the Brazilian Minister for Foreign Affairs, that should the necessity unfortunately arise Her Majesty's Government will protect British subjects in Brazil from the operation of laws attempted to be exercised[*] beyond Brazilian jurisdiction.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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[*] It appears from the subsequent Report of July 25 that the following words were omitted here: "over crimes against Brazil and Brazilians committed."—H. C. E.

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## No. 17.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 30.)

*Temple, June* 29, 1876.

My Lord,

Tax on British hospital at Pernambuco.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 2nd ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Rio de Janeiro, together with the previous papers specified in the inclosed list, relative to the provincial Brazilian authorities for arrears of taxes on the British hospital at Pernambuco.

That as it would be necessary to send instructions to Her Majesty's Chargé d'Affaires to regulate his conduct in that case, he (Mr. Lister) was to request us to take those papers into our consideration, and to favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

Depends on Brazilian law.

Payment should not be resisted.

That the question in this case depends entirely upon Brazilian law, Imperial or provincial, or both; and, as the Brazilian authorities are probably acting under legal advice, and are, notwithstanding the opinion of Señor Fonseca, possibly rightly advised, and not likely to give way, and no further claim for the tax since the law of 1873 will be made; Her Majesty's Chargé d'Affaires at Rio de Janeiro may, in our opinion, properly be instructed to no longer resist payment of the amount claimed. Your Lordship will best judge how far Her Majesty's Government should ask for a return of the sum paid, as an act of grace, as suggested in the Memorandum of Mr. Cowper.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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## No. 18.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 26.)

*Temple, July* 25, 1876.

My Lord,

Exterior crimes against Brazil.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 30th ultimo (Lord Tenterden to Dr. Deane, 30th June, 1876), stating that some difficulty was found in acting on our Report of the 16th ultimo, relative to the Brazilian law as to trying foreigners for crimes against Brazil or Brazilians committed out of Brazilian jurisdiction, and that, as the matter was one of considerable importance, your Lordship thought it best to ask us, before acting on that Report, to be kind enough to explain our meaning rather more fully.

That the object of the Brazilian law was to enable Brazilian Courts to try persons other than Brazilians for offences committed beyond Brazilian jurisdiction, and that, in the Law Officers' Report of the 4th November, 1875, it was distinctly laid down that Her Majesty's Government should not allow this as far as British subjects were concerned.

But that in our Report we adopted a different wording. We said that, "should the necessity unfortunately arise, Her Majesty's Government will protect British subjects from the operations of laws attempted to be exercised beyond Brazilian jurisdiction."

That now the exercise of laws "beyond Brazilian jurisdiction" did not seem to your Lordship to be quite the same thing as the exercise in Brazilian jurisdiction of laws applicable to offences committed beyond that jurisdiction, and that your Lordship would, therefore, be glad to know whether, by the present Report, we intend to signify our adherence to the opinion expressed in the Law Officers' Report of the 4th November, 1875.

That, if that was the case, your Lordship would further ask us to be good enough to add to our Report some suggestions as to the arguments which should be employed in answering the last Brazilian note upon the subject (inclosure in Mr. Drummond's No. 26 of the 20th March, 1876). That that note, which was well and temperately expressed, cited in support of the Brazilian law, the example of France and of many other European States, and that your Lordship would like to have materials for enforcing by argument our assertion that Great Britain would protect British subjects against the operation of the law.

In obedience to your Lordship's commands we have the honour to report—

Reply to Brazilian argument.

That we submit, for your Lordship's consideration, that the reply to the Brazilian note may be as follows:—

That the note assumes that the municipal law of a particular State, adopted by some other Governments and carried out by Treaties or Conventions between two or more States, is sufficient to introduce and sanction a principle which shall govern the relations of all other Governments to each other, and to each other's subjects.

Treaties only bind Contracting Parties.

This assumption is unfounded; Treaties can bind only the contracting parties; and the provisions in Treaties, where such provisions introduce new rules, are exceptions to, rather than evidence or confirmation of, a previous general law.

The municipal law of any particular State, *ex vi termini*, by the reason of the thing, and the universal usage and practice of nations, cannot effect a change in the duties and obligations of other States, and introduce a new principle of international law.

The municipal law of France, upon which the Brazilian note relies, dates from the Code de Brumaire, year iv, Articles 12 and 13; and see Code d'Instruction Criminelle, Articles 5 and 6.

French law is territorial.

But previous to the Code de Brumaire, year iv, crimes committed beyond French territory were not punishable in France. In accordance with the law in England and in the United States, and the general law of nations, it was held in France that the "loi pénale" was territorial, and could not, in France, be brought to bear upon acts committed beyond the limits of France.—"Ortolan," "Cléments de Droit Pénal," s. 910.

Even French subjects were apparently not amenable to French criminal law before the municipal law of Brumaire, year iv.

The Brazilian note states quite accurately that several continental nations have adopted the principle of French law, and have enacted that foreigners found within their territory may be punished for crimes committed beyond the territory; in other words, have adopted the principle of the *Forum deprehensionis*.

Municipal laws no evidence of international law.

These enactments, however, have been chiefly introduced since 1830; and it is remarkable, as a proof that municipal laws are no evidence of international law, that some of these Governments have tried to induce the French Government to adopt even a wider and more stringent jurisdiction than that in the Code Criminel, but without effect. In fact, different Governments have enacted different provisions on the subject and extent of jurisdiction over crimes committed outside their territories; and these varying acts of separate Governments, instead of proving the consent and agreement relied upon by the Brazilian note, show a divergence of opinion as well as a variance in practice, which is not to be deemed in any sense a foundation for a general rule of law binding on other nations.

The Brazilian note contends that what is called the sacred right of defence sanctions the positive law of a State to punish a foreigner for certain acts committed by him beyond the territory of such State.

This argument proves too much, for a number of different circumstances might be, as occasion happened, considered to afford a ground for the application of this sacred right of defence at one time, or in one country, against a man guilty of the greatest possible crime; at another time, or in another country, against a man whose offence has been most trivial.

Acts committed beyond the territory cannot endanger security of the State.

The act committed beyond the territory cannot properly be said to endanger the peace or security of the State into whose territory the supposed offender comes.

And the crime is an infraction of the laws of the country where the offence happens, not against the laws of the country into which the criminal may subsequently go.

Moreover, the argument drawn from the sacred right of defence is without application with respect to England, since protection or redress would here be afforded to the Government and the subjects of Brazil in the event of any crime being committed in this country against either.

Cannot admit Brazilian principles.

We think that Mr. Drummond may be instructed to reply to the Brazilian note that Her Majesty's Government cannot, for these reasons, admit the principles upon which the Baron de Cotegife argues that the new law of Brazil is consistent with international usage.

And Mr. Drummond should further be instructed to observe that the Brazilian law does not purport to sanction the exercise of Brazilian law over a British subject out of Brazil, but only when the British subject is found in Brazil.

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Correspondence with France in 1851-52.

Before any instructions are sent to Mr. Drummond upon this subject, we would suggest that some inquiry be made in the Foreign Office whether a correspondence did not pass between the French and English Governments in 1851-52 in reference to a *projêt de loi* upon a similar matter voted by the Corps Législatif the 4th June, 1852, and withdrawn by the French Government before the decision of the Senate.

This correspondence, if in existence, might throw light upon the views of Her Majesty's Government at the time, and give the means of replying to the Baron de Cotegife's observations upon the alleged silence hitherto kept by England.

We regret that, in the Report of the 16th June, 1875, the words "over crimes against Brazil and Brazilians committed" were by inadvertence omitted.

We adhere to the opinion expressed in the Report of the 4th November, 1875.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Central America.

## No. 19.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 17.)

*Temple, March* 16, 1876.

My Lord,

Bombardment of Amoa.

Vice-Consul Debrot's claim to British nationality

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 25th February ultimo, stating that, with reference to our Report of the 1st of September last upon the British claims against Honduras, on account of losses at Amoa in 1873, owing to the acts of General Streber, he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister in Central America, inclosing copy of a letter from Vice-Consul Debrot in support of his claim to British nationality; and that he (Lord Tenterden) was to request that we would favour your Lordship with our opinion as to whether M. Debrot has established his claim; and Lord Tenterden was pleased to add that your Lordship was not aware that it is usual for a British Consular Agent to take an oath of allegiance to Her Majesty on his appointment.

In obedience to your Lordship's commands we have the honour to report—

not established.

That M. Debrot has not established his claim to be a British subject.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 20.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 10.)

*Temple, July* 10, 1876.

My Lord,

Decree prohibiting contraband of war entering Salvador ports.

We were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 2nd day of June last, in which he stated that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister in Central America, inclosing copy and translation of a Decree issued by the Government of Guatemala, by which the introduction into, and traffic in, the ports of Salvador is prohibited of certain articles specified in the Decree as contraband of war, and by which it is further declared that such articles, in the event of their capture, will be considered lawful prize, and that he (Lord Tenterden) was to request that we would favour your Lordship with our opinion as to whether the Guatemalan Government has a legal right to prohibit by Decree the import of contraband of war into the ports of a State with which Guatemala is at war, without establishing and maintaining a regular and efficient blockade.

In obedience to your Lordship's commands we have the honour to report—

Guatemala may seize contraband of war in transit to enemy's ports without establishing a blockade.

That, assuming the existence of a state of war in which Guatemala is a belligerent, the Government of Guatemala has the legal right to seize articles contraband of war in transit to the ports of the other belligerents, without establishing and maintaining a regular and efficient blockade.

The articles named in the Decree, of which a copy is transmitted to us, are strictly contraband of war.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# China.

## No. 21.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 16.)

*Temple, June* 15, 1876.

Mr. Saur's claim.

My Lord,

Banker's order alleged to be burnt in fire at Shanghae Consulate.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us herewith correspondence in regard to a claim put forward by Mr. Julius Saur, to be compensated for the loss of a banker's order for 5,000 taels, alleged to have been destroyed in the fire at Her Majesty's Consulate at Shanghae, and that he (Lord Tenterden) was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to the answer that should be returned to Mr. Julius Saur in the case.

Case not made out. Refuse compensation.

In obedience to your Lordship's commands we have the honour to report—

That Mr. Julius Saur may, in our opinion, properly be answered, that the evidence furnished by himself, and which is contradicted by the evidence obtained from Shanghae, fails to show that the banker's order for 5,000 taels was placed in Her Majesty's Consulate at Shanghae, and subsequently destroyed there.

And that his claim for compensation, for the loss of such banker's order, cannot be entertained.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 22.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 8.)

*Temple, July* 7, 1876.

Order in Council. Fees, China and Japan.

My Lord,

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 1st June ultimo, stating that he was directed by your Lordship to transmit to us the accompanying draft Order in Council* with proposed amendments, shown in red ink, which had been prepared at the Board of Trade in communication with the Foreign Office, for abolishing such of the fees levied in China and Japan

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* For Order in Council as issued, see Confidential Paper No. 2912.

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under the Order in Council of the 19th June, 1868, as are inconsistent with the fees laid down in Schedule B of the Maritime Order in Council for China and Japan of the 6th August, 1874; and to request that we would take this draft into our consideration, and report to your Lordship whether the Order in Council as amended might properly be issued.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

Approving draft.

That the Order in Council as amended may, in our opinion, properly be issued.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 23.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 31.)

*Temple, July* 31, 1876.

My Lord,

Vessels of war purchased in England for China, leaving under Chinese flag.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us the accompanying letter from Mr. J. D. Campbell (Mr. Campbell, 13th July, 1876), the Agent in this country for the purchase of certain vessels of war for the Chinese Government, which were about to be dispatched to their destination under the Chinese flag, asking, with reference to the maintenance of discipline on board those vessels, how it would be affected by the exterritorial clauses of the Treaties with China; and that he was to request that we would take that paper into our consideration, and favour your Lordship with our opinion as to what answer should be returned to Mr. Campbell upon that point.

In obedience to your Lordship's commands we have the honour to report—

Discipline not affected by exterritorial Treaties, &c. Persons on board subject to Chinese law.

That it appears from the letter of Mr. J. D. Campbell to your Lordship, of the 13th July, 1876, that the ships in question will be under the Chinese flag and commanded by officers bearing the commission of the Emperor of China; and we are of opinion that the maintenance of discipline on board such ships is not in any way touched by exterritorial Treaties (or by any section of a British Act of Parliament), and all persons serving on board those ships will be amenable to Chinese law.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Dominica.

### No. 24.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 17.)

*Temple, July* 15, 1876.

My Lord,

Dominican law. Arms and munitions of war.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 4th July instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from the British Vice-Consul at Santo Domingo, inclosing copy of a law issued on the 2nd ultimo by the Dominican Government, prohibiting the introduction into that Republic of arms and munitions of war, and ordering the confiscation of all vessels discharging such articles, or having such articles on board under the circumstances specified in the said law.

That, as the terms of that law appeared to your Lordship to be extremely stringent, Lord Tenterden further stated that he was to request that we would be good enough to favour your Lordship at our early convenience with our opinion as to the steps that Her Majesty's Government should take with regard thereto.

In obedience to your Lordship's commands we have the honour to report—

That the first Article of the law issued by the Dominican Government is, in our opinion, within the competence of that Government.

Confiscation of vessels is contrary to international law.

The remaining Articles ordering the confiscation of all vessels carrying the forbidden articles are contrary to the rules and practices of civilized nations. (See "Ortolan," "Règles Internationales et Diplomatiques de la Mer, l. iii, c. vi; Phillimore International Law, 2nd ed., vol. iii., ss. 275, 277.) The general rule (perhaps subject to the exceptions mentioned in Phil., U.S.) is, that the only penalty the carrier of contraband of war is subject to is the loss of freight and expenses, as well as the contraband articles.

We, therefore, suggest, for your Lordship's consideration, that a notice of the prohibition, as in Article 1 of the Law, may properly be published in the "London Gazette."

Confiscation of British vessels should not be suffered.

And the Government of St. Domingo may properly be informed that the proposed confiscation of vessels in Article 2 so far as British ships are concerned will not be suffered by Her Majesty's Government.

We assume as the basis of our opinion that a state of war exists.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Egypt.

### No. 25.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 15.)

*Temple, March* 14, 1876.

My Lord,

Convention for settlement of British claims against Egypt.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the inclosed despatch of Her Majesty's Agent and Consul-General in Egypt, forwarding a copy of a Convention signed by him with the Egyptian Government, with reference to the nomination of a Special Commission for the settlement of the outstanding claims of British subjects against the Egyptian Government; and that he, Lord Tenterden, was to request that we would be so good as to inform your Lordship whether that Convention met the requirements of the case.

In obedience to your Lordship's commands we have the honour to report—

Seems to meet requirements of case.

That the Convention agreed to by General Stanton, and stated by him to be, as to its conditions, identical with the conditions contained in the Agreement previously signed by the Austrian, German, and Italian Consuls-General (we presume in relation to similar matters), seems to us to meet the requirements of the case.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 26.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 27.)

*Temple, May* 27, 1876.

My Lord,

British claims against Egypt. Rules of Procedure.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 24th April last, stating that, with reference to our Report of the 14th March, he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Agent and Consul-General in Egypt (General Stanton, No. 134, 10th April, 1876), inclosing copies in French and Italian of the Rules of Procedure which have been drawn up by the Commissioners nominated for the settlement of outstanding claims between British subjects and the Egyptian Government, and to request that we would take this despatch into our consideration, and favour your Lordship with our opinion as to whether these rules should receive the approval of Her Majesty's Government.

Lord Tenterden was also pleased to inclose General Stanton's despatch (General Stanton, No. 40, 12th February, 1876), containing a copy of the Convention sanctioning the Commission.

In obedience to your Lordship's commands we have the honour to report—

May be sanctioned.

That in our opinion, the rules may properly receive the sanction of Her Majesty's Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 27.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received August* 9.)

*Temple, August* 9, 1876.

My Lord,

New Court of Appeal. Daira bonds. Judgment against Khedive.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 5th June last, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Agent and Consul-General in Egypt, reporting that a question of the validity of the recent decrees for the unification of the Egyptian debt had been raised in the new Court of Appeal at Alexandria, in consequence of an action which had been brought against the Daira of the Khedive for the non-payment of a Daira bond due last April, and inclosing an abstract of the decision of the Court by which the Daira was called upon to pay the bond.

That Lord Tenterden was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to the instructions which should be given to General Stanton on this subject.

That two further despatches from General Stanton were therewith inclosed, which Lord Tenterden was to request that we would take into our consideration with that above referred to.

In obedience to your Lordship's commands we have the honour to report—

Opinion divided as to validity of judgment as against Khedive's Decree.

That we unfortunately are not agreed upon the question whether the judgment of the new Tribunals was right or not, for while the Attorney-General and Solicitor-General are of opinion that the Decree of the Khedive took away the plaintiff's right of action, and therefore the judgment against the Khedive was wrong, Dr. Deane is of opinion that the Decree was inoperative, and could not affect the rights ceded to foreigners under the Treaty and the new Code.

If Decree is an attack on rights acquired by foreigners, it is a breach of compact.

But we all agree that if the Decree is "une atteinte portée à un droit acquis d'un étranger par un acte d'Administration," Her Majesty's Government may properly direct Her Majesty's Agent and Consul-General in Egypt to point out to the Khedive that the Decree is a breach of the compact made with the Powers who were consenting parties to the establishment of the new jurisdiction and Tribunals.

We have read the further papers sent in reference to this matter, but the above Report applies also to them.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 28.

*Memorandum by the Lord Chancellor as to Egyptian Courts.*

Conflict between Khedive and the new Tribunals. (Daira bonds.)

THIS is evidently a very serious affair, and it appears to go to the root of the whole arrangement as to the unification of the Egyptian debt.

The two important Articles are the 10th and 11th, as to the competence of the Egyptian Courts (page 195 of F. O. Book, 2548).

The 10th Article makes the Government the "Administrations," and the dairas justiciable before the Court in suits with foreigners.

The Khedive, as I understand, contends that this means justiciable according to whatever may be the law of Egypt for the time being, but that he may change the law from time to time in any way he thinks fit.

Possibly this might be argued if the 10th Article stood alone.

But the 11th Article provides that the Court may pronounce judgment (taking as their standard the Code Civil) against attempts which prejudice a right acquired by a foreigner "by an act of Administration."

The words, "by an act of Administration," may be coupled either with the word "attempts," or with the word "acquired."

The Khedive's argument seems to couple the words with the word "attempts," and it alleges that in this case the attempts" are not "attempts by an act of Administration," but by an act of legislation.

Khedive's Decree is an act of Administration and comes under judgment of the Court.

I cannot agree with this. It is evident that Article 11 must have meant something more than Article 10. Article 10 made the "Administrations" justiciable, and Article 11, in protecting foreigners against the "act of Administration," must have meant something more than Article 10. In fact, in a country where the Sovereign is absolute, and has in himself absolute legislative power, a decree, or law, made in a matter of administration is itself an act of Administration, and the Decree of the Khedive for the suspension of payments and the unification of the debt is itself an act of financial administration, and as such may well come under the judgment of the Court by Article 11.

I think the German Memorandum is in substance right.

Powers should unite in protest.

I think, however, that it is most important that the Powers which joined in setting up the Court should unite in any protest that is made, or in any step that is taken, to get rid of the deadlock. It appears probable that, putting France aside, the other European Powers are disposed to support the authority of the Court. Whether France will do so may be doubtful, both because she has never looked favourably upon the Court, and also because she is probably interested in the arrangement for the unification of the debt.

(Signed) CAIRNS.

*August* 15, 1876.

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## No. 29.

*The Lord Chancellor to Lord Tenterden.*—(*Received October* 11.)

*Balmoral Castle, October* 9, 1876.

Dear Lord Tenterden,

Suez Canal votes. Agree with Law Officers.

I ENTIRELY concur in the opinion of Mr. Reilly and the Law Officers as to the right of voting at meetings of the Suez Canal Company.

Tribunal question. Retains same opinion.

As to the Egyptian Tribunal question, I have read the Egyptian Memorandum. I suppose you will place it before the Law Officers. It seems to me to be a long argument, the greater part of which is irrelevant. It does not grapple with the question of the construction of the clauses in the constitution of the Tribunal, and on these I retain the opinion I have already expressed.

Yours, &c.
(Signed) CAIRNS.

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## No. 30.

*The Attorney- and Solicitor-General to the Earl of Derby.—(Received November 6.)*

My Lord, *Temple, November* 6, 1876.

**Conflict between Khedive and new Tribunals.**

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 19th October ultimo, stating that, with reference to our Report of August last on the recent disputes between the Khedive and his new Law Courts, he was directed by your Lordship to transmit to us the correspondence which had passed on this subject,* and to draw our attention to the Egyptian Memorandum of the case, which we would find at p. 24 of the print.

That in our Report, which we would find at p. 15, we stated that while the Attorney and Solicitor-General were of opinion that the judgment against the Khedive was wrong, Dr. Deane was of opinion that the Decree for the unification of the Egyptian debt was inoperative, and could not affect the rights of the foreign plaintiffs, but that we were all agreed that if the Decree was "une atteinte portée à un droit acquis d'un étranger par un acte d'Administration," it was a breach of the compact made with the Powers who were parties to the establishment of the new Tribunals.

That the following is a brief outline of the principal arguments which are urged in the Egyptian Memorandum in support of the contention that the Decree was not such an "acte d'Administration" within the true meaning of Article 11 of the "Règlement Judiciaire." A distinction is drawn between the expression "mesure administrative," used in the first part of the Article, and the expression "acte d'Administration," used in the last part.

That it was contended that the first part of the Article explained the second (p. 35).

That the expression "mesure administrative," in the first part of the Article, means "une mesure administrative d'ordre général, et obligatoire pour tous" (p. 25), whereas the expression "acte d'Administration" in the second part of the Article means "les actes administratifs spéciaux dirigés contre les droits acquis ou arbitraires et mal fondés" (p. 31).

That the new Tribunals were expressly debarred by the terms of Article 11 from interfering with a "mesure administrative," while they were empowered in certain cases to give redress against "un acte d'Administration."

That the character and quality of a "mesure administrative" cannot be affected by the circumstance that private rights might suffer from its application; that the injury which might be occasioned to private rights is the consequence and not the object of such a measure (p. 35).

That as Article 11 debarred the Court from the faculty of interfering with the operation of a "mesure administrative," it clearly recognized the possibility of "mesures administratives exécutoires même envers les étrangers" (p. 35).

That the capitulations anterior to the reforms "n'établissent aucune limitation au pouvoir législatif du Khédive quant à la matière dont il s'agit." (See pp. 27, 34, and 35.)

That in granting the reforms the Khedive never intended to renounce this legislative power, and that "cette renonciation, qui serait d'une validité douteuse, même dans le cas où elle serait expressément stipulée, ne peut pas être présumée par l'interprétation trop subtile et forcée d'Articles de lois conçues dans un tout autre esprit" (p. 34).

That it could not be denied that the Decree for the unification of the Egyptian debt was a "mesure administrative" within the meaning of the first part of Article 11 (p. 25), and that the Court was wrong in holding that the application and enforcement of that Decree by the proper Department of State, in refusing to pay at maturity any one of the bonds or bills in question held by a foreigner was in each case a separate "acte d'Administration" affecting the private rights of foreigners within the meaning of Article 11.

That, in short, it was argued in the Memorandum that the Decrees of the 6th April and 7th May are "mesures administratives" of high State policy and of general application, which, though they might incidentally affect the rights of foreigners, it was clearly within the legislative power of the Khedive to enact whether under the régime of the capitulations or under the present system.

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* Print, Nos. 1, 2, 6, pages 1 to 41; General Menabrea, September 25; to General Menabrea, October 3; to Lord Chancellor, October 5; Mr. Gould, No. 76, October 2; Sir J. Harris, No. 110, October 5; Mr. Wyndham, No. 249, October 6.

That the Decrees being valid legislative measures, binding on foreigners as well as natives, no administrative act founded on those Decrees, and necessary to carry them into execution, could be held to be illegal, and that the Court, by delivering judgments for the payment of the Daïra bonds at maturity in the face of those Decrees, attempted to arrest the execution of a "mesure administrative," in violation of the prohibition contained in the first part of Article 11.

That the whole of the arguments are concisely resumed in pages 33 and 36.

That with reference to Article 34 of the "Règlement Judiciaire," we would observe that the Judgment of the Court, in the case of Caprera *v.* the Daïra (p. 6) asserts that under the Capitulations no Decree of the Egyptian Government was binding on foreigners without the assent of their respective Governments; and that at the time of the introduction of the judicial reforms it was expressly stipulated that the Capitulations should be maintained in their integrity. That the German Memorandum (p. 8) stated that the legislative power of the Egyptian Government has been essentially restricted by the agreements respecting the new organization of the Courts, and it was to be so restricted; and further, that the task of protecting foreigners in their rights, which under the Capitulations fell on the Powers, was by the introduction of the reforms transferred to the Mixed Courts. On the other hand, it was positively asserted in the Egyptian Memorandum that the Capitulations never restricted the legislative power of the Khedive over foreigners *on the subject matter* of the two Decrees (pp. 26, 27, and 34, and Declaration before Tribunal, p. 4), and it is stated by Chérif Pasha, in his letter to Major-General Stanton of the 23rd May, pp. 3, 4, that Article 11 gave rise to "des notes explicatives" between the Egyptian Government and some of the Powers interested, and it was expressly established that the new Tribunals should have no power "de prononcer sur les mesures d'ordre général et fiscal."

That we might, therefore, perhaps consider it necessary, in order to arrive at a satisfactory solution of the difficulty, that this conflict of opinion in regard to the effect of the Capitulations on the legislative powers of the Khedive over foreigners should be disposed of by further inquiry.

That in the meanwhile Lord Tenterden was to request that we would take the Egyptian Memorandum into our consideration, and favour your Lordship with any remarks which the arguments contained therein may suggest to us.

In obedience to your Lordship's commands we have the honour to report—

That we are unable to agree in the conclusion arrived at in this matter by Dr. Deane.

There are, we think, two distinct questions at issue which ought to be kept separate, but which in the Egyptian Memorandum, as well as in other papers written upon the subject, have been mixed up together.

1. Has the Khedive, in promulgating the Decrees of the 6th April and 7th May, violated any international obligations?

2. Is it competent for the Reformed Tribunals to entertain and decide this question, and pronounce the Decrees of the 6th April and 7th May to be invalid?

**Khedive has not violated international engagements.**

1. A great part of the Egyptian Memorandum is taken up with arguments to show that the Khedive has violated no international obligation in promulgating the Decrees of the 6th April and 7th May, and we incline to the opinion that on the whole these arguments are well founded.

**Tribunals have no power to decide limits of Khedive's sovereignty, or to refuse to recognize validity of Decrees.**

2. Upon the second head we think the Egyptian Memorandum proves that in the Regulations for the Reformed Tribunals the Khedive did not intend to give, and did not in fact give, to those Tribunals the power to determine the limits of his own sovereignty. The language of the 11th Article cannot, in our opinion, be construed to confer so extraordinary a jurisdiction. Whatever power was confided to the Tribunals to decide that individual acts of the administration were illegal, there was no authority given, or intended to be given, to decide on the validity of a law, or to arrest a general administrative measure of such importance as the unification of the public debt.

We are therefore still of opinion that in refusing to recognize the validity of the Decrees of the 6th April and 7th May the Reformed Tribunals were arrogating to themselves a jurisdiction not conferred upon them by the Regulations.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.

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## No. 31.

*Dr. Deane to the Earl of Derby.—(Received November 6.)*

*Temple, November* 6, 1876.

My Lord,

Conflict between Khedive and the new Tribunals.

I WAS honoured with your Lordship's commands, in conjunction with the Attorney- and Solicitor-General, signified in Lord Tenterden's letter of the 19th ultimo, stating that with reference to the Law Officers' Report of the 8th August last on the recent dispute between the Khedive and his new Law Courts, he was directed by your Lordship to transmit to us the correspondence which had passed on that subject, and to draw our attention to the Egyptian Memorandum of the case, which would be found at page 24 of the print.

That in the Law Officers' Report, which would be found at page 15, it was stated that while the Attorney- and Solicitor-General were of opinion that the judgment against the Khedive was wrong, Dr. Deane was of opinion that the Decree for the unification of the Egyptian debt was inoperative, and could not affect the rights of the foreign plaintiffs, but that we were all agreed that if the Decree was "une atteinte portée à un droit acquis d'un étranger par un acte d'administration," it was a breach of the compact made with the Powers who were parties to the establishment of the new Tribunals. The following was a brief outline of the principal arguments which were urged in the Egyptian Memorandum in support of the contention that the Decree was not such an "acte d'administration" within the true meaning of Article 11 of the "Règlement Judiciaire." A distinction was drawn between the expression "mesure administrative" used in the first part of the Article and the expression "acte d'administration" used in the last part. It was contended that the first part of the Article explained the second (page 35). That the expression "mesure administrative" in the first part of the Article meant "une mesure administrative d'ordre général et obligatoire pour tous" (page 25), whereas the expression "acte d'administration" in the second part of the Article meant "les actes administratifs spéciaux dirigés contre les droits acquis ou arbitraires et mal fondés" (page 31). That the new Tribunals were expressly debarred by the terms of Article 11 from interfering with a "mesure administrative," while they were empowered in certain cases to give redress against "un acte d'administration." That the character and quality of a "mesure administrative" could not be affected by the circumstance that private rights might suffer from its application, that the injury which might be occasioned to private rights was the consequence and not the object of such a measure (page 35). That as Article 11 debarred the Court from the faculty of interfering with the operation of a "mesure administrative," it clearly recognized the possibility of "mesures administratives exécutoires même envers les étrangers" (page 35). That the Capitulations anterior to the reforms "n'établissent aucune limitation au pouvoir législatif du Khédive *quant à la matière dont il s'agit.*" (See pages 27, 34, and 35.) That in granting the reforms the Khedive never intended to renounce this legislative power, and that "cette renonciation qui serait d'une validité douteuse même dans le cas où elle serait expressément stipulée ne peut pas être présumée par l'interprétation trop subtile et forcée d'Articles de lois conçues dans un tout autre esprit" (page 34). That it could not be denied that the Decree for the unification of the Egyptian debt was a "mesure administrative" within the meaning of the first part of Article 11 (page 25), and that the Court was wrong in holding that the application and enforcement of that Decree by the proper Department of State in refusing to pay at maturity any one of the bonds or bills in question held by a foreigner was in each case a separate "acte d'administration" affecting the private rights of foreigners within the meaning of Article 11.

That, in short, it was argued in the Memorandum that the Decrees of the 6th of April and 7th of May were "mesures administratives" of high State policy and of general application, which, though they might incidentally affect the rights of foreigners, it was clearly within the legislative power of the Khedive to enact whether under the régime of the Capitulations or under the present system. That the Decrees being valid, legislative measures binding on foreigners as well as natives, no administrative act founded on those Decrees and necessary to carry them into execution could be held to be illegal, and that the Court by delivering judgments for the payment of the Daïra bonds at maturity in the face of those Decrees attempted to arrest the execution of a "mesure administrative" in violation of the prohibition contained in the first part of Article 11.

That the whole of the arguments were concisely resumed in pages 33 and 36.

With reference to Article 34 of the "Règlement Judiciaire," it would be observed that the judgment of the Court in the case of Caprara *v.* the Daïra (page 6) asserted that under the Capitulations no Decree of the Egyptian Government was binding on foreigners without the assent of their respective Governments, and that at the time of the introduction of the Judicial Reforms it was expressly stipulated that the Capitulations should be maintained in their integrity.

That the German Memorandum (page 8) stated that the legislative power of the Egyptian Government had been essentially restricted by the agreements respecting the new organization of the Courts, and it was to be so restricted, and further, that the task of protecting foreigners in their rights, which under the Capitulations fell on the Powers, was, by the introduction of the reforms, transferred to the mixed Courts. On the other hand, it was positively asserted in the Egyptian Memorandum that the Capitulations never restricted the legislative power of the Khedive over foreigners *on the subject matter* of the two Decrees (pages 26, 27, and 34, and Declaration before Tribunal, page 4), and it was stated by Cherif Pasha in his letter to Major-General Stanton of the 23rd of May, pages 3 and 4, that Article 11 gave rise to "des notes explicatives" between the Egyptian Government and some of the Powers interested, and it was expressly established that the new Tribunals should have no power "de prononcer sur les mesures d'ordre général et fiscal."

That we might therefore perhaps consider it necessary, in order to arrive at a satisfactory solution of the difficulty, that that conflict of opinion in regard to the effect of the Capitulations on the legislative powers of the Khedive over foreigners should be disposed of by further inquiry.

In the meanwhile, Lord Tenterden was to request that we would take the Egyptian Memorandum into consideration, and favour your Lordship with any remarks which the arguments contained therein might suggest to us.

In obedience to your Lordship's commands I have the honour to report—

Dissent from Law Officers' opinion.

That I regret being unable to agree with the Attorney- and Solicitor-General.

I have carefully considered the long and able arguments contained in the Egyptian Memorandum, and also the similar heads of argument in the Swedish note.

I do not think it necessary to examine in detail the several points of that argument, because, as it seems to me, the case made in the Memorandum is based upon a fallacy, viz., that the Khedive is unfettered by convention with foreign Powers with reference to the Codes and Tribunals.

The Tribunals are founded upon Treaties.

The Tribunals exist and exercise a jurisdiction founded upon and conceded by Treaty. The concurrent will of the Contracting Powers is required to alter the provisions of the Regulations and Codes.

Had not the Decrees of April and May been issued, the Tribunals would, it is admitted, have had jurisdiction under Articles 10 and 11.

The avowed object, or, if not the object, the result of those Decrees, it is argued, takes away the competence of the Tribunals by an act of the Legislative Power.

Khedive cannot modify their powers without consent of Contracting Parties.

The Khedive could not, as it seems to me, without the consent of the Powers and by his own mere authority, evade and defeat the whole purport and object of Articles 10 and 11 of the "Règlement d'Organisation Judiciaire."

If the argument of the Memorandum is well founded, the Khedive by a Decree emanating from himself might put a stop to every proceeding under the new judicial system.

This, I conceive, he could not do without breaking faith with the several Powers, who were parties to the institution of this new system.

The need of this joint action of those several Powers with the Khedive disposes of the analogy and reference in the Memorandum to the case of Turkey and other States, which have at different times arbitrarily and under the pressure of difficulties dealt with their creditors.

Those States were, in the matter, independent, bound by no Treaty or Convention with other Powers. The Khedive has accepted the Code, and the Tribunals which are to work the Code, and is not in a position to deny the jurisdiction of the latter, or repeal the provisions of the former.

The assumption in the Memorandum, that the legislative authority of the Khedive was still absolute, and that by adopting the Code he ceded no part of his authority, is, I think, untenable. And I am of opinion that the Tribunals were competent, notwithstanding the Decrees.

Practically, however, the question has, I presume, ceased, from the financial position of Egypt, to be one which, with a view to the good of the creditors or the solvency of the Government, can be dealt with or solved upon the true legal interpretation of the words used in Articles 10 and 11 already referred to, even if there were no difference of opinion on the meaning of those Articles.

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A compromise advisable.

The independence of the Egyptian Government, the authority of the Tribunals for the past as well as for the future, and the interests of the creditors seem to require some compromise, and some further and more accurate definition of the Powers of the Government, the authority of the Tribunals and the rights of foreigners in litigation with the Daïra or the Government.

Your Lordship has before you the suggestion for such a compromise in Mr. Cookson's letter of the 3rd September (p. 23), and in that suggestion, modified to some extent as to the rights of creditors, who may not have obtained judgments, may be found the best and easiest way out of the present difficulties.

I have, &c.
(Signed) J. PARKER DEANE.

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# France.

## No. 32.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March* 15.)

*Temple, March* 14, 1876.

My Lord,

Joseph Gridley. Trial at Brest for piracy.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 24th day of January last, stating that he was directed by your Lordship to transmit to us the accompanying papers respecting the arrest and trial for piracy of a British seaman, Joseph Gridley, by the French authorities at Brest, and to request that we would favour your Lordship with our opinion as to whether Joseph Gridley is entitled to any compensation for the treatment he has received at the hands of the French authorities.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

Not entitled to compensation, but may bring case before French Government.

That, in our opinion, Joseph Gridley is not entitled to any compensation for the treatment which he has received at the hands of the French authorities; but we think Lord Lyons may properly be instructed to bring the matter officially before the French Government for their favourable consideration.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 33.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March* 17.)

*Temple, March* 16, 1876.

My Lord,

Liability of British subjects in France to military requisitions.

(Returns of horses and mules in their possession.)

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 4th February ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Paris (No. 32), forwarding a copy of a despatch from Her Majesty's Consul at Bordeaux, together with a copy of a letter addressed to the British Vice-Consul at Bayonne by the Prefect of the Department of the Basses Pyrénées, requesting him to call on British subjects residing in his district to make a return of horses and mules in their possession, with a view to their requisition for military purposes in the event of the mobilization of the French army.

Mr. Lister was also directed to inclose a further despatch (No. 38), with its inclosure, from Lord Lyons on the same subject, together with a Memorandum which had been drawn up in the Foreign Office on the question of the liability of British subjects residing in France to military requisitions. In this Memorandum reference is made to a Report of the Law Officers made in 1870, 26th August; and he was to request that we would take these papers into our consideration with reference to that Report, and favour your Lordship with our opinion on this question.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

British subjects not exempt from making such returns.

That, in our opinion, British subjects residing in France are not exempt from making a return of horses and mules in their possession with a view to the requisition of such horses and mules for military purposes in the event of the mobilization of the French army.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 34.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March* 20.)

*Temple, March* 18, 1876.

My Lord,

Privileges of mail-packets. Arrest of "Ville de Brest" when going to assistance of the postal steamer "Amérique."

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 12th January, 1876, stating that he was directed by your Lordship to transmit to us a correspondence respecting the arrest at Queenstown of the French vessel "Ville de Brest," which was one of the vessels belonging to the Compagnie Générale Transatlantique, subsidized by the French Government for the conveyance of mails.

That it appeared that the French postal steamer "Amérique," belonging to the same Company, whilst on her voyage from New York to Europe, in charge of the mails, injured her machinery, and the "Ville de Brest" having been dispatched to her assistance by the French Company, and having put into Queenstown for coal, was there arrested at the suit of a Mr. W. H. Owen, of Liverpool, on account of a claim preferred against the said Company to the amount of 12,000*l*., for the loss of a vessel with which, it was stated, the "Ville de Brest" had some time previously been in collision, and that that amount having been paid under protest, the "Ville de Brest" was allowed to proceed to sea to the assistance of the "Amérique."

That the Marquis d'Harcourt, the French Ambassador at this Court, now claimed the restitution of the 12,000*l*. paid under protest, on the ground that the "Ville de Brest" was entitled to the privileges of a Government mail-packet, under the Postal Convention of the 24th September, 1856, between this country and France (of which a copy was inclosed), and that the arrest was, therefore, illegal.

That Article V of the Convention in question, which described the privileges of packets employed by, or subsidized by, the post-offices of each nation, and which provided for such immunity from arrest, concludes with the words, "they shall not on any account be diverted from their especial duty or be liable to seizure, detention, embargo, or 'arrêt de Prince.'"

That in case it should be urged by the parties who instituted the proceedings against the "Ville de Brest," that she was not carrying mails at the time of her arrest, and, therefore, not engaged on the "especial duty" above referred to, it may be observed that the Xth Article of the same Convention states:—

"In cases of accident or damage sustained in the course of their navigation, by the packets respectively employed by the two Offices in the conveyance of the mails, the Contracting Parties engage to afford mutually to those vessels all the aid and assistance which their situation may require, &c., and it might, therefore, be a question whether the arrest of a vessel, sent out in aid of a postal vessel, in the act of carrying mails, would not of itself constitute an infraction of the above Article, irrespective of the privileges which the vessel arrested might claim as being subsidized as a mail vessel by the French Government.

That Lord Tenterden was therefore to request that we would take that case into our consideration, and favour your Lordship with our opinion thereupon, and as to the course which Her Majesty's Government in regard to the French Ambassador's application.*

That he, Lord Tenterden, was to inclose, for our information, although the case

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* *Sic in orig.*

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was not quite an analogous one, a correspondence which took place in the course of the year 1875, in regard to the arrest at Dover, and subsequent release, of the Belgian postal steamer "Prince Bedouin," together with a Memorandum referring to another case of similar detention which occurred in the year 1871, and which formed the subject of a reference to the Law Officers, in both of which the prompt release of the vessels was ordered.

In obedience to your Lordship's commands we have the honour to report—

**Contrary to stipulations of Postal Treaty.**

That, in our opinion, the seizure of the "Ville de Brest," and the subsequent demand of security for a deposit of 12,000*l.* as the condition of her release, was contrary to Treaty obligations.

**Money paid should be returned.**

And the Court of Admiralty should, we think, be moved to order the return of the money deposited.

We give this opinion, assuming that the "Ville de Brest" was a subsidized vessel within section 5 of the Postal Convention.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 35.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May 16.)*

My Lord,
*Temple, May* 16, 1876.

**Privileges of mail-packets. Arrest of the "Ville de Brest.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th ultimo, stating that, on the receipt of our Report of the 18th March, respecting the French vessel "Ville de Brest," your Lordship caused a letter, which he was directed by your Lordship to inclose therewith, to be addressed to the Post Office, requesting that the necessary communication might be made to the Admiralty in accordance with our Report, if Her Majesty's Postmaster-General should see no reason to differ therefrom, calling on that Department to move the Court of Admiralty to return the sum of 12,000*l.* which was paid to release that vessel from arrest.

That Lord Tenterden was then to transmit to us the reply from the General Post Office, from which we should observe that Lord John Manners did not consider that the vessels in question did not* come within the terms of the Vth Article of the Postal Convention of the 24th September, 1856, as regards immunity from seizure.

That Lord Tenterden was to request that we would take that letter into our consideration, and favour your Lordship with our opinion as to whether the view taken by Her Majesty's Postmaster-General was correct, and, if so, what steps should be taken by Her Majesty's Government in the matter. That the previous papers were sent therewith for reference if necessary.

In obedience to your Lordship's commands we have the honour to report—

That if the "Ville de Brest" was a vessel maintained, freighted, and subsidized by the French Government for the conveyance of correspondence, and did as a fact convey correspondence from France to England by the way of Havre and Plymouth, we should still be inclined to think that she came within Article V of the Convention, though, as Lord John Manners says, she does not carry any mails on behalf of the English Post Office.

**French contract should be examined as to her being a packet within meaning of the Treaty.**

The right to the privileges claimed by the French Ambassador can, as it seems to us, not be satisfactorily ascertained till—first, the contract for the conveyance of mails between the French Government and the Company to which the "Ville de Brest" belongs has been considered; and, secondly, the fact whether mails, in pursuance of such contract, if any, are conveyed by that Company's ships to Plymouth. We therefore submit, for your Lordship's consideration, that the French Ambassador may properly be informed of the doubts existing as to the "Ville de Brest's" right to the exemptions in the Convention, and be requested to allow an inspection of the contract between the French Government and the Company, and that Lord John Manners may be asked whether, as a fact, the vessels belonging to the French Company do bring mails from France to England.

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* *Sic in orig.* Query "did come."

We gather from the Post Office letter that mails from England to France are not conveyed by this Company.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 36.

*Mr. Lister to the Law Officers of the Crown and Dr. Deane.**

Gentlemen,
*Foreign Office, May* 5, 1876.

**Channel Tunnel. Protocol of Commission.**

I AM directed by the Earl of Derby to state to you that his Lordship, after communication on the subject with the Treasury, is desirous of obtaining your opinion on a Protocol *ad referendum* adopted at a meeting of the Anglo-French Commission for the Channel Tunnel and Railway, held at Paris last February.

Copies of the minutes of that meeting, of printed correspondence on this subject, and a letter from the Board of Trade, are likewise inclosed, and I am, at the same time, to inform you that Lord Derby has settled with the Treasury that, before any final step is taken which would be binding upon the two Governments, the approval of Parliament to the course proposed to be pursued shall be obtained.

In the present stage of this matter, Lord Derby directs me to request that you will take this Protocol into consideration, and that you will favour his Lordship with any observations or suggestions which you may have to offer thereupon.

You will perceive that the next meeting of the Commission is appointed to be held in London on the 22nd instant, and I am, therefore, to request that you will be so good as to forward your Report before the 14th instant, in order that Lord Derby may be able to communicate it to the Treasury in time for the British Commissioners to receive their instructions before that meeting takes place.

I am, &c.
(Signed) T. V. LISTER.

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*Report from the Law Officers in reply to the foregoing Letter.*

That we have carefully considered the papers transmitted to us.

**Legislation necessary, and Treaty with France.**

It seems to us that the matters referred to in the Protocol can be settled only by legislation, so far as this country is concerned, and by Treaty as between this country and France.

**Proposed responsibility of Government.**

We presume that the action of the British Government from time to time, and in several particulars, is necessary to the carrying out of the scheme; but we observe that the Protocol suggests that the Government should take upon itself considerable responsibilities, so far, in some eventuality, as the working and purchase of the railway and tunnel.

**Jurisdiction over offences before opening of line.**

No provision seems to be suggested for the jurisdiction over and punishment of offences before the time when the line is in working order. The attention of the Commission might, we think, be called with advantage to this omission.

We have no further observations to make on the Protocol.

J. H.
H. S. G.
J. P. D.

*May* 18, 1876.

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* The Law Officers' Report upon this subject could not be discovered when this collection of Reports was made, and it was therefore necessary to obtain from the Law Officers the original as drawn up by them. The Law Officers, however, do not appear to retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the substance of the Foreign Office letter to them is recapitulated. It has therefore been deemed advisable to print the Foreign Office letter in this instance, as without it the bare Report, without the preamble, might not be wholly intelligible.

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## No. 37.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 13.)

*Temple, July* 12, 1876.

My Lord,

Channel Tunnel.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 22nd June, stating that with reference to that part of our Report of the 18th May in which we suggested that provision should be made for the jurisdiction over and punishment of offences which might occur before the time when the Channel Tunnel and Railway were in working order, he was directed by your Lordship to transmit to us a Memorandum by Mr. Watson (25th May, 1876), in which he sets forth reasons against dealing with that matter in the manner suggested in our letter. That he, Mr. Lister, was to request that we would take the inclosed paper into consideration, and favour your Lordship with our opinion on the subject.

In obedience to your Lordship's commands we have the honour to report—

That in our former Report we kept before us the fact that your Lordship had desired that we should make such observations upon the Protocol sent to us as that document might suggest.

Jurisdiction over offences before opening of line.

Accordingly, we noticed the omission of any provision for jurisdiction during the time the tunnel was making, and recommended that this omission should be brought to the attention of the Commission.

Provision should be made for, but not by international contract.

We did not intend that this jurisdiction should be dealt with by international contract, nor, in fact, did we say so. But we were and still are of opinion that some provision should be made, if not by both England and France, certainly by England, for offences committed during the progress of the works. And we see that Mr. Watson agrees with this opinion, though he has mistaken our former Report in supposing that we meant this provision should be made by contract between the two countries.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 38.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 13.)

*Temple, July* 12, 1876.

My Lord,

Powers of "Pro-Consuls" appointed by Consuls.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 27th June ultimo, stating that he was directed by your Lordship to transmit to us a correspondence with Her Majesty's Consul at Bordeaux* as to the validity of the signature attached to legal certificates of a person asked by the Consul to sign for him while still present at his post.

That the Consul contended that, in view of the powers conferred on Acting Consuls and Pro-Consuls by the Act 18 and 19 Vict., cap. 42, the signature of such a person was valid.

That it had always been considered in the Foreign Office that an "Acting Consul" was a person who acted in the absence of a Consul from his post; and that the sanction of the Secretary of State to such a temporary transfer of duty was necessary in order to render the signature of the Acting Consul valid. That the term "Pro-Consul," though inserted in the Act of Parliament, was not one that was ever used in the Foreign Department, and your Lordship was unaware whether it could be considered that there was any material difference between an "Acting Consul" and a "Pro-Consul."

Mr. Lister was accordingly pleased to request that we would take this subject into our consideration, and favour your Lordship with our opinion as to whether a "Pro-Consul" differs in any way from an "Acting Consul," and if so, whether a "Pro-Consul" might be properly taken to mean a person deputed by the Consul to administer oaths and perform notarial acts without the sanction of the Secretary of State having been obtained, and while the Consul was at his post; and to state that the 20th section of the Consular Act, which bears on the subject, would be found at p. 57 of the accompanying volume (General Consular Instructions), and the Act 18 and 19 Vict., cap. 42, at p. 65.

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* To Consul Hunt, No. 2, May 23; Consul Hunt, No. 16, June 6; to Consul Hunt, No. 3, June 16; Consul Hunt, No. 18, June 19.

In obedience to your Lordship's commands we have the honour to report—

That, so far as we know, the term "Pro-Consul" is used only in the Sardinian Consular service. (Cussy, "Règlements Consulaires des Etats de l'Europe et de l'Amérique," p. 423.) He is an inferior, though distinct, Consular Officer, appointed by a superior Consular Officer, and without any right to promotion.

The word in 18 and 19 Vict., c. 42, was possibly inserted and allowed to remain in the Statute by inadvertence, or with the idea of including every kind of person discharging Consular duties.

Difference between Pro-Consul and Acting Consul.

Former cannot administer oaths without authority of Secretary of State.

The only distinction we would suggest between an "Acting Consul" and a "Pro-Consul" is, that the former may be the person acting during the temporary absence of the regular Consular Officer from his post. The "Pro-Consul" discharging certain duties thrown upon him by his principal, who, though present, cannot at the moment in person perform the required duty; but, whatever may be the meaning of the word "Pro-Consul," we are of opinion that a person deputed by the Consul without the authority of the Secretary of State cannot administer an oath under 18 and 19 Vict., c. 42.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 39.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received August* 5.)

*Temple, August* 1876.

My Lord,

Privileges of mail-packets.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 26th July ultimo, stating that he was directed by your Lordship to inform us that upon receipt of our Report of the 16th May last respecting the arrest at Queenstown in December last of the French vessel the "Ville de Brest," the French Ambassador at this Court was, as recommended by us, informed of the doubts existing as to the right of that vessel to the exemption from arrest claimed for her, and was requested to move the French Government to enable Her Majesty's Government to have access to the mail contract between that vessel* and the Company to which the "Ville de Brest" belongs; and, at the same time, Her Majesty's Postmaster-General was requested to state whether, as a fact, the vessels belonging to the French Company do bring mails from France to England.

Lord Tenterden further stated that he was to transmit to us a letter from the French Ambassador, inclosing a copy of the contract in question, and a letter from the General Post Office, containing a reply to the question suggested in our Report; and that he, Lord Tenterden, was to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to the answer which should now be returned to the French Ambassador on the case.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

That we have carefully considered the Articles of the Postal Convention between this country and France, and the Convention between the French Government and the Transatlantic Company, and the Post Office letter of the 29th May, 1876.

We consider that the privileges provided for under Article V of the Postal Convention are limited to vessels employed in conveying mails between France and England, and that the Company to which the "Ville de Brest" belonged and the service in which the vessels of that Company are employed have no relation to the conveyance of mails between France and England, and cannot consequently claim the privileges of the Postal Convention between the two countries.

"Ville de Brest" does not come within meaning of Postal Convention, and cannot be relieved from the security given on her behalf.

The Marquis d'Harcourt may therefore, in our opinion, properly be answered that Her Majesty's Government, considering that the "Ville de Brest" does not come within the provisions of the Convention for the communication by post between France and this country, cannot take any measures for relieving the Company to which

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* *Sic. in orig.* Query "between the French Government and the Company, &c."

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the "Ville de Brest" belongs from the security which has been given on behalf of that vessel.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 40.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.**—(*Received August* 5.)

*Temple, August* , 1876.

Powers of a Pro-Consul.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th ultimo, stating that with reference to our Report of the 12th ultimo, respecting the validity of the signature attached to legal certificates of a person asked by the Consul to sign for him while still present at his post, he was directed by your Lordsnip to observe that the point as to whether a person so deputed could perform notarial acts without the sanction of the Secretary of State had not been noticed in our above-mentioned Report.

That your Lordship would be glad, therefore, if we would kindly take the point into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

Cannot perform notarial acts.

That, in our opinion, a person appointed Pro-Consul, or Deputy by the Consul, cannot, by virtue and on the strength of such appointment, perform notarial acts.

He derives no authority from Consul's appointment.

We regret that your Lordship has had the trouble of referring these papers back to us. Our former Report should have stated expressly our opinion that the "Pro-Consul" or Deputy derived no authority whatever from the Consul's appointment of him.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 41.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received August* 12.)

*Temple, August* 10, 1876.

Newfoundland fisheries. Rights of French fishermen.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 26th ultimo, stating that the Law Officers of the Crown had from time to time had referred to them from the Foreign Office certain questions arising out of some long outstanding matters of dispute between this country and France in regard to French rights of fishing on certain given points of the coast of Newfoundland, by virtue of formal engagements entered into between the two countries; and, as we were no doubt aware, negotiations had from time to time been entered upon at Paris with a view to a settlement of these outstanding questions, but hitherto without any satisfactory result; and renewed negotiations of a more or less informal character, which were conducted at Paris during last year and the early part of the present year, between Captain Miller, as British Commissioner, and Captain de Boissoudy, as the Commissioner for France, were broken off in the month of March last, under the circumstances stated in the Colonial Office letter thereto annexed.

That that letter, as we should see, inclosed some draft Articles which Lord Carnarvon, in communication with Captain Miller, and with Mr. Carter, the Premier of Newfoundland, were desirous should be submitted to the French Commissioner, as containing the basis of the arrangements to which the Imperial Government and that of Newfoundland were ready to consent, with a view to a settlement of the matters in dispute, though, as we should see by the correspondence, they were not to be put forward as being textually agreed to.

That before, indeed, they could be so submitted formally to the French Commissioner, your Lordship was desirous of being favoured with any observations we might desire to offer in regard to any amendments in form, or any alterations which it might appear to us desirable to introduce into those Articles, without, however, affecting their substance; and since the principles involved in them had, as Lord Tenterden had said, been already agreed to by the Imperial and Colonial Governments (or rather by the Premier of Newfoundland on behalf of the latter), it was unnecessary that he (Lord Tenterden) should call our attention generally to those principles.

That there was one point, however, to which it might be desirable that he should advert, as it came prominently forward in Article I of the draft Articles, and involved, perhaps, the most serious point of contention between the fishermen of the two countries, namely, how far French fishermen can claim, at those points of the coast where they have fishery rights, exceptional privileges of fishing over British or Colonial fishermen.

That the point at issue arose out of the wording of the British Declaration signed at Versailles on the 3rd September, 1783, which stated that "to this end (viz., to prevent all 'foundation of dispute for the future'), and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishery of the French, during the temporary exercise of it which is granted to them, upon the coast of the Island of Newfoundland; and he will for this purpose cause the fixed settlements which shall be found there to be removed."

That out of that declaration had arisen the claim of the French Government on behalf of their fishermen to the exclusive right of fishing on the parts of the coast in question during the fishing season, to the entire exclusion of British fishermen, a pretension which had never been admitted by this country, though it had formed the subject of much discussion, not only with the French Government, but amongst legal and other authorities in this country, who at various times had taken very opposite views of the exact privileges intended to be accorded to the French (or which could, in fairness, be claimed by them) under the declaration in question.

That, in Article I of the draft Articles then inclosed, it was proposed to insert the words, "that the French fishermen shall be deemed, so long as this Convention is in force, to have the first claim to any particular position on the water, but not so as to exclude the British from such rights of free concurrent fishing as they have hitherto enjoyed and are entitled to claim."

That Lord Tenterden had thought it right to enter into the above brief explanation in order to account for the more or less ambiguous terms which that Article contained, but which your Lordship understood were intended, whilst still maintaining the right of British fishermen to concurrent fishing, to yield the preference of station in point of fact to French fishermen, a concession which the Colonial Office are of opinion would be found acceptable with the French Commissioner, whilst the details of such an arrangement could be determined by the Joint Commission which it was proposed to appoint to regulate all such matters on the spot.

That, in drawing our attention to that particular Article, your Lordship, at the same time, directed Lord Tenterden to observe that, in your Lordship's opinion, it was most essential in any new negotiation to avoid the use of ambiguous, or vague, or contradictory expressions, such as might give rise to probable, or even possible embarrassment or dispute in the time to come; and that your Lordship would request that, in any amendments which we might think fit to suggest in the proposed Articles then submitted to us, we would keep that principle prominently in view.

That your Lordship did not desire to offer any further observation upon the draft Articles in their present stage, but that your Lordship would be glad to be favoured with our Report on that subject at our earliest possible convenience, as it was most important that every facility should be afforded for a speedy settlement of those outstanding questions, and the British Commissioner has already proceeded to Paris with a view to an immediate resumption of negotiations.

That the draft of the answer which your Lordship had caused to be returned to the Colonial Office was also annexed.

We are also honoured with a further letter from Sir Julian Pauncefote, bearing date the 28th ultimo, inclosing copy of a despatch from Her Majesty's Ambassador at Paris relative to the above question, and to request that we would take that despatch into our consideration with reference to the papers then before us.

In obedience to your Lordship's commands we have the honour to report—

Draft Convention will add to the confusion existing.

That the Article A of the proposed Convention is, in our opinion, so framed that, instead of lessening, it will add to the difficulties which have, down to the present time, beset the Newfoundland Fisheries question.

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* See also No. 71. (*Miscellaneous.*)

That the expression "first claim to any particular position on the water" is vague and ambiguous in itself, and is not made more certain by the following words: "but not so as to exclude the British from such rights of free concurrent fishing as they have hitherto enjoyed and are entitled to claim."

What are the British rights?

The rights of the British are the very things in dispute, and on the first occasion, if the Convention be agreed to, will arise under it the question, what rights have the British hitherto enjoyed; what rights are they entitled to claim?

Again, what are the rights and what is the meaning of a "free concurrent fishery," which is "not to interrupt in any manner by competition" the French fishermen? (British Declaration, 3rd September, 1783).

Further, what is the meaning of "the first claim to any particular position on the water?"

Take the case of a British vessel taking up a position at a distance from and even out of sight of French vessels. Is the British ship to keep that place or give it up at the demand of the French vessel which may come up some time afterwards?

And the French?

To take another case. How far do the rights of the French extend from the particular position on the water originally taken up?

We could trouble your Lordship with other instances of complication, which, as it seems to us, would arise under Article A. But we merely suggest, for your Lordship's consideration, those matters which immediately occur as vague and ambiguous to the extent of making the important Article A utterly useless, if not mischievous.

We have not the local or practical knowledge which would enable us to say how this Article could be amended. And we are pressed by the observation of Mr. Carter, that if a distance were given within which no British vessel should fish the French might occupy the whole fishing-ground to the exclusion of the British.

We can, therefore, only submit to your Lordship the objections which occur to us, and the reasons for those objections.

Proposed amendments.

We think Article F should follow after Article D, and be placed before the present Article E.

And in Article G, instead of "belonging," the words "which belong" might be used as a more positive assertion of the fact.

We further suggest the omission of the words "by their competition" at the end of the first paragraph of Article G.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 42.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received August* 15.)

My Lord,

*Temple, August* 14, 1876.

Case of Mr. Lottin. Grant of passport.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 8th June, 1876, stating that he was directed by your Lordship to transmit to us a correspondence, as marked in the margin,* respecting the case of Mr. Lottin, who, having been born in London of French parents, had applied to the British Embassy at Paris for a passport, on the ground of his being a British subject, an application which Her Majesty's Minister did not feel justified in granting without previous authority from the Foreign Office.

That Mr. Adams having been called upon for a report as to what had been the practice observed hitherto at the British Embassy in Paris, in the case of applications for passports under similar circumstances; and, further, as to the light in which the granting of such passports would be viewed by the French Government, that Lord Tenterden inclosed a despatch from him conveying a Report from M. Treitt, the Legal Adviser to the Embassy, on this subject, and requested that we would take these papers into our consideration, and favour your Lordship with our opinion whether the answer which your Lordship proposed to return to Mr. Lottin was right and proper.

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* Mr. Lottin, May 16; to Mr. Lottin, May 27; to Mr. Adams, No. 538; Mr. Adams, No. 371; to Mr. Adams, No. 575; Mr. Adams, No. 395; draft to Mr. Lottin.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

Double nationality cannot have passport. (See Note.)

That in our opinion the answer which your Lordship proposes to return to Mr. Lottin is right and proper.*

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No 43.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received October* 10.)

My Lord,

*Temple, October* 9, 1876.

Claim of Pericador Toncador against executors of Mdme. Larichandy, at Réunion.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 23rd August last, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Consul at Réunion, stating the difficulties under which an Indian, named Pericador Toncador, was placed, in his attempts to recover a sum of 1,500 fr. claimed by him from the heirs and trustees of Mdme. Larichandy, and that he was to request us to favour your Lordship with our opinion, whether in this case your Lordship would be justified in making any representation to the French Government, with a view of invoking their interference.

In obedience to your Lordship's commands we have the honour to report—

That the circumstances of this case are not, in our opinion, sufficient to justify any official interference on your Lordship's part for the protection of the Indian, Pericador Toncador, since, if he had the means of placing his case before the Tribunals at Réunion, he might obtain justice, or at least a decision.

It is, however, clear, from the facts stated by Mr. Consul Perry, that advantage has been taken, first, of the ignorance of the Indian in obtaining his money; secondly, of his poverty, in the refusal to return the money without legal proceedings.

Her Majesty's Government may support officiously.

And your Lordship may, therefore, in our opinion, properly, but officiously, bring the case to the notice of the French Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 44.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received October* 14.)

*Temple, October* 14, 1876.

My Lord,

Newfoundland fisheries. Draft Convention.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 20th ultimo, stating that he was directed by your Lordship to state to us that your Lordship caused our Report of the 10th August, on the draft Articles proposed for the settlement of the Newfoundland Fishery question, to be submitted to the Secretary of State for the Colonies; and that he, Mr. Lister, was then to transmit to us a letter from the Colonial Office, inclosing an amended draft of Article A, and that he was to request that we would favour your Lordship, at our earliest convenience, with our opinion on that Article as now recast.

In obedience to your Lordship's commands we have the honour to report—

Language is still ambiguous.

That the clause, as recast, is, in our opinion, vague and ambiguous.

The language of Clause A, for example, in the phrases "the same waters" and "not already occupied," will be understood in different senses, and will certainly give rise to dispute hereafter.

But, without any practical or local knowledge, and looking to the letter from the

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* The reply to Mr. Lottin was to the effect that, as he had a double nationality, he could not be supplied with a passport by Her Majesty's Ambassador at Paris unless, by French law, he had ceased to be a French citizen.

Colonial Office, we are unable to suggest how the clause could be made more certain or more clear.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 45.

*Lord Tenterden to the Law Officers of the Crown and Dr. Deane.*[*]

*Foreign Office, December* 5, 1876.

Gentlemen,

Extradition Act, 1870. Powers of Governors of British Colonies.

I AM directed by the Earl of Derby to transmit to you, for your consideration, the accompanying correspondence relating to the powers of Governors of British Colonies under the Extradition Act of 1870; and I am to request that you will favour his Lordship with your opinion whether the Governors of British Colonies are bound to discharge, with regard to extradition from the Colonies under that Act, all the duties discharged by a police magistrate in cases of extradition from the United Kingdom, or whether such Governors may, in accordance with the view expressed by the Home Office, depute colonial magistrates to discharge these duties.

The interpretation clause of the Act assigns to the expression "police magistrate" the special meaning therein mentioned, "unless the context otherwise requires," but having regard to the modifications introduced by section 17 for the purpose of applying the Act to Colonies, it may be questionable whether a departure from the special interpretation assigned is required within the intent and meaning of those words.

I am to observe, however, that if such departure be admissible in applying the Act to colonial extradition, no special deputation from the Governor to a police magistrate would appear necessary, as the latter could act under the order issued by the Governor in lieu of the Secretary of State, under sections 7 and 17 (2).

Another consequence would flow from this construction of the Act, that police magistrates and justices of the peace in Colonies might initiate extradition proceedings under section 8, as it is provided by section 17 that the Act for the purposes of colonial extradition shall be read as if the British possession were substituted for the United Kingdom or England.

If you should be of opinion that police magistrates in Colonies are competent under the Act to execute and perform the powers and duties in relation to extradition which are vested in police magistrates in England, Lord Derby would be glad to be informed whether you consider that in Colonies the expression "police magistrate" must be limited to "stipendiary magistrates," or may include unpaid justices of the peace who in some Colonies deal with police cases.

I am, &c.
(Signed) TENTERDEN.

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*Report from the Law Officers in reply to the foregoing Letter.*

The terms "Secretary of State" and "police magistrate" are defined in section 26 of the "Extradition Act, 1870."

And the duties of the police magistrate are set out in the 8th and following sections of the Act.

Section 17 extends the Act as if "British possession" were substituted in the Act for the United Kingdom or England.

The Governor would not, apart from the Act, have the power of extradition. His powers, therefore, are limited by the words of the Act.

The Governor must perform the acts performed in England by a police magistrate.

Section 17, sub-section 2, provides that all powers vested in or acts authorized or required to be done by the police magistrate and the Secretary of State, or either of them, in relation to the surrender of a fugitive criminal, may be done by the Governor of the British possession alone.

I find in the Act no words which would authorize either the Secretary of State or the police magistrate to depute any persons to discharge their several duties in relation to the surrender of a fugitive criminal. The context does not seem to require any changes in the meaning of the words "police magistrate" given in the interpretation clause, for the Governor can do the acts which the Statute requires the police magistrate to do.

Cannot depute colonial magistrates to perform them for him.

We are therefore of opinion that the word "may" in section 17, sub-section 2, must be read as "shall," and that the Governor is bound to discharge, with regard to extradition under the Act, all the duties discharged by the police magistrate in cases of extradition from the United Kingdom, and that the Governors in British possessions cannot depute colonial magistrates to discharge those duties.

J. H.
H. S. G.
J. P. D.

*December* 11, 1876.

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## Germany (Prussia).

### No. 46.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 28.)

*Temple, March* 27, 1876.

My Lord,

Imprisonment of Mr. Robshaw at Hamburg; charge of fraud.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Ambassador at Berlin, together with two despatches and their inclosures from Her Majesty's Consul at Hamburg, and previous correspondence, as marked in the margin,[*] relative to the case of Mr. Robshaw, who had been recently imprisoned in Hamburg on a charge of fraud and collusion with a defaulter named Rogers, who had absconded with certain goods, and who after having been in prison for nearly five months was set at liberty on the 10th June last, the Hamburg Court of Inquiry having decreed that no prosecution should take place.

That we would perceive that Dr. Sieveking, an eminent lawyer at Hamburg, having been requested to make inquiries, with a view of ascertaining whether any claim could be instituted on account of the losses alleged to have been incurred by Mr. Robshaw in this matter, had reported to the effect that a claim of this nature could scarcely be sustained, but that, if so inclined, Mr. Robshaw could bring an action for damages before the Civil Court for withholding certain documents belonging to him, and which he considered to be of value.

Mr. Lister was pleased to request that we would take the inclosed papers into our consideration, and favour your Lordship with our opinion whether any further steps could be taken by Her Majesty's Government in this matter, and, if so, what course it would be most expedient to adopt.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

Treated according to law of Hamburg. Her Majesty's Government cannot interfere.

That in our opinion Her Majesty's Government cannot properly take any further steps to assist Mr. Robshaw, who seems to have been treated in accordance with the law and practice of the Tribunals of Hamburg in cases of a like kind.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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[*] The Law Officers' Report upon this subject could not be discovered when this collection of Reports was made, and it was therefore necessary to obtain from the Law Officers the original as drawn up by them. The Law Officers, however, do not appear to retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the substance of the Foreign Office letter to them is recapitulated. It has therefore been deemed advisable to print the Foreign Office letter in this instance, as without it the bare Report, without the preamble, might not be wholly intelligible.

[*] Lord Odo Russell, No. 3, Consular, February 15, 1876; Consul Annesley, No. 5, February 1876; Consul Annesley, No. 6, February 14, 1876; List.

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## No. 47.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 23.)

*Temple, May* 22, 1876.

My Lord,

Case of Mr. Whinney.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 12th ultimo, stating that, with reference to his letter of the 15th January, 1875, he was directed by your Lordship to transmit to us a letter, with its inclosures, from Mr. Whinney, who was arrested at Hamburg, and ordered to deposit a sum of 5,000*l.* in a German Court.

That the previous papers with respect to that case were inclosed, from which we should perceive that, in answer to Mr. Whinney's first appeal for assistance, your Lordship was, by the advice of the Law Officers of the Crown (dated the 30th January, 1875), informed that his (Mr. Whinney's) remedy lay in an appeal to the Higher German Courts.

That that appeal having been made unsuccessfully, Lord Tenterden was to request that we would take those papers into careful consideration, and favour your Lordship with our opinion whether the case was now such as to call for any diplomatic action on the part of Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

That in our opinion diplomatic interference would, in this case, be useless, since the German Government would obviously answer that they cannot control the decisions of German Courts, which are given in accordance with the law of the country.

His proceedings against a debtor at Hamburg, and his liability to return goods seized from same debtor in another country.

We have read with care the whole case submitted to and the opinion given on that case by Mr. Stephen. We agree with him in the remarks which he makes upon the ignorance of English procedure shown by the German Judges; but the only, or, at least, the material point for consideration is whether, by the law of Hamburg, a creditor, having instituted proceedings against a debtor, resident in Hamburg, before the Hamburg Tribunals, and then, pending the proceedings in Hamburg, sued and attached the goods of the same debtor for the same cause of action in another country, can be compelled to repay the debtor the moneys so attached, and give security as to other moneys, part of the same debt, but not yet recovered.

Liable by law of Hamburg.

Oppressive as such law may be, the Court of Appeal has ruled that such is the law. In our opinion, as already stated, there is no room for diplomatic action.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 48.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 3.)

*Temple, June* 2, 1876.

My Lord,

Heirs of C. Bleichen. Claim against Her Majesty's Government. Capture of his ship in 1807.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 13th May instant, stating that he was directed by your Lordship to transmit to us the correspondence noted in the margin* relative to a claim advanced by the heirs of C. Bleichen, a Danish subject, against Her Majesty's Government, on account of the capture of a ship belonging to him during the Anglo-Danish war of 1807 by a British frigate; and that he (Mr. Lister) was to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to the answer which should be returned to the German Ambassador on the subject.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

No legal claim.

That, in our opinion, the heirs or representatives of C. Bleichen have no legal claim for compensation upon Her Majesty's Government.

Mischievous precedent if entertained.

Your Lordship will, however, best judge whether other reasons than those of strict law should incline Her Majesty's Government to entertain a claim unnoticed for sixty years, and the consideration of which may make a very inconvenient and mischievous precedent.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Count Munster, April 28, 1875; Memorandum of May 7, 1875; to Count Munster, May 18, 1875; Count Munster, October 15, 1875; to Count Munster, October 30, 1875; Count Munster, April 22, 1876; Memorandum, May 11.

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## No. 49.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 28.)

*Temple, November* 28, 1876.

My Lord,

Case of the "Milo" collision.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 10th ultimo, stating that he was directed by your Lordship to transmit to us correspondence relative to the circumstances under which the British vessel "Milo" had been detained by the German authorities at Stettin on account of the expenses entailed on the Navigation Commission for cleaning the channel of the Lurne which had been obstructed by the wreck of the "Catharine," sunk in collision with the "Milo."

Caution of 5000*l.*

That that vessel had now, after the detention of upwards of a year, been released on the deposit of a caution of 5,000*l.*, and that your Lordship would be glad to be informed whether, in our opinion, it would be proper for Her Majesty's Government to make any representations to the German Government with a view to obtaining some compensation to the owners on account of the losses which they had sustained in the matter.

In obedience to your Lordship's commands we have the honour to report—

That the liability of the "Milo," her arrest, the nature and amount of the security required to release her from arrest, were questions properly to be determined by the Prussian Tribunals.

Her Majesty's Government cannot ask compensation for Messrs. Wilson.

We are therefore of opinion that it would not be proper for Her Majesty's Government to make any representations to the German Government with a view to obtaining any compensation to the Messrs. Wilson on account of the losses which they may have sustained in the matter.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Greece.

## No. 50.

*The Law Officers of the Crown aud Dr. Deane to the Earl of Derby.*—(*Received March* 25.)

*Temple, March* 24, 1876.

My Lord,

Ionian bondholders. Rate of payment.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 18th ultimo, stating that he was directed by your Lordship to inform us that instructions, in the sense of the Report of the Law Officers of the 4th August last, were transmitted to Her Majesty's Chargé d'Affaires in Athens for communication to the Ionian bondholders, and for his guidance in his further communications with the Greek Government.*

That Lord Tenterden was pleased to transmit to us further despatches from

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* Mr. Stuart, No. 183, November 6, 1875; No. 18, February 2, 1876.

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Mr. Stuart, in which he states that the Greek Government refused to accept the view of the question arrived at by Her Majesty's Government, and assert that they are at liberty to pay off the bondholders at the same rate as they would have been paid had the original Ionian laws still been in force.

That to arrive at a conclusion respecting this point, it would be observed that Mr. Stuart remarks that it might be necessary that the Currency Laws of the Ionian Parliament should be carefully examined—that he was therefore to request that we would have the goodness to take this matter into our consideration, and favour your Lordship with our opinion, at our earliest convenience, as to the proper course to be pursued by Her Majesty's Government.

That he (Lord Tenterden) was also to inclose a despatch from Sir C. Sebright which had just been received, as well as a letter from Mr. Taylor, one of the bondholders, and to state that the laws of the 25th January and the 10th May, 1865, could not be procured in this country, and copies had accordingly been requested by telegraph from Corfu.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That, referring to Sir C. Sebright's letter to Mr. Stuart of the 20th February, 1875, the printed bonds are stated to be payable in pounds sterling in legal Ionian currency, and some which are written or promissory notes merely say pounds sterling.

In the Treaty between Great Britain, France, Russia, and Greece of the 29th March, 1864, and the Convention between Great Britain and Greece, same date, the only denomination of money is pounds sterling.

And the 27th and 28th Vict., cap. 40, authorizing the relinquishment in favour of the King of the Hellenes of certain money payable in respect of the Greek Loan, and confirming the Treaty of March, 1864, pounds sterling are alone named.

By Article VII of the Treaty of March, 1864, the King of the Hellenes takes upon himself, amongst other things, certain engagements and contracts which we presume would include the Ionian bonds.

By Article VIII he promises to take upon himself the payment of pensions scheduled in the Convention of the same date.

The Decree of the Greek Government fixing the value of 1*l.* sterling at 27 dr. 70 l. bears date the 25th January, 1865.

Greek Decree cannot override Treaty.

In the Law Officers' Report of the 11th May, 1875, it was stated to your Lordship that in their opinion the Hellenic Government could not by such an *ex post facto* Decree alter the relations existing and confirmed by Treaty between the Government and its creditors.

Payment should be made according to rate of exchange.

To that opinion, having read the despatch and two inclosures (one from the Finance and the other from the Foreign Minister at Athens) of Mr. Stuart, we still adhere, and we are also of opinion, as given in the Law Officers' Report of the 4th August last, that the payment to the bondholders should be made according to the rate of exchange, and not according to the rate arbitrarily fixed by the Hellenic Government.

We do not at present see how the Currency Laws of the Ionian Islands can affect the question, but we have not had the opportunity of seeing those laws.

Question referred to Treaty Powers.

As the question may fairly be considered one of a Treaty obligation, we submit, for your Lordship's consideration, that the rights of the bondholders may be referred to the Governments which were parties to the Treaty of 1864; and should your Lordship think fit to adopt that course, notice of your intention should be given at the earliest opportunity, in order to stop any proceedings before the Greek Tribunals.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 51.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received April* 12.)

*Temple, April* 11, 1876.

My Lord,

"Hylton Castle" collision case.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a

copy of a telegram from Her Majesty's Minister at Athens, inquiring whether the Greek Courts were competent to try, as regards damages against the English steamer, a collision case between an Italian mail-steamer and the English merchant-steamer "Hylton Castle." That Articles VII and XI of the Treaty of the 4th October, 1837, between this country and Greece ("Hertslet's Treaties," vol. v, p. 288) might have a bearing on that case. It should also be stated that Greece had adopted the Regulations of the Merchant Shipping Act with regard to collisions at sea ("Digest of Statutes relating to Merchant Shipping, prepared by Board of Trade, 1875").

That Mr. Lister was to request that we would take that matter into consideration, and favour your Lordship, at our earliest convenience, with our opinion as to the answer which should be returned to Mr. Stuart on the subject.

In obedience to your Lordship's commands we have the honour to report—

Greek Courts competent to try case against the British vessel.

That the English steamer is at the Piræus, as appears from the telegram, and Mr. Stuart may, in our opinion, properly be answered that the Greek Courts are competent to try the case of collision against the English steamer.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 52.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 27.)

*Temple, May* 27, 1876.

My Lord,

Ionian bondholders.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Minister at Athens (No. 85, April 25), containing observations upon the question of referring the case of the Ionian bondholders for the opinion of the Governments who were parties to the Treaty of 1864, and to request that we would inform your Lordship whether we saw any reason to alter our Report of the 24th March.

Lord Tenterden was also pleased to inclose a volume containing the Currency Laws of the Ionian Laws of the Ionian Islands, which we had not previously had before us.

In obedience to your Lordship's commands we have the honour to report—

Adhere to previous Report.

That we see no reason to alter our Report of the 24th March.

Claim for interest may be referred to Treaty Powers.

The suggestion made by Her Majesty's Minister at Athens, that the claim for interest should be included in the reference, seems to us to be one which may very properly be adopted.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 53.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 20.)

*Temple, June* 19, 1876.

My Lord,

"Hylton Castle" and "Agrigento" collision case.

Criminal proceedings.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 29th April last, stating that, with reference to our Report of the 11th of that month, he was directed to transmit to us further papers relative to the collision between the British steamer "Hylton Castle" and the Italian steamer "Agrigento," in Greek waters, and that he was to request that we would take the same into our consideration, and favour your Lordship with such observations as we might have to offer thereupon, with special reference to the remarks contained in the letter from the Board of Trade of the 26th April, as to the competency of the Greek Courts to exercise jurisdiction in that case, in the event of criminal proceedings being instigated against the master of the "Hylton Castle."

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We are also honoured with a letter from Mr. Lister, dated the 4th May ultimo, inclosing for our consideration a further document in the case.

Presence of British Consul. "Most favoured nation."

We are also honoured with a further letter from Mr. Lister, bearing date the 30th ultimo, stating that, with reference to the letter of the 29th April, on the subject of the case of the "Hylton Castle," he was to transmit to us a further despatch from Her Majesty's Minister at Athens, containing a copy of the Treaty of Commerce between Spain and Greece, dated the 21st August last, and that he (Mr. Lister) was to request that we would take that paper into our consideration, together with the Treaty of Commerce between this country and Greece of the 4th October, 1837, Article VIII of which Treaty secured most-favoured-nation treatment to British Consuls in Greece, and favour your Lordship with our opinion on the question of the attendance of the English Consul at the examination of the captain of the "Hylton Castle" before the Greek Courts.

That Mr. Lister was to request that we would return an answer on that point at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, British Consular officers in Greece are entitled to be placed upon the footing of the most favoured nation by Article VIII of the Treaty of the 4th October, 1837.

Whatever privileges, therefore, may be held by a Spanish Consular officer in Greece, under the Treaty forwarded by Mr. Stuart, may be claimed by a British Consular Agent.

Treaty privileges are limited.

We doubt, however, the extent of the privileges given under Articles XI and XII of this latter Treaty. For the provisions of Article XI might be satisfied by their application to civil and commercial matters only; and they are certainly limited by the words "en tant que cela est permis par la législation du pays."

And in Article XII the words "pour protéger les droits et les intérêts de leurs nationaux," may likewise be construed with reference only to civil rights and interests.

British Consul should be present, independent of Treaty.

The captain of the "Hylton Castle," as we understand the former papers, is to be tried for a crime, and not a civil matter. We do, however, advise that the English Consul should claim to be present at the examination of the captain of the "Hylton Castle." For, independent of Treaty, common justice, and the ordinary usage among civilized nations, require the presence of some protection for the accused, and the presence of the Consular officer, on the other hand, cannot lead to the defeat of justice.

Reference to case of the "Franconia."

In reference to the former papers transmitted to us, we delay reporting upon them till judgment has been given in the case of the master of the German ship "Franconia," a case exactly similar, save as to the place of collision and nationality of the ships, to that of the "Hylton Castle."

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 54.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 9.)

My Lord, *Temple, July* 8, 1876.

"Hylton Castle" collision case.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 4th instant, stating that, with reference to our Report of the 19th ultimo, he was directed by your Lordship to transmit to us further papers relative to the case of the "Hylton Castle," and to state that, as it appeared probable that the Greek Courts would proceed to take action in that matter before the case of the "Franconia" was decided in this country, your Lordship would be glad to be favoured with our opinion as to the course which should be pursued by Her Majesty's Chargé d'Affaires at Athens, in the present stage of that question. That the previous papers on the subject were also inclosed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Master should have every means of defence.

That, in our opinion, Her Majesty's Government can, properly and consistently with the course taken in the case of the "Franconia," only instruct Her Majesty's Chargé d'Affaires at Athens to see that the master of the "Hylton Castle" has afforded to him every means of defence.

"Franconia."

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Hayti.

### No. 55.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 8.)

My Lord, *Temple, May* 6, 1876.

Haytian insurrection. Blockade of Jacmel.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 12th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Minister at Port-au-Prince, relative to the measures adopted by the Haytian Government in consequence of the outbreak of an insurrection in that Republic; and that he (Lord Tenterden) was to request that we would favour your Lordship with our opinion as to the instructions that should be sent to Major Stuart upon the subject of the blockade of Jacmel.

Atlas Steamship Company.

We are also honoured with a letter from Mr. Lister, dated the 17th ultimo, stating that he transmitted to us, by direction of your Lordship, a letter from the Atlas Steamship Company, calling attention to the loss which would be caused to them by the action of the Haytian Government in blockading the port of Jacmel. That Mr. Lister was to request that the inclosed letter might be added to the papers upon the same subject sent to us for our consideration on the 12th ultimo.

In obedience to your Lordship's commands we have the honour to report—

Blockade creates state of war, and gives neutral rights.

That the Haytian Government have the right to blockade the port of Jacmel, but by such blockade that Government creates a state of war, giving neutral as well as belligerent rights.

It appears from the letter of Messrs. Leech that the blockade was established and existed *de facto*.

So long, therefore, as the blockade is maintained, British subjects have no legal right to complain of, and no redress to claim for, any loss which they may suffer through the blockade.

Latter claimed for British subjects.

Major Stuart may therefore, in our opinion, properly be instructed to point out to the Haytian Government that Her Majesty's subjects are entitled to claim, and will be protected in, the exercise of their rights as neutrals.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 56.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 16.)

My Lord,

*Temple, May* 16, 1876.

Case of Mrs. Maunder.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 4th March last, stating that, with reference to our Report of the 30th October last, he was directed by your Lordship to transmit to us the accompanying further correspondence relative to the nationality of Mrs. Maunder, a lady who had a claim against the Haytian Government, and that he, Mr. Lister, was to request that we would be good enough to inform your Lordship whether the inclosed papers contained sufficient information to enable us to decide whether or no Mrs. Maunder was entitled to British protection. That the previous papers were inclosed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Her nationality established.

That the question of nationality depends on the legitimacy of Joseph Maunder, which, in its turn, depends on the question whether Frederick Maunder was married to Mdlle. Lebusse, and that, in our opinion, there is ample evidence to sustain the marriage.

The marriage must have taken place more than half a century ago. The parties appear to have described themselves as man and wife.

The letter by Mdme. Lebusse-Maunder and the certificate of the Judge seem to us *primâ facie* evidence of the marriage.

Of the evidence transmitted by Mr. Stuart, it may be said that the greater part of it is not evidence at all, and that what is evidence is so extremely weak that it does not, in our opinion, at all rebut the presumption arising from the facts set out.

Is entitled to British protection.

We therefore think Mrs. Maunder is entitled to British protection.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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## Italy.

### No. 57.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 28.)

My Lord,

*Temple, March* 27, 1876.

Consul's registration of births of illegitimate children, &c.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 28th day of February ultimo, stating that he was directed by your Lordship to transmit a correspondence* in regard to a question raised by Her Majesty's Consul at Florence; first,

Whether British Consular Officers abroad should or should not enter in the registers of their Consulates the births of illegitimate children of British subjects, knowing them to be so; and, secondly, whether registration in a British Consulate is looked upon as affording proof of British nationality, or whether it is a mere formality.

That we would perceive that, on the first point, the Registrar-General had stated it to be his opinion that the births of illegitimate children of British subjects within the boundaries of the Consulate should be registered by the Consul, and in a letter from that officer, in answer to a reference from the Foreign Office, he stated his reason for arriving at that decision.

Lord Tenterden further stated that your Lordship was by no means satisfied with the correctness of the view taken by the Registrar-General of this question, and that he was to request that we would favour your Lordship with our opinion thereupon, as well as with any observations we might have to offer in regard to the value of registration in Consular registers as proof of nationality.

That a specimen of the Consular registers of births was inclosed, from which we would see that it is required that the maiden surname of the mother should be given, and, consequently, contemplates only the registration of the births of children born in wedlock.

Such births not to be registered.

Lord Tenterden also said that he was to add that any value that may be attached to the registration as a proof of nationality would be materially impaired if the registers were to include the births of those confessedly not British subjects.

In obedience to your Lordship's commands we have the honour to report—

Registration no proof of nationality.

That in our opinion British Consular Officers abroad should not enter in the registers of their Consulates the births of the illegitimate children of British parents, and that registration in a British Consulate affords no proof of nationality.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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### No. 57*.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received April* 11.)

My Lord,

*Temple, April* 7, 1876.

Decree of Divorce Court. "Custentini *v.* Custentini."

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 28th March ultimo, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Consul at Florence, requesting instructions as to whether the Decree, of which a copy was inclosed, pronounced in the cause "Cusentini *v.* Cusentini and Barnard," by Her Majesty's Court of Divorce and Matrimonial Causes, is sufficient, according to English law, to enable the petitioner, whose marriage had been thereby dissolved, to marry again; and that he (Mr. Lister) was to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to what answer should be returned to Mr. Consul Colnaghi's despatch.

In obedience to your Lordship's commands we have taken the papers into our consideration and have the honour to report—

Petitioner may marry again according to English law.

That Mr. Consul Colnaghi may, in our opinion, properly be answered that, the Decree having dissolved the former marriage, the petitioner may, according to the law of England, now marry again.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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### No. 58.

*The Attorney-General to the Earl of Derby.*—(*Received April* 10.)

My Lord,

*Temple, April* 10, 1876.

Deserter from 71st Highlanders on board American vessel at Palermo.

I WAS honoured with your Lordship's commands signified in Lord Tenterden's letter of the 8th April instant, stating that he was directed to transmit to the Law Officers and Dr. Deane a telegram which had just been received from Her Majesty's Minister at Rome, reporting that upon the application of the Colonel of the 71st Highlanders, Her Majesty's Consul at Palermo had caused to be arrested a deserter from that regiment, who had taken refuge on board an American barque at Palermo; but, that although in the first instance that step had been taken with the consent of the American Consul at Malta, the American captain had reclaimed the prisoner, and the American Consul, under instructions from his Minister at Rome, had made a similar demand; and

Reclaimed by American Consul.

That Sir A. Paget had accordingly telegraphed for instructions for the guidance of the British Consul on this case.

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* Sir A. Paget, No. 336; to Registrar-General, February 4; Registrar-General, February 7; Law Officers, February 3, 1852; Circulars, Consuls, March 10, 1871; Law Officers, February 25.

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Lord Tenterden also stated that he was to observe that the only international agreement with Italy with regard to the surrender of deserters is that contained in the XIXth Article of the Treaty with that country of the 8th August, 1863, which declares that, "The Consuls, Vice-Consuls, and Consular Agents of each of the Contracting Parties residing in the dominions or possessions of the other shall receive from the local authorities such assistance as can by law be given to them for the recovery of deserters from the vessels of their respective countries;" but nothing is said in the Treaty about military deserters.

That under these circumstances, it appeared to your Lordship that the demand for the surrender of the prisoner cannot properly be resisted; but that you would be glad to be favoured with the opinion of the Law Officers and Dr. Deane upon the point at the earliest convenience, in order that the necessary instructions might be telegraphed to the Consul at Palermo.

In obedience to your Lordship's commands I have the honour to report—

**Surrender cannot be resisted.**

That the demand for the surrender of the prisoner cannot properly be resisted.

I have, &c.
(Signed) JOHN HOLKER.

N.B.—As this matter is pressing, and the Solicitor-General and Dr. Deane are absent from town, the Attorney-General has made this report without consultation with them.

J. H.

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## No. 59.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received April* 12.)

*Temple, April* 11, 1876.

My Lord,

**Nationality of Prince Bandini.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Rome relative to an application made to him by Prince Bandini Giustiniani to protect his interests as a British subject, together with a letter from the Home Office, to which Department the question was referred for opinion.

That Lord Tenterden was also to transmit to us a Memorandum by Mr. Hertslet, the Chief Librarian of the Foreign Office, in regard to the Treaties which were in force between this country and Sardinia and the Roman States, respectively, at the date of Prince Bandini's naturalization, together with a copy of the Act for naturalizing him and his mother, and copies of the Treaty of Commerce between Great Britain and Sardinia of the 27th February, 1851, and of the Declaration with the Roman States of the 17th November, 1853.

That Lord Tenterden was at the same time to observe that the use of the word "of" for "or" in the extract from the Act quoted by Sir Augustus Paget, which was clearly a clerical error, and the question raised by the Home Office whether the word "or" should not be read "and," did not, in your Lordship's opinion, bear upon the question at issue.

That Lord Tenterden was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to the instructions which should be sent to Sir Augustus Paget in the matter.

In obedience to your Lordship's commands we have the honour to report—

**He cannot claim privileges, not having resided in the United Kingdom.**

That, in our opinion, none of the privileges, by way of immunity, of a natural-born British subject of the United Kingdom, whether immunities in the general sense, or immunities in relation to trade, can be enjoyed or claimed in any foreign country by Prince Bandini under his Naturalization Act, since he has not complied with the condition requiring him to have inhabited and resided within the United Kingdom.

And that Sir A. Paget may properly be instructed to that effect.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 60.

*The Lord Chancellor to the Earl of Derby.*—(*Received April* 28.)

**Registration of illegitimate children.**

**Registration no proof of nationality.**

THE Lord Chancellor presents his compliments to Lord Tenterden, and with reference to the question referred to in his letter of the 24th instant, and the accompanying correspondence, begs to state, for Lord Derby's information, that he concurs in the opinion of the Law Officers upon the two points submitted to them, viz., that British Consular Officers abroad should not enter in the registers of their Consulates the births of the illegitimate children of British parents, and that registration in a British Consulate affords no proof of nationality.

*House of Lords, April* 27, 1876.

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## No. 61.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received September* 12.)

*Temple, September* 12, 1876.

My Lord,

**Arrests of British subjects in Italy.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 16th June last, stating that he was directed by your Lordship to transmit to us a correspondence, of which a list was therewith annexed, which had taken place between the Foreign Office and Her Majesty's Ambassador at Rome and various parties interested in the matter respecting the arrest by Italian Carabinieri, and the imprisonment of certain British subjects travelling in Italy, the particulars of these occurrences being fully stated in the correspondence.

That the cases in question are three:—

**Messrs. Tourrier and O'Neill.**

1st. The arrest and imprisonment of Messrs. Tourrier and O'Neill in the Province of Ravenna, on account of which, and of their alleged ill-treatment, they have demanded an indemnity from the Italian Government.

In this case it would appear that the Carabinieri implicated in these proceedings have been subjected to some disciplinary punishment, the nature of which has, however, not been clearly ascertained, whilst the Italian Government have expressed their regret at the occurrence.

**Mr. Kay.**

2ndly. The arrest of the Rev. D. Kay, which it is asserted by the Italian authorities was attributable to his having refused to give his name or any sufficient account of himself when first accosted by the Carabinieri; and it will be observed that, although Mr. Kay had the opportunity afforded him of furnishing an explanation on these points, he has not as yet done so in any way that can be considered satisfactory.

**Messrs. Allies.**

3rdly. The arrest of the Rev. Mr. Allies and his brother, Mr. E. H. Allies, which was accompanied by the infliction of a fine on the first-named gentleman.

That it would be seen, by your Lordship's despatch to Sir A. Paget No. 150 of the 22nd July last, that in the case of the Messrs. Allies Her Majesty's Government considered that the circumstances warranted their appealing to the Italian Government for a special pecuniary compensation and for the return of the fine imposed.

That the despatches to Sir A. Paget Nos. 95, 142, 150, 151, 152, and 222 of last year would put us in possession of the views of Her Majesty's Government in regard to those several cases, whilst they form the basis of Sir A. Paget's remonstrances to the Italian Government on behalf of the complainants.

**Italian argument.**

That the final appeal to that Government had, as we would see, been answered by the Memorandum communicated by General Menabrea, the Italian Ambassador at this Court, to your Lordship on the 24th ultimo, which sets forth the grounds upon which the Italian Government decline to grant any compensation in the cases referred to.

That Memorandum asserts the principle that the Administration are debarred by the nature of the Italian laws from granting any such compensation upon a diplomatic remonstrance, as in the present case, and that such compensation could only be awarded by a Decree of the Law Courts following upon proceedings taken therein by the complaining parties, to whom such Courts are always open, but which have not been instituted by any of the complainants in the cases under consideration; whilst it is at the same time represented that in default of such proceedings the occurrences complained of cannot properly form the subject of diplomatic representation.

That the Memorandum presented by General Menabrea states explicitly what is the bearing of Italian law upon the cases in question; what is the course which, according to the Italian view, the aggrieved parties should have taken to obtain

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redress; and maintains that the demand for compensation in such cases could not be admitted without an entire departure from those principles which the Italian Government affirm are equally applicable to Italian subjects and to foreigners.

That before accepting the answer of the Italian Government as final, and making any communications in accordance therewith to the several parties interested, your Lordship would be glad to be favoured with our opinion whether the explanation thus given by the Italian Government affords valid ground for their refusal to entertain any claim for compensation, and whether, taken with the expression of regret by that Government for any undue severity which the complainants may have experienced, the cautionary Circular of the 11th July, issued to the Carabinieri, and referred to in the correspondence, and the punishment which Her Majesty's Government are assured was inflicted upon the Carabinieri in the case of Messrs. Tourrier and O'Neill, Her Majesty's Government may rest satisfied that they cannot in justice require more from the Government of Italy.

That a secondary question, as we will perceive, arises out of this correspondence, namely, as to the precautionary measures to be adopted for the future to secure British subjects as far as possible from the repetition of such occurrences, and we would find the views of Her Majesty's Government on that subject sufficiently explained in your Lordship's despatches to Sir A. Paget Nos. 151 and 152 of the 22nd July last.

That your Lordship would be glad to be informed whether, in this particular, we concur in the principle therein set forth as to the necessity of coming to a clear understanding with the Italian Government as to the nature of the documentary evidence which British travellers are to be expected to produce to prove their identity if called upon to do so, and as to the mode by which it is proposed to make known whatever arrangement may be come to on this particular point.

In obedience to your Lordship's commands we have the honour to report—

That, if we rightly understand General Menabrea's Memorandum, he intends to assert that, according to the law of Italy, when a person has been injured by the action of an Agent of the Government, he may have recourse to the Tribunals of the country, and may obtain a Decree not merely against the individual inflicting the injury, but against the Government, and that in such case the Government will be at liberty, and, indeed, be bound to pay over the amount of compensation decreed.

If actions may be brought against Italian Government for redress, diplomatic action is not immediately called for.
Doctrine that Government is not liable to be sued for compensation for actions of its Agents, untenable.
In absence of local remedy, diplomatic intervention necessary.

If this be the true meaning of the Memorandum and a correct statement of the Italian law, then we agree that the British subjects who have made complaint of the treatment they have been subjected to cannot call upon the British Government to interfere on their behalf diplomatically, until, at all events, they have done all in their power to obtain redress from the Tribunals of Italy. If, however, General Menabrea merely intends to insist that in a case where a British subject has been injured by an Agent of the Government, such subject ought to sue the individual inflicting the wrong in the Italian Courts, and ought not to seek any compensation from the Government, we are quite unable to subscribe to such a doctrine. It appears to us that if a British subject, whilst he is in a foreign State, receives an injury from the Government of such State, or from an Agent for whose acts the Government is responsible (and it does not appear to be contended that the Italian Government is not responsible for the acts of the Carabinieri), and no adequate remedy is provided by the municipal law of such foreign State, it is not only the right, but it may be, according to circumstances, the duty of our Government to obtain, by diplomatic intervention, the payment of compensation to the British subject for the injury inflicted upon him.

Subject to the above observations upon the contentions put forward by General Menabrea, we are of opinion that, under all the circumstances of the particular cases submitted for our consideration, Her Majesty's Government may properly conclude that it is not necessary further to press any claim for compensation, but may rest satisfied with what has already been done by the Government of Italy.

As to evidence of identity required of British subjects.

As to the second question asked by your Lordship, we entirely concur in the views of your Lordship as to the necessity for coming to a clear understanding with the Italian Government as to the nature of the documentary evidence which British travellers are to be expected to produce to prove their identity; and we also think that a notification should be published in England and Italy, and at Her Majesty's Legations and Consulates, explaining the requirements of the Italian Government in this respect.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Japan.

## No. 62.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received April 4.)*

*Temple, April* 4, 1876.

My Lord,

Messrs. Hooper's claim against Japan.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 20th March ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister in Japan (No. 9), together with its inclosures, relative to a claim made by Messrs. Hooper Brothers upon the Japanese Government, which Her Majesty's Minister at Yedo had declined to support, a decision against which Messrs. Hooper now appeal; and that he, Lord Tenterden, was to request that we would take those papers into our consideration, and favour your Lordship with our opinion thereupon, especially as to whether Sir Harry Parkes' action in the matter ought not to be approved.*

Right of inland travelling and trading.

Lord Tenterden also stated that he was further to transmit to us, for convenience of reference, a copy of the Treaty between England and Japan of the 26th August, 1858, and of the Order in Council of the 9th March, 1865.

In obedience to your Lordship's commands we have the honour to report—

Approve Sir H. Parkes refusing to support.

That the action of Sir Harry Parkes in the matter of Messrs. Hooper's claim against the Japanese Government may, in our opinion, be approved.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 63.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May 4.)*

*Temple, May* 2, 1876.

My Lord,

Japanese newspapers. Publication by British subjects.

Notification by Sir H. Parkes, prohibiting.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 6th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Minister in Japan, together with their inclosures, reporting the circumstances under which he had issued a notification prohibiting the publication by British subjects of newspapers in the Japanese language, and that he (Lord Tenterden) was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether the action taken by Sir Harry Parkes in the matter, under the Order in Council for China and Japan of the 9th March, 1865, was right and proper, and might be approved.

That Lord Tenterden was likewise to inclose a copy of the Order in Council for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Approval.

That the action taken by Sir Harry Parkes was, in our opinion, right and proper, and may be approved.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* *Note.*—Messrs. Hooper had travelled into the interior for purposes of trade, and claimed compensation for loss of contracts, &c., on being sent back. The case turned on the Treaty right of travelling, but not trading, in the interior. (See Mem. with Sir H. Parkes' No. 9 of 24th January, 1876.)

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## No. 64.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 9.)

Japanese newspapers. Notification.

My Lord, *Temple, May* , 1876.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 1st May instant, stating that, with reference to his letter of the 6th ultimo, he was directed by your Lordship to transmit to us the accompanying further despatch (No. 44 of the 6th March), and its inclosure, from Her Majesty's Minister in Japan, on the subject of the notification issued by him prohibiting the publication by British subjects of newspapers in the Japanese language, and to request that we would take this paper into our consideration, in conjunction with those already before us, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

Claim of Mr. Black cannot be pressed further.

That we think Her Majesty's Government cannot press further on the Japanese Government for compensation to Mr. Black.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 65.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 10.)

Shooting regulations in Japan.

My Lord, *Temple, May* 9, 1876.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 6th April ultimo, stating that, with reference to the Report of the 22nd March, 1875, he was directed by your Lordship to transmit to us the accompanying further despatches, as marked in the margin,* relative to the proposed regulations for shooting in Japan, and that he (Lord Tenterden) was to request that we would take those papers into our consideration, and favour your Lordship with our opinion thereupon, more especially as to whether Sir Harry Parkes' proceedings in the matter should be approved.

Lord Tenterden was pleased to add that the previous papers were likewise transmitted for convenience of reference.†

In obedience to your Lordship's commands we have the honour to report—

Approve Sir H. Parkes.

That in our opinion the proceedings of Sir Harry Parkes in the matter may properly be approved.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 66.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 13.)

Hiôgo Gas Company.

My Lord, *Temple, June* 13, 1876.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Chargé d'Affaires in Japan (Mr. Plunkett, No. 52) relative to a proposal made by the Hiôgo Gas Company to place itself under Japanese jurisdiction.

Foreign jurisdiction in Japan.

That the case was an important one from its bearing on the general question of foreign jurisdiction in Japan; and that Lord Tenterden was to request us to take the papers into our consideration, and to report to your Lordship our opinion whether the Hiôgo Gas Company, being a foreign public company under British jurisdiction, had the right of placing itself under Japanese jurisdiction.

In obedience to your Lordship's commands we have the honour to report—

No right to place itself under Japanese jurisdiction.

That, in our opinion, the proposal of the Hiôgo Gas Company (many or most of whose members are British subjects) to place itself under Japanese jurisdiction should not be entertained.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 67.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 6.)

Publication of Japanese newspapers. Claim of Mr. Black.

My Lord, *Temple, July* 5, 1876.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 24th ultimo, stating that, with reference to our letter of the 2nd May, on the subject of the claim of Mr. Black to be compensated by the Japanese Government for losses consequent on the suppression of a Japanese newspaper, published by him in Japan, he, Lord Tenterden, was directed by your Lordship to transmit to us a further despatch from Sir H. Parkes on the subject.

As to words "lawful capacity" in Japanese Treaty.

That he was at the same time to call our attention to the VIIIth Article of the Treaty between Great Britain and Japan of the 26th August, 1858, which provides that the "Japanese Government will place no restriction whatever upon the employment by British subjects of Japanese in any lawful capacity," and that Lord Tenterden was to request us to report to your Lordship our opinion whether the words "lawful capacity" were to be understood as excepting such capacities as were unlawful under Japanese law, or only those that were unlawful according to English law.

That in the latter case there might be some ground for Mr. Black's claim for compensation for the interference of the Japanese Government with the workmen in his employ, and that your Lordship would be glad to have our opinion as to whether such a claim could properly be supported by Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

If unlawful by Japanese law, Mr. Black's claim cannot be supported.

That, assuming the employment of the Japanese subjects by Mr. Black to have been, as stated by Sir H. Parkes, in a capacity unlawful by Japanese law, we are of opinion that the interference of the Japanese Government with the workmen employed by Mr. Black was not a breach of the VIIIth Article of the Treaty of 1858, and the claim of Mr. Black for compensation cannot properly be supported by Her Majesty's Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 68.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 13.)

Marriages of British subjects with Japanese.

My Lord, *Temple, July* 12, 1876.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister in Japan, forwarding correspondence on the question of the legality of the marriages of British subjects with Japanese, and that he was to request us to take the papers into our consideration, and report to your Lordship our opinion as to the instructions that should be sent to Sir H. Parkes on the subject.

In obedience to your Lordship's commands we have the honour to report—

Englishwoman forfeits British protection. Japanese woman acquires it, unless contrary to local law.

That Sir Harry Parkes may, in our opinion, properly be instructed that an Englishwoman who marries a Japanese will forfeit her right to British protection in Japan, and a Japanese woman marrying a British subject will, in the absence of any law to the contrary in Japan, become entitled to British protection; and that the instructions in the Circular of the 21st November, 1873, should in all cases be carefully followed.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Japanese Minister for Foreign Affairs, December 27, 1875; to Sir H. Parkes, No. 27, March 8; Sir H. Parkes, No. 26, February 7, 1876.

† Sir H. Parkes, No. 4, January 11; to Sir H. Parkes, No. 38, March 30, 1875.

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## Liberia.

### No. 69.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received April* 12.)

*Temple, April* 11, 1876.

My Lord,

Proclamation forbidding import of arms and munitions of war into Maryland, Liberia.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 1st April instant, stating that he was directed by your Lordship to transmit to us a letter from the Liberian Consul-General in London (29th March, 1876), forwarding a copy of a Proclamation by the President of Liberia with regard to the importation and sale of fire-arms and munitions of war in the County of Maryland; and that he, Mr. Lister, was at the same time to inform us that a portion of the territories on the West Coast of Africa claimed by Liberia was in insurrection, and had ejected the Liberian authorities; and, under those circumstances, he was to request that we would take the Proclamation into our consideration, and favour your Lordship with our opinion as to whether any, and, if so, what, steps should be taken by Her Majesty's Government in consequence of it.

In obedience to your Lordship's commands we have taken the Proclamation into our consideration, and have the honour to report—

Should be published in "Gazette."

That your Lordship may, in our opinion, properly transmit the Proclamation to the Board of Trade for publication in the "London Gazette."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Madagascar.

### No. 70.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 10.)

*Temple, July* 8, 1876.

My Lord,

Marriages in Madagascar according to rites of Church of England.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us papers in regard to a question of appointing a Vice-Consul at Tananario, in Madagascar, for the purpose of celebrating marriages under the Consular Marriage Act.

That we should observe that Her Majesty's Consul raised a question, in connection with the discussion which had taken place on the subject, as to what he should do if parties were married according to the rites of the Church of England previously to the civil ceremony taking place before him.

That, in most cases where that sort of question had been raised, it had been explained that the Consul had nothing to do with any religious ceremony which parties to a marriage might wish to go through either before or after the Consular ceremony, and that his duty was restricted to seeing that any marriage celebrated before him was solemnized in accordance with the provisions of the Act of Parliament.

Uncivilized countries.

That in the present case, however, it might possibly be contended that a marriage in an uncivilized country such as Madagascar was valid when only the rites of the Church of England were used, and that, therefore, the interference of a Consular authority was unnecessary; and on that point Mr. Lister was to refer us to the two Reports from the Law Officers, which would be found in the accompanying volumes.

That before, therefore, writing to Her Majesty's Consul in regard to that matter, he, Mr. Lister, was to request that we would favour your Lordship with our opinion as to whether there was any doubt as to the validity in that country of marriages celebrated in Madagascar by a clergyman of the Church of England.

That when your Lordship should be acquainted with our opinion as to the strictly legal aspect of the case, your Lordship would consider whether, in view of the difficulty of registration connection with such marriage, it might not be, in any event, desirable to give greater facilities for the celebration of Consular marriages in Madagascar by the appointment of a British Vice-Consul at Tananario.

In obedience to your Lordship's commands we have the honour to report—

That the "Consular Marriage Act," 12 and 13 Vict., c. 68, provides that nothing in that Act shall confirm, impair, or otherwise affect the validity of any marriage solemnized beyond seas otherwise than as therein provided.

No doubt they are valid.

We have no information as to the law of Madagascar, but we entertain no doubt that a marriage between British subjects celebrated in Madagascar by a clergyman of the Church of England is valid.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Miscellaneous.

### No. 71.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received October* 18.)

*Temple, October* 17, 1876.

My Lord,

Powers of Pro-Consuls. (Circular.)

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 5th October instant, stating that, with reference to our letters of the 12th July and of the 5th August,* in which we reported, for the information of your Lordship, that, in our opinion, a person appointed Pro-Consul by a Consul without the authority of the Secretary of State cannot perform notarial acts under 18 and 19 Vict., c. 42, he was directed by your Lordship to transmit to us the accompanying draft of a Circular despatch which had been prepared for the purpose of conferring on Her Majesty's Consuls and Vice-Consuls abroad the power of appointing, on behalf of the Secretary of State, Pro-Consuls for the purposes of the Act in cases where the necessity for such an appointment may arise.

Mr. Lister further stated that he was desired to request that we would favour your Lordship with our opinion as to whether Pro-Consuls appointed under the authority conferred upon Consuls and Vice-Consuls by the proposed despatch would be competent to exercise the notarial powers conferred on Pro-Consuls by the Act.

In obedience to your Lordship's commands we have the honour to report—

If appointed by authority of Secretary of State, may perform acts under 18 & 19 Vict., cap. 42.

That, in our opinion, Pro-Consuls appointed under the authority conferred upon Consuls and Vice-Consuls by the proposed despatch will be competent to exercise the notarial powers conferred on Pro-Consuls under 18 and 19 Vict., c. 42.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* See Nos. 38 and 40. (*France.*)

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## Monte Video.

### No. 72.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received January* 6.)

*Temple, January* 5, 1876.

My Lord,

Central Uruguay Railway Company. Threatened seizure, for conveying arms to revolutionists.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 21st December ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister at Buenos Ayres (Mr. West, No. 114), inclosing copies of correspondence with Major Munro in regard to an application he had received from the Chairman of the Central Uruguay Railway Company requesting his interference on behalf of that railway which the Monte Videan Government had threatened with seizure, on the ground that the Company had forwarded arms and ammunition to the revolutionists.

That he, Lord Tenterden, was also to inclose the correspondence* which had passed between the Foreign Office and the Directors of the Central Uruguay Railway Company in this country upon the same subject, and to request that we would take the papers into our consideration, and favour your Lordship with our opinion and with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

That, in our opinion, there are no reasons which would justify the interference of Her Majesty's Government in the case of the Uruguay Railway Company.

Cannot interfere on ground that British subjects are interested in a foreign railway.

The information expected by the "Elbe" in the course of this month may possibly induce us to modify this opinion, but the fact that some British subjects are interested more or less in a foreign railway affords, as a rule, no reason for the interference of Her Majesty's Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 73.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 23.)

*Temple, May* 23, 1876.

My Lord,

"Enmore" and "Belle Hooper" collision (British and American vessels) in *Argentine* waters. Arrest of "Enmore" by *Monte Videan* Tribunal.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Monte Video, relating to the case of the British steamer "Enmore."

That it would be seen that the "Enmore" ran down an American schooner, the "Belle Hooper," in Argentine waters, saved her crew, and towed her into the port of Monte Video; that the "Enmore" was there seized and forcibly detained by order of the Monte Videan Tribunal of Commerce, but was subsequently enabled to escape by the assistance of Commander Dunlop, of Her Majesty's ship "Beacon," acting at the request of Her Majesty's Consul.

That your Lordship was of opinion that the peculiar circumstances reported in the inclosed despatch go far to justify Major Munro in acting as he did; but that, before returning any answer to him, your Lordship would be glad to be favoured with our opinion as to the legal aspect of the case.

We are also honoured with further letters from Lord Tenterden, bearing date the 24th ultimo and 5th instant respectively, inclosing a further letter and despatch relating to the case of the "Enmore," and requesting that we would take the same into our consideration, together with the papers inclosed in Mr. Lister's letter of the 20th ultimo.

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* Uruguay Railway Company, December 7; to Uruguay Railway Company, December 11; Uruguay Railway Company, December 15; to Uruguay Railway Company, December 18; to Major Munro, No. 10, December 8, and No. 11, December 14; Major Munro, Telegraphic, December 12.

In obedience to your Lordship's commands we have the honour to report—

Admiralty Tribunals competent to arrest the "Enmore."

That the Tribunals exercising Admiralty jurisdiction at Monte Video had, in our opinion, the right to arrest the British ship "Enmore" at the suit of the American ship "Belle Hooper," in a cause of collision, though occurring in Argentine waters.

British Consul should not have aided her escape.

Assuming that the "Enmore" was under arrest by legal process of a Court exercising such Admiralty jurisdiction, Her Majesty's Consul should not have interfered or assisted the "Enmore" in escaping.

Political state of Monte Video may relieve him from blame.

The papers do not show that the authority or proceedings of the Tribunals were stopped by the political state of things at Monte Video. Such an interference with the ordinary administration of justice may, if it existed, relieve the British Consul from blame.

But we submit, for your Lordship's consideration, that any answer which may be returned to Her Majesty's Consul should be so worded that all difficulties with either a Monte Videan Government or the United States' Government arising out of the matter may be provided against.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Pacific Islands.

### No. 74.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received January* 5.)

*Temple, January* 4, 1876.

My Lord,

Detention of British vessel "Airolo" by French authorities at Tahiti.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 16th December ultimo, stating that he was directed by your Lordship to transmit to us the accompanying further letter from Messrs. de Wolf and Co. (13th December, 1875), stating that they consider themselves entitled to compensation on account of the seizure and detention of their vessel, the "Airolo," by the French authorities at Tahiti, and to request that we would take that paper into our consideration, together with the previous correspondence relating to the case, which was referred for our opinion on the 11th December instant.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

The master's conduct led to her detention. Messrs. de Wolf have no claim to compensation.

That, in our opinion, the conduct of the master having led to the legal detention of the "Airolo," Messrs. de Wolf and Co., the owners of that vessel, are not in a position to call upon Her Majesty's Government to obtain compensation for such detention from the French Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

## No. 75.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received January* 5.)

*Temple, January* 4, 1876.

My Lord,

Seizure of British vessel "Airolo" at Tahiti, and imprisonment of her master, Captain Scott.

WE were honoured with your Lordship's commands signified in Mr. Bourke's letter of the 13th December ultimo, stating that he was directed by your Lordship to transmit to us the correspondence, as marked in the margin, relating to the seizure of the British brigantine "Airolo" at Tahiti, and the subsequent trial and imprisonment of the master of that vessel by the French authorities, and to request that we would take the case into our consideration, and favour your Lordship with our opinion thereupon, and as to whether Her Majesty's Government would be justified in interfering, and, if so, to what extent in Captain Scott's behalf.

In obedience to your Lordship's commands we have taken the case into our consideration, and have the honour to report—

Cannot interfere in his behalf.

That, in our opinion, there are no legal grounds upon which Her Majesty's Government would be justified in interfering in behalf of Captain Scott.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 76.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received January* 24.)

*Temple, January* 24, 1876.

My Lord,

Reciprocity Treaty between United States and Sandwich Islands.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 20th December last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying List relative to a Treaty of Reciprocity which was concluded on the 30th January last between the United States of America and the King of the Sandwich Islands, and subsequently modified by a vote of the United States' Senate.

That a copy of the Treaty of Friendship, Commerce, and Navigation between Great Britain and the Sandwich Islands of the 10th July, 1851, was likewise inclosed; and that he (Mr. Lister) was to request that we would take the papers into our consideration, and favour your Lordship with our opinion as to whether the clause in the Memorandum annexed to the United States and Hawaiian Treaty, which provides that "His Hawaiian Majesty shall not lease or otherwise dispose of, or create any lien upon any port, harbour, or other territory in his dominions, or grant any special privilege or rights of use therein to any other Power, State, or Government, nor make any Treaty by which any other nation shall obtain the same privileges," &c., does not constitute an infraction of the most-favoured-nation privileges secured to this country under Article III of the Anglo-Hawaiian Treaty.

Mr. Lister was also pleased to say that he was further to request that we would advise your Lordship as to the course which Her Majesty's Government would be justified in adopting in the above case with a view of vindicating their Treaty rights in the matter.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

No infraction of British "most-favoured-nation" rights.

That, in our opinion, the Memorandum annexed to the Treaty of Reciprocity concluded between the United States of America and the King of the Sandwich Islands on the 30th January, 1875, does not of itself constitute an infraction of the most-favoured-nation privileges secured to Great Britain under Article III of the Anglo-Hawaiian Treaty of 1851.

The Memorandum provides for two matters, viz.:—

1. That His Hawaiian Majesty, so long as the Treaty shall remain in force, will not lease or otherwise dispose of, or create any lien upon any port, harbour, or other territory in his dominions, or grant any special privilege or rights of use therein to any other Power, State, or Government.

2. That during the continuance of the Treaty he will not make any Treaty by which any other nation shall obtain the same privileges relative to the admission of any articles free of duty secured by the first-named Treaty to the United States.

With regard to the first of these matters, we beg to observe that, so long as the King of Hawaiia abstains from leasing, or otherwise disposing of, or creating any lien upon any port, harbour, or other territory in his dominions, and from granting any special privilege or rights of use therein to any Power, State, or Government whatsoever, he will be fulfilling his Treaty obligations both to this country and the United States, and neither Government will have any right to complain.

It is true the King may find himself in a dilemma should the word "grant" be hereafter said to mean that British ships are no longer entitled to use in each particular case those privileges to which, under Article III of the Honolulu Treaty of the 10th July, 1851, they are entitled to, or he grant hereafter to the United States of America any privilege which he is bound to extend to this country by Article III of the Treaty of 1851, but debarred from so extending by his stipulation in the Memorandum.

Possible difficulties should be pointed out.

We think that it will be a prudent course to point out at once to the Hawaiian Government the possibility of such difficulties arising.

Existing British privileges remain untouched.

2. With regard to the second of these matters, it seems to us that the Treaty with the United States merely prohibits future Treaties with other Powers, and leaves untouched the privileges secured to this country by the existing Anglo-Hawaiian Treaty.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD
J. PARKER DEANE.

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## No. 77.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received September* 12.)

*Temple, September* 12, 1876.

My Lord,

Reciprocity Treaty between United States and Sandwich Islands. Bearing on British interests.

WE were honoured by your Lordship's commands signified in Mr. Lister's letter of the 11th May last, stating, that with reference to our Report of the 24th January last, he was directed by your Lordship to transmit to us, together with the previous correspondence on the subject, a further despatch, with its inclosures, from Her Majesty's Commissioner and Consul-General at Honolulu, relative to the Reciprocity Treaty concluded between the United States and the Sandwich Islands. Mr. Lister further stated that he also inclosed a Memorandum which had been prepared at the Foreign Office, containing observations with respect to the possible effect of the Treaty in question upon the commercial interests of Great Britain; and that he was to request that we would take these papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon, with especial reference to the question as to whether most-favoured-nation treatment can be claimed for this country in regard to customs duties under Article III of the Anglo-Hawaiian Treaty of 1851 in the event of the denunciation by the Hawaiian Government of Articles IV, V, and VI of that Treaty.

In obedience to your Lordship's commands we have the honour to report—

Most favoured-nation treatment as to customs dues cannot be claimed under Article III of British Treaty in event of abrogation of Article IV.

That in our opinion Article IV of the Anglo-Hawaiian Treaty provides for customs duties, and would have been unnecessary if Article III of that Treaty had already made a similar provision. Article III therefore refers to favours, privileges, and immunities other than customs duties.

And in the event of the denunciation by the Hawaiian Government of Articles IV, V, and VI of the Anglo-Hawaiian Treaty, all stipulations between the two countries in reference to customs duties will cease at the expiration of the twelve months' notice.

As to right to abrogate Articles IV, V, and VI.

With respect to the construction of Article XVII of the Anglo-Hawaiian Treaty, we are of opinion that the right of either of the Contracting Parties to terminate Articles IV, V, and VI is not controlled by the words "In order that the two Contracting Parties may have the opportunity of hereafter treating and agreeing upon such other

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arrangements as may tend still further to the improvement of their mutual intercourse, and to the advancement of the interests of their respective subjects."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Persia.

### No. 78.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received July 17.)*

*Temple, July* 13, 1876.

My Lord,

Agha Mehdee, born in India of Persian parents.

WE are honoured with your Lordship's commands, signified in Lord Tenterden's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Her Majesty's Minister at Tehran, in which Mr. Thomson stated that the Persian Government had granted a Persian subject, named Agha Mehdee, born in India of Persian parents, the right of trading, on payment of the 5 per cent. duty established by Treaty for British merchants, but that they had given notice that they would in future consider and treat such persons as Persian subjects within Persian territory.

That Lord Tenterden was also to inclose a Memorandum which had been drawn up in the Foreign Office on the subject. That the question which had thus been raised by Mr. Thomson respecting the right of persons of Persian origin, born within Her Majesty's dominions, but residing in Persia, to the privileges of British subjects in the latter country, appeared to your Lordship to be primarily one of international law, and, in that view, Lord Tenterden was to request that we would take those papers into our consideration, and report to your Lordship our opinion thereon.

In obedience to your Lordship's commands we have the honour to report—

Such persons not entitled to privileges of British subjects in Persia.

That, assuming the law of Persia applicable to the cases which Mr. Thomson expects may arise to be correctly stated by the Persian Minister, a man born of Persian parents in Her Majesty's dominions, in our opinion, cannot in Persia claim or be entitled to the privileges of a British subject, but is in Persia subject to all the obligations which the law of Persia imposes upon its own subjects.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE J. GIFFARD.
J. PARKER DEANE.

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## Peru.

### No. 79.

*Dr. Deane to the Earl of Derby.—(Received February 12.)*

*Temple, February* 11, 1876.

My Lord,

Swann *v.* Vines. Production of Foreign Office papers in Courts of Law.

I AM honoured with your Lordship's commands signified in Mr. Lister's letter of the 4th instant, stating that he was directed to transmit to me two letters which your Lordship had received from Mr. Bennett, solicitor for Mr. Swann, who had an action at law pending against Mr. Vines, late Her Majesty's Consul at St. Michael's and Islay, requesting the production, before competent authority, of the originals or authentic copies of certain documents in the archives of the Foreign Office, which Mr. Bennett considered to be necessary for the support of his client's case: and that he (Mr. Lister) was to request that I would favour your Lordship with my opinion as to the reply which should be returned to that application.

That the documents referred to in Mr. Bennett's last letter, together with other papers upon the subject of the case Swann *v.* Vines, were also forwarded to me therewith for my inspection.

In obedience to your Lordship's commands I have the honour to report—

That, referring to previous cases, I find that the Librarian—now Mr. Hertslet—has been usually the person served with a *subpœna duces tecum*, and as no inconvenience will probably arise by a similar course being followed in the present case, I am of opinion that Mr. Bennett may properly be answered that Mr. Hertslet is the proper person to produce any documents of which the production can legally be called for.

"Privileged" documents. Mr. Hertslet not to produce them except by direction of the Judge.

With reference to the documents specified in the list referred to in Mr. Bennett's letter dated the 25th January, 1876, I am at a loss to see how some of them can be made evidence, whilst others are in the nature of privileged communications, and I therefore suggest that if Mr. Hertslet is called upon to produce any of these documents, he should not do so, except, in each case, by direction of the Judge who tries the cause.

I have, &c.
(Signed) J. PARKER DEANE.

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## Portugal.

### No. 80.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received April 12.)*

*Temple, April* 11, 1876.

My Lord,

Commercial privileges granted by Portugal to France and extended to Great Britain.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Lisbon, in which attention was called to the circumstance that the Portuguese customs authorities would require, in extending to Great Britain, under the recent Portuguese Law and Royal Decree, the privileges of Tariff B annexed to the Treaty of the 11th July, 1866, between France and Portugal, the production of certain documents, according to the stipulations of that Treaty.

That we should observe that Mr. Watson remarks that those documents were not

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required to be produced under the Treaty of the 3rd July, 1842, between this country and Portugal.

That Mr. Lister was therefore to request that we would take those papers into consideration, and favour your Lordship, at our early convenience, with our opinion on the point raised in Mr. Watson's despatch, viz., whether the provisions of the Treaty of 1842 should modify the conditions attached to the privileges recently granted to British Trade.

In obedience to your Lordship's commands we have the honour to report—

Portugal justified in requiring production of certain documents before extending privileges to Great Britain.

That, in our opinion, the Portuguese Government have a right to require, in extending to Great Britain, under the recent Portuguese law and Royal Decree, the privileges of Tariff B annexed to the Treaty of the 11th July, 1866, between France and Portugal, the production of the documents referred to in Mr. Lister's letter.

In arriving at this conclusion, we have assumed that the provisions under Tariff B of the Treaty in question are more favourable to the British merchant than the provisions of the Treaty of July 1842, between Great Britain and Portugal, and that the last-mentioned Treaty will not be in any way affected to the prejudice of the British importer.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 81.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 3.)

*Temple, June* 2, 1876.

My Lord,

Delagoa Bay. Case of the "William Shaw," captured previous to the arbitration.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, as marked in the margin, relative to the case of the "William Shaw."

That that vessel, a schooner belonging to Natal, was seized in September 1871 by Portuguese officials, in the Mapoota River, which was part of the territory included in the "Delagoa Bay" question then in dispute between Great Britain and Portugal. That she was seized on the ground that she ought, before entering the Mapoota River, to have gone to Lorenço Marques and paid certain duties. That she was also accused of having on board arms not mentioned in her manifest, and her master was said to have previously offended against the Portuguese Customs Laws.

That, after her capture she was taken to Lorenço Marques, and fined 100*l*. Her owner offered to pay the fine under protest, but his offer was refused, and the case was referred to the Supreme Court at Mozambique, which Court, however, did not appear to have given any formal decision thereon.

That in April 1872 the owner, having represented the case to Her Majesty's Government, claiming 3,600*l*. damages on account of the seizure of the vessel (he having no interest in the cargo), it was held that, as the question as to the sovereignty over the territory in which the seizure took place was about to be referred to arbitration, nothing should then be done in the matter.

That some months afterwards the "William Shaw" was released on a bond being given for the payment of such sum as might be awarded by a competent Tribunal in the event of the arbitration being decided against Great Britain, and it appeared that she was subsequently wrecked.

That since those transactions, the Delagoa Bay Arbitration had been decided in favour of Portugal, and, on the strength of that decision, the Portuguese Vice-Consul at Durban had claimed from the owner the sum of 750*l*., the amount named in the bond.

That, on the other hand the owners of the "William Shaw" and of the cargo contended that the result of the arbitration did not justify the proceedings of the Portuguese authorities at a time when the territorial sovereignty over Delagoa Bay was still in dispute, and that they claimed as compensation for the loss inflicted on them by those proceedings the sums respectively of 3,600*l*. and 800*l*.

That Lord Tenterden was to point out that it appeared from Sir H. Bulwer's despatch of the 30th March, 1876, that in October 1873 the then Lieutenant-Governor of Natal undertook, in a letter to the Portuguese authorities at Lorenço Marques, that the Government of Natal would hold itself responsible for the payment of the amount of the security mentioned in the bond to be given for the release of the vessel, but it did not appear that any claim had yet been made on the Colony for the fulfilment of that undertaking.

That, in those circumstances, Lord Tenterden was to request that we would take the inclosed papers into our consideration, and favour your Lordship with our opinion as to the course that Her Majesty's Government should take in the matter.

In obedience to your Lordship's commands we have the honour to report—

French award gives to Portugal the territory where the vessel was seized.

That in our opinion the award of the President of the French Republic must be held to give the territory in which the "William Shaw" was seized to the Portuguese at the time of the seizure; and in no sense can such territory be deemed neutral before or pending the arbitration.

If we entertained any doubts upon this general question, the terms of the bond in the particular case of the "William Shaw" would put an end to such doubts.

Her Majesty's Government cannot claim compensation.

Her Majesty's Government cannot therefore, in our opinion, make any claim whatever on the Portuguese Government for compensation on account of the loss suffered by the late Mr. David Leslie by reason of his ship being seized by the Portuguese in Portuguese territory for a breach of Portuguese law.

Bond entered into must be paid to Portuguese authorities.

We do not find amongst the papers transmitted to us the decision of the Tribunal at Mozambique, but, assuming that Tribunal to have awarded the sum of 750*l*., the Government of Natal is responsible for that sum to the Portuguese authorities at Lorenço Marques.

The subsequent loss of the "William Shaw" in no way affects that responsibility.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 82.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 17.)

*Temple, November* 17, 1876.

My Lord,

Consular registration of births of illegitimate children.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 27th ultimo, stating that with reference to our report of the 27th March,* as to the registry of the illegitimate children of British parents in Consular registers, he was directed by your Lordship to transmit to us a despatch from the Acting British Consul at Loanda upon the subject, and that he was to request that we would favour your Lordship with our opinion as to what instructions should be sent to Mr. Carnegie with reference to the entry of the birth of an illegitimate child made by him before he received the instructions forwarded in our Report, which was inclosed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Should be cancelled.

That assuming that a principle and uniformity of practice should be adopted and followed in the different Consulates, we are of opinion that Mr. Carnegie should be instructed to cancel the registration of the illegitimate child referred to.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* See No. 57 (*Italy*).

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## Russia.

### No. 83.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received December* 6.)

*Temple, December* 5, 1876.

My Lord,

Case of Mr. Zoru, naturalized in Bombay under Indian Naturalization Act.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 6th October last, stating that he was directed by your Lordship to transmit to us papers, in which the question was raised as to whether Mr. Zoru was entitled to be furnished with a British passport in a foreign country, by virtue of a certificate of naturalization granted to him by the Government of Bombay under the provisions of the "Indian Naturalization Act No. XXX of 1852," a copy of which was also inclosed.

As to right to British protection abroad.

That it would be observed that in the letter from the India Office an opinion was expressed that Mr. Zoru was entitled to British protection abroad, as having been naturalized under the Indian Act already mentioned, which was based on the English Naturalization Act of 1844.

That your Lordship, however, observed that the 8th clause of the Indian Act contained the words "within the said territories," which would seem to imply that naturalization under it was confined to persons while actually resident in Her Majesty's Indian possessions.

That it was not improbable that the words in question were introduced into the Indian Act of 1852 in consequence of the provisions of the Act 10 and 11 Vict., c. 83, enacting that the Naturalization Acts passed by the Legislatures of any of Her Majesty's foreign possessions should have the force of law within such possessions.

That Mr. Lister was to request that we would take the subject into our consideration, and favour your Lordship with our opinion as to the answer which should be returned to Mr. Consul-General Stanley.

That a copy of the Report of the Royal Commission on the Laws of Naturalization and Allegiance was inclosed, at page 94 of which would be found a copy of the Act 10 and 11 Vict., c. 83, and at pages 96 and 97 the Instructions issued to Diplomatic and Consular Officers abroad, relative to the grant of passports to persons naturalized in British Colonies.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the privileges of naturalization to which Mr. Zoru is entitled are defined and limited by the Indian Naturalization Act No. XXX.

Consul-General Stanley right in refusing him a British passport.

And since that Act in terms confines the rights, privileges, and capacities thereby intended to be conferred to persons within the territories under British Government in India, Mr. Consul-General Stanley may properly be answered that he has acted rightly in refusing a British passport to Mr. Zoru.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Siam.

### No. 84.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received September* 7.)

*Temple, September* 6, 1876.

My Lord,

Siam Order in Council extending powers of Consul-General.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 7th August ultimo, stating that he was directed by your Lordship to transmit to us a draft Order in Council which had been prepared by Mr. F. S. Reilly for extending the authority conferred on the Consul-General in Siam by the Siam Order in Council of 1856, so as to enable him to inflict the punishment of imprisonment for three years, and conferring on the Consul-General and on other Consular Officers exercising jurisdiction in Siam the authority to send cases for trial to British Burmah.

That Lord Tenterden was to request us to take the draft into our consideration, and to report to your Lordship our opinion whether it might properly be issued.

That the accompanying correspondence, showing the circumstances under which it had been prepared, was annexed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Approving.

That the Order may properly be issued.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Spain.

### No. 85.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received January* 11.)

*Temple, January* 10, 1876.

My Lord,

Sale of "Norfolk Hero" at Valencia, and subsequent fraudulent sale to Mr. Gilmour.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 23rd December ultimo, stating that he was directed by your Lordship to transmit to us the inclosed correspondence respecting the sale at Valencia, in 1873, of the vessel "Norfolk Hero," and the claim advanced by Mr. Gilmour that a fraudulent sale had been made to him of the vessel after her sale at the Spanish port, and that he (Lord Tenterden) was to request that we would take those papers into our consideration and favour your Lordship with our opinion thereupon, and as to the answer which should be returned to Mr. Gilmour in the matter.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Her Majesty's Government cannot interfere.

That Mr. Gilmour may, in our opinion, properly be answered that your Lordship cannot in any way compensate him, or by your interference provide any remedy for the loss which he may have sustained.

We entirely agree with the opinion expressed in the Board of Trade's letter of the

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**Consul Dart to blame for not sending certificate of registry.**

10th December, 1875, that Mr. Dart is very much to blame for his neglect of duty in not sending home the certificate of registry when the ship was sold in May 1873.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 86.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March* 16.)

*Temple, March* 15, 1876.

My Lord,

**Case of the "Dolores."**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th January last, stating that with reference to our Reports of the 20th September and the 21st and 29th October relative to the case of the "Dolores," he was directed by your Lordship to state to us that your Lordship had thought it advisable, before sending any instructions upon the subject to Her Majesty's Minister at Madrid, to obtain a copy of the proceedings in the case. That had now been done, and that Mr. Layard's despatch inclosing copy and translation of the proceedings was sent therewith.

That Lord Tenterden was to request that we would take that document into our consideration, together with the former papers, which were also sent to us, and that we would be good enough to inform your Lordship whether we saw any reason to modify the opinion expressed in the above-mentioned Reports.

That the point to which Lord Tenterden was to request that we would be good enough especially to direct our attention was that paragraph in our Report of the 20th September, in which we state that the "Dolores" was on a "lawful voyage, she carried a legal cargo, and her papers were regular and in perfect order. The only charge against her is, that the manifest was kept back from the boarding officer."

That those statements, Lord Tenterden was to observe, though very probably true, rested entirely on the evidence of the claimants, and were flatly contradicted by that of the captors, as would be seen from Sir John Walsham's despatch No. 548 of the 20th September, and from the copy of the proceedings then sent to us.

That, in those circumstances, your Lordship felt doubtful whether you would be justified in making use of the language of our Report as quoted above.

We are also honoured with a further letter from Lord Tenterden, bearing date the 27th January, stating that he was directed by your Lordship to inclose to us a further paper respecting the case of the "Dolores," with a request that we would have the kindness to take it into our consideration in conjunction with the correspondence on that subject which was already before us.

In obedience to your Lordship's commands we have the honour to report—

That the information before us at the time when the Reports of the 20th September and the 21st and 29th October, 1875, were respectively made, led us to the conclusion that the "Dolores" was adjudged a lawful prize by the Tribunal at Algeciras, solely on the ground that the manifest was kept back from the boarding officer. It now, however, appears, from the copy of the proceedings in the case before the Spanish Court, which is laid before us, that there was evidence adduced tending to show that the vessel was engaged, not in lawful trade, but upon a smuggling adventure, and that the condemnation proceeded upon the ground that this fact was established.

**Spanish Court justified in condemning for smuggling.**

This being so, we cannot say that the Spanish Court were not justified in coming to the conclusion at which they arrived, though possibly they attached more weight to the evidence of the captors than we should have been inclined to do.

**No further interference warranted.**

We therefore think that the decision of the Spanish Tribunal was regular, and, being the decision of a Court of competent jurisdiction, that no further official interference in the case is warranted.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 87.

*Lord Tenterden to the Law Officers of the Crown and Dr. Deane.**

Gentlemen, *Foreign Office, November* 2, 1875.

**Intestate estate of William Higgs.**

I AM directed by the Earl of Derby to transmit to you the accompanying despatch (No. 568) from Her Majesty's Minister at Madrid, in which he asks for instructions as to how he should act with regard to the property left by William Higgs, a British subject, who has lately died at Madrid, intestate.

The case which formed the subject of the correspondence in 1872, referred to by Mr. Layard (inclosed herewith)† differed from this, but in the course of that correspondence the proper mode of dealing with the property of British subjects dying intestate in Spain was incidentally laid down by the Law Officers of the Crown; and it is on account of the difficulty of following the course then prescribed that Mr. Layard applies for further instructions.

**As to validity of old Treaties with Spain.**

You will see that the course prescribed by the Law Officers in 1872 was founded on the provisions of the Treaty between Great Britain and Spain of 1667; and the question now raised is in the first instance dependent upon that of the validity of the ancient Treaties with Spain, which question has been referred to you for reconsideration in my two letters of the 26th ultimo; since, if those Treaties are ultimately decided to be no longer valid, their provisions will cease to afford any guidance in the matter.

If, however, you should, on reconsideration, come to the conclusion that the Treaties are still in force as regards British subjects in Spain, it will remain to be considered how the provisions of the Treaty of 1667 can be complied with in face of the difficulties to which Mr. Layard calls attention; and it appears to Lord Derby that the intention of the Treaty would be sufficiently met in this, and in similar cases, if, in the absence of any objection on the part of persons interested, Her Majesty's Consul were to remit the proceeds of the estate in the usual manner to this country, for the benefit of the next of kin.

I am to request that you will be good enough to take the inclosed papers into your consideration, and favour Lord Derby with your opinion as to the answer that should be returned to Mr. Layard's last despatch.

I am, &c.
(Signed) TENTERDEN.

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*Law Officers' Report in reply to the foregoing Letter.*

**Opinion. Cases of intestacy are governed by Treaty of 1667.**

That, in our opinion, the Article XXXIV of the Treaty of 1667 governs the case of British subjects dying intestate in Spain, and that Mr. Layard may properly be instructed to take that Article for his guidance in all cases of intestacy.

Mr. Layard's attention should be called to the words of that Article, from which he will see that the merchants in whose hands the goods, papers, writings, and books of accounts are to be deposited need not be British merchants.

**Remuneration for custody of goods, &c.**

We see no objection to the allowing a reasonable remuneration to the persons who have the custody of the goods, papers, and documents belonging to the intestate.

J. H.
H. S. G.
J. P. D.

*March* 17, 1876.

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* The Law Officers' Report upon this subject could not be discovered when this collection of Reports was made, and it was therefore necessary to obtain from the Law Officers the original as drawn up by them. The Law Officers, however, do not appear to retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the substance of the Foreign Office letter to them is recapitulated. It has therefore been deemed advisable to print the Foreign Office letter in this instance, as without it the bare Report, without the preamble, might not be wholly intelligible.

† Mr. Layard, No. 131, May 1: to Law Officers, May 13; Law Officers, May 15; to Mr. Layard, No. 63, May 18; Mr. Layard, No. 210, June 19; to Law Officers, June 25; Law Officers, June 27; to Mr. Layard, No. 92, July 4, 1872.

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## No. 88.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 24.)

*Temple, March* 23, 1876.

My Lord,

Capture of the "Lark" and detention of British subjects on board.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 24th January last, stating that, with reference to our Report of the 4th May last, he was directed by your Lordship to transmit to us the accompanying further correspondence relative to the case of the "Lark."

That we should see from that correspondence that, in accordance with our abovementioned Report, instructions were sent to Her Majesty's Chargé d'Affaires at Madrid to inform the Spanish Government that Her Majesty's Government were willing to accept the sum of 1,550*l.*, instead of 3,150*l.* originally claimed as compensation for the British subjects captured on board the "Lark;" and to express the hope that, on reconsideration, the Spanish Government would recognize the justice of the claims in question, and pay the reduced amount then claimed; but that the Spanish Government had declined to admit the claims or to pay any compensation.

That, in those circumstances, Lord Tenterden was to request that we would take the inclosed papers into our consideration, together with the previous correspondence which was sent therewith for convenience of reference, and favour your Lordship with our opinion as to the steps that should be taken in the matter.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government may insist on Spain paying compensation.

That we are still of opinion that your Lordship may properly insist, in the strongest manner consistent with diplomatic usage, upon compensation being made to the British subjects who were taken out of the "Lark," and detained as prisoners by the Spanish authorities.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 89.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 23.)

*Temple, March* 23, 1876.

My Lord,

British vessel "Amalia," seized by Spanish guardacosta.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Colonial Office, together with previous papers, on the subject of the capture by a Spanish guardacosta of the British vessel "Amalia," and the proceedings subsequently taken against certain of the crew by the guardacosta; and that he, Lord Tenterden, was to request that we would have the goodness to take those papers into our consideration, and favour your Lordship with our opinion on the case, and inform you what course we considered it would be advisable that Her Majesty's Government should now take in the matter.

That Lord Tenterden was to add that, as the affair was pressing, your Lordship would be glad to receive our report as soon as possible.

In obedience to your Lordship's commands we have the honour to report—

Proceedings against crew of the latter illegal. Her Majesty's Government should compensate.

That, in our opinion, the proceedings against the four Spanish sailors at Gibraltar have been illegal, and the men should be at once liberated, with fair compensation to them individually.

With respect to Her Majesty's Government and the Spanish Government, we submit, for your Lordship's consideration, that the present case may be of considerable use for the future.

And we are of opinion that, whilst regret may be expressed by Her Majesty's Government for the proceedings against the four men at Gibraltar, Her Majesty's Government may very properly insist upon the Spanish Government expressing their regret at the insult offered to the British flag by a Spanish Government vessel in boarding and seizing a vessel flying that flag on the high seas, and far beyond Spanish jurisdiction.

Spanish Government should be pressed to respect British flag in future, and to compensate owners of the "Amalia."

And Her Majesty's Government may further properly insist upon the Spanish Government giving directions to all their vessels to respect the British flag in future cases, and upon compensation being made to the owners of the "Amalia" and her cargo for any loss or expenses incurred by the seizure, and return of that vessel to Gibraltar.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 90.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 25.)

*Temple, March* 25, 1876.

My Lord,

Case of the "Uruguay," late "Octavia."

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 17th January last, stating that he was directed by your Lordship to transmit to us the accompanying letter and its inclosures from the Colonial Office upon the subject of the detention, at Kingstown, Jamaica, of the steamer "Uruguay" (formerly the "Octavia").

Connected with Cuban insurgents. Detained at Jamaica.

That the vessel in question was originally British, but she had lately become nominally the property of an Uruguan. It was, however, notorious that she really belonged to persons connected with the Cuban insurgents, and that she was intended to be employed in landing arms, and probably men, in Cuba. The Uruguan Government, at the instance of the Government of Spain, had notified to Her Majesty's Government that she was no longer entitled to fly the Uruguan flag.

That, in those circumstances, it was unlikely that any claim would be preferred diplomatically against Her Majesty's Government on account of her detention; and as no legal proceedings seemed to have been taken by any one interested in her on that account, your Lordship proposed to suggest to the Earl of Carnarvon that the action taken by the Governor of Jamaica in the matter, on the advice of the Attorney-General of the Colony, should be approved.

That it would be seen, however, from the inclosed papers, that considerable doubt was felt at first as to the proper course to follow with regard to the "Uruguay," and that your Lordship would be glad to be informed, for future guidance in cases of a similar nature, whether we were of opinion that the interpretation of the law laid down by the Attorney-General of Jamaica was correct.

Departure with British registry. Capture by Spanish man-of-war.

We are also honoured with a further letter from Lord Tenterden, dated the 23rd March, stating that, with reference to his letter of the 17th January last, he was directed by your Lordship to transmit to us a further letter from the Colonial Office, inclosing a despatch from the Governor of Jamaica, in which he reported the circumstances of the release from detention at Port Royal, with a British registry, of the "Uruguay" (now rechristened the "Octavia"), and of her subsequent capture and conveyance to Porto Rico by a Spanish man-of-war. That Lord Tenterden was also to inclose further correspondence on the subject, from the latter portions of which it would appear that it was the intention of the Spanish authorities to remove the crew to Cuba.

That, under those circumstances, he (Lord Tenterden) was to request that we would, at our earliest possible convenience, favour your Lordship with our opinion as to what course Her Majesty's Government should pursue in the matter.

We are also honoured with a further letter, dated the 23rd instant, from Lord Tenterden, stating that, with reference to his letter of that day's date, he was to transmit to us, for our information, the accompanying copies of telegraphic instructions which your Lordship had thought it advisable to address respectively to Her Majesty's Minister at Madrid and to Her Majesty's Consul at Porto Rico relative to the case of the "Octavia," together with a further letter from the Board of Admiralty on the same subject, and the reply which your Lordship had caused to be addressed to their Lordships.

In obedience to your Lordship's commands we have the honour to report—

There is no war, therefore no contraband of war. Capture illegal. May demand release.

That there is no war, but merely an insurrection, in Cuba; consequently, there is neither blockade nor contraband of war. The seizure, therefore, of the "Octavia," out of Spanish waters, was, in our opinion, illegal. And, assuming that vessel to have been lawfully under the British flag, and with a British register, Her Majesty's Government may, in our opinion, properly insist upon her immediate release.

The above Report was drafted before the receipt of Lord Tenterden's letter of the 23rd instant and its inclosures.

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Resist by force, crew being landed in Cuba. (Reference to "Virginius.")

The antecedents of the ship are so notorious that some allowance may be made for the conduct of the Spanish authorities; but, remembering the treatment received by the crew of the "Virginius," we are of opinion that a force sufficiently strong to overawe all thoughts of resistance may properly be employed to prevent the Spaniards from landing the crew in Cuba.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 91.

*(The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—*(Received April* 1.)

*Temple, April* 1, 1876.

My Lord,

Case of the "Octavia." Release of British subjects.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 29th ultimo, stating that, with reference to his letter of the 27th ultimo relative to the case of the "Octavia," he was directed by your Lordship to transmit to us the accompanying telegram from Her Majesty's Consul at Puerto Rico, and a letter from the Admiralty, from which we should see that all the British subjects taken on board that vessel (twenty-two in number) had been handed over to the Commander of Her Majesty's ship "Eclipse" and taken to St. Thomas.

Detention of master, his wife, and three Cubans.

That the "Octavia" herself, however, the captain and his wife, and three Cubans, were still detained at Puerto Rico pending instructions from Madrid.

That Lord Tenterden was to request that we would take the inclosed papers into our consideration, together with those already before us; and that we would favour your Lordship, at our earliest convenience, with our opinion as to the course that should be pursued in the matter.

In obedience to your Lordship's commands we have the honour to report—

That we had prepared a Report on the letter of Lord Tenterden of the 27th March, 1876, but in consequence of the action taken by the Spanish Government, as stated in the papers transmitted with Lord Tenterden's letter of the 29th, we will not trouble your Lordship with that Report, as the circumstances are changed.

Her Majesty's Government may demand their release and that of the vessel.

We are of opinion that Mr. Layard may now properly be instructed to press upon the Spanish Government the illegality of the seizure of the "Octavia" out of Spanish waters, and to claim the immediate release of the ship, her master, his wife, and the members of the crew not yet released.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 92.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—*(Received April* 26.)

*Temple, April* 25, 1876.

My Lord,

Claim of Mr. J. E. Whitman. Losses caused by Spanish Bank at Havana.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 28th March ultimo, stating that, with reference to the Report of the Law Officers and Dr. Deane of the 25th March, 1874, he was directed by your Lordship to transmit to us the accompanying letter from Mr. James Whitman (March 14, 1876), relative to the claim of his brother, Mr. J. Edward Whitman, to compensation for losses alleged to have been caused to him by the action of the Spanish Bank, and of other banks and individuals at Havana acting under the influence of the Spanish Bank, with regard to certain speculations in gold in which he was engaged; and that he (Lord Tenterden) was to request that we would take that letter into our consideration, together with the previous papers which were inclosed therewith,* and that we would be good enough to inform your Lordship whether we see any reason to modify the opinion expressed in the above-mentioned Report of the 25th March, 1874.

* Mr. Dunlop, No. 6, Consular, February 2, 1874; Law Officers, March 25, 1874; Mr. Dunlop, No. 12, April 1, 1874.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government cannot interfere.

That we see no reason to modify the opinion expressed in the Report of the 25th March, 1874.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 93.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—*(Received April* 26.)

*Temple, April* 25, 1876.

My Lord,

Mr. Kynock's claim. Cuba. "Figueredo" estate.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 6th April instant, stating that, with reference to the Report of the Law Officers and Dr. Deane of the 14th August, 1874, he was directed by your Lordship to transmit to us further correspondence relative to the claim of Mr. Kynock against the Spanish authorities in Cuba.

That we should see from that correspondence that the Spanish Government had proposed a mode of settling the claim which Mr. Kynock maintained to be quite illusory, and that the Acting British Consul-General at Havana concurred in Mr. Kynock's view of the proposal.

Lord Tenterden also stated that, in these circumstances, he was to request that we would take the inclosed papers into our consideration, together with the previous correspondence, which was also sent therewith, and that we would favour your Lordship with our opinion as to the course that should be pursued in the matter.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

That in our opinion the proposal of the Spanish Government will, as stated by Mr. Kynock and the Acting British Consul-General at the Havana, be of very slight, if of any use to Mr. Kynock.

Loss caused by acts of Spanish Government Agents. Spanish Government should indemnify him, and recoup themselves.

The loss incurred by Mr. Kynock was caused by the acts of those employed by the Spanish Government, and Her Majesty's Government may properly urge upon the Spanish Government the obligation of indemnifying Mr. Kynock, leaving the Spanish Government to recoup itself out of the produce of the sale of the Figueredo Brothers, and not relieving itself of the liability to indemnify Mr. Kynock by throwing the chances of the sale of the estate upon him.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 94.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—*(Received May* 10.)

*Temple, May* 9, 1876.

My Lord,

Case of the "Victoria." Messrs. Durroch's claim for her detention.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 22nd January last, stating that, with reference to our Reports of the 20th July and 4th October, relating to the case of the "Victoria," he was directed by your Lordship to transmit to us letters from the owners of that vessel, requesting that your Lordship would demand from the Spanish Government a sum of 6,000*l.* for losses sustained by them owing to her detention at Barcelona by the Spanish authorities, and that Mr. Lister was to request that we would favour your Lordship with our opinion as to whether Her Majesty's Government would be justified in making that claim upon the Spanish Government.

That the correspondence in that case was inclosed for convenience of reference if required.

We are also honoured with a further letter from Mr. Lister, of the 9th February last, stating that, with reference to his letter of the 22nd January, respecting the case

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of the British steamer "Victoria," he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Consul at Barcelona on the subject, and to request that we would take it into our consideration, together with the previous papers which were then before us.

In obedience to your Lordship's commands we have the honour to report—

Case before Spanish Courts. Her Majesty's Government cannot interfere.

That, in our opinion, Her Majesty's Government could not, at any time, have interfered diplomatically in the case of the "Victoria," the case being before the Tribunals of an independent country.

And this opinion is not modified by the fact that the "Victoria" has been burnt whilst under the custody of the Spanish Courts, for it appears from Mr. Layard's despatch of the 29th November, 1875, that the owners of the "Victoria" might have released the ship on giving security.

And we are further of opinion that Messrs. Durroch may properly be informed that their claim for 6,000*l*. cannot be demanded by your Lordship from the Spanish Government as a compensation for their losses by reason of the ship's detention at Barcelona.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 95.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May* 11.)

*Temple, May* 10, 1876.

My Lord,

Case of the "Amalia." Spanish captors tried at Gibraltar for piracy.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 10th April ultimo, stating that, with reference to our report of the 23rd March last, he was directed by your Lordship to transmit to us further correspondence, as marked in the margin, relative to the case of the "Amalia," a British vessel lately captured by a Spanish guardacosta while on a voyage from Gibraltar bound for Oren, and which vessel was subsequently retaken by her crew, who took her and the four Spaniards placed on board into Gibraltar, where the captors were charged with piracy. That we would see that, in accordance with the advice contained in our above-mentioned report, the four Spaniards had been set at liberty, and that Her Majesty's Minister at Madrid had been instructed, in informing the Spanish Government of their release, to make a strong representation as to the capture of the "Amalia." That no further action, therefore, appeared to be called for at present, but that your Lordship would be glad to be favoured with our opinion upon the proceedings taken in the matter by the authorities at Gibraltar, under the advice of the Attorney-General of the Colony.

Lord Tenterden was also pleased to say that the previous papers were inclosed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

No case of piracy. No foundation for proceedings.

That the proceedings taken by the authorities at Gibraltar against the Spanish sailors do not, in our opinion, admit of any justification, for we are unable to agree with the Attorney-General at Gibraltar, that there was a *prima facie* case, or anything like a *prima facie* case of piracy, and without this supposed piratical act there was no foundation for the proceedings.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 96.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May* 18.)

*Temple, May* 18, 1876.

My Lord,

Case of the "Octavia." Intention to submit to Prize Court.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 12th April last, stating that, with reference to our Report of the 1st of

that month, he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister at Madrid (Mr. Layard, No. 110, April 1, 1876) relative to the case of the "Octavia," and to request that we would favour your Lordship with our opinion as to whether Mr. Layard should be instructed to protest against the intention announced by the Spanish Minister for Foreign Affairs of submitting the case to a Prize Court, bearing in mind that there was no war, and that the information at present before Her Majesty's Government was to the effect that the "Octavia" was a British vessel, and was captured by a Spanish ship of war on the high seas.

Lord Tenterden was pleased to inclose the previous papers for convenience of reference.

We were also honoured with a letter from Mr. Lister, dated the 18th April ultimo, stating that, with reference to Lord Tenterden's letter of the 12th, he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Consul at Porto Rico, containing fuller details as to the recent capture on the high seas near St. Thomas of the British steamer "Octavia" by the Spanish sloop of war "Hernan Cortes," and the subsequent proceedings relative to the "Octavia" and those on board her, and to request that we would take the inclosed despatches into our consideration, together with the papers already before us, and that we would favour your Lordship with our opinion on the case at our earliest convenience.

We were also honoured with a note from Mr. Lister, dated the 22nd April last, stating that he was directed by your Lordship to transmit to us the inclosed despatch from Her Majesty's Consul at Porto Rico, and to request that we would have the goodness to take it into our consideration in conjunction with the other papers before us relative to the case of the "Octavia."

In obedience to your Lordship's commands we have the honour to report—

Term "Prize Court," in time of peace.

That the term "Prize Court" may possibly be employed in a loose sense, but however that may be Her Majesty's Government may, we think, properly take higher ground, which will make all reference to the expression "Prize Court" needless.

Her Majesty's Government may demand release of vessel and crew seized on high seas.

And in our opinion Mr. Layard may properly be instructed to inform the Spanish Government that Her Majesty's Government claims the immediate release of the British ship "Octavia," and of all the persons on board that ship seized on the high seas by a Spanish man of war.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 97.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May* 18.)

*Temple, May* 18, 1876.

My Lord,

"Octavia." Doubts as to her right to hoist British flag.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 8th May instant, stating that, with reference to his letter of the 12th ultimo, he was directed by your Lordship to transmit to us the accompanying letter (to Mr. Farrer, 2nd May, 1876) and its inclosure from the Registrar of Seamen, expressing a doubt whether the "Octavia," at the time of her capture, was legally a British vessel, the *bonâ fide* property of a British subject, and that he, Lord Tenterden, was to request that we would take these papers into our consideration, together with those already before us.

That your Lordship had requested Her Majesty's Secretary of State for the Colonies to obtain from the Governor of Jamaica proof as to the nationality of M. de Cardova, the purchaser of the "Octavia," and any other information his Excellency could apply as to the legality and *bonâ fide* nature of the transfer of that vessel to British nationality.

That three further despatches relative to the case of the "Octavia" from Her Majesty's Minister at Madrid were also inclosed therewith for our consideration (Mr. Layard's Nos. 210, 224, and 237), and Lord Tenterden further stated that he was to call our special attention [? to the question] raised therein as to whether a Spanish Court is competent to decide upon the right of the "Octavia" to hoist the British flag, and that we would, no doubt, observe the reference to the "Virginius" as bearing on that of the "Octavia."

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In obedience to your Lordship's commands we have the honour to report—

Spanish Court cannot decide as to flag. (Reference to the case of the "Virginius.")

That, in our opinion, the Spanish Court is not the Court which should inquire into or decide upon the right of the "Octavia" to fly the British flag.

Mr. Layard has, we consider, correctly stated the case of the "Virginius," and the principles which should govern the case of the "Octavia."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 98.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 18.)

*Temple, May* 18, 1876.

My Lord,

Case of the "Octavia."

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 27th ultimo, stating that he was directed by your Lordship to request that we would be good enough to take the accompanying papers into our consideration, in conjunction with the correspondence on the subject of the "Octavia," which was inclosed in the letter from the Foreign Office of the 12th ultimo.

In obedience to your Lordship's commands we have the honour to report—

Captain Erskine's conduct should be approved.

That your Lordship may, in our opinion, properly concur in the suggestion of the Lords of the Admiralty, that Captain Erskine's conduct be approved.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 99.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 2.)

*Temple, June* 1, 1876.

My Lord,

Case of the "Amalia." Spanish sailors tried at Gibraltar for piracy.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th instant, stating that, with reference to our Report of the 10th instant, he was directed by your Lordship to transmit to us the accompanying translation of a letter from the Spanish Minister at this Court, claiming compensation for the four Spanish sailors lately detained at Gibraltar on a charge of being illegally on board the British vessel "Amalia."

That Lord Tenterden was to request that we would take the inclosed letter into our consideration, together with the former papers, which were returned to us therewith, and favour your Lordship with our opinion as to the answer that should be returned to the Spanish Minister.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government should grant compensation.

That, in our opinion, the Spanish Minister may properly be answered that Her Majesty's Government admits the right of the four Spanish sailors to compensation.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 100.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 3.)

*Temple, June* 2, 1876.

My Lord,

Seizure of "Marie Louise" in Sulu Archipelago.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 15th May ultimo, stating that, on the receipt of the Law Officers' Report

Mr. Field's claim against Spain for compensation.

of the 4th October last, your Lordship requested Her Majesty's Secretary of State for the Colonies to endeavour to procure from the Governor of Hong Kong further evidence as to the nationality of Mr. James Benjamin Field, who claimed compensation, as a British subject, from the Spanish Government, on account of his seizure by a Spanish naval officer while on a trading voyage in the Sulu Archipelago on board the German brig "Marie Louise," and on account of the treatment he afterwards underwent at the hands of the Spanish authorities in the Philippines.

That he was directed by your Lordship to transmit to us the accompanying letter from the Colonial Office (May 8, 1876), inclosing a despatch upon the subject from the Governor of Hong Kong, and a statutory declaration made by Mr. Field, and to request that we would be good enough to inform your Lordship whether, in our opinion, the inclosed documents afford sufficient proof of Mr. Field's British nationality to justify Her Majesty's Government in pressing his claim against the Government of Spain.

The former papers upon this subject were returned to us for convenience of reference.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

His nationality proved Her Majesty's Government may support his claim.

That, in our opinion, the papers inclosed in the letter from the Colonial Office afford sufficient proof of Mr. Field's British nationality to justify Her Majesty's Government in pressing his claim against the Government of Spain.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 101.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 14.)

*Temple, June* 13, 1876.

My Lord,

Capture of the "Sultana." Proceedings of the Spanish in the Sulu Archipelago.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 18th February last, stating that, with reference to our Reports of the 22nd and 30th October last relative to the case of the "Sultana," he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Acting Consul-General at Brunei (Mr. Low, No. 21), containing further information upon the subject.

That the previous correspondence was also inclosed, together with a précis of the same (4th February, 1876), which had been made in the Foreign Office, and that he, Lord Tenterden, was to request that we would take these papers into our consideration, and that we would be good enough to inform your Lordship whether we were still of opinion that compensation can be claimed from the Spanish Government for losses sustained by British subjects in connection with the capture of the "Sultana."

Lord Tenterden was also pleased to say that, if so, he was to request that we would favour your Lordship with our opinion as to the particular losses or alleged losses for which compensation should be claimed, and the grounds upon which the claims should be based, and that he was to add that action had been delayed in the matter, as it was thought advisable to come to a decision in the first instance as to the line of policy that should be pursued by Her Majesty's Government in the general question of Spanish proceedings in the Sulu Archipelago.

That the decision at which Her Majesty's Government had arrived upon that subject would be learnt from your Lordship's despatch to Lord Odo Russell No. 35 of the 17th January, of which a copy was sent therewith.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

As to conduct of Spanish officers. Her Majesty's Government cannot claim compensation for British subjects.

That we have considered the statements contained in the further information forwarded by Her Majesty's Acting Consul-General at Brunei. As to the conduct of the Spanish officers, we adhere to the opinion expressed in the Report of the Law Officers of the 30th October, 1875.

But we do not find that proof of injury to British interests or of loss of property

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belonging to British subjects which would justify us in advising your Lordship that any claims for compensation should now be made upon the Spanish Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 102.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June 20.*)

*Temple*, *June* 19, 1876.

My Lord,

Detention of the "Joseph Dodds" with tobacco on board for Huelva.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 9th May, stating that, with reference to the Law Officers' Report of the 14th July last upon the case of the "Joseph Dodds," he was directed by your Lordship to transmit to us the accompanying further correspondence on the subject.*

That we would see therefrom that, before acting on the above-mentioned Report, your Lordship thought it advisable to obtain further information as to the proceedings of the Spanish Consul-General in the matter, and that the explanations received from the Spanish Government on this point have been referred to Messrs. Argles and Rawlins, the solicitors for the claimants, for their observations.

That Lord Tenterden was pleased to request that we would take these papers into our consideration, together with the previous correspondence which was also inclosed, and favour your Lordship with our opinion as to the steps that should now be taken with regard to the claims arising out of the detention of the "Joseph Dodds."

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the explanations received from the Spanish Government, and the observations and statements furnished by Messrs. Argles and Rawlins, show, as it appears to us—

1. That the inquiry made and the information sought at the Spanish Consulate in London was extremely imperfect.

2. That the fact that tobacco formed part of the cargo of the ship was not communicated to the Spanish Consul or his clerks when the inquiry was made and the information asked for.

Messrs. Breslauer should have inquired as to Spanish Customs laws.

3. That Messrs. Breslauer might and should, knowing, as merchants must be presumed to know, the strictness of the Spanish Customs laws, have made more precise and careful inquiries, and obtained more accurate information before they shipped that part of the cargo, which was to be landed at Huelva.

Spanish Consul not to blame.

4. No blame can be thrown upon the Spanish Consul in London for either misleading, or holding back information from, Messrs. Breslauer.

Claim cannot be supported.

We are therefore of opinion that no further steps can be properly taken with regard to the claims arising out of the detention of the "Joseph Dodds."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 103.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June 29.*)

*Temple*, *June* 28, 1876.

My Lord,

Case of the "Victoria." Messrs. Grant and Durrock's claim for detention.

WE were honoured with your Lordship's commands signified in Mr. Bourke's letter of the 31st May ultimo, stating that he was directed by your Lordship to transmit to us a further letter from Messrs. Grant, Durrock, and Co. (dated the 26th May), again urging their claim upon the Spanish Government for compensation on account of the proceedings of the Spanish authorities in regard to the "Victoria," and that your Lordship would be glad to be favoured with our opinion whether there is anything in Messrs. Grant and Co.'s letter to induce us to modify the views expressed in our Report of the 9th May last.

Mr. Bourke was pleased to say that the correspondence in the case was inclosed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Cannot modify former opinion. (See No. 94.)

That we see no reason to modify the opinion which we submitted to your Lordship on the claims of Messrs. Grant and Co. upon the 9th ultimo.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 104.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July 13.*)

*Temple*, *July* 12, 1876.

My Lord,

Claim of Messrs. Bickford, Smith, and Co. Losses through hostilities near Bilbao.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 5th May last, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, as marked in the margin, relative to the claim of Messrs. Bickford, Smith, and Co. to compensation from the Spanish Government for damage said to have been done to their fuse factory at Hurrigorri during the recent hostilities near Bilbao, and that he was to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to whether Messrs. Bickford, Smith, and Co.'s claim should be supported.

In obedience to your Lordship's commands we have the honour to report—

Cannot support unless Spanish or other subjects are compensated.

That in our opinion the claim of Messrs. Bickford and Co. for compensation in respect of any loss which they may have sustained during the military operations near Bilbao cannot properly be supported unless the Spanish Government gives compensation to the subjects of Spain or of any other country in the same circumstances.

Spanish Decree cannot be considered by Her Majesty's Government.

The Decree of the Municipal Judge is a matter for the consideration of the Spanish authorities, and cannot, as we think, properly be considered by your Lordship.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 105.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received September 12.*)

*Temple*, *September* 12, 1876.

My Lord,

Seizure of the "Octavia."

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 9th August last, stating that on the receipt of our Reports of the 18th May your Lordship instructed Her Majesty's Chargé d'Affaires at Madrid to claim from the Spanish Government the immediate release of the British vessel "Octavia," and of all the persons and property seized on board her.

Spanish proposal to deliver her to Her Majesty's Government in deposit, pending decision of Spanish Courts.

That in reply to this claim the Spanish Government proposed that the three prisoners still detained, who are alleged to be Cubans, should be released, and that the vessel and cargo should be placed in deposit, pending the judicial proceedings.

That this proposal Her Majesty's Government were unable to accept, inasmuch as it would involve an obligation to give the vessel up if the decision of the Spanish Court were to be adverse to her, and such an obligation would be a practical admission of the right of jurisdiction of a Spanish Court over a British vessel on the high seas.

That since then the Spanish Minister at this Court has proposed verbally to your Lordship that the prisoners should be released, and the "Octavia" and her cargo delivered to Her Majesty's Government, to be held in deposit until the question as to the seizure of the vessel has been determined, and as this proposal did not involve an

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* To Sir J. Walsham, No. 229, July 19, 1875; Mr. Layard, No. 58, February 9, 1876; to Messrs. Argles and Rawlins, February 19, 1876; Messrs. Argles and Rawlins, May 3, 1876.

admission of Spanish jurisdiction, Her Majesty's Government were disposed to consider it favourably.

As to owner. Mr. Cordova trying to recover her from British custody.

That it occurred, however, to your Lordship that, in the event of the "Octavia" being placed in the custody of British officers at Kingston or elsewhere, the owner, Mr. Cordova, might make an attempt to recover possession of the vessel by legal proceedings in the local Courts.

He undertakes not to do so.

That your Lordship therefore thought it advisable, before replying to the proposal of the Marquis de Casa Laiglesia, to obtain an undertaking from the owner that he would make no such attempt, and would indemnify Her Majesty's Government against expenses incident to the custody of the ship.

With that object a telegram was sent to the Governor of Jamaica, and an answer was received on the 29th ultimo, to the effect that the owner had given this undertaking in writing, and that he would prefer to receive damages and value rather than compensation and restitution.

His supposed bankruptcy.

That the Governor added that there was some doubt as to the owner's solvency.

Bankruptcy Law of Jamaica.

That this last statement raised a fresh difficulty, inasmuch as the Law of Bankruptcy in Jamaica is governed by "Law 25 of 1871," which declares what shall be deemed an act of bankruptcy, and enacts (sections 6, 11, 16 [3]) that the title of the trustee in bankruptcy, who corresponds to the assignee in England, shall relate back to the act of bankruptcy on which the adjudication may have been founded; and as, in this case, an act of bankruptcy may have already been committed by the owner of the "Octavia," his undertaking might be of no value. Her Majesty's Government could hardly set up as a defence to any legal proceedings which might be taken to recover possession of the ship, that the title of the owner has been divested by a judgment of Court of competent jurisdiction abroad, for that is what Her Majesty's Government deny.

That your Lordship would, therefore, be glad to know whether, under the circumstances, the custody of the ship by Her Majesty's Government might be regarded by an English Court as an "Act of State," so that, in the words of Chief Justice Cockburn in Feathers *v.* the Queen (explaining the case of Baron *v.* Denman), all private rights of action would become merged in the international question which has arisen between the two Governments.

Lord Tenterden also stated that he was to transmit to us the accompanying papers, as marked in the margin, being the correspondence that had passed relative to the case of the "Octavia" since the date of our above-mentioned Report, together with a copy of the Jamaica Bankruptcy Act, and he was to request that we would favour your Lordship, at our earliest convenience, with our opinion as to whether, in the event of the "Octavia" being brought into Jamaica waters under the proposed arrangement, legal proceedings would lie for the recovery of the possession of the ship and cargo.

In obedience to your Lordship's commands we have the honour to report—

Report. No action would lie; her detention would be an act of State.

That in this case we are of opinion, and would therefore report, that neither against the officers nor against Her Majesty's Government could any legal proceedings be maintained in respect of the detention of the "Octavia" under the circumstances, inasmuch as the nature of her detention is one for which no action would lie, and we think a petition of right is only a form of procedure by which what would otherwise be an action against an individual is tried against the Crown, inasmuch as the nature of that detention is an act of State. It seems to us, however, that the mere holding as a deposit until the question as to the seizure of the vessel has been determined is an admission of Spanish jurisdiction, and, unless guarded by special terms, involves an agreement to restore the vessel to the possession of the Spanish Government in the event of the Spanish Prize Court deciding that it was a lawful capture.

Spanish proposal involves admission by Her Majesty's Government of Spanish jurisdiction.

We have not overlooked the statement, that "the proposal of the Spanish Government did not involve an admission of Spanish jurisdiction," but we are unable to see how a deposit *pendente lite* is to be regarded in that character, unless it involves the proposition that we have adverted to, viz., that it is to be handed over to the successful litigant upon the termination of the suit. We should submit, therefore, for your Lordship's consideration, whether the mere taking of the vessel upon such terms does not involve the very admission which in terms is said to be repudiated.

Owner's claim met by his own consent.

With respect to any claim by the owner, it appears to us that his claim would be met by his own consent, and we think any person claiming under him, *e.g.*, a trustee in bankruptcy, would be answered by the same consent; for although the general proposition is true, that the title of trustee in bankruptcy relates back to the act of bankruptcy, yet a *bonâ fide* dealing by a third person without notice of such act of bankruptcy would be protected, and, further, we do not understand that Her Majesty's

Government are setting up any claim of their own to the vessel in question, but are only claiming to hold it as against the Spanish authorities for the true owner, whoever that true owner may turn out to be.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 106.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received October 2.)*

*Temple, October* 2, 1876.

My Lord,

Gibraltar waters. Limits within which vessels wrongfully captured may be retaken, &c.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 11th August last, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Admiralty requesting your Lordship's opinion as to whether any fresh instructions should be issued for the guidance of Her Majesty's naval officers at Gibraltar in regard to the limits within which a vessel wrongfully capturing or captured in British waters might be pursued and taken by one of Her Majesty's ships.

That he was also to inclose a draft of the answer which your Lordship proposed to return to the Admiralty, and to request that we would be good enough to favour your Lordship with our opinion whether the proposed answer might properly be sent.

That a copy of the standing orders at present in force at Gibraltar would be found in the Admiralty letter of the 14th December, 1875, sent therewith, and a Law Officers' Report of the 4th October, 1872, bearing upon the subject, was likewise inclosed.

In obedience to your Lordship's commands we have the honour to report—

Recaptures may be made in British waters, and captors detained.

1. That we are of opinion that in British waters a vessel of any nationality wrongfully captured may be recaptured, and the capturing vessel may be lawfully detained.

British, but not foreign vessels may be recaptured on high seas.

2. On the high seas a British vessel wrongfully captured may be recaptured; but a foreign vessel, though wrongfully captured in British waters, cannot be lawfully recaptured upon the high seas.

But not in foreign waters, &c.

3. In foreign waters no vessel, British or foreign, though wrongfully captured can be lawfully recaptured.

4. The capturing vessel cannot be lawfully detained outside British waters.

We cannot, therefore, concur in the proposed answer to the letter from the Admiralty.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 107.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received October 10.)*

*Temple, October* 10, 1876.

My Lord,

British vessel "Amazona" at Bahamas, with guns for Cuban insurgents.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th September ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter and its inclosures from the Colonial Office (August 24, 1876), relative to the expected arrival in Bahama waters of a steamer named the "Amazona," said to fly the British flag, to have on board four guns ready for mounting, and to be intended for use by the Cuban insurgents against the Spanish Government.

That we would see that the Attorney-General of the Colony in his Report to the Governor raised doubts as to whether the provisions of clauses 4 to 10 of the "Foreign Enlistment Act, 1870," were applicable to a vessel in the service of the Cuban insurgents, those insurgents not being recognized as belligerents, and, therefore, not consti-

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tuting, in his opinion, a "foreign State at war with a foreign State at peace with Her Majesty."

That as the question thus raised by the Attorney-General of the Bahamas was one of great general importance, apart from the special question of the "Amazona," he was to request that we would favour your Lordship with our opinion thereon.

Reference to case of "Salvador."

Sir Julian Pauncefote was pleased to inclose a copy of the Judgment of the Privy Council on the case of the "Salvador," which was of a somewhat similar nature, but which arose under the old Foreign Enlistment Act (59 Geo. III, c. 69), and to add that your Lordship would also be glad to be favoured with our opinion as to whether the Colonial Attorney-General was correct in supposing that the "Amazona," if proved to be fitted out as a privateer to be used in the service of an unrecognized nationality, might be dealt with as a piratical vessel.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the Attorney-General of the Colony has not given due weight to the Interpretation Clause, section 30, of the "Foreign Enlistment Act, 1870."

Case comes under Foreign Enlistment Act, though Cubans are not "belligerents."

If, therefore, the "Amazona" is in the employment, or intended to be employed, in the service of the insurgents in Cuba, although those insurgents may not be in the strict sense of the word "belligerents," the case is brought within the Statute. The case of the "Salvador," though under the former Foreign Enlistment Act, was decided upon words almost, if not quite, the same with the words in the 30th section of the Act of 1870; and is a clear authority upon the point that as in the 4th section of the Act of 1870, the insurgents are a "foreign State" at war with a foreign State at peace with Her Majesty.

"Amazona" not a pirate.

We doubt if the "Amazona," fitted out as a privateer and to be used in the service of an unrecognized nationality, could be dealt with as a piratical vessel.

The proceedings proper to be taken against her, if the facts should justify any proceedings when she comes to the Bahamas, will be, in our opinion, under the "Foreign Enlistment Act, 1870."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 108.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received October* 19.)

*Temple, October* 18, 1876.

My Lord,

Spanish vessel "Virgen del Carmen," recaptured by British authorities at Gibraltar. Treatment of guardacosta men on board.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letters from the Colonial Office and their inclosures respecting the case of a Spanish trading vessel, the "Virgen del Carmen," which was alleged to have been captured at Gibraltar in British waters by a Spanish revenue cruizer, and was re-taken by the British authorities with two of the sailors of the guardacosta on board; that those two men had been handed over to the police; and that he was to request that we would take those papers into our consideration, and favour your Lordship, at our earliest convenience, with our opinion whether, under the circumstances therein stated, those Spanish sailors (admitting them to belong to the Spanish navy and to have acted under orders from their superior officers) had rendered themselves amenable in any way to punishment by the local Tribunals.

That Sir J. Pauncefote was to call our attention to an opinion of the Law Officers of the Crown, dated the 4th October, 1872, in which Lord Granville was advised that "Her Majesty's Government would be exercising only a right in directing the seizure and detention of any Spanish guardacostas and the imprisonment of their crews, in the event of violation of British territory, till the Spanish Government gave some security against the repetition of similar insults."

That the Report in question was inclosed to us in Lord Tenterden's letter of the 11th August, which was then before us.

We have also the honour to acknowledge two further letters of the 5th instant, on the above subject, from Sir J. Pauncefote, with their inclosures, requesting that

they might be considered with those transmitted to the Law Officers with his letter of the 30th ultimo.

In obedience to your Lordship's commands we have the honour to report—

Guardacosta crew, acting under orders, not amenable to punishment.

That, in our opinion, the Spanish sailors taken on board the recaptured vessel, admitting them to belong to the Spanish navy and to have acted under orders from their superior officers, are not amenable in any way to punishment by the local Tribunals.

Sailors so taken should be released, as was the case in the present instance (the Officer administering to Lord Carnarvon, 20th September, 1876), on security for their appearance when required.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 109.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received October* 26.)

*Temple, October* 25, 1876.

My Lord,

German vessel, "Marie Louise," captured in Sulu waters by Spanish man-of-war.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th September ultimo, stating that, with reference to previous correspondence respecting the case of the German vessel "Marie Louise," which was captured in Sulu waters by a Spanish man-of-war, he was then directed by your Lordship to transmit to us the accompanying papers relating to the claim of Mr. Hodgkins, a British subject, to compensation for his detention by the Spanish authorities on that occasion, and that he, Sir Julian Pauncefote, was to request that we would take those papers into our consideration, and favour your Lordship with our opinion whether Her Majesty's Government would be justified in supporting Mr. Hodgkins' claim.

Detention of Mr. Hodgkins.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government may support his claim to compensation.

That, in our opinion, Her Majesty's Government will be justified in supporting the claim to compensation for his detention by the Spanish authorities made by Mr. Hodgkins, a British subject,

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 110.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 18.)

*Temple, November* 17, 1876.

My Lord,

Case of the "Virgen del Carmen." As to detention of guardacosta men who captured.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 24th ultimo, stating that with reference to the seizure of the "Virgen del Carmen" by a Spanish guardacosta in the harbour of Gibraltar, and to our Report of the 18th ultimo, in reply to the letter from the Foreign Office of the 30th September, in which we stated that sailors taken under the circumstances referred to should be released on security for their appearance when required, he was directed by your Lordship to request that we would inform you whether, in our opinion, that course should be adopted in cases where the magistrate was satisfied from the investigation of the case that the offenders were sailors of the Spanish navy, and acted under the orders of their superior officer, or whether the last paragraph of our Report was intended to apply only pending the inquiry.

That, as in default of finding security, the sailors would, it was presumed, be committed to prison, the question was one of grave importance, and your Lordship was desirous to give as full directions as possible for the guidance of the authorities at Gibraltar in such cases.

That the papers bearing on the case were therewith returned for convenience of reference.

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In obedience to your Lordship's commands we have the honour to report—

Spanish Government responsible for acts of guardacosta men.

That, in our opinion, the question becomes one between the two Governments, as soon as the magistrate is satisfied that the offenders are sailors of the Spanish navy, who have acted under the orders of their superior officer, for whose acts the Government of Spain is responsible.

Spanish Consul should attend proceedings at Gibraltar.

The magistrate, in conducting the inquiry, will probably have, at all events he should always require, the attendance of the Spanish Consul, or of some other responsible Spanish official.

Men should be released on his promise to produce them if wanted.

This person's declaration that the accused are sailors of the Spanish navy, who have acted under orders, should in most, if not in all cases, till there is reason to distrust the good faith of the official, or of the Government on whose behalf he may be assumed to act, be accepted, and the accused be released on his (the official's) assurance that they shall be produced if any further inquiry is necessary or desirable.

Failing this, they may be detained, not as punishment, but for purposes of the inquiry.

In the event of the Consul or other official not choosing to attend, the magistrate need not assume that the accused are sailors of the Spanish navy, acting under orders, nor need the magistrate, in such a case, hesitate sending the accused to prison during the inquiry, and till such time as may be sufficient to satisfy him that the accused are persons in the service and under the orders of their Government.

The statement to that effect made at any time by the Spanish Consul, or other official, should be sufficient to procure the release of the accused from confinement.

The security should not, in our opinion, be a money security in the nature of bail, but the written assurance of the person acting on the responsibility of the Spanish Government, so that if the accused are at any time required and not produced the two Governments may be brought face to face.

Should this written assurance not be given, the magistrate may, in our opinion, detain the accused, not by way of punishment, but for the purpose and during the time of the inquiry.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Sweden.

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## No. 111.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received January 24.)*

*Temple, January 24, 1876.*

My Lord,

Seal Fisheries. Order in Council.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 11th January instant, stating that he was directed by your Lordship to transmit to us therewith a letter from the Board of Trade (5th January, 1876), inclosing the draft of an Order in Council which had been drawn up with a view to bring into operation the Act passed in the last Session of Parliament providing for the observance of a close time in the seal fisheries within the area specified in that Act.

Mr. Lister also stated that he inclosed the previous correspondence on that subject as noted in the accompanying list, and that he was to request that we would take those papers into our consideration, and favour your Lordship at our earliest convenience with our opinion as to whether his Lordship should express to the Lords of Trade his concurrence in the proposed Order in Council.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Approval.

That in our opinion your Lordship may properly express to the Lords of Trade your concurrence in the proposed Order in Council.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Inclosure in No. 111.

*Draft Order in Council.*

Draft Order in Council. Seal fisheries. Close season.

WHEREAS by the "Seal Fishery Act, 1875," it is enacted that when it appears to Her Majesty in Council that the foreign States whose ships or subjects are engaged in the seal fishery in the area mentioned in the schedule to that Act, or any part of such area, have made or will make with respect to their own ships and subjects the like provisions to those contained in that Act, it shall be lawful for Her Majesty, by Order in Council, to direct that that Act shall, after the date mentioned in the Order, apply to the seal fishery within the said area, or such part thereof as may be specified in the Order:

And whereas it has been made to appear to Her Majesty in Council that the foreign States whose ships or subjects are at present engaged in the seal fishery in the area mentioned in the schedule to the said recited Act will make with respect to their own ships and subjects the like provisions to those contained in the said recited Act:

Now therefore Her Majesty, in exercise of the power vested in her by the said recited Act, by and with the advice of Her Privy Council, is pleased to direct that the "Seal Fishery Act, 1875," shall, after the date of this present Order, apply to the seal fishery within the area mentioned in the schedule to the said Act.

And Her Majesty, in exercise of the same power, by and with the like advice, is further pleased to fix the 3rd day of April in every year as the day before which the master and person in charge of, and every person belonging to, any British ship, and every British subject, shall not kill or capture, or attempt to kill or capture, any seal within the area mentioned in the schedule to the said Act.

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## No. 112.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received April 7.)*

*Temple, April 6, 1876.*

My Lord,

English church at Stockholm.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us correspondence regarding the differences which had arisen between the British community and the general congregation of the English church at Stockholm respecting the management of the Church affairs and the appointment of the chaplain.

That the English church at Stockholm was formerly under the provisions of the Consular Act, but when, in 1874, the Government grant to English Church establishments abroad was withdrawn, Her Majesty's Consul was instructed to take the necessary steps for making over to the British community any rights Her Majesty's Government might have over the Church property.

That the transfer, however, had not been completely carried out, the deeds not having then been executed, although Her Majesty's Consul had informed the community that Her Majesty's Government renounced any lien they might have over the property.

That your Lordship would be glad if we would take the inclosed papers into our consideration, and favour your Lordship with our opinion as to the position of Her Majesty's Government with regard to the chapel at Stockholm, and particularly upon the following points:—

To whom does it belong? To whom should it be made over?

Whether the chapel belonged to Her Majesty's Government, to the British community, or to both, or to the Anglican community of Stockholm as a sect; whether Her Majesty's Government had now any property or interest in the chapel to make over, and if so, to whom should they make it over?

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That should we be of opinion that Her Majesty's Government had a property in the chapel at Stockholm which they could dispose of, and that it should be made over to the British community of that place, Mr. Lister was to request that we would take into our consideration the draft deeds of transfer inclosed in Consul Segrave's despatch of the 1st instant, and favour your Lordship with our opinion as to whether they should be approved and executed.

We have also the honour to acknowledge three further letters from Mr. Lister, bearing date the 17th, 18th, and 21st ultimo, a letter from Lord Tenterden dated the 24th ultimo, and a further letter from Mr. Lister of the 25th ultimo, inclosing further papers with reference to the case of the English church at Stockholm, and requesting that we would take the same into our consideration, together with the previous correspondence relating to that subject which was then before us.

In obedience to your Lordship's commands we have the honour to report—

Information imperfect, but Her Majesty's Government should in no way interfere, nor execute deeds of transfer.

That, without definite instructions as to what was the exact nature of the conveyance originally executed, and as to the Swedish law applicable to such conveyance, it is impossible to give any opinion as to the persons in whom the church is now vested, but under the circumstances, we are decidedly of opinion that Mr. Erskine and Mr. Consul Segrave may properly be instructed not to execute either of the deeds of transfer, and to inform all persons who have, or think they have, any interest in the matter, that Her Majesty's Government will in no way interfere.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Tunis.

### No. 113.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May 11.)*

My Lord, *Temple, May* 10, 1876.

New Gas Company *v.* Foreign and Colonial Gas Company. Judgment of Consular Court.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 22nd April ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Agent and Consul-General at Tunis, reporting a judgment given by the Consular Court in that city in the case of the "New Gas Company" against "Foreign and Colonial Gas Company," and that he, Mr. Lister, was to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to the answer which should be returned to Mr. Wood.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Right; it should be executed.

That the judgment and sentence given by Mr. Wood are, in our opinion, right, and that Mr. Wood may be instructed to take the proper steps for the execution of his sentence.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 114.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received June 27.)*

My Lord, *Temple, June* 27, 1876.

Tunisian Railway Company. Action in Consular Courts against Mr. E. A. Perkins.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 1st ultimo, stating that he was directed by your Lordship to transmit to us—

1. A letter received by your Lordship from the Secretary to the Tunisian Railway Company, complaining of the action of Her Majesty's Consul-General at Tunis, in the case of the prosecution before the Consular Court in that city of Mr. E. A. Perkins, one of the employés of the Company;

2. A report which, by your Lordship's directions, had been made by Her Majesty's Consul-General at Tunis on the matter;

3. A copy of the Order in Council of the 12th December, 1873, regulating the proceedings of Consular Courts;

And that Mr. Lister was to request us to take those papers into our consideration, and to favour your Lordship with our opinion on the proceedings of Her Majesty's Consul-General in that case, and as to the answer which should be returned to the Tunisian Railway Company.

In obedience to your Lordship's commands we have the honour to report—

Proceedings strictly right.

That, in our opinion, the proceedings of Her Majesty's Consul-General were strictly right.

The Tunisian Railway Company may, we think, properly be answered to the above effect.

Shorthand writer and copy of depositions might have been allowed.

In reporting to your Lordship on this case we have purposely used the word "strictly," for we submit, for your Lordship's consideration, that Her Majesty's Consul-General might, without any breach of his judicial duty, or the risk of a miscarriage of justice, have allowed the prosecution the presence of a shorthand writer and a copy of the depositions.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 115.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received August 10.)*

My Lord, *Temple, August* 8, 1876.

Tunisian Railway Company *v.* E. A. Perkins. Depositions.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 4th July ultimo, stating that, in reference to our letter of the 27th June ultimo, he was directed by your Lordship to transmit to us a certified copy of the depositions taken in the case of the prosecution before the Consular Court at Tunis of Mr. E. A. Perkins, one of the employés of the Tunisian Railway Company (June 27, 1876, Inclosures), and to request that we would be good enough to state whether there is anything in those papers that would in any way alter our opinion as to the proceedings of Her Majesty's Consul-General.

Mr. Lister was pleased to add that the previous papers were inclosed for convenience of reference if required.*

In obedience to your Lordship's commands we have the honour to report—

Nothing to cause change of opinion.

That there is nothing in the depositions which in any way alters our opinion as to the proceedings of Her Majesty's Consul-General.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S GIFFARD.
J. PARKER DEANE.

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* Mr. Hodges, March 26, 1876; Consul-General Wood, No. 10, April 12, 1876; Law Officers, June 27, 1876.

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# Turkey.

## No. 116.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 3.)

My Lord, *Temple, June* 2, 1876.

Mr. Hart's claim against Vice-Consul Fawcett.

WE were honoured with your Lordship's commands signified in the Honourable Mr. Bourke's letter of the 23rd May ultimo, stating that he was directed by your Lordship to transmit to us the correspondence, as marked in the margin,* respecting a claim for balance of rent advanced by Mr. W. H. Hart against Mr. Fawcett, Her Majesty's Vice-Consul and Assistant Judge in the Supreme Consular Court at Constantinople, and to request that we would take these papers into our consideration, and favour your Lordship with our opinion whether your Lordship could properly instruct Mr. Fawcett to furnish his solicitor with authority to represent him and act for him in this country in the event of Mr. Hart taking proceedings to recover the alleged debt in the manner pointed out by that gentleman in his letter of the 18th May, which forms part of the inclosed correspondence.

In event of legal proceedings in England.

In obedience to your Lordship's commands we have the honour to report—

Mr. Fawcett cannot authorize his solicitor to represent him and act for him.

That your Lordship cannot, in our opinion, properly instruct Mr. Fawcett to furnish his solicitor with authority to represent and act for him in any proceedings which Mr. Hart may be recommended by his own legal advisers to take against Mr. Fawcett.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

## No. 117.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 6.)

My Lord, *Temple, July* 5, 1876.

Paolo Laus and A. Egnaud, convicted of murder at Alexandria.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us a despatch and inclosures from Her Majesty's Consul-General and Judge at Constantinople as to the punishment to be awarded to Paolo Laus, convicted of murder at Alexandria, and his accomplice, A. Egnaud.

That Mr. Lister was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to what sentence it would be proper to pass on the convicts in question.

In obedience to your Lordship's commands we have the honour to report—

Should have twenty years' hard labour.

That, in our opinion, both the prisoners may be sentenced to twenty years' hard labour.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Mr. W. H. Hart, February 10, 1876; to Vice-Consul Fawcett, February 22, 1876; to Mr. Hart, February 22, 1876; Mr. W. H. Hart, March 23, 1876; to Vice-Consul Fawcett, April 3, 1876; to Mr. Hart, April 3, 1876; to Vice-Consul Fawcett, March 27, 1876; to Mr. Hart, April 13, 1876; Mr. W. H. Hart, May 6, 1876; to Mr. Hart, May 17, 1876; Mr. Hart, May 18, 1876.

## No. 118.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received October* 14.)

My Lord, *Temple, October* 14, 1876.

Messrs. White's chrome ore mines.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 12th ultimo, stating that he was directed by your Lordship to transmit to us the correspondence noted in the accompanying list relative to the claim of Messrs. White and Co., of Glasgow, to the produce of certain chrome ore mines in Turkey, which claim had been hitherto supported by Her Majesty's Government.

Counter-claim of Messrs. Harten.

That he was now to draw our especial attention to the letter from Messrs. J. C. Harten and Co., of the 18th July last, urging that the influence of Her Majesty's Government might not be exercised on behalf of Messrs. White and Co., and to Sir H. Elliot's despatch No. 16, Commercial, of the 24th August, and that he (Mr. Lister) was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to the further instructions which should be addressed to Her Majesty's Ambassador in that matter.

In obedience to your Lordship's commands we have the honour to report—

No ground for opposition of the latter.

That, assuming the facts stated in the Report inclosed in Sir H. Elliot's despatch No. 16, Commercial, of the 24th August last, we are of opinion that Messrs. Harten and Co. have no good reason for objecting to the use of proper influence by Her Majesty's Government in favour of Messrs. White and Co.

We observe that the objection taken by Messrs. Harten and Co. is confined to the Harmayik Mines, and the letter of the 18th July last from those gentlemen speaks of the Daghardi Mine and ore as belonging to them till May 1879.

We are not aware how far this statement in respect to the Daghardi Mine and ore is true.

Her Majesty's Government may continue to support Messrs. White.

In reference to the Harmayik Mine, Her Majesty's Ambassador may, we think, properly be instructed to continue giving his assistance to the claim of Messrs. White and Co.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

## No. 119.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received October* 19.)

My Lord, *Temple, October* 18, 1876.

Marriages in Turkey according to rites of Roman Catholic Church.
As to legality in England.
*Lex loci.*

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th September last, stating that he was directed by your Lordship to transmit to us papers, as marked in the margin,* in which a question is raised as to the legality in this country of a marriage celebrated in Turkey according to the rites of the Roman Catholic Church.

That we would observe that Mr. Joly, the Acting British Consul at Smyrna, states that the local Turkish authorities recognize the validity of all marriages solemnized between Christians by the duly authorized priest to whose ecclesiastical jurisdiction either of the parties may belong, and that the children of such marriages are held to be legitimate.

That one of the parties to the marriage which had given rise to the question appeared to have been a Roman Catholic at the time of marriage, so that the marriage would, according to what is stated by Mr. Joly, be recognized as valid by the local authorities of Smyrna.

Sir Julian Pauncefote also stated that he was to request that we would take the matter into our consideration, and favour your Lordship with our opinion as to whether such recognition on the part of the local authorities would be sufficient to cause an English Court of Law to pronounce in favour of the validity of such a marriage as the one in question, as having been performed in accordance with the *lex loci;* and further, if we are of opinion that it would be held valid by such Court, whether the statement

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* Acting Consul Joly, No. 49, July 8; to Acting Consul Joly, No. 18, July 26; Acting Consul Joly, No. 58, August 19, 1876.

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Mr. Sholton's case.

of the Acting Consul as to the practice of the Turkish authorities is sufficient to authorize your Lordship to cause Mr. Sholton to be informed that his marriage is legal and his children by it legitimate, and to issue instructions accordingly in regard to the registration of those children.

In obedience to your Lordship's commands we have taken the matter into our consideration and have the honour to report—

Such marriages of British subjects legal in England, and children may be registered, even independent of the *lex loci.*

That, in our opinion, a marriage celebrated between British subjects in Turkey by a Roman Catholic priest, according to the rites of the Roman Catholic Church, would be held valid in this country, and the children of such marriage would be deemed legitimate. Your Lordship may therefore, we consider, issue directions for the registration of such children as legitimate.

We have considered the question of the validity of the marriage in this case, independently of the effect of the *lex loci*, but the fact that the law of Turkey (the *lex loci*) recognizes the validity of such a marriage is an additional reason for holding the marriage to be good.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## United States.

### No. 120.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received June 14.)*

My Lord, *Temple, June* 14, 1876.

Extradition of Charles Worms from Canada to United States. Mrs. Worms' petition.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 11th ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, forwarding a petition from the wife of Charles Worms, who had been extradited from Canada to the United States, urging that he had been illegally given up, and that Lord Tenterden was to request that we would take the papers into our consideration, and report to your Lordship our opinion as to the answer that should be returned to Mrs. Worms.

That a previous letter from the Colonial Office sending newspaper reports of the proceedings in Worms' case was annexed for our information.

In obedience to your Lordship's commands we have the honour to report—

United States' Government acted within their Treaty rights.

That Mrs. Worms may, in our opinion, properly be answered that Her Majesty's Government cannot take any steps towards obtaining the surrender of her husband from the United States' authorities, because they have acted according to their Treaty rights in requiring and obtaining his extradition.

Canadian Government irregular in surrendering when proceedings were suspended.

We are, however, of opinion that the conduct of the Canadian Government in surrendering Worms, whilst all further proceedings were, by the judgment of the Court of Queen's Bench of Lower Canada, suspended, was, to say the least, very irregular.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 121.

*The Irish Law Officers to the Earl of Derby.—(Received October 19.)*

Sir, *Chief Secretary's Office, Dublin Castle, October* 18, 1876.

Powers of attorney. Formalities necessary for verifying execution of.

IN reply to your letter of the 23rd September, 1876, we beg to state, for the information of the Earl of Derby, that we have caused inquiries to be made in the Office of the Accountant-General of the Court of Chancery in Ireland, which is the office referred to in the despatch of Her Majesty's Consul at New Orleans, respecting the formalities required in that office for the verification of the execution of powers of attorney in foreign places: we inclose a copy of the forms of a power of attorney and of the affidavit verifying the execution of the same, and of the instructions issued by the Accountant-General, a compliance with which is required in that office.

Affidavits, witnesses, &c.

It will be found on reading these instructions that every power of attorney, whether in the Kingdom or in foreign places, must be executed in the presence of two attesting witnesses. That one of these witnesses must be either a magistrate, or a clergyman, or a notary public. That an affidavit of the due execution of the power must be sworn before some person duly authorized to take affidavits to be used in the Court of Chancery.

In this country, such person must be a Commissioner for taking affidavits in Chancery. In foreign places, the affidavit may be sworn before a Consul. The person before whom the affidavit must be sworn must not be one of the attesting witnesses.

The affidavit of the due execution of the power of attorney may be made by either of the attesting witnesses. It is not necessary that the notary should go before the Consul, or make any affidavit. The other attesting witness is equally competent to do so.

The statement, therefore, in Messrs. Janson, Cobb, and Pearson's letter of the 5th August, 1876, that the notary must make the affidavit, which M. de Fonblanque has assumed to be correct, appears to be incorrect.

We are not aware whether the practice in the Accountant-General's Office in England is the same as that which prevails here, or whether a less ample verification of powers of attorney executed in places abroad is accepted there.

Having made this statement, for the information of the Earl of Derby, we venture to suggest that, if the requirements of the Accountant-General in this country impose unreasonable difficulties in the way of suitors, this is a matter for the consideration of the Court of Chancery here. But it would appear from a letter of the Accountant-General to the Attorney-General, dated 18th October instant, and which we annex, that much practical inconvenience does not exist under the existing rules.

We have, &c.
(Signed) GEORGE A. C. MAY.
DAVID PLUNKET.

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### Inclosure in No. 121.

*Mr. Brady to the Attorney-General for Ireland.*

*Accountant-General's Office, Court of Chancery,*
My dear Attorney-General, *Dublin, October* 18, 1876.

I ONLY returned from England this morning, or I should have attended to your note sooner.

As I have not seen the power of attorney, stated to have been objected to by me, I cannot give any explanations for the reason I refused to receive it.

I am very liberal as to receiving foreign and colonial powers, being well aware of the difficulty of getting them executed and witnessed, and I now very rarely put parties to the trouble, delay, and expense of an application to the Court, finding by experience that the Judge always sent for me, and agreed in what I had decided. I am satisfied if the document is regular in form, has two respectable witnesses, or even one in some distant parts of the world, and that the affidavit of execution sworn by either witness is sworn before a Consul or Ambassador in foreign countries, or before any person lawfully authorized to administer an oath in any part of Her Majesty's Dominions, a notary public is competent to swear the witness to a power of attorney

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in either Her Majesty's Dominions or in foreign countries; of course if a notary public is a witness, he ought not to administer the oath attached to the power.

In all cases I consider the solicitor in the matter responsible to the Court and me, and have never even heard of any attempt at fraud.

Yours, &c.
(Signed) MAZIERE J. BRADY.

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## No. 122.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received November 7.)*

My Lord,
*Temple, November* 6, 1876.

Extradition of Charles Worms.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 2nd ultimo, stating that, with reference to our Report of the 14th June, he was directed by your Lordship to transmit to us therewith a letter from the Colonial Office, dated the 27th September, inclosing a despatch from the Deputy-Governor of Canada in regard to the extradition of Charles Worms, and requesting to be informed how far the points then brought to notice in the inclosed Minute of the Canadian Privy Council affect or vary the opinion previously formed by us regarding the course taken by the Canadian Government in that case; and that Lord Tenterden was to request that we would take those papers into our consideration, and favour your Lordship with any observations that we might have to offer in the matter.

In obedience to your Lordship's commands we have the honour to report—

That we have carefully considered the Report of the Committee of the Privy Council of the Dominion and the Memorandum of the Minister of Justice.

In these documents it is argued that because Charles Worms, the fugitive whose extradition was demanded, did not, within fifteen days after the writ of *habeas corpus* had been refused, give notice in writing of appeal, and prosecute his appeal within thirty days, the warrant for his extradition, executed on the 11th April, and his extradition on the 17th April, were regular, and the proceedings or action of the Government were justifiable.

We regret that we are unable to agree with this reasoning.

"The Supreme Court Act, 1875," giving an appeal, was the statute in force.

The Chief Justice, on the 19th February, granted an appeal to the Supreme Court, and ordered that all proceedings should be suspended and stayed till the final decision of the Supreme Court—the Court of Appeal.

It should not have taken place when proceedings were stayed, notwithstanding technical informality.

Notice of this order of the Chief Justice was, on the 21st February, received by the Minister of Justice from the Clerk of the Crown; and, in our opinion, the Minister of Justice, so affected with the knowledge that all proceedings were stayed, should not have advised the extradition of the fugitive without further inquiry, and merely because certain technical and formal proceedings were not taken; the appeal, it is to be observed, having been granted by the Chief Justice.

Some communications also were had by the Secretary of State of Canada with the Lieutenant-Governor of the Province of Canada and with the Attorney-General of Quebec; so that every person officially concerned knew the terms of the decision.

The Act repealing the right of appeal had not become law when the warrant for the extradition of the fugitive was executed. It is not, therefore, necessary to refer to that part of the case.

And we are unable to give any weight to the argument of the Minister of Justice, that the warrant for extradition should issue to prevent the fugitive availing himself of the lapse of the two months.

Worms should have been warned to proceed with appeal.

The Judgment stayed the proceedings, and before the fugitive was given up by the Government, which knew the fact that proceedings were stayed, the Government should, in our opinion, have taken measures to inform the fugitive that, if he did not proceed with the appeal granted to him, his extradition would follow.

We are, therefore, still of opinion that there was irregularity in the extradition of Charles Worms.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Venezuela.

## No. 123.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received December 9.)*

My Lord,
*Temple, December* 9, 1876.

Detention of British vessels in Venezuelan ports.
The "Annie Cotter," &c.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 27th October last, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, as marked in the margin, relative to the conduct of the Venezuelan authorities in detaining in Venezuelan ports British vessels engaged in trade with those ports without assigning any reason for such detention.

That we should see that, in reply to notes on the subject addressed to him by Her Majesty's Minister at Caracas, the Venezuelan Minister for Foreign Affairs claimed for the Executive the power, under the 19th Law of the Venezuelan Code of Finance, to order the detention of any vessel, national or foreign, for a term of from 20 to 100 days. The mere suspicion of a vessel being engaged in clandestine traffic being sufficient for the exercise of this faculty.

That as it was obvious that, under a law of so arbitrary and unusual a character, foreign vessels frequenting the ports of Venezuela might be subjected to great injustice, your Lordship thought it advisable to ascertain what view was taken of the matter by the Governments of other countries whose subjects were likely to be engaged in trade with Venezuelan ports.

That the answers of the French, German, United States, Dutch, Danish, and Spanish Governments would be found among the inclosed papers, together with a summary of them drawn up in the Foreign Office.

That Sir J. Pauncefote was to request that we would take those papers into our consideration, and that we would favour your Lordship with our opinion as to—

1. Whether a representation should be made to the Venezuelan Government respecting the general question of the right claimed by them to detain vessels on mere suspicion; and,

2. As to whether compensation should be claimed from the Venezuelan Government on account of the detention of the "Annie Cotter" and other British vessels against which no reasonable ground of suspicion could be shown to have existed.

We have also the honour to acknowledge the receipt of a further despatch, together with a letter from Sir J. Pauncefote, requesting that it might be taken into consideration in conjunction with the papers already submitted to us.

In obedience to your Lordship's commands we have the honour to report—

If law permits seizure only after discharge of cargo, Venezuelan Government must compensate.

That we gather from the despatch of Mr. Russell to Mr. Fish that the Venezuelan law under which the "Annie Cotter" and some other British vessels have been arrested applies in spirit and in letter only to cases in which the vessel is seized after the cargo has been discharged, and that this detention is in the nature of a penalty. Assuming this to be the only law upon which the Venezuelan Government can justify the arrest and detention of the "Annie Cotter" and other British vessels which were seized and detained while the cargo was still on board, we are of opinion that Her Majesty's Government may properly insist upon full compensation being made for the arrest and detention of those vessels by the Venezuelan Government.

But we desire to call your Lordship's attention to Señor Blancó's letter to Mr. Middleton, dated the 3rd July, 1876, and inclosed in Mr. Middleton's despatch No. 60, 1876.

In this letter Señor Blancó does not, indeed, give the words of the law, but states its substance to be that the National Executive can order the detention of any vessel, national or foreign, for a term of from twenty to one hundred days, the mere suspicion of the vessel being engaged in clandestine traffic being sufficient for the exercise of this faculty.

Señor Blancó thus gives a view of the law under which the Venezuelan Govern-

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ment acted in arresting the vessels in question, totally different from the terms of the enactment cited by Mr. Russell.

If Señor Blancó is accurate the Venezuelan Government had, as a matter of right, the power to order the detention in their ports of foreign vessels, on suspicion that such vessels were engaged in clandestine traffic.

But the exercise of that right is so open to abuse that a representation may, we think, fairly be made to the Venezuelan Government, with the view of inducing that Government to alter and modify the law.

But if law permits seizure on suspicion of clandestine traffic, no compensation can be claimed, but modification of law may be requested.

2. Again, assuming Señor Blancó to be right, no compensation can, in our opinion, be claimed from the Venezuelan Government on account of the detention of the "Annie Cotter" and other British vessels.

Those several acts of detention are but instances of the injuries to which innocent persons are liable under the working of a law, which may be altogether mischievous, but which, nevertheless, the Venezuelan Legislature had the power to enact.

Inquire as to bearing of the law.

We submit, for your Lordship's consideration, that Mr. Middleton should be instructed to furnish accurate information of the law of Venezuela, bearing upon the arrest and detention of these vessels by the Venezuelan Government for your Lordship's guidance in the matter.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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*Printed for the use of the Foreign Office. May 1880.*

CONFIDENTIAL.

# REPORTS

BY THE

# LAW OFFICERS OF THE CROWN.

1877.

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| 8 | Law Officers .. | Dec. , | Treaty of Managua. Mosquito Indians. Non-payment of subsidy by Nicaragua. As to term "full sovereignty." Nicaragua not entitled to it without consent of Mosquitians to absolute incorporation. Mosquito Proclamation no excuse for non-payment. Great Britain may demand payment, with interest .. .. .. .. .. | 8 |

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| 9 | Law Officers .. | Mar. 16, 1877 | Order in Council. Powers of Acting Consuls in China and Japan, and as to limit of duration. No objection to it . | 9 |
| 10 | Law Officers .. | Dec. 11, | Customs privileges at Chinkiang. Case of the "Cadiz" hulk. Treaty of 1858 does not abridge Chinese rights over rivers. They would have been justified in removing the hulk, and owners have no claim in consequence of withdrawal of privileges. As to danger of recognizing Chinese Treaty rights. The question may be evaded. The request for temporary removal of hulk was reasonable, and should have been complied with. China Navigation Company have no claim .. .. .. .. .. .. | 9 |

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| 11 | Law Officers .. | July 30, 1877 | British claims arising out of civil war. Property seized by troops. Neglect of Government to satisfy. Approving draft instructions as to compensation for injuries received in violation of Treaty rights .. .. .. .. | 11 |
| 12 | Law Officers .. | Nov. 5, | Claims arising out of civil war. Colombian Decrees. As to manner of submitting them. Treaty rights of Great Britain. Her Majesty's Government may insist on claims being received in usual diplomatic manner, without reference to local Tribunals .. .. .. .. | 12 |

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| 13 | Law Officers .. | Dec. 21, 1877 | Capture of British vessel "Brisk" by one of the revolutionary parties in Dominica. Claim of Mr. Godet for compensation. Another revolutionary party now in power. No claim on present *de facto* Government for acts of the other revolutionary party .. .. .. .. | 13 |

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| 14 | Law Officers .. | Feb. 28, 1877 | Egyptian Slave Trade Convention. Turkish objection to right of search. Convention does not authorize search of Turkish vessels .. .. .. .. .. | 14 |
| 15 | Law Officers .. | Mar. 12, | Mixed Courts. Date at which quinquennial period should commence. Should be the 1st February, 1876, but question might be arranged with other Powers as to the 1st January or the 1st February .. .. .. .. | 14 |
| 16 | Law Officers .. | 12, | Egyptian Law respecting arrangements between debtors and creditors. As to consent of Powers being necessary. Mr. Vivian should not consent until the law has been seen and approved by the Powers .. .. .. | 15 |

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| 17 | Law Officers .. | July 2, 1877 | Jurisdiction in bankruptcy. Conflict between Mixed Tribunals and Consular Courts. Cannot agree whether Mixed Courts have jurisdiction when the debtor is a foreigner. If they have jurisdiction it is exclusive, and proceedings in Consular Court would be void on a foreign creditor appearing. Exclusive jurisdiction should be vested in Mixed Courts. One Judge might be of the nationality of the bankrupt .. | 15 |

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| 18 | Law Officers .. | Jan. 26, 1877 | Case of Mr. James Wilson. Ill-treatment at hands of French Government, Her Majesty's Government cannot interfere .. .. .. .. .. .. | 16 |
| 19 | Law Officers .. | July 2, | English Insurance Companies in France. France has the right to require appointment of French Agent as security for tax. Decree imposing tax is not contrary to Convention .. .. .. .. .. .. | 17 |
| 20 | Law Officers .. | Oct. 9, | Marriage, at Havre, of John Julian, engineer of a British vessel plying between Cardiff and Havre. Question of residence. Having a *bonâ fide* residence at Havre, he may make the usual declaration, though personally absent during the month .. .. .. .. .. | 18 |

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| 22 | Law Officers .. | Oct. 26, | Slave Trade Treaty of 1841. Extension to German Empire. Must be either by "accession" or by new Treaty. Austria and Russia should be invited to join .. .. .. | 19 |

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| 23 | Law Officers .. | Apr. 20, 1877 | Ionian bondholders. Entitled to payment in Corfu in Ionian currency at rate named in Tariff of 1827. Sovereign not Ionian currency. Date from which interest is payable. Tribunals may decide minor questions of interest, &c. Inaccuracy in bondholders' protest .. .. .. | 21 |
| 24 | Law Officers .. | July 21, | Ionian bondholders. Claim to be paid in pounds sterling. Agree with Foreign Office that they have no claim. Decision of the Areopagus not in point .. .. .. | 22 |

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| 25 | Law Officers .. | July 25, 1877 | Mrs. Maunder's claim. Entitled to partial support. Arbitration may be accepted on payment by Hayti of the 22,000*l.* and interest. No Frenchman should arbitrate .. | 23 |

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| 26 | Law Officers | July 30, 1877 | Contraband of war, &c. (See Turkey. No. 96) | 24 |
| 27 | Law Officers | Oct. 27, | Arrest of British subjects in Italy. Warning to British subjects published in "London Gazette." Concur in proposed letter to Italian Ambassador in justification, and recapitulating causes which led to it. (Draft to Count Menabrea annexed) | 24 |
| 28 | Law Officers | Dec. 12, | Italian blockade-runners. (See Turkey. No. 111) | 31 |

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| 29 | Law Officers | July 10, 1877 | Case of Elizabeth Searfield. Crime committed by British subject on board American vessel in Japanese waters. Trial by British Consular Court at Kanagawa. Case within British Consular jurisdiction, except offences against discipline of ship. This not applicable to public ships | 31 |
| 30 | Law Officers | Sept. , | Publication of newspapers (Mr. Black's case). Japan may prohibit publication, but not prejudice rights of British subjects under Article XXIII of Treaty | 32 |
| 31 | Law Officers | Oct. 15, | Robert Miers, a British subject resident in Bonin Islands. Cannot divest himself of British nationality, there being no Japanese law of naturalization | 33 |

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| 34 | Law Officers | April 10, 1877 | Slave embarked on board a British vessel and relanded in Morocco. Her Majesty's Government not warranted by law in claiming surrender. Reference to case of the slave Grace. Slave returning to his country resumes his condition as a slave | 35 |

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| 35 | Law Officers | Jan. 11, 1877 | Extradition Treaty with Netherlands. As to its application to Straits Settlements. Was not intended to apply to Colonies. Straits Settlements hitherto governed by Indian Extradition Act. The Treaty does not apply to Straits Settlements, but the Indian Extradition Act may be preserved in force by an Order in Council | 36 |
| 36 | Law Officers | Mar. 21, | Netherlands Extradition Treaty and the Straits Settlements. Extradition may take place from Straits Settlements without requiring reciprocity from Dutch Colonies | 38 |

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| 37 | Law Officers | June 12, 1877 | Sovereignty of Cocos or Keeling Islands, occupied by Captain Fremantle under a misapprehension. Mr. Ross appointed Superintendent, and deprived of right of trading under Netherlands flag. British title is doubtful unless the occupation is ratified by Her Majesty's Government | 38 |

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| 38 | Law Officers | Jan. 3, 1877 | Western Polynesia Order in Council. As to 3-mile limit. (Reference to "Franconia" case.) Cannot legislate for crimes committed within. Crimes on high seas. Cannot confer power for trial of. Deportation without appeal, and interrogation of accused persons, arbitrary | 39 |
| 39 | Law Officers | 25, | Reciprocity Treaty between United States and Sandwich Islands. How affecting British Treaty. Approving instructions to Major Wodehouse. (Instructions annexed.) While British Treaty lasts, Her Majesty's Government cannot allow differential treatment, &c. | 40 |
| 40 | Law Officers | Mar. 16, | Western Polynesia Order in Council. (Reference to "Franconia" case.) As to jurisdiction within 3-mile limit. Offences committed in the Channel cannot be made subject to the jurisdiction of High Commissioner of the Western Pacific | 41 |

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| 41 | Dr. Tristram to Archbishop of Canterbury | Feb. 9, 1877 | Marriages in Persia and in heathen countries generally. Citing cases. In English factories. At Madras by a Roman Catholic priest. Consular Marriage Act does not invalidate other marriages. General principle. Marriage according to *lex loci* is good everywhere. Marriages by an ordained minister in Persia are valid, but at Tehran it is desirable they should be performed at house of Her Majesty's Minister | 42 |
| 42 | Law Officers | June 29, | Administration of oath to a Persian by Her Majesty's Minister at Tehran. Suspected fraudulent intention to suppress a will. Oaths need not be administered to other than British subjects. Refuse oath, but may certify to signature | 43 |

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| 44 | Law Officers | Aug. 1, | Conveyance of Peruvian troops on board British vessel "Limena." (Superseded by Report of the 7th December, 1877. No. 48) | 45 |
| 45 | Law Officers | Sept. 19, | Swann *v.* Vines. Subpœna for Secretary of State. Reply to Mr. Swann that Vines was not dismissed. Secretary of State may decline to give evidence on grounds of public policy | 45 |
| 46 | Law Officers | Oct. 9, | Peruvian iron-clad "Huascar." Claim of Messrs. Anthony and Tate for coals, &c., taken out of British vessel "Imucina." Peruvian Decree disclaims responsibility for acts of the "Huascar." Her Majesty's Government cannot support claim | 46 |
| 47 | Law Officers | Nov. 1, | Swann *v.* Vines. Papers required respecting dismissal of Vines, &c. Decline further information to Swann. As to production of papers by Mr. Hertslet, &c. Certain papers may be returned to Vines | 46 |

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| 48 | Law Officers .. | Dec. 7, 1877 | Conveyance of Peruvian troops in British vessel "Limena" for suppression of rebellion. Foreign Enlistment Act forbids engagement in military service of foreign State at war with friendly State. Definition of "foreign State." Rebels come within. "Limena" could be detained on high seas for breach of neutrality, but not in Peruvian waters .. | 47 |

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| 50 | Law Officers .. | 27, | Indian Tariff. Nothing to add to above Report (No. 49) .. | 49 |
| 51 | Law Officers .. | Aug. 9, | Atrocities committed by British subject Scott and by Spanish and Dutch subjects on their slaves in River Congo. No evidence forthcoming to try Scott in England. Great Britain has no jurisdiction on the spot, and denies Portuguese claim to the territory. There are no means of bringing Scott to justice .. .. .. .. | 50 |

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| 53 | Law Officers .. | May 3, | Torpedoes off Odessa. Notice and regulations for piloting vessels. May represent to Russian Government the hardship of detaining vessels because a man-of-war may be in sight .. .. .. .. .. .. | 51 |
| 54 | Law Officers .. | 12, | Messrs. Watts and Milburn. Destruction of their lighters on the Danube by Turkish authorities. Demand reparation for injuries to British property and insults to the British flag. British vessels should be allowed to pass into Austrian waters .. .. .. .. .. | 51 |
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| 56 | Law Officers .. | 18, | Messrs. Watts and Milburn. Danube Tug and Lighter Company. Detention of their vessels by Roumanian authorities. Cannot say whether it was justifiable. Approve Colonel Mansfield. (See also No. 90) .. .. | 53 |
| 57 | Law Officers .. | June 6, | Messrs. Watts and Milburn. Sinking and seizure of their lighters. Confusion in claim. Sinking may be a necessity of war. Wilful damage and seizure of cargo gives ground for indemnity. Messrs. Watts should bring claim before Turkish Government in first instance .. .. .. | 53 |
| 58 | Law Officers .. | 29, | Messrs. Watts and Milburn. Sinking of their lighters by Russian military authorities. Claims may be brought before Russian Government. Case of the "Annette" .. | 54 |
| 59 | Law Officers .. | July 4, | Contraband of war. Export. Approving *pro-memoriâ* to be communicated to Russian Ambassador. (*Pro-memoriâ* annexed.) Neutrals not bound to prevent export of contraband of war, but enemy may capture it. Her Majesty's Government cannot impose restrictions on trade .. | 54 |
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| 66 | Law Officers .. | Apr. 26, | British Consul at Galatz. Has no Vice-Admiralty jurisdiction in cases of collision on the Danube, and cannot arrest vessels in such cases. Special jurisdiction of the Supreme and other Courts .. .. .. .. .. | 60 |
| 67 | Law Officers .. | 27, | Turco-Russian war. Sending Proclamation of Neutrality and letters to public offices. (See Confidential Nos. 3166 and 3167 .. .. .. .. .. .. | 62 |
| 68 | Law Officers .. | 28, | Turkish regulations for treatment of Russian subjects and right of search in Bosphorus. No objection to. Measures for protection of neutral vessels requisite, also notice of blockades, &c. Porte should surrender belligerent rights over Suez Canal in respect of neutrals, reserving rights against the other belligerent .. .. .. | 63 |
| 69 | Law Officers .. | May 2, | Turkish iron-clad in Victoria Docks. Approving letter to Customs. (Letter annexed.) Iron-clad to be watched and detained, &c. .. .. .. .. .. | 63 |
| 70 | Law Officers .. | 3, | Contraband of war. Coal in neutral vessel for use of British ship of war in Turkish port. Such coal is not contraband of war. Her Majesty's Government should arrange with Russian Government as to exempting it from capture .. | 64 |
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| 72 | Dr. Deane .. | 4, | Foreign ships of war building in England. Receipt of Report .. .. .. .. .. .. | 65 |
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| 74 | Law Officers .. | 8, | Iron-clads building for Turkish Government by Messrs. Samuda. Search and inquiry under Foreign Enlistment Act. Security for their not being removed until conclusion of war .. .. .. .. .. .. | 66 |

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* For Reports on Messrs. Watts and Milburn's claims against Russia and Turkey for seizure of their lighters, &c., on the Danube, see Russia.

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| 79 | Law Officers | 11, | Danube Commissioners and Her Majesty's ship "Cockatrice" detained at Sulina by Russians. Rights of Commission under Treaty. Danube is neutral and free, but stoppage of navigation by torpedoes, &c., is justified by necessities of war. Commissioners must get a pass. Her Majesty's gun-boat cannot go up river | 69 |
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| 87 | Law Officers | 25, | Turkish iron-clad "Mendoukié." Approving warrant. It need not be under seal, and should only be used in case of need. Messrs. Watson should be asked to give security | 73 |
| 88 | Law Officers | June 1, | Turkish iron-clad "Mendoukié" was handed over to Turkish Government before declaration of neutrality. Name changed to "Hamadieh." Not satisfied that she was completely handed over. Should be arrested, and persons warned against infringement of Foreign Enlistment Act | 73 |
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| 91 | Law Officers | 6, | Belligerent ships of war. Approving draft to Admiralty as to enforcement of Regulations. Principal officer of Customs must watch and report breaches of neutrality, &c. (Draft to Admiralty annexed) | 75 |
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| 94 | Law Officers | 25, | Case of the "Hermes." British insurers of French cargo on Greek vessel seized by Turks. Cargo, being abandoned by owners, becomes property of the insurers, who have a claim to compensation Her Majesty's Government may support them. (Lord Chancellor's opinions annexed.) British Government cannot complain of seizure of a foreign ship by Turks. British underwriters insuring a foreign ship run the risk of loss. British Government have no right to interfere | 78 |
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| 96 | Law Officers | 30, | Coal for Port Saïd. Russian Consular certificate for protection from capture. Russian Ukase. Sulphur not contraband of war, unless for enemy's use, &c. Coal is always liable to *seizure*. Use of Russian Consular certificate does not imply admission that coal is otherwise liable to *condemnation*. Sulphur notice should not be published without further information | 80 |
| 97 | Attorney-General and Dr. Deane | Aug. 6, | Black Sea blockade. Efficiency not impaired by navigation of small vessels under protection of Russian guns on shore | 81 |
| 98 | Law Officers | 16, | Navigation of the Danube and neutral commerce. Porte's explanations satisfactory | 82 |
| 99 | Law Officers | Sept. 14, | Black Sea blockade. Permission for Greek vessels to pass through. No right to make exceptions in favour of one neutral. Exceptions in cases of disabled vessels. Blockade must be equal for all | 82 |
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| 101 | Law Officers | Nov. 3, | Seizure of Turkish iron-clad "Hamadieh" under Foreign Enlistment Act. Turkish protest against, on ground that she was Turkish property before the war began. Complainant may apply to Court of Admiralty for decision of question | 83 |
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| 104 | Law Officers | 5, | Danube Public Act. Surplus funds. Surplus carried to the reserve fund cannot be used to make up deficit of income, but any balance not declared to be surplus may be so applied | 85 |
| 105 | Dr. Deane | 12, | Blockades. Licences for passing through. Allowable in exceptional cases. Reference to cases during Crimean war | 86 |
| 106 | Law Officers | 13, | Black Sea blockade. Representation of Black Sea Blockade Committee on inefficiency of it. Approves reply that if vessels are allowed to pass, Her Majesty's Government might refuse to recognize the blockade | 86 |
| 107 | Law Officers | 17, | Iron-clad building for Turkish Government. Proposal to relieve Messrs. Samuda from bond entered into, and to obtain bond from Messrs. Gadban, to whom she will be transferred. Approve, but the vessel must be watched | 86 |

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| 109 | Law Officers .. | 26, | Danube and Black Sea Railway. Gratuitous use by Russians. The railway being on Turkish soil, the Company (though an English one) must look to Turkey for protection | 88 |
| 110 | Law Officers .. | Dec. 7, | Turkish blockade of coast of Albania. Reference to case in 1861. Propose to inform Lloyd's, but wait for dates before communicating to "Gazette." Concur. Blockade of insurrectionary coasts is legal by law of nations | 88 |
| 111 | Law Officers .. | 12, | Breach of blockade. Seizure of Greek vessels, chartered by Italians, in Bosphorus, for. Approving memorandum for Italian Ambassador. (Memorandum annexed.) Views of Her Majesty's Government. The blockade was recognized as existing. A ship breaking blockade may be captured even during her return voyage, and after touching at another port, when driven there by stress of weather | 89 |
| 112 | Law Officers .. | 14, | Blockade of coast of Albania. Disagree with Turkish Law Officers. (Reference to American blockades, when Southerners became belligerents.) Blockade is an act of war, and must be confined to coasts in possession of the enemy | 90 |
| 113 | Law Officers .. | 19, | Breach of blockade. Seizure of vessels with British cargoes in Bosphorus, for. Owners protest on grounds of—1, inefficiency of blockade; 2, terms of notification; 3, Treaty rights. Efficiency of blockade is doubtful when many vessels pass blockading force. British, French, and American practice: vessels may be captured during voyage. Not protected while in Bosphorus. Legality of seizure is undoubted. Porte should be urged to keep the blockade efficient, to grant no more licences, and to cause Prize Court decisions to be sound. Above applies also to seizures of Italian vessels | 90 |
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| 116 | Law Officers .. | 21, | Lacepede Islands. Right of Great Britain to sovereignty over. Mr. Geddes licensed to occupy by Governor of Australia. Mr. Roberts subsequently hoisted United States' flag, as agent to Mr. Lord, who claimed for United States. Governor of Australia right in granting licence, if not previously claimed, &c., by another country. Act of Congress does not justify Mr. Roberts' action. United States have no claim. Royal Commission to a Governor is not questionable by countries who have not previously claimed territory implicated; but possession should be taken. As to power of a Consul in a Colony (with reference to Mr. Lord, the United States' Consul-General). Exequatur may be withdrawn. General principle. Validity of declaration to annex territory is doubtful. Actual possession or evidence of ownership necessary, also visits from ships of war | 95 |

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| 119 | Law Officers .. | Nov. 16, | Canadian Extradition Act. No stipulation as to trial for other than the extradition crime; but Canadian Minister may refuse extradition, &c. The Act is sufficient for execution of Treaties under Extradition Act of 1870, and the latter may be suspended in Canada while Canadian Act remains in force; but the powers conferred by it on Canadian Minister is very extensive | 99 |

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# AFRICA.

No. 1 a. **[Colonial Office.]**

**[May 12, 1877.]**

*Law Officers of the Crown to Colonial Office.*

My Lord, *Temple, May* 12, 1877.

WE were honoured with your Lordship's commands, signified in Mr. Malcolm's letter of the 9th instant, stating that he was directed to forward to us the accompanying copy of a Commission issued by Her Majesty to Sir T. Shepstone, and to request our attention to certain transactions which had occurred in connection therewith.

Commission empowering Sir T. Shepstone to annex the Transvaal.

That we would observe that the Commission, after directing an inquiry into the cause of the late disturbances in the territories adjacent to Her Majesty's Colonies in South Africa, empowered Sir T. Shepstone, if he should deem it necessary in order to secure the peace and safety of the said Colonies, by a Proclamation under his hand, to declare that from and after a day to be therein named so much of any such territories as aforesaid as to him should seem fit should be annexed to and form part of Her Majesty's dominions, and that Sir T. Shepstone was thereupon appointed Administrator of such territories provisionally and until Her Majesty's pleasure should be more fully known; and that it was further provided that no such Proclamation should be issued unless (among other things) he was satisfied that the inhabitants of any district to be annexed, or a sufficient number of them, or the Legislature thereof, desired to become Her Majesty's subjects.

That Sir T. Shepstone, acting under that Commission, went from Natal in March last to the neighbouring Republic, commonly called the Transvaal Republic, which had been for some time the seat of grave disturbances with the native tribes. That he found the Republic in a state of anarchy. That the taxes could not be collected, nor obedience to the laws enforced. That all trade was suspended and the public treasury empty. That he also found that a large proportion of the inhabitants were anxious that the country should be taken under the British flag, as a means of protection against the hostile natives, who had already defeated the Republic, and who were only restrained from overwhelming it by the presence of the British Commissioner.

That, at the same time, it was of the highest importance to the British Colonies to prevent the destruction of the Republic by the natives, inasmuch as such an event, if it were to happen, would certainly lead to a general uprising of the natives, and an attack on the British Colonies, with all the horrors of a Kaffir war.

That, under those circumstances, Sir T. Shepstone, after trying various methods of escaping from the perilous situation, had come to the conclusion that the emergency was so grave as to justify him in issuing a Proclamation under his Commission, declaring that the Transvaal Republic should be annexed to and form part of Her Majesty's dominions, and that he was at the present time, your Lordship had no doubt, carrying on the government of the Republic as Administrator.

That that step appeared to have been taken without, on the one hand, any act of cession by the President or the Volksraad (the Legislature) of the Republic, though at the instance of a large number of the inhabitants, and without, on the other hand, any exertion of force, though a corps of British soldiers had been encamped on the frontier of the Republic, and had then, it might be assumed (since the Proclamation) marched into it.

That your Lordship had not yet received the terms of the Proclamation, but that might be assumed to have contained a recital of the emergency, and a declaration that the Republic was, from a date therein named, annexed to and formed part of Her Majesty's dominions.

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That, under those circumstances, your Lordship desired to be advised as to what were the powers of Her Majesty of legislating for the Transvaal Republic. Was it to be regarded as a conquered Colony, and had Her Majesty the same power of making arrangements by Order in Council for its constitution and government as in the case of other conquered or ceded Colonies? or could it be deemed to fall within the scope of the Falkland Islands Act (6 Vict., cap. 13) as extended by 23 & 24 Vict., cap. 121?

That, as your Lordship was very anxious to be informed of the legal position of the Crown with regard to the Republic, Mr. Malcolm was to request that we would take the matter into our consideration at the earliest moment possible.

In obedience to your Lordship's commands, we have the honour to

*Report—*

That, under the circumstances stated in Mr. Malcolm's letter, we are of opinion that the territory lately under the Government of the Transvaal Republic is to be regarded as conquered or ceded territory, and that Her Majesty has the same power, by Order in Council, of legislating for the inhabitants of this territory as she possesses in cases of conquered or ceded Colonies.

We think that the case does not fall within the scope of the Falkland Islands Act (6 & 7 Vict., cap. 13) as extended by 23 & 24 Vict., cap. 121.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.

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[This Report should have appeared after No. 1, page 1.]

## AFRICA.

No. 1 b. **[Colonial Office.]**

**[September 25, 1877.]**

*Law Officers of the Crown to Colonial Office.*

My Lord, *Temple, September 25, 1877.*

Establishment of High Court of Justice in the Transvaal: Question raised by Judge Kotze.

WE were honoured with your Lordship's commands, signified in Mr. Herbert's letter of the 1st August last, stating that he was directed by your Lordship to transmit to us a copy of a despatch from Sir T. Shepstone on the subject of the establishment of a High Court of Justice in the Transvaal territory, and the appointment of officers to that Court.

2. That Sir T. Shepstone appeared to have found himself under the necessity of making legislative provision for an improved system of administering justice, while, owing to the advice given by Judge Kotze, of the Transvaal, he was in doubt whether the power to make such provision was vested in himself, or where it was to be sought for.

3. That the question as to the power of Her Majesty, in the circumstances which had happened, to legislate for the Transvaal by Order in Council, had already been referred to us by the letter from the Colonial Department, dated the 9th May, 1877, and in our Report upon that letter, dated the 12th May, we stated that the Transvaal was to be regarded as conquered or ceded territory, and that Her Majesty had the same power of legislating by Order in Council in this case as in other cases of conquered or ceded territory.

4. That it would therefore appear that Judge Kotze (a copy of whose opinion was inclosed) was incorrect in the view he had taken that no legislative authority resided in Her Majesty with reference to the territory of the Transvaal.

5. That Judge Kotze, however, seemed to regard certain words of the Proclamation issued by Sir T. Shepstone when annexing the territory (copy of which was annexed) as being equivalent in their restrictive force to the grant of a Constitution by Her Majesty to a conquered or ceded Colony, so as to preclude Her Majesty or the Administrator from legislating by Order in Council or by Proclamation.

6. That the words in question, as quoted by Judge Kotze, were a declaration "that the Transvaal would remain a separate Government with its own laws and Legislature, and that it was the wish of Her Most Gracious Majesty that it should enjoy the fullest privileges compatible with the circumstances of the country and the intelligence of its people." That your Lordship, however, was inclined to view these words as pointing to the maintenance of the individuality of the Transvaal, and to a guarantee against its absorption in any other community, rather than as the constitution of any legislative authority within the State or restriction upon Her Majesty's legislative powers towards the Colony.

7. That Mr. Herbert was further pleased to state that he was directed by your Lordship to request that we would take these papers into our consideration, and favour your Lordship with our opinion:—

(1.) Whether in the circumstances Sir T. Shepstone had power to issue the Proclamation making provision for the administration of justice in the Transvaal, a copy of which was sent therewith.

(2.) Whether the words of the Proclamation issued by Sir T. Shepstone on the annexation of the Transvaal, quoted by Judge Kotze, have the effect of abrogating or limiting Her Majesty's power of legislating by Order in Council for the Transvaal terrritory.

(3.) Whether anything disclosed in the papers has the effect of abrogating or limiting the power of Her Majesty to legislate by Order in Council for the Transvaal, and, if so, to what extent.

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(4.) Whether Sir T. Shepstone, as Administrator of the Transvaal under the Commission issued to him (copy of which was sent therewith), has or has not power by Proclamation to make such provisions for the peace, order, and good government of the Transvaal as may appear necessary, no Charter or Constitution having hitherto been granted to the Transvaal by the Crown.

In obedience to your Lordship's commands we have the honour to

*Report—*

1. That Sir T. Shepstone's Commission being limited to a power to annex and administer, he had not, in our opinion, power to issue the Proclamation making provision for the administration of justice in the Transvaal, because such Proclamation provides for an alteration in the existing laws of the territory. It will, however, be competent for Her Majesty to give validity to the provisions of a Proclamation by an Order in Council.

2. The words of the Proclamation issued by Sir T. Shepstone on the annexation of the Transvaal have not, we think, the effect of abrogating or limiting Her Majesty's power of legislating for the annexed territory by Order in Council. The language of the paragraph of the Proclamation referred to by Judge Kotze is vague and not happily chosen; but we consider that, properly construed, such paragraph merely contains a promise that Her Majesty will grant to the Transvaal a separate Legislature, and that the territory shall not be absorbed into any other State.

3. In our opinion, nothing disclosed in the papers submitted to us has the effect of abrogating or limiting the power of Her Majesty to legislate by Order in Council for the Transvaal.

4. Sir T. Shepstone, as the Administrator of the Government under the Commission issued by Her Majesty, has in our opinion power by Proclamation to make such provision for the peace and good government of the Transvaal as may be necessary, provided he does not by such Proclamation assume to alter or abrogate existing laws.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.

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*Printed for the use of the Foreign Office. May 1880.*

CONFIDENTIAL.

# LAW OFFICERS' REPORTS: 1877.

## Africa.

### No. 1.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received June 28.)*

*Temple, June 28, 1877.*

My Lord,

Dahomey blockade.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th instant, stating that he was directed by your Lordship to transmit to us a letter, and its inclosures, from the Admiralty, reporting that the blockade of the coast of Dahomey by Her Majesty's naval forces had been raised, and that he was to request that we would prepare a draft form of notice of the raising of the blockade for insertion in the "London Gazette" of Friday next, the 29th instant.

Raising of.

In obedience to your Lordship's commands we have the honour to report—

That we have the honour to submit the following draft form of notice for your Lordship's consideration:—

Notice for "Gazette."

"It is hereby notified that the Earl of Derby, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Lords Commissioners of the Admiralty a copy of a letter from Commodore Sullivan, the Senior Officer of Her Majesty's ships and vessels on the Cape of Good Hope and West Coast of Africa Station, dated 'Her Majesty's ship "Sirius,"' Whydah, 12th May, 1877, informing their Lordships that the blockade of the sea-coast of the Kingdom of Dahomey, which for some time past has been maintained by Her Majesty's ships, had been raised from that date."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

## Austria.

### No. 2.

*Dr. Deane's Clerk to Lord Tenterden.—(Received October 11.)*

*Temple, October 11, 1877.*

British chapel, Vienna.

DR. DEANE'S clerk presents his compliments to Lord Tenterden, and begs respectfully to state, with reference to his Lordship's letter of the 10th instant,

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respecting the case of the British chapel at Vienna, that the Law Officers and Dr. Deane being unable to agree on their report, the matter stands over for further consideration, until they return from their holidays.

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## No. 3.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 3.)

My Lord, *Temple, November* 2, 1877.

**British chapel at Vienna.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 28th July last, stating that he was directed by your Lordship to request that we would be good enough to favour your Lordship with our opinion upon the following point, connected with a British chapel which had been recently built at Vienna.

**Built by public subscription.**

That the funds for building it were collected by public subscription, and it was intended that the work should have commenced in 1875, but it was found at that time that the Church of England form of worship was not one of those recognized by Austrian law, and that consequently its public exercise in the proposed chapel would be illegal. That discovery led to communications between the British Ambassador and the Austrian Government, the result of which was that an opinion was given by the latter that, if the building were to be placed under the control and jurisdiction of the Ambassador, its use for the purpose for which it was to be constructed might be sanctioned, but not otherwise.

**Placed under jurisdiction of Ambassador.**

That the question of the acceptance of that arrangement was submitted to Her Majesty's Government, who, after some hesitation, consented to it; but did so on the express understanding that the property in the building should not be vested in them, either absolutely or on any trusts, and that they should not be called upon to contribute anything towards its erection or maintenance.

That the Ambassador having informed the Austrian Government that he was auuthorized to accept the position towards the chapel which he was required to assume, it was licensed as being under his control and jurisdiction by an Imperial rescript dated the 15th March, 1875, whereby it was declared that, "A chapel for the religious use of the members of the British Embassy who belong to the Anglican Church, as well as for that of such British subjects, either residing in or passing through Vienna, as the British Ambassador for the time being may admit to it, may be erected in Vienna, and that religious service according to the Anglican Ritual may be performed there, on condition that the said chapel, and the use of the same for the said purpose, remain under the control and jurisdiction of the British Embassy."

That the building, which was now said to be completed, had been conveyed to the Bishop of London and his successors.

That the Ambassador had now raised the question whether marriages, which had hitherto been solemnized in the Embassy house, under the provisions of the Act Geo. IV, cap. 91, could be solemnized in the chapel when it should be opened; and that Lord Tenterden was to request that we would favour your Lordship with our opinion as to whether the chapel might, under the circumstances, be considered to be the "chapel of the British Ambassador" within the meaning of the Act, for the purpose of solemnizing marriages in pursuance thereof. That such papers were inclosed as would explain the precise position in which the matter stood.

We are also honoured with a further letter from Lord Tenterden, dated the 1st instant, stating that, with reference to his letter of the 28th July last, he was to transmit a despatch from Her Majesty's Ambassador at Vienna with regard to the locality of the English chapel; and that he (Lord Tenterden) was to request us to take that paper into our consideration, with the previous papers then before us, and furnish your Lordship with our opinion upon the matter.

In obedience to your Lordship's commands we have the honour to report—

**Marriages may be solemnized therein under the Act.**

That the Chapel may, in our opinion, be considered to be the "chapel of the British Ambassador" within the meaning of the 4 Geo. IV, cap. 91, for the purpose of solemnizing marriages in pursuance thereof.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Bolivia.

## No. 4.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 21.)

My Lord, *Temple, July* 21, 1877.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th June ultimo, stating that he was directed by your Lordship to submit to us the accompanying papers on the subject of the schooner "Ida."*

**British vessel "Ida" purchased by Mr. Eden.**

That it would appear that that British vessel was purchased by Mr. Eden, a British subject, who paid for her and obtained a bill of sale, but neglected to perfect his title by having her transferred in his name at the port of registry in Jamaica, according to the provisions of the Merchant Shipping Act of 1854. Nevertheless, he had a beneficial interest in the vessel as against the seller, such as was recognized by the Merchant Shipping Act of 1862. That while on a coasting voyage the master fraudulently sold the vessel by auction for 401 dollars to one Newball, a citizen of the United States of Colombia.

**Failure to register her at Jamaica.**

**Fraudulent sale by the master to a Colombian.**

That Mr. Eden, on being apprised of that fraud, proceeded to Colon, where the "Ida" was arrested through the intervention of of Her Majesty's Vice-Consul, and the matter was placed in the Colombian Court of San Andres. That before the decision of the Court was given the "Ida" was allowed to escape from Colon at night; that judgment was, however, subsequently pronounced to the effect that the "Ida" was the property of Mr. Eden, and had been unlawfully and without authority sold by her captain, but that, before she should be delivered, Mr. Eden was to pay to Newball the sum of 386 dol. 80 c. for the attachment at Colon. That Mr. Eden protested against that decision, and refused to pay that sum, and the vessel was again attached, and in June 1876 was still at San Andres (see Mr. Eden's memorial, paragraphs 11 and 12, inclosed in Colonial Office letter of the 15th August, 1876).

**Decision of Colombian Court in favour of Mr. Eden.**

**Escape of "Ida" and transfer to Bolivia flag.**

That what had since become of the vessel did not appear from the papers, but it would seem that she was still in the possession of Newball, who had changed her name from "Ida" to "Anna," and put her under the Bolivian flag.

**Refusal of British officer to interfere because of non-registration.**

That Commodore Lyons had refused to take any action on the ground that the vessel was not registered in Mr. Eden's name at Kingston, the port of registry, but in the name of the former owner, from whom he purchased her, Mr. Robert Bodden (Inclosure 9 in Consul Mallet's No. 37 of the 5th November, 1876). That the vessel had, however, since then been registered in the name of Mr. Eden (see Mr. Eden to Mr. Harvey, 21st February, 1877, inclosed in Colonial Office letter of the 18th May, 1877).

That it would seem to be admitted by the decision of the Court of San Andres that the sale of the vessel to Newball under the circumstances above detailed could give him no legal title to her.

That it appeared to your Lordship that the fact of non-registration of the vessel in Mr. Eden's name did not disentitle him to the assistance of Her Majesty's Government in his efforts to obtain justice and to recover possession of his property, and that, especially now that he had effected the registration of the vessel in his own name at Kingston, the Bolivian Government should be called upon to detain the vessel in order to allow Mr. Eden to prove his title and recover possession of her.

That Sir Julian Pauncefote was to request that we would take those papers into consideration, and inform your Lordship whether we concurred in that view, and if so, that we would also favour your Lordship with our opinion as to what measures might properly be taken in the event of a refusal on the part of the Bolivian Government to comply with that request.

In obedience to your Lordship's commands we have the honour to report—

**Bolivian Government should detain vessel to allow Eden to prove title.**

That the Bolivian Government may, in our opinion, properly be called upon to detain the vessel in order to allow Mr. Eden to prove his title and recover possession of her.

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* Colonial Office, August 15; Consul Mallet, No. 37, November 5, 1876; Colonial Office, May 18, 1877.

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The Bolivian Government may, however, have some good excuse or reason for refusing to take any steps to assist Mr. Eden in the matter, and we are therefore unable, with the information before us, to say what measures might properly be taken in the event of a refusal on the part of the Bolivian Government to comply with the request made upon that Government to assist Mr. Eden.

Ground application on illegal use of Bolivian flag.

We presume the application to the Bolivian Government would be a request based, among the other facts of the case, upon the judgment of the Court of San Andres and the use by the ship of the Bolivian flag, which apparently she is not entitled to sail under.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Brazil.

## No. 5.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received January 24.)*

My Lord,

*Temple, January* 23, 1877.

Exterior crimes against Brazil.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 23rd December ultimo, stating that, with reference to our Report dated the 25th July last, he was directed by your Lordship to transmit to us correspondence which had passed since that date on the subject of the Brazilian law as to trying foreigners for crimes against Brazil or Brazilians, committed out of Brazilian jurisdiction.

Brazil abandons case of crimes against individuals by British subjects, &c.

That we should see by the inclosed papers that the Brazilian Government admitted that crimes committed by British subject against individual Brazilians out of Brazil could not be punished in Brazil, because a similar power was not claimed by Great Britain as regarded crimes committed by Brazilians against British subjects out of British jurisdiction. That according to the Brazilian law such offenders could either be given up to the Government of the country where the offence was committed, or expelled from Brazil.

Law the same as French Law of 1808.

That as regards crimes against the Brazilian State, the principle of the Brazilian law was the same as that of the French Law of 1808, which had been adopted by other countries, and which had not been protested against by the Government of this country.

As to withdrawal of British protest.

That we should see also, by the Home Office letter of the 7th December, that Mr. Secretary Cross was of opinion that, in the circumstances, the protest of Her Majesty's Government against the Brazilian law may be withdrawn.

That Sir J. Pauncefote was to request that we would take the inclosed papers into our consideration, and be good enough to inform your Lordship whether we concurred in the opinion expressed by Mr. Cross.

In obedience to your Lordship's commands we have the honour to report—

Law provides punishment for promoting war against Brazil;

for giving information as to Brazilian forces;

for making statements against the Emperor.

That, on referring to Mr. Buckley Mathew's despatch (No. 93, Confidential, of the 7th October, 1876) to your Lordship, we respectfully call your attention to the 69th Article of the Code of Brazil, which decrees imprisonment with hard labour for from two to six years against any person who shall excite a nation to declare war against Brazil without succeeding in his object. To the 72nd Article, which sentences to hard labour for from six to twenty years any person giving to a hostile Government or their Agents any knowledge of the state of the Brazilian forces, and to the 88th Article, which awards from four to twelve years' hard labour to any one who misrepresents the moral or physical state of the Emperor.

Application of this provision to British Members of Parliament and others.

Your Lordship will see that these provisions place in peril any person who, in his place in Parliament, for instance, or as a newspaper correspondent, or a merchant in the course of his business transactions, or other person who may make remarks hostile to, but unsuccessful in causing war against Brazil; or make some misstatement as to the health of the Emperor, or convey intelligence of the state of the Brazilian forces.

The Baron de Cabo Frio, in the extract from his letter given by Mr. Buckley Mathew, does not say that the punishment for these crimes which come under Article 1 shall be inflicted in those cases only where the laws of the country of the offender establish punishment against foreigners in like cases.

This restriction apparently applies only to cases within Article 3.

Suggesting further remonstrance.

We have thought it our duty to submit these observations to your Lordship, since the explanation given by the Baron de Cabo Frio, so far as Article 3 is concerned, may satisfy your Lordship that the protest may be withdrawn, and yet Article 1 induce your Lordship to make a further remonstrance to the Brazilian Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 6.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received February 17.)*

My Lord,

*Temple, February* 16, 1877.

Exterior crimes against Brazil.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 7th instant, stating that, with reference to our Report of the 23rd ultimo, he was directed by your Lordship to transmit to us a draft of a despatch which your Lordship proposed to address to Her Majesty's Minister at Rio de Janeiro upon the subject of the law lately passed in Brazil relative to crimes committed by foreigners out of Brazilian jurisdiction; and that he was to request that we would favour your Lordship with our opinion as to whether the proposed instruction rightly defined the position which should be taken up by her Majesty's Government in the matter.

That the previous papers in the case were therewith returned for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Approving draft.

That the proposed instruction, in our opinion, properly defines the position which Her Majesty's Government should take up.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex to No. 6.

*The Earl of Derby to Mr. Mathew.*

(No. 11.)

Sir,

*Foreign Office, February* 20, 1877.

I have had under my consideration, and have consulted Her Majesty's Secretary of State for the Home Department and the Law Officers of the Crown upon your despatch No. 93, Confidential, of the 7th October, and the previous correspondence, relating to the law lately passed in Brazil, by which British subjects are made liable to punishment in that country for certain crimes committed out of Brazilian territory.

Crimes against individuals.

Do not dispute right to expel or surrender offenders for.

It appears from your above-mentioned despatch that the Brazilian Government clearly admit that that part of the law which relates to crimes against individual Brazilians does not apply to British subjects, inasmuch as Great Britain does not claim a similar jurisdiction in the case of crimes committed against British subjects out of British territory. With regard to this class of crimes, the Brazilian Government only claims the right to give up the offenders to the Government of the country in which the offence was committed, or to expel them from Brazil, and it appears to Her Majesty's Government that this claim cannot be disputed.

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As regards this part of the law, therefore, the announcement made by Mr. Drummond to the Brazilian Government, on behalf of Her Majesty's Government, as reported in his despatch No. 184 of the 14th December, 1875, becomes unnecessary and may be withdrawn.

**Crimes against the State.**

With respect to that part of the law which relates to crimes against the Brazilian State, the case is somewhat different.

The right of a State to punish such crimes committed by foreigners out of its territories is claimed by the French Law of the 27th June, 1866, which is only a slight modification of the Law of the 17th November, 1808, in force up to that date. A similar right has been assumed in laws passed by other States, and Her Majesty's Government have not protested against the principle thus laid down.

The only occasion on which Her Majesty's Government protested was in 1852, when it was proposed to pass a law in France extending the principle to crimes against individuals, and on that occasion the proposal was abandoned.

**Law applicable under certain circumstances.**

For these reasons Her Majesty's Government feel that they would not be justified in refusing to allow the Brazilian law to be applied to British subjects under certain circumstances, and you will so inform the Brazilian Minister for Foreign Affairs, but in doing so you will point out to his Excellency that the Brazilian law goes much further than the French law, which applies only to crimes "attentoire à la sûreté de l'Etat," to the forgery of the Seal of the State, and counterfeiting national currency or papers; and that a strictly literal interpretation of the Articles 69, 72, and 88 of the Brazilian Code, to which you call attention in your above-mentioned despatch, would render non-Brazilians liable to severe punishment for acts which, however culpable they might be if committed by Brazilians, or by foreigners in Brazil, might be perfectly legitimate on the part of a foreigner out of Brazil. The provisions of those Articles would, for instance, place in peril any person who, in his place in Parliament, or as a newspaper correspondent, or a merchant in the course of his business transactions, or in other circumstances, might make remarks hostile to, but unsuccessful in causing war against Brazil, or make some misstatement as to the health of the Emperor, or convey intelligence of the state of the Brazilian forces.

**But not to speeches in Parliament, or newspaper articles, &c.**

**Reserve right to protest.**

Her Majesty's Government cannot for a moment suppose that the Brazilian law was ever intended to apply, or that the Brazilian Government would ever attempt to apply it, to such cases, but at the same time they feel it their duty formally to reserve their right to protest against the application of that law to a British subject should an occasion arise which, in their opinion, would call for remonstrance and intervention.

I am, &c.

(Signed) DERBY.

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## Central America.

### No. 7.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received November 26.)*

*Temple, November 24, 1877.*

My Lord,

**Assault on Mr. Eisenstück, German Consul at Leon, by Señor Seal.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th September last, stating that he was directed by your Lordship to transmit to us the accompanying papers, as marked in the margin, relative to a difference which had unfortunately arisen between the Government of Germany and that of Nicaragua, originating in two assaults committed by a Señor Seal—the first upon M. Paul Eisenstück, then Acting German Consul at Leon; the second (in which it was alleged that Señor Seal was assisted and protected by some soldiers sent for that purpose by the Third Alcalde) upon the same gentleman, M. Maurice Eisenstück, the German Consul, and others; the object of the several assaults having

been to enable Señor Seal to regain possession of his wife, step-daughter to M. Paul Eisenstück, with whom she was staying.

That no British subject was concerned in the matter, and no British interest was directly affected by it, but there were questions involved which were of general importance to all nations whose subjects frequent the Republics of Central America, and an appeal having been made by both Germany and Nicaragua for the moral support of Her Majesty's Government, they were unwilling to decline altogether to express an opinion.

That Sir Julian Pauncefote was therefore to request that we would take these papers into our consideration, and favour your Lordship, at our earliest convenience, with our opinion whether the circumstances of the case justified the demands of the German Government for reparation to their full extent, and, if not, in what respect Her Majesty's Government might properly use its good offices to obtain a modification of them.

That the documents to which your Lordship would direct our special attention were the following:—

1. The despatch of the German Government to their Minister in Central America, inclosed in Count Münster's letter of the 18th April, 1877, which contained an exposition of the facts of the case from the German point of view and of the nature of the reparation demanded.

2. The exposition of the facts of the case from the Nicaraguan point of view contained in the address to Congress of the Nicaraguan Minister for Foreign Affairs of the 16th May, translation of which would be found at p. 5 of the "Star and Herald" of Panama of the 21st July.

That this was inclosed in the letter from Señor de Marcoleta of the 27th August.

3. The letter from Señor Rivas, Nicaraguan Minister for Foreign Affairs, to your Lordship of the 11th July, 1877.

4. The despatch from Mr. Locock, Her Majesty's Minister in Central America, No. 72 of the 25th July, containing observations thereon.

5. Mr. Locock's No. 79 of the 6th August, transmitting the observations on Señor Rivas' letter of M. von Bergen, the German Minister.

6. Mr. Locock's No. 73 of the 27th July, containing legal opinions as to the invalidity of the proceedings of the local Tribunals in the case.

7. Letter from Señor Rivas, Nicaraguan Minister for Foreign Affairs, to the German Minister for Foreign Affairs, dated Nicaragua, the 11th July (see cutting from the Panama "Star and Herald" of the 21st August, 1877).

8. The letter to your Lordship from Señor de Marcoleta,* Nicaraguan Minister at this Court, soliciting the friendly intervention of Her Majesty's Government with the Government of Germany to effect an amicable arrangement of the question.

We were also honoured with a note from Lord Tenterden, dated the 13th October, stating that with reference to Sir Julian Pauncefote's letter of the 25th ultimo, he was directed by your Lordship to transmit to us for consideration, with the papers already received, the accompanying letter from the Nicaraguan Minister at this Court, respecting the affair of Eisenstück, the German Consul at Leon.

We were further honoured with a letter from Sir Julian Pauncefote, dated the 3rd November instant, stating that, with reference to his letter of the 25th September, he was directed by your Lordship to transmit to us, for our consideration, the accompanying further despatch from Her Majesty's Minister in Central America relative to the Eisenstück affair, and to add that your Lordship would be glad to be favoured with our opinion on the case at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

That we have considered these papers, and have given very close attention to Mr. Locock's two despatches Nos. 72 and 79, dated the 25th July and the 6th August.

**German demands are just; Her Majesty's Government cannot use good offices to obtain modification.**

And, looking to the conduct of the Government and authorities of Nicaragua, we are unable to say that the circumstances of the case do not justify the demands of the German Government, or that Her Majesty's Government can properly in any respect use its good offices to obtain a modification of those demands.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* See letter from Señor de Marcoleta of September 13.

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### No. 8.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received December* 13.)

My Lord, *Temple, December* , 1877.

Treaty of Managua.

Mosquito Indians.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd November ultimo, stating that in 1860 Her Majesty's Government concluded a Treaty with the Republic of Nicaragua relinquishing the Protectorate of Great Britain over the Mosquito Territory, and, in return for the cession to Nicaragua of sovereign rights over the territory in question, subject to certain restrictions as to self-government, Nicaragua had, by Article V of the Treaty, agreed to pay to the Mosquito Indians an annual sum of 5,000 hard dollars, by half-yearly payments to be paid at Greytown.

Non-payment of subsidy by Nicaragua.

That up to the present time, however, the Nicaraguan Government had neglected to make any payment to the Mosquito Chief, notwithstanding the repeated representations made to them by Her Majesty's Government.*

That Sir Julian Pauncefote inclosed a copy of the Treaty of Managua, together with the papers marked in the margin, which would show us how the matter now stands.

That the Nicaraguan Government expressed their willingness to pay the subvention so soon as they should enter into possession of "full sovereignty" over the Mosquito Territory, and they pointed to a so-called rebellious Proclamation issued by the present Mosquito Chief on his accession in 1874 at the age of 18. That that Proclamation was instantly withdrawn, but were it otherwise, the excuse put forward by the Nicaraguan Government for the non-payment of the subsidy appeared to be frivolous, as they had never pretended that the circumstances referred to gave them the right to annul the Treaty under which they continue to claim sovereign rights over the Mosquito Territory, nor had they ever been impeded in the enjoyment of such rights as were conferred on them by the Treaty.

That Mr. Locock, in his note to the Nicaraguan Minister, a copy of which was inclosed in his No. 89 of the 28th August last, had called upon his Excellency for the immediate payment of the instalments of the subvention then due, together with interest thereon.

That as regarded the claim for interest, Mr. Locock desired to be informed whether it could properly be pressed, and as in the present case default had been made in the payment of a liquidated debt at stipulated dates, the demand for interest on the arrears would seem to be founded on reason and practice, but before sending further instructions to Mr. Locock, your Lordship desired to be favoured with our opinion on that point, and with any observations which might suggest themselves to us on the claim generally.

In obedience to your Lordship's commands we have the honour to report—

As to term "full sovereignty."

That the soundness of the excuse put forward by the Nicaraguan Government that they have not entered into possession of "full sovereignty" over the Mosquito Territory depends upon the sense of the word "full," a word which is not in the Treaty.

So far as the papers before us enable us to form an opinion, Nicaragua was not to have or enter into "full sovereignty" until the Mosquito Indians agreed under Article IV of the Treaty to absolute incorporation, and subjected themselves to be governed by the general laws and regulations of the Republic.

Mosquito Proclamation no excuse for non-payment.

And a Proclamation issued in 1874 cannot be used as a reason for not having paid money, the payment of which, under the Treaty (Article V), should have been completed in 1870.

Great Britain may demand payment with interest.

And since Great Britain was one of the two parties to the Treaty, Nicaragua being the other, Great Britain has, in our opinion, the right to call upon the other contracting party to comply with the terms of the Treaty and pay, without further delay, the amount due under Article V to the Mosquito Indians.

The Nicaraguan Government might have been called upon to begin paying the annual instalments seventeen years ago; this, however, was not done, and we think that under the circumstances the payment of some sum in the nature of interest may fairly be demanded.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* This is incorrect; the sum paid up to March 1866 (the last payment) was 19,140 dols. 79 c. See Inclosure 4 in Consul Golian's No. 2, Political, 1877.—(*Departmental Note.*)

## China.

### No. 9.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 17.)

My Lord, *Temple, March* 16, 1877.

Order in Council.

Acting Consuls. Powers.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us, together with the previous papers, the accompanying letter from Mr. F. S. Reilly, inclosing the draft of a further Order in Council for China and Japan, which he had been instructed to prepare, conferring on certain officers in those countries, who would be styled "Acting Consuls," the powers now vested in duly commissioned Consuls or Vice-Consuls or officers acting temporarily for them by the 25th section of the China and Japan Order in Council of the 9th March, 1865; and that he (Lord Tenterden) was to request that we would take that draft into our consideration, and favour Lordship with our opinion thereupon.

Limit of time.

That Lord Tenterden was to add that your Lordship proposed to adopt Mr. Reilly's suggestion as to the limit of the duration of the Order in Council in question.

In obedience to your Lordship's commands we have the honour to report—

No objection.

That we see no objection to the draft Order in Council as prepared by Mr. Reilly, and omitting the limit of the duration of the Order.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 10.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received December* 12.)

My Lord, *Temple, December* 11, 1877.

Customs privileges at Chinkiang.
Case of the "Cadiz" hulk.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit correspondence relating to a claim preferred against the Chinese Government, by the China Navigation Company, for compensation for losses that they had sustained, in consequence of the withdrawal of certain "Customs privileges" theretofore enjoyed by them in respect of a hulk moored at the Treaty port of Chinkiang.

That Sir Julian Pauncefote was to inclose a printed memorandum on the case, dated August 1877, in which the facts were shortly stated, and certain conclusions arrived at adverse to the claim of the Company.

That he was also to draw our attention to a letter subsequently received from the Chinese Minister at this Court, transmitting the opinion of counsel consulted in London on behalf of the Chinese Maritime Customs, and that we should observe that they had arrived at the same conclusion.

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That, on the other hand, Sir Thomas Wade had expressed a contrary opinion in a memorandum which was inclosed for our consideration, and in which he contended that on the proper construction of Article XVII of the Treaty of Tientsin (which would be found at p. 1 of the Appendix to the printed Chinese Case), it was not competent to the Chinese authorities to order the removal of the hulk without having previously established, before the competent authority of the British owner, that the hulk was causing the obstruction and injury complained of, and that the suspension of her "Customs privileges" under the circumstances mentioned was, as advised by Sir Edmund Hornby at the time, illegal.

That Sir Thomas Wade had furnished your Lordship with a memorandum to the same effect, by Mr. Hewlett, of the Chinese Consular service, which was likewise inclosed for our perusal.

That Sir J. Pauncefote was to request our opinion on the questions raised, at our earliest convenience, as the Chinese Minister was urgently pressing for a reply to his communications of the 7th June and the 20th July last, which had been delayed, by reason of the pressure of other business having prevented Sir Thomas Wade from furnishing his Report on the case at an earlier date.

That your Lordship considered the question at issue one of great importance, and, having regard to the strong opinion entertained by Sir Thomas Wade in favour of the claim of the Company, and against the views of the Chinese Government in respect of the rights of British subjects under the Treaty, your Lordship desired Sir J. Pauncefote to request that, before finally giving our opinion, we would be good enough to hold a conference on the case at the Foreign Office, with Lord Tenterden, Sir Thomas Wade, and himself.

We are also honoured with a further letter from Sir J. Pauncefote, bearing date the 1st instant, stating that, with reference to his letter of the 24th ultimo, he was to transmit, by your Lordship's directions, two further letters from the Chinese Minister at this Court, relative to the case of the "Cadiz" hulk at Chinkiang, which he was to beg might be taken into our consideration in connection with the previous papers.

In obedience to your Lordship's commands we have the honour to report—

That the rights which China has, by the law of nations, over the rivers in China can be limited only by the special and definite terms of a Treaty or other instrument surrendering such right either entirely or partially.

Treaty of 1858 does not abridge Chinese rights over rivers.

Chinese justified in removing hulk.

The XVIIth Article, however, of the Treaty of 1858—and we are not aware of any other provision in that Treaty—does not, in our opinion, abridge the rights of the Chinese Government over and upon the rivers in China, and, so far as the case of the hulk "Cadiz" is concerned, we think that the Chinese authorities were entitled, under the circumstances, to order the vessel to be removed from her moorings, and that they would have been justified, upon the order not being complied with, in removing her themselves.

Owners have no claim for withdrawal of privileges.

We also think that if the Chinese authorities withdrew the facilities granted to the owners of the hulk, or those using her as a landing-place for goods, because the order for her removal was disregarded, no claim for damages consequent on such withdrawal can properly be made against the Chinese Government.

We should not have troubled your Lordship with any further observations, if we had not had the opportunity of conferring with Sir Thomas Wade, and with Lord Tenterden and Sir Julian Pauncefote, upon the questions raised in the case.

Danger of acknowledging Treaty rights of the Chinese.

At this conference Sir Thomas Wade expressed himself very strongly upon the mischiefs which would or might follow, if the view which we have taken of the Treaty or other rights of the Chinese Government were known to that Government.

These consequences, so feared by Sir Thomas Wade, may be provided against by further arrangements, but should not, we think, affect the opinion, which, after the fullest consideration, we have above submitted to your Lordship upon the present rights and powers of the Chinese Government.

Question may be evaded.

In the particular circumstances of the hulk "Cadiz" there are, however, facts which may enable your Lordship to answer the Chinese Minister, without noticing the Treaty, or entering upon the general question of territorial rights.

The first complaint of any kind was made by the British Consul in April 1875, stating that the action of the river was undermining the Bund, and giving notice to the Taotai that the Chinese Government would be held responsible for the damage done by the river to the British concession.

The Chinese thereupon, and after some examination of the river, came to the conclusion that the "Cadiz," by some action on the current, caused the damage to the Bund. The owners of the "Cadiz," on the other hand, and they, too, had an examination of the river made in their behalf, asserted that the "Cadiz" was in no way the cause of the injury.

A very lengthened discussion then took place between the Chinese authorities, the agents of the owners of the "Cadiz," and the British Consul at Shanghae, who had been asked by the Taotai to enforce the removal of the "Cadiz." This request the Consul did not comply with.

The state of things was this:—

There was damage being done to the Bund.

The cause of the damage was a matter in dispute between the parties.

The dispute could be put an end to by an experiment.

Request for temporary removal of hulk.

And accordingly, on the 28th March, 1876, on the 17th April, and the 9th and 24th May, 1876, the Taotai stated on behalf of the Chinese authorities that all that was asked was "the temporary and experimental removal of the hulk."

This removal being refused, the privileges were withdrawn in the manner and after the delay now to be described.

The British Consul being informed that it was intended to withdraw the privileges requested, in June, that the threatened measure should not be carried out. The execution of the measure was therefore further delayed for fifteen days, the Taotai, at the same time, again informing the Consul that all that was desired was the temporary removal of the "Cadiz," pending the investigation and arrangement of the matter.

Should have been complied with.

China Navigation Company have no claim.

This request of the Taotai that the "Cadiz" "should be temporarily and experimentally removed" was a most reasonable request, which should have been complied with, and upon the merits of the case, and without reference to the Treaty, we are of opinion that the China Navigation Company have no ground for any claim for compensation against the Chinese Government.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

## Colombia.

### No. 11.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 31.)

*Temple, July* 30, 1877.

My Lord,

British claims arising out of civil war. (Property seized by troops.)

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th July instant, stating that he was directed by your Lordship to transmit to us the inclosed despatch from Her Majesty's Minister at Bogotá, calling attention to the disregard paid by the Colombian Government to her Treaty engagements with this country, as regarded the investigation of British claims and the granting of compensation to British subjects for the forcible seizure of their property during the civil war.

Neglect to satisfy.

That we would perceive that General Salgar alleged that he had no power to grant compensation for the seizure of British property without the express sanction of the Congress, and that the consideration of such claims must be postponed until peace and good order were re-established within the Republic.

That Sir Julian Pauncefote also inclosed the draft of a despatch which your Lordship proposed to address to Her Majesty's Chargé d'Affaires at Bogotá upon that subject; and he was to request that we would favour your Lordship with our opinion as to whether the proposed instructions were warranted by the Treaty rights of the country and consistent with the law of nations.†

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* Mr. Bunch, No. 24.

† See No. 39 to Mr. O'Leary, November 12, 1877, expressing opinion of Her Majesty's Government that British subjects, whose property has been seized by national troops in violation of Treaty of 1866, are entitled to immediate compensation, &c.

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Approving draft instruction.

In obedience to your Lordship's commands we have the honour to report—

That the words "recognized by Her Majesty," p. 2, line 5 from the bottom, may, in our opinion, be properly omitted. The passage in p. 5 beginning with the words "and where compensation" down to the word "suppression," line 2 from the bottom of the same page, may also be properly omitted. For we think the strong ground for the claim is in the Treaty.

Violation of Treaty rights.

Subject to the above suggestions, the proposed instructions are, in our opinion, warranted by the Treaty rights of the country and consistent with the law of nations.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 12.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 6.)

My Lord,

*Temple, November* 5, 1877.

Claims arising out of civil war.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th August last, stating that, with reference to our Report of the 30th July, he was to transmit a further despatch from Her Majesty's Chargé d'Affaires at Bogotá, inclosing copies of laws passed by the Colombian Government, dealing with the claims of foreigners and others arising out of the civil war.

Colombian Decrees as to submission of.

That by those Decrees it was stipulated that foreign claims should be submitted to and approved by the Supreme Federal Court before payment could be made thereon.

Treaty rights.

That your Lordship considered that such a proceeding, if persisted in, would violate the provisions of the existing Treaty, and cause grievous delay and expense to the claimants, who have every right to demand immediate compensation for the expropriation of their goods.

Refusal to receive claims in usual diplomatic manner.

That we should perceive that the Colombian Government refused to entertain the proposal submitted to them by the Representatives of England, France, and Germany, that foreign claims should be presented to the Government in the usual diplomatic manner, and that the Government having once received them, should refer them, if thought necessary, to their own Law Officers, or even to their Courts of Law.

That your Lordship feared that if these and similar laws were not strongly opposed the Treaty between this country and Colombia would rapidly become practically null and void. That Sir J. Pauncefote was therefore to request that we would take that case into our consideration, and favour your Lordship with our opinion as to whether, having regard to the Treaty rights of this country, Her Majesty's Government were entitled to insist that the claims of British subjects arising out of enforced military requisitions should be settled by the Executive and Administrative Department of the State without reference to the local Tribunals.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government may insist on their being so received, without reference to local Tribunals.

That, in our opinion, Her Majesty's Government are entitled to insist that the claims of British subjects arising out of enforced military requisitions should be presented diplomatically to, and be received by the Executive and Administrative Department of the State, and without reference to the local Tribunals.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Dominica.

## No. 13.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received December* 21.)

My Lord,

*Temple, December* 21, 1877.

Capture of British vessel "Brisk" by one of the revolutionary parties in Dominica.
Mr. Godet's claim.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th December instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* respecting the claim of Mr. Godet, of Turk's Island, for compensation at the hands of the Government of Santo Domingo for the loss of his vessel, the "Brisk," and her cargo, under the circumstances therein detailed. That the facts of the case as gathered from those papers would appear to be as follows:—

On the 30th September, 1876, the British schooner "Brisk," while on a voyage from Turk's Island to Cape Haytien, laden with a cargo of salt, was seized by two Dominican armed vessels off Fort Liberty, where she was to touch on her voyage. At that time the President of Santo Domingo, Espaillat, was striving to hold the country against the two revolutionary parties of Baez and Gonzalez. The "Brisk" was captured by order of an officer of Gonzalez, the object of the seizure being to arrest a passenger on board the schooner named Ritchie, an American citizen, who was suspected of having bought arms and ammunition for the party of Baez. On reference to the map contained in Major Stuart's despatch No. 34 of the 29th October last, it would be seen that the place of capture was in Haytian waters.

That the "Brisk," immediately after her capture, was ordered by the seizors to be taken to Porto Plata, and on her voyage to that port she encountered a storm and was lost with all on board.

Another revolutionary party now in power.

That the party of Baez were now in power, and the question arose whether, under the circumstances above stated, Her Majesty's Government could claim reparation from the existing *de facto* Government of Santo Domingo for the outrage committed by the Gonzalez party on the British flag, and compensation to the owner of the "Brisk" for the loss of his vessel and cargo.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion thereon.

In obedience to your Lordship's commands we have the honour to report—

No claim on present *de facto* Government for acts of the other revolutionary party.

That, in our opinion, no claim for compensation to the owner of the "Brisk," nor reparation for the outrage committed on the British flag by the Gonzalez party, can be claimed from the existing Government of Santo Domingo.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Colonial Office, September 20; to Major Stuart, No. 22; Major Stuart, No. 34.

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## Egypt.

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### No. 14.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.**

Egyptian Slave Trade Convention.

Gentlemen,

*Foreign Office, February* 23, 1877.

I AM directed by the Earl of Derby to transmit to you the accompanying draft of an Anti-Slave Trade Convention between this country and Egypt, which it is proposed to send to Her Majesty's Agent and Consul-General at Alexandria for negotiation with the Khedive. The draft of a despatch to Mr. Vivian, containing instructions for his guidance in negotiating the Convention, is also inclosed; and I am to request that you will take these papers into your consideration, and favour his Lordship with your opinion upon the proposed drafts.

A correspondence in print relating to the proposed Convention which has passed between this Department, Her Majesty's Representatives in Turkey, and Her Majesty's Agent and Consul-General in Egypt is also annexed for reference if required.

Lord Derby would be obliged by an early consideration of the inclosed papers, as it is important that the draft Convention should be sent to Mr. Vivian by the mail which leaves this country on Friday, the 2nd March.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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*Report.*

Turkish objection to right of search.

That the objection which the Turkish Government may take to the exercise of the right of search of vessels under the Egyptian (that is, the Turkish) flag is one which, in the circumstances of the case, your Lordship might be disposed to overlook or ignore, since without the exercise of that right the Convention may come practically to nothing.

Convention does not authorize search of Turkish vessels.

But, advising your Lordship on a matter of international law, we cannot say that the Convention authorizes the search of Turkish vessels, and hence difficulties may arise under Article VI.

Subject to the above observations, the Convention and instructions (with the omission suggested by Lord Tenterden in the margin of the instructions) may, in our opinion, properly be sent to Mr. Vivian.

*February* 26, 1877.

J. H.
J. P. D.

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### No. 15.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March* 14.)

Mixed Courts. Date at which the quinquennial period should commence.

My Lord,

*Temple, March* 12, 1877.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 28th ultimo, stating that he was directed by your Lordship to request that we would take into our consideration the inclosed despatch from Her Majesty's Agent and Consul-General in Egypt, containing a copy of a letter from the Egyptian Government upon the subject of the date at which the quinquennial period for which the Mixed Courts were established should commence.

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* The Law Officers' Report upon this subject could not be found when this collection of Reports was made, and it was therefore necessary to obtain the original draft of the Report. The Law Officers, however, do not retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the Foreign Office letter to them is recapitulated. It has, therefore, been deemed advisable to print the Foreign Office letter in this instance, as the bare Report, without the usual preamble, would not be wholly intelligible.

That Lord Tenterden was to request that we would inform your Lordship of our opinion on that point.

That Lord Tenterden annexed a memorandum by Sir Julian Pauncefote, in which he drew attention to the Orders in Council of the 1st February, 1876, as bearing on the question.

In obedience to your Lordship's commands we have the honour to report—

1st February, 1876 but date might be fixed with the other Powers.

That, in our opinion, the 1st February, 1876, is the date when the quinquennial period for which the Mixed Courts were established should commence.

But your Lordship might, as suggested by Sir Julian Pauncefote, properly act in fixing the date with the other Powers, taking the date, however, to be either the 1st January or 1st February, 1876.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 16.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March* 14.)

Egyptian law respecting arrangement between debtor and creditor.

As to consent of Powers being necessary.

My Lord,

*Temple, March* 12, 1877.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us two despatches from Her Majesty's Agent and Consul-General in Egypt, inquiring whether it was necessary that the Judicial Courts in Egypt should obtain the consent of the Powers to the addition to the Egyptian Code under Article 12 of a general law empowering them to sanction and protect an equitable arrangement between a debtor and his creditors.

That Lord Tenterden inclosed a memorandum drawn up by Sir Julian Pauncefote on the subject, together with the former papers, and that he (Lord Tenterden) was to request that we would favour your Lordship with our opinion upon the instructions which should be given to Mr. Vivian by Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

That the proposed new law may work a material change, for instance, defeat the rights of the dissentient minority of creditors.

Mr. Vivian should not consent till law is seen and approved by the Powers.

We are therefore of opinion that Mr. Vivian should be instructed not to give his consent to the proposed law until the text of such law has been seen and approved by the Powers.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 17.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received July* 2.)

Jurisdiction in bankruptcy. Conflict between Mixed Tribunals and Consular Courts.

My Lord,

*Temple, July* 2, 1877.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 26th March last, stating that he was to transmit to us papers relating to a conflict of jurisdiction in cases of bankruptcy which had arisen between the Mixed Tribunals and the Consular Courts in Egypt.

That we should perceive that a proposal was made to confer on the Mixed Tribunals in Egypt exclusive jurisdiction in all cases of bankruptcy without regard to the nationality of the parties concerned, such jurisdiction having until then been shared between the Consular and the Mixed Courts, according to the nationality of the bankrupt and his creditors.

That, as that was a matter which might seriously affect British commercial interests, Lord Tenterden was to request us to take the inclosed papers into consideration and to favour your Lordship with our opinion on them, and in particular as regards the following points:—

1. Whether any jurisdiction in bankruptcy where the debtor is a foreigner was

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vested in the Mixed Tribunals by the terms of Article 9 of the Règlement Judiciaire, and if so, whether proceedings in bankruptcy instituted in a British Consular Court become void in the event of a foreign creditor appearing, who was entitled to claim under the bankruptcy.

2. Whether we considered it desirable that exclusive jurisdiction in bankruptcy should be vested in the Mixed Tribunals as proposed, and if so, whether we would recommend that, as a condition to the assent of Her Majesty's Government to that course, any modification in the Code of Bankruptcy as administered by the new Tribunals should be insisted on.

That, in connection with that subject, Lord Tenterden was further to transmit to us a despatch from Her Majesty's Agent and Consul-General in Egypt, inclosing a copy of a newspaper containing the report of a judgment of the Court of Appeal affecting the question under consideration.

That Lord Tenterden was also to transmit a copy of the Règlement d'Organisation Judiciaire and Egyptian Codes, and of the printed correspondence referred to in the inclosure of that letter.

We have also the honour to acknowledge the receipt of further letters on this subject, bearing date the 12th April, 1877, the 27th April, 1877, and the 26th ultimo.

In obedience to your Lordship's commands we have the honour to report—

Cannot agree whether Mixed Courts have jurisdiction when debtor is a foreigner.

That (1) the question whether any jurisdiction in bankruptcy, where the debtor is a foreigner, was vested in the Mixed Tribunals by the terms of Article 9 of the Règlement Judiciaire is one of very great difficulty.

If they have jurisdiction, it is exclusive, and proceedings in Consular Court would be void on foreign creditor appearing.

After a very careful discussion and consideration, we are unable to come to an entire agreement upon the subject. We concur, however, in the opinion that if the Mixed Tribunals have jurisdiction in bankruptcy such jurisdiction is exclusive, and that therefore proceedings in bankruptcy instituted in a Consular Court would become void in the event of a foreign creditor entitled to claim under the bankruptcy appearing.

Exclusive jurisdiction should be vested in Mixed Courts.

2. We are clearly of opinion that it is, under the circumstances, desirable that exclusive jurisdiction in bankruptcy should be vested in the Mixed Tribunals as proposed.

One Judge might be of nationality of the bankrupt.

It does not occur to us that if exclusive jurisdiction in bankruptcy is given to the Mixed Tribunals, as suggested, any modification of the Code of Bankruptcy will be necessary, unless indeed it should be deemed advisable to provide that one of the Judges in bankruptcy cases shall be, if possible, of the same nationality with the bankrupt.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## France.

### No. 18.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received January 27.)*

My Lord, *Temple, January 26*, 1877.

Case of Mr. James Wilson.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us therewith the papers relative to certain legal proceedings in which Mr. James Wilson was concerned, arising out of contracts entered into by him and other parties with the French Government, and to request that we would favour your Lordship with our opinion as to whether, under the circumstances detailed in Mr. James Wilson's letters to Lord Lyons of the 20th and 22nd December last, any action was called for on the part of Her Majesty's Government.

Illegal treatment at hands of French Government.

That during the proceedings which took place in France in 1874, Mr. James Wilson appealed to Her Majesty's Government for protection, as a British subject, against what he conceived to be illegal treatment at the hands of the French Government. His complaint was considered at the time, and he was informed that the circumstances of his case did not warrant any official interference on his behalf.

That on receipt of Lord Lyons' despatch No. 325 of the 22nd December last, it appeared to your Lordship that the case was one which did not in any way concern Her Majesty's Government; and that, even if they were in possession of sufficient information to judge whether the compromise referred to did not amount to a "compounding of felony," Mr. James Wilson had failed to show any grounds which justified his application for the opinion of the Law Officers of the Crown. That Lord Lyons was accordingly instructed to reply in that sense to Mr. Wilson's letter of the 20th December. That Mr. Wilson's letter of the 22nd December had since been received, and it appeared to your Lordship to contain nothing which altered the complexion of the case.

That, if we should concur in that view and in the propriety of the reply sent to Mr. Wilson's letter of the 20th December, your Lordship proposed, subject to any observations with which we might favour your Lordship on the case, to inform Mr. Wilson that you saw no grounds for modifying the decisions arrived at and already communicated to him by Lord Lyons.

In obedience to your Lordship's commands we have the honour to report—

No grounds for interference of Her Majesty's Government.

That, in our opinion, Mr. Wilson may properly be informed that your Lordship sees no ground for modifying the decision arrived at and communicated to him by Lord Lyons.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 19.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received July 3.)*

My Lord, *Temple, July* 2, 1877.

English Insurance Companies. As to providing a French agent when transacting business in France.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 5th April last, stating that he was directed by your Lordship to transmit to us a despatch, with its inclosures, from Her Majesty's Ambassador at Paris, relative to a question which had arisen as to whether English Insurance Companies were bound to provide a French representative when transacting business in France.

Convention respecting Joint Stock Companies.

That Mr. Lister was to observe that Article I of the Convention between Great Britain and France of the 30th April, 1862, declared that Joint Stock Companies of either nation might exercise all their rights, "dans toute l'étendue des Etats et Possessions de l'autre Puissance sans autre condition que de se conformer aux lois des dits Etats et Possessions."

French Decree imposing tax.

That by an Act of the French Legislature, dated the 23rd August, 1871 (copy of which was inclosed), Article 6, a tax was imposed on policies of insurance (marine and fire).

That Article 7 declared that that tax should be collected and received on account of the Treasury by the Companies' underwriters, brokers, &c., effecting the insurances.

That Article 10 provided that "un Règlement d'Administration Publique" should determine the mode of payment of the above tax, and the rates at which it should become payable, and also all other matters necessary to carry out the provisions of Articles 6 and 7; and that every contravention of the said "Règlement" should entail a fine of 50 fr.

That the "Règlement" in question was made by a Decree of the "Commission Provisoire chargée de remplacer le Conseil-d'Etat," and was dated the 25th November, 1871.

That Article 10 of that Decree declared, *inter alia*, that foreign Insurance Companies "doivent avant toute opération ou déclaration, faire agréer par l'Administration de l'Enregistrement un représentant Français personnellement responsable des droits et amendes."

That Messrs. Arends and Seidler (the latter a British subject), merchants of Nantes, had been appointed Agents in France for the Liverpool, London, and Globe Insurance Company of Liverpool, and they were called upon by the "Directeur-Général de l'Enregistrement du Département de la Loire Inférieure" to submit for

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approval the name of a French subject as surety for the payment of the tax and fines, in accordance with Article 10 of the Decree. That Mr. Seidler protested against that provision as contrary to the Convention of 1862.

That Mr. Nestor Treitt, the French Counsel to the British Embassy at Paris, had been consulted, and he was of opinion that the provision of Article 10 of the Decree complained of by Mr. Seidler is a violation of the Convention.

That Her Majesty's Ambassador, however, was desirous, before acting on that opinion, to receive instructions from your Lordship on the subject. That the point seemed to your Lordship not free from doubt, and Mr. Lister was accordingly to request that we would take that matter into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

We are also honoured with a further letter from Mr. Lister, bearing date the 16th April last, stating that he was directed by your Lordship to transmit to us, for our consideration, in conjunction with the papers inclosed in the letter from the Foreign Office of the 5th April, a further despatch from Her Majesty's Ambassador at Paris on the subject of foreign Insurance Companies in France.

In obedience to your Lordship's commands we have the honour to report—

Cannot agree with M. Treitt that tax is contrary to Convention. French Government may require appointment of French agent as security for the tax.

That we are unable to agree with Mr. Treitt, whose opinion is formed on general reasons of policy, and not upon the words of the Convention of 1862.

That Convention provides that foreign Insurance Companies may exercise their rights in France, subject, however, to a compliance with the law of France.

In our view the meaning of this provision of the Convention is that foreign and French Companies should be placed upon the same footing, and we think that the Law of the 25th November, 1871, practically does place foreign and French Companies in the same position.

There is, therefore, in our opinion, no violation of the Convention of 1862 in requiring that foreign Insurance Companies should be obliged to have as representative a French subject, who may become surety for the payment of the tax and fines.

That, having considered the further papers transmitted by Mr. Lister, we are confirmed in the opinion that the French Government may insist upon a French representative.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 20.

*The Law Officers of the Crown to the Earl of Derby.—(Received October* 10.)

My Lord,
*Temple, October* 9, 1877.

Marriage at Havre.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st October instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Havre* asking for instructions as to the propriety of celebrating a marriage between two British subjects under the following circumstances:—

John Julian, engineer of a British vessel plying between Cardiff and Havre.

That John Julian, the intended husband, is the chief engineer on board the "William Banks," a British steamer plying between Cardiff and Havre. That the "William Banks" came to Havre every eight or nine days, and remained there about sixty hours. That she had been running between the above-mentioned ports for over three years, and John Julian had a room at Havre as well as at Cardiff, which he occupied in the interval between the journeys.

Question of residence.

That under the Consular Marriages Act (12 and 13 Vict., cap. 68) the notice of marriage must contain a statement that each of the parties had dwelt within the Consular district during one calendar month at the least (section 2), and by section 6 a declaration was required that the parties had had their usual place of abode within the district.

Sir Julian Pauncefote was pleased to request that we would take this matter into our consideration, and favour your Lordship with our opinion, at our earliest convenience, as to whether, under the circumstances above mentioned, John Julian could properly make the declaration required, and, if not, whether, in the event of his making such declaration, the Consul was bound to solemnize the marriage, the validity of which would not thereby be affected (section 13), or would be justified in doing so, leaving the declarant to the risk of incurring the penalties prescribed by the Act in the case of false declarations.

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* Consul Bernal, No. 38, September 25, 1877.

In obedience to your Lordship's commands we have the honour to report—

Having a residence at Havre, he may make usual declaration, though personally absent during the month.

That if John Julian has had a *boná fide* residence at Havre for the period described, *i.e.*, three years, which continued up to the last, he may properly make the declaration required, although in pursuing his avocations as an engineer on board ship he has been personally and physically absent from Havre during the month.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.

In the absence of Dr. Deane from England we have thought it expedient, as the matter is urgent, to send in the Report from ourselves only.

J. H.
H. S. G.

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## Germany.

### No. 21.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received January* 5.)

My Lord,
*Temple, January* 3, 1877.

Production of documents by Her Majesty's Consuls in Civil Court in Germany.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 14th December ultimo, stating that he was directed by your Lordship to transmit to us papers as marked in the margin,* respecting the refusal of Her Majesty's Consul at Stettin to produce in original or copy a document required in evidence before a civil Court in Germany in the suit of Jamieson *v.* Burneand, and that as this case is one which may sometimes recur, your Lordship would be glad to be informed whether, in our opinion, it is the duty of Her Majesty's Consular officers abroad to produce, at the order of local Courts, copies or originals of declarations made before them in their Consular capacity.

In obedience to your Lordship's commands we have the honour to report—

Consuls should produce them on order of Court, where public interests are not concerned.

That, in our opinion, Her Majesty's Consular officers abroad should, on the order of local Courts, produce copies or originals of declarations made before them in their Consular capacity, where such declarations relate to the interests of individuals only, and the public interests are not concerned.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 22.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received October* 27.)

My Lord,
*Temple, October* 26, 1877.

Slave Trade Treaty of 1841. Extension to German Empire.

Port to which Germa vessel should be sent for adjudication.

As to other parties to Treaty of 1841 joining in new Declaration.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the correspondence relating to an application from the Government of Germany for the extension to the whole of the German Empire of the Treaty of 1841 between Great Britain, Austria, France, Prussia, and Russia, for the suppression of the Slave Trade, and also for the amendment of so much of the "Instructions to Cruisers," which formed an integral part of the Treaty in question, as related to the port to which a Prussian vessel, or a vessel belonging to the Hanse Towns captured under the Treaty, should be sent for adjudication.

That, in conformity with the provisions of the existing Treaties with Prussia and with the Hanse Towns of 1841 and 1837 respectively, a Prussian vessel detained by a British cruiser for an infraction of the Treaty of 1841 would be sent for adjudication

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* Count Münster, October 24; to Consul Blackwell, No. 2, November 25; Consul Blackwell, No. 25, December 1, 1876.

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to Stettin, a Hamburgh vessel to Cuxhaven, a Bremen vessel to Bremerhaven, and a Lubeck vessel to Travensmunde.

The German Government now desired that all vessels flying the German flag, which would necessarily include not only Prussian vessels, but also vessels belonging to Hamburgh, Bremen, Lubeck, Oldenburgh, and Mecklenburgh, which had been incorporated in the German Empire, should be brought to Cuxhaven for adjudication, and handed over to the jurisdiction of that German State to which the home port of the vessel belonged.

That Her Majesty's Government were willing to accede to the wishes of the German Government both as regards the extension of the Treaty to the German Empire, and as to the port to which a vessel flying the German flag should be sent for adjudication.

That Lord Tenterden was to state that the Treaty in question was never ratified by the Government of France, and therefore it subsisted only between the other parties thereto.

That the draft of an instrument for carrying out the proposed arrangement was transmitted therewith. It was in the form of a Declaration, the substance of which had been approved by the German Government, but that we should observe that neither Russia nor Austria were made parties to it, and that, indeed, so long as Great Britain and Germany were bound by the Treaty and this Declaration, no inconvenience would practically result from the non-adhesions of the other two Powers to the arrangement proposed. There was no reason, however, to believe that Russia or Austria would refuse their adhesion to it, and the question arose whether, having regard to the fact that the Declaration was virtually an Act of Accession to the Treaty of 1841, it would not be in conformity with precedent and usage, if not actually necessary, to invite the Governments of Russia and Austria to become parties thereto. On that point Lord Tenterden was to refer us to the observations of Calvo, vol. i., sec. 587, p. 711, and he was to request that we would favour your Lordship with our opinion thereon, and as to whether in other respects the draft Declaration was proper and sufficient in form and substance to carry out the objects in view.

In obedience to your Lordship's commands we have the honour to report—

That at the time of the ratification of the Treaty of December 1841 the North-German Confederation did not exist as a European Power, and therefore can only become a party to the rights and obligations imposed by that Treaty by—

Germany must either "accede" or new Treaty be signed.

(1.) An Act of Accession to that Treaty, or
(2.) By a new and separate Treaty to the same effect.

It is true that the parts of the North-German Confederation, viz., the Kingdom of Prussia and the Hanse Towns, were separately parties to Slave Treaties, but the fact remains that the North-German Confederation was, and is, a Power unknown to the Treaty of December 1841. That Power now wishes to become a party to the Treaty, and in our opinion the proper course to that end will be by a Declaration of "Accession."

The objection on the part of the German Government to the term "Accession," a term well known in International Law, is not quite intelligible.

Approving draft Declaration, &c.

We approve of the draft Declaration as drawn by Mr. March, but think it advisable to make some additions to the Preamble.

We think the Preamble should commence with a recital of the fact of the Treaty with the Hanse Towns, followed by the recital as now appears in the draft of the Treaty of 1841.

After these should be some such recital as the following:—

"Whereas the said Hanse Towns and the said Kingdom of Prussia are now parts of the North-German Confederation and are included in the Empire of Germany, and His Majesty the Emperor of Germany is desirous that the provisions of the said Treaty of the 20th December, 1841, which at present apply to Prussia (&c., as now follows in the draft Declaration).

Such words in the Preamble may perhaps meet the objection which is made to the term "Accession," and with these additions we approve of the Declaration of Accession as drafted.

Austria and Russia should be invited to join.

We agree with the remarks of Calvo, vol. i., p. 711, and are of opinion that it would be right and proper to invite the Governments of Russia and Austria to become parties to the proposed Declaration.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Greece.

## No. 23.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received April 20.*)

My Lord, *Temple, April* 20, 1877.

Ionian bondholders.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 12th ultimo, stating that he was directed by your Lordship to bring once more under our consideration the case of the Ionian bondholders, which had been the subject of diplomatic correspondence during the last two years and of numerous Reports from ourselves and our predecessors.

That Lord Tenterden was to transmit to us the inclosed printed memorandum, which had been prepared in the Foreign Office Department with a view to facilitate our labours to some extent by precising the questions which still remain at issue between the bondholders and the Greek Government, and by referring us to those portions of the voluminous correspondence which bore upon them.

That Lord Tenterden was also to transmit to us a volume containing laws relating to the currency.

That your Lordship desired to be favoured with our opinion on the questions which it was proposed at p. 11 of the memorandum should be submitted to us, as well as with any general observations which the present aspect of the case might suggest to us.

In obedience to your Lordship's commands we have the honour to report—

That the Greek Government has now given way upon the questions whether the place of payment should be Corfu or Athens, and the effect of the *ex post facto* law of 1865 regulating the currency and fixing the value of the pound sterling.

Entitled to payment in Corfu, in Ionian currency at rate as in Tariff of 1827.

As to the question now submitted to us through Lord Tenterden, we agree with the opinions of the Law Officers, the 11th May and the 4th August, 1875, and the 25th October, 1875, that the bondholders are entitled to be paid in Corfu the value of pounds sterling in Ionian currency; but having now had our attention specially called to the provisions of the Ionian law (Act No. 57 of the 15th March, 1827), we think that the payment should be of so much silver of that currency as will represent the amount due at the rate mentioned in the tariff contained in such law. We may add that in making our previous Reports upon this subject we were led to suppose, by statements in the papers laid before us, that a sovereign was part of the Ionian currency, but it now appears that this is not so.

Sovereign not Ionian currency.

We think that the bonds which make the loans payable in "pounds sterling" and those which contain the words "according to the value rate of the Ionian monetary tariff," stand upon the same footing, and should be treated in the same manner.

Interest.—Date from which payable.

With regard to the date from which the bondholders should be paid interest, we think that as the Greek Government first tendered the money at Athens, and in drachmas and leptas, the bondholders were justified in then refusing to accept payment. It seems to us that the bondholders are entitled to be paid interest on the total amount of their loans to the day when they refused to receive the silver dollars afterwards deposited in the Ionian Bank at Corfu (see memorandum, p. 11).

Tribunals may decide minor questions.

We see no difference now between the two Governments which requires the further interference of Her Majesty's Government on behalf of the bondholders, nor any matter which can properly require the action of the Tribunals, unless it be the right of the bondholders to interest on any amount due to them for the difference between that which they might have received in March 1875 and the sum which they may now be found entitled to. If there be any question upon this subject, we think it may properly be referred to the Ionian Tribunals.

Inaccuracy in bondholders' protest.

In expressing the above opinion, we now assume that it is not accurate to say, as stated in the bondholders' protest, and referred to on p 2 of the Foreign Office memorandum of the 30th January, 1877, "That by the Ionian Law No. 57 of the

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15th March, *1857* (*sic*), the national money of the Ionian States consisted of pounds sterling, crowns, half-crowns, and other silver British coin, and that, according to the positive dispositions of the Ionian Civil Code still in vigour, deposits and loans made in pounds sterling, shillings, and pence must be repaid in the same coin."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 24.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 23.)

My Lord,

*Temple, July* 21, 1877.

**Ionian bondholders.**

**Claim to be paid in pounds sterling.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd June ultimo, stating that he was directed by your Lordship to transmit to us the further correspondence which had taken place in the case of the "Ionian bondholders," and which was noted in the margin;* that on receipt of our Report of the 20th April last a copy of it, and of the printed Foreign Office memorandum therein referred to, were forwarded to Sir C. Sebright, Her Majesty's Consul in the Ionian Islands, whose attention was specially directed to the last paragraph of our Report, and that he was instructed to invite the bondholders to point out the enactments whereby, as they allege, deposits made in pounds sterling must be repaid in the same coin.

That in reply to that communication Sir C. Sebright had forwarded to your Lordship the following papers:—

1. Remarks on the monetary system of the late Ionian State.
2. Translation of a recent judgment of the Supreme Court of Appeal at Athens (the Areopagus) in the case of the Mont de Piété of Corfu against the Ionian Bank.
3. Report on the subject of the Ionian monetary law, and on the legal aspects of the claims of the Ionian bondholders.
4. Report on the claims of the Ionian bondholders (No. 47 of the 19th June).

That after a careful examination of the first and third documents above mentioned your Lordship had come to the conclusion that they entirely fail to establish the contention of the bondholders that the national money of the Ionian State consisted of pounds sterling as well as of the British silver coins mentioned in the currency laws of the islands. That in support of the statement of the bondholders that "by the positive dispositions of the Ionian Civil Code still in vigour deposits and loans made in pounds sterling, shillings, and pence must be repaid in the same coin," Sir C. Sebright set out in the third document above mentioned (No. 44 of the 12th June) articles 1767, 1768, 1776, and 1779 of the Ionian Civil Code (a copy of which was transmitted therewith),† and referred to other articles of the same law. That he relied also on the judgment of the Areopagus contained in the second document above mentioned (Inclosure 2 in No. 43 of the 5th June).

**Judgment of the Areopagus does not apply.**

That on this point it appeared to your Lordship that whatever might be the legal effect of the provisions of the Civil Code on monetary transactions between private individuals, they cannot apply to monetary transactions between private individuals and the Public Treasury, which were regulated by special legislation and therefore that the judgment of the Areopagus in the case of the Mont de Piété of Corfu against the Ionian Bank cannot affect the rights claimed by the Greek Government under the Ionian Act No. 57 of the 15th March, 1827.

That your Lordship, however, requested that we would take the case once more into consideration and inform your Lordship whether we concur in the above views or whether the papers now transmitted modify in any way the previous conclusions arrived at by us, and communicated in our Report of the 20th April last.

In obedience to your Lordship's commands we have the honour to report—

**Agree with Foreign Office that they have no claim.**

That we concur in the views on the rights of the Ionian bondholders expressed in the letter of Sir Julian Pauncefote's communicating your Lordship's directions to us.

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* Sir C. Sebright, No. 21, March 1; to Sir C. Sebright, No. 26, April 30; Sir C. Sebright, No. 41, May 17; to Sir C. Sebright, No. 2, May 30; Sir C. Sebright, No. 43, June 5; No. 44, June 12, 1877; Ionian Civil Code; Sir C. Sebright, No. 47, June 19, 1877.

† See also No. 47 of June 19.

And the papers transmitted to us with that letter modify in no way the previous conclusions arrived at by us and communicated in our Report of the 20th April last.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Hayti.

### No. 25.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 25.)

My Lord,

*Temple, July* 25, 1877.

**Mrs. Maunder's claim.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th June ultimo, stating that he was directed by your Lordship to transmit to us the inclosed despatches from Her Majesty's Minister in Hayti,* reporting the result of his further efforts to induce the Haytian Government to settle the claims of Mrs. Maunder, whose case had on previous occasions been laid before us with reference to her nationality. That for the exact particulars of the claim he was to refer us to the following documents:—

1. A printed statement of case (Inclosure 2 in Mr. Stuart's No. 15 of the 10th May).
2. List of losses and claims (Inclosure 8 in Mr. Stuart's No. 14 of the 7th May.)
3. Remarks and objections of Haytian Government (Inclosure 12 in ditto).
4. Rejoinder thereto of Mr. Stuart (Inclosure 15 in ditto).
5. Proposal of Haytian Government to refer matter to arbitration (Inclosure 16 in ditto).

That your Lordship doubted whether Mrs. Maunder's claim could be sustained to its full extent, but the case appeared to be one which, having regard to the nature of most of the items of claim, might properly be referred to arbitration as proposed by the Haytian Government. That your Lordship, however, having regard to the undisputed fact that the late Mr. Maunder advanced 22,000*l.* to the Company of Tortuga on the security of the timber illegally seized by General Salmane in 1868, was disposed to think that, as a condition of assenting to the arbitration, the Haytian Government should repay to Mrs. Maunder the above sum, with interest to date. That your Lordship would be glad to learn whether we concur in the above views, and if so, whether we are of opinion that the acceptance of the arbitration should be made subject to any other special conditions. That if it should be decided to refer the case to arbitration, Mrs. Maunder's consent would be of course necessary.

Sir Julian Pauncefote was further pleased to state that the previous papers relating to the case were returned therewith for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

That we have gone through the papers transmitted to us, and particularly the later correspondence between Mr. Stuart and the Haytian Government, and the claims put forward on behalf of Mrs. Maunder cannot, in our opinion, be supported by Her Majesty's Government to their full extent.

**Entitled to partial support.**

At the same time, Mrs. Maunder is, we think, fully entitled to the support of Her Majesty's Government to a certain extent.

Her advisers now say that she would be satisfied with the payment of the amount advanced by Mr. Maunder to the Company of Tortuga on the security illegally seized in 1868, and a reference to arbitration of the rest of her claim.

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* Major Stuart, Nos. 14 and 15.

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**Arbitration may be accepted on payment of 22,000*l*. and interest.**

We are of opinion that your Lordship may therefore accept the offer of the arbitration if Mrs. Maunder consents to that course. And as a condition of assent to the arbitration, your Lordship may, in our opinion, properly insist upon the immediate payment of 22,000*l*., with interest to the date of payment.

**No Frenchman should arbitrate.**

French interests have been so much mixed up in the transactions connected with the Maunder claim, that it may be desirable that no Frenchman be concerned in the reference.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Italy.

## No. 26.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby, July* 30, 1877.

[Contraband of War, &c.]

[See Turkey, No. 96.]

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## No. 27.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received October* 27.)

My Lord, *Temple, October* 27, 1877.

**Arrests of British subjects in Italy.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 22nd instant, stating that the arrest of British subjects in Italy by the Carabinieri or armed police, on account of their being unprovided with passports or sufficient evidence of identity to satisfy the police, had given rise to a correspondence with the Italian Government, and to the issue of a notification in the "London Gazette" containing a warning to British subjects.

**Warning published in "London Gazette."**

That the Italian Government had taken exception to the publication of that notification, and your Lordship had caused a draft to be prepared of a letter to the Italian Ambassador in London justifying its issue, and recapitulating the various causes of arrest which led to it.

That Lord Tenterden was to transmit to us a selection of the correspondence more immediately relating to the issue of the notification,* together with some printed correspondence and a memorandum† bearing upon the general question of complaints of outrages on British subjects abroad and on foreigners in the British dominions, and that he was to request that we would take those papers into our consideration, together with the accompanying draft, and favour your Lordship with our opinion whether the same was right and proper to be sent, more especially with reference to that part of it which dealt with the proceedings of the Sicilian Courts in the case of Messrs. Rainford and Monckton.

That your Lordship would be glad to be favoured with our Report at our earliest convenience, as the Italian Ambassador is pressing for a reply to the last communication of his Government.

In obedience to your Lordship's commands we have the honour to report—

**Concur in letter to Italian Ambassador.**

That we have carefully read and considered the draft of the proposed letter to the Italian Ambassador, and we cannot suggest any alteration or amendment. That part of it which especially deals with the proceedings of the Sicilian Courts in the cases of Messrs. Rainford and Monckton, is in our opinion perfectly proper, and we entirely concur in the spirit and in the terms in which that part of the proposed letter is expressed.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Printed Papers (Confidential 3280).

† Memorandum by Mr. Hertslet, February 8, 1877 (Confidential 3279).

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### Annex to No. 27.

*The Earl of Derby to Count Menabrea.*

M. l'Ambassadeur, *Foreign Office, October* 30, 1877.

**Passports in Italy.**

I have the honour to acknowledge the receipt of your Excellency's communications of the 12th and 19th ultimo, with their various inclosures, referring to the cases of Messrs. Rainford and Monckton and the Rev. W. Giles, and the question of the notice regarding passports which Her Majesty's Government lately felt themselves under the necessity of publishing in the "London Gazette."

**Notice in "London Gazette."**

I have carefully considered the papers which your Excellency has done me the honour to transmit to me, and I now beg to invite your Excellency's attention to the following remarks:—

**Arrests of British subjects.**

Her Majesty's Government desire to remove the misapprehension which appears to exist as to the grounds on which they have issued the public notification referred to, and for this purpose it is important that the attention of the Italian Government should be recalled to the numerous cases which have occurred since the early part of the year 1875, in which unoffending British subjects have suffered ill-treatment at the hands of the Italian police in consequence of their not having carried passports, relying on the announcement of the Italian Government that this formality might thenceforth be dispensed with.

The details of these occurrences were fully discussed at the time; but I think it necessary to recapitulate them here as briefly as the circumstances permit, stating the facts from the narrative of the sufferers themselves, all of them persons of undoubted respectability, and from reliable information in the possession of this Department.

**Case of Messrs. Tourrier and O'Neill.**

The first of these cases is that of Mr. T. J. Tourrier and Mr. J. G. O'Neill, the former a teacher of languages, and the second gentleman being at the time of his arrest engaged in studying painting in Florence.

It appears from their statement that on the 25th March, 1875, they left Florence on foot, intending to walk to Ravenna, for their pleasure.*

Between 4 and 5 o'clock on the afternoon of the 27th they arrived at Coccalia, close to Forli, on the road to Ravenna, and entered a café for refreshment.

They had scarcely entered when a Brigadier and two privates of the Reali Carabinieri also came in, and immediately demanded their passports.

They answered that being English no passports were required. On their insisting, however, Mr. Tourrier handed them his card and a receipt for the Ricchezza Mobile, dated the 25th March, 1875, with the Florence stamp.

The Brigadier pronounced these proofs of identity of no value. The two gentlemen were then searched, and their purses and papers taken from them.

They protested, declaring that, after the account they had given of themselves and the contents of their pockets, all evidencing that they were Englishmen on a pedestrian tour, there could be no reason for detaining them. In reply, they were told they must accompany the carabinieri to the guard-house. Hence, after a second examination, they were conveyed to Ravenna, previous to which they were locked up for the night in a cell, their beds being composed of planks, with a blanket to each.

They had no food except what they could purchase with a few pence left in their pockets by chance.

On Sunday morning, the 28th, Messrs. Tourrier and O'Neill were peremptorily ordered to get up and go with the carabinieri.

They were then manacled, the right wrist of one being attached to the left of the

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* Sir A. Paget, No. 82, March 31, 1875.

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other, and they were thus marched along the high road like two malefactors, and being ordered to walk more slowly with a threat of a bullet through the head if not obedient.

Arrived at Ravenna, Messrs. Tourrier and O'Neill were taken to the prison of the Questura, followed by the mob. There, after a second minute search and interrogation, and other formalities, and having been deprived of the remaining articles in their possession, they were eventually permitted to see the Questore, who, having questioned them, immediately ordered their liberation, furnishing them with a safe-conduct against further molestation, and stating that the Brigadier at Coccalia should, in the first instance, have been satisfied with the proofs given him.

This case having been represented by Sir A. Paget to Signor Visconti Venosta, his Excellency, on his own behalf and on that of the Minister of the Interior, expressed regret at the occurrence; and, whilst it was maintained that the circumstances of the case and the exceptionally disturbed state of the district justified to a certain extent the arrest and detention of Messrs. Tourrier and O'Neill, it was admitted that the carabinieri had acted with too much rigour, and orders were given that they should receive a severe admonition.

M. Visconti Venosta at the same time expressed the hope that the instructions then given by the Minister of the Interior would prevent the recurrence of any such cases.

**Case of Rev. D. Kay.**

Whilst Sir A. Paget was still in communication with the Italian Government on the above matter,* a further case of outrage by carabinieri was brought to his notice, the object of their violence in this instance being the Rev. David Kay, a Minister of the Church of Scotland, who, at the time of his arrest, was, it appears, returning from Carrara, whither he had gone to purchase a piece of marble for a monument to his late wife.

I take the following facts from his own statement placed in the hands of the British Vice-Consul at Leghorn:—

On the 9th May of the same year (1875), Mr. Kay was returning from the Marina to Carrara in a public conveyance, when, on passing through the village of Avenza, about three miles from Carrara, the driver asked leave to stop for a few minutes, as he hoped to get some more passengers. Mr. Kay thereupon alighted from the conveyance, and walked up and down the street, keeping it in view. He observed two carabinieri going in and out of a café close by, but they apparently took no notice of him, though he had passed them two or three times, till he was about to re-enter the conveyance, when the chief carabiniere accosted him with inquiries whether he had a passport, what was his name, residence, occupation, and nationality, &c.

These questions were all answered, Mr. Kay explaining that he had no passport.

The chief then said it was a very serious thing Mr. Kay travelling there without a passport, and that he was liable to be imprisoned; that the law was very strict; he must produce his passport or "arrange the matter." Mr. Kay explained that he understood Englishmen were not required to produce passports in Italy, instancing his previous travels through and about Italy without his ever having been asked for such a document. The carabiniere replied that that might be, but that "here" it was different, and Mr. Kay must produce a passport or go to prison; it was "a very serious matter indeed," and that he must "arrange" it.

Mr. Kay naturally conceived the idea that an attempt was being made to impose upon him, and he replied, "I have given my name twice over; will you be good enough to give me your name, when we may perhaps manage to arrange it?" Upon this, Mr. Kay affirms, the chief carabiniere sprang upon him and grappled him by the throat, whilst the other seized both his arms from behind, held and shook him violently.

In spite of Mr. Kay's remonstrances against the unwarrantable violence used towards him, he was dragged through the assembled crowd to the Police Office, and certain articles taken from him. Here Mr. Kay produced some of his hotel bills; tenders from well-known sculptors at Carrara for statuary, and, it is believed, certain papers in English. Then, in answer to Mr. Kay's demand as to what he had done, and what was the meaning of the violence used towards him, he was answered by invectives against the English generally, and a declaration that he, the chief carabiniere, would teach them that they could not go where they pleased without passports, and all attempts on Mr. Kay's part to obtain his release were met with insulting behaviour on that officer's part, and the assertion that he would "teach the English;"

and the same behaviour followed Mr. Kay's endeavours to get leave to telegraph to the British Consul at Leghorn, or to go by carriage, at his own expense, accompanied by carabinieri to Carrara for the purpose of being identified.

The endeavours of a fellow-traveller in the same conveyance with Mr. Kay, and of the driver, the former of whom was aware of his circumstances, proved fruitless to obtain his release, and he was also refused leave to communicate with the delegate in Carrara; being also unable to obtain the attendance of a medical man, Mr. Kay being out of health, he was shut up in a dirty cell for the night, with a hard board to lie on, under further circumstances of insult which I need not detail here.

Shortly before 2 the following morning the chief carabiniere entered Mr. Kay's cell in a very different frame of mind, apparently bent upon conciliation, begging Mr. Kay "not to think anything about this affair;" that it was "a matter of form," and would be "easily settled." He, at the same time, gave Mr. Kay to understand that there had been a suspicion, though not on his part, that he was a Prussian or Russian, and interrogated him on this and other matters, Mr. Kay indignantly repudiating the idea that such an outrage was to be so easily "arranged."

Between 4 and 5 in the morning Mr. Kay became so unwell that he succeeded, after vainly endeavouring to obtain it earlier, in securing the attendance of a doctor between 8 and 9 o'clock, who said that Mr. Kay must be removed immediately. Two hours later he was removed from the cell, and driven to Carrara in the custody of two carabinieri, the chief and another, and marched up to prison. Later in the day the delegate made his appearance, when Mr. Kay asked what was the accusation against him. He was answered, "You are charged with being an Englishman travelling in Italy without a passport; that is the charge, and we will soon settle it if you can refer me to any respectable person known to me." The charge was repeated on Mr. Kay's request, and, having given certain references to persons resident in Carrara, and after some further questions and answers in the presence of an interpreter, Mr. Kay was released at 3 o'clock in the afternoon, after an imprisonment of twenty hours, and without, as he affirms, any expression of regret on the delegate's part.

Sir A. Paget,* however, in his report of his personal communications with M. Visconti Venosta on this subject, states that his Excellency was evidently deeply concerned at this new occurrence, and had said that he had told the Minister of the Interior that unless he could devise some really effectual means for preventing the recurrence of such cases, it would be better that foreign Governments should be informed that the passport system was re-established in Italy.

**Case of Messrs. Allies.**

Within one month of Mr. Kay's arrest, the arrest of the Rev. W. B. Allies,† a Roman Catholic priest, and of his brother, Mr. Edward H. Allies, a surveyor in the employment of the Duke of Norfolk, took place under the following circumstances, and I may here explain that the facts which I would now place before your Excellency are corroborated by a most careful and exhaustive inquiry conducted by Mr. Colnaghi, Her Majesty's Consul at Florence, who bears testimony to the ready assistance rendered him by the Italian authorities at Aosta in his endeavours to elicit the truth.

The Messrs. Allies, who where on a walking tour together in Italy, were, in the afternoon of the 8th June, 1875, on the Italian frontier, about half-way on the road to St. Rhemy, when, having turned off the road a few paces and seated themselves on the grass for rest, they saw two carabinieri (Stefano Belmondo, Brigadier, and another) coming towards them. Although the place was quite open where these gentlemen were seated, the Brigadier and his colleague appeared to consider the circumstance suspicious, and advanced towards Messrs. Allies, who, startled by the unexpected address of the carabinieri, either did not reply for the moment or their answers were unheard, and after a subsequent interchange of words, in the course of which the Rev. Mr. Allies admits having called the Brigadier "un insolent," the Brigadier appeared to lose his temper, and proceeded to handcuff the Rev. Mr. Allies whilst on the ground. Mr. E. H. Allies meanwhile remained by his brother perfectly quiet, merely saying, in English, "Do not resist."

The Brigadier then asked for the Rev. Mr. Allies' papers. He was shown the Bishop's certificate, which he was, however, unable to understand, and his knapsack was ransacked, he having explained that he had no passport. Mr. E. H. Allies was

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* Sir A. Paget, No. 149, May 30, 1875.

* Sir A. Paget, No. 157, June 3, 1875.

† Sir A. Paget, No. 172, June 13; No. 185, June 18; Nos. 195 and 196, June 29; No. 228, August 3, 1875. (Taken especially from No. 228, containing Sir A. Paget's representation to M. Visconti Venosta, founded on Mr. Colnaghi's report.)

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told that he could go free, though he also had no passport; but he refused to leave his brother. The Rev. Mr. Allies was then marched of in custody of the carabinieri to Etroubles, about 6 miles distant, at which place the two brothers were placed in a filthy cell, the two being the next morning handcuffed together, conveyed to Aosta, and thrown into prison, when, by the exertions of private friends, they were, however, released on bail.

The charge of the Brigadier against the Rev. Mr. Allies appears to have been that of insolence, and of resisting him in the execution of his duty; the Brigadier affirming that Mr. Allies applied the term "charogne" to him, as well as that of "insolent," though, whilst the latter was admitted, the former was unequivocally denied by Mr. Allies.

This was followed by the trial of the Rev. Mr. Allies, on the 15th June, on the above charge, and the infliction upon him of a fine of 100 lire.

With the remonstrance by Her Majesty's Government to the Italian Government, through Her Majesty's Ambassador at Rome, on the subject, your Excellency is no doubt acquainted.

It appears from the correspondence in this case that the occurrence was the cause of much regret to the authorities at Aosta.

**Case of Messrs. Rainford and Monckton.**

I now come to the case of Messrs. Rainford and Monckton, which is, comparatively, so recent that I need not enter much into details.*

Mr. P. E. Rainford is a resident proprietor of Taormina, where he had lived many years, and, it need hardly be said, was perfectly well known to all the authorities. Mr. Claud Monckton was his friend, and a guest in his house. On the evening of Sunday, the 17th September, 1876, they were walking, in company, through the Fair of Madonna della Rocca, held a short distance above Taormina, when a Vice-Brigadier of carabinieri approached, and, in an insolent tone, asked Mr. Rainford who he was, much to the surprise of the latter, as, owing to previous communications between them in the matter of a robbery which had occurred a short time before, they were perfectly well known to each other. Mr. Rainford replied that he was an English gentleman. "Where do you come from?" the Vice-Brigadier asked.—"From England." "Where were you born?"—"In London." "What are you doing here—making a tour?" Mr. Rainford, in surprise, answered, "Why I have been living here for many years," and, in answer to further inquiries, replied that he lived in the house with the flagstaff, near the carriage road. "What are you doing here?" asked the carabiniere, in a most offensive manner. Mr. Rainford then perceived that the Vice-Brigadier sought to pick a quarrel if possible, so he answered, quietly, "I am seing the festa, and our servants and workmen are all here." Other questions about Mr. Rainford's family were also answered equally patiently. He then went away, when Mr. Rainford thought the affair was at an end; but he speedily returned, demanding to see Mr. Rainford's papers and passport. Mr. Rainford explained that he had not his passport with him, but that he had one at his house, though not obliged to be provided with it; and that every one present, the carabinieri included, knew him perfectly well. The Vice-Brigadier got more and more angry, and sent off for a carabiniere, who, however, gave his testimony to Mr. Rainford's identity. Mr. Rainford asked what more the officer wanted, when he rejoined, "Silence, or I will put you in irons." Mr. Rainford replied "that he dared not," and asked "what he had done." The Vice-Brigadier, turning to the carabiniere, ordered him to put the irons on Mr. Rainford, when the thumb-screws and chain were produced, and he then ordered that gentleman to "put his hands together." Mr. Rainford absolutely refused to submit to this indignity; and eventually the Vice-Brigadier said, "You are under arrest, and must come with me," when Mr. Rainford, unresisting, was marched off amidst a crowd of astonished spectators.

Some coversation then ensued about Mr. Monckton's papers, which the Vice-Brigadier was told he could see, with Mr. Rainford's, at the house of the latter; but he answered, "No matter, he is under arrest," and they were both marched off to the prison, after further insulting conduct on the part of the Vice-Brigadier, who refused to listen to any explanations.

The two gentlemen were then placed in a filthy cell, the loathsome state of which, as described by Mr. Rainford, I cannot detail to your Excellency, and where, as he states, "the bed consisted of one small sack of fœtid rotten straw and two coverlets reeking with filth and vermin." Herein they were locked, with further insult, and light or food being refused them for the night, though this refusal was somewhat relaxed on the earnest intercession of one of the citizens of Taormina. In the meantime the Sindaco of Taormina arrived, but having been closeted with the Vice-Brigadier some time, went away, without seeing the prisoners, saying he could do nothing. The Pretore then arrived, but in spite of their remonstrances, he also left, telling them they must content themselves till the morning, and that he could do nothing.

It is not necessary to quote the various insults and imprecations indulged in by the Vice-Brigadier, as detailed by Mr. Rainford, nor his own physical sufferings in consequence of his night's confinement in his filthy dungeon, which was shared by Mr. Monckton.

Suffice it to add that on the following morning they were liberated, without any examination or any accusation being brought against them, and the Syndic, the Pretore, and the Vice-Brigadier were all subjected to reproof and punishment.

The cause of the carabiniere's conduct on this occasion is traced by Mr. Rainford to an incident which occurred in the preceding year, when he called this officer to account, with others, for scaling his garden wall, and they affirmed that they were carabinieri, and could enter where they liked without his permission.

**Case of Rev. W. Giles.**

I must now refer to the case of the Rev. W. Giles, the Vice-Rector of the establishment styled "the English College at Rome," which occurred in the midst of the discussions arising out of the arrest of Messrs. Rainford and Monckton.

It appears that the Rev. Mr. Giles left Rome by train for Naples on the 4th July last. Leaving the train at Rocca Secca, he started in a public conveyance for Isola del Lire, where he found accommodation at an inn in that place. After visiting the waterfalls in the neighbourhood, he returned to the inn, supped, and retired to bed about 10 o'clock. About half-an-hour after midnight Mr. Giles was awakened by a loud knocking at his door. On opening it two carabinieri entered, who demanded to know who he was and all about him.

Thereupon Mr. Giles produced his Foreign Office passport dated in 1870, which the Brigadier, notwithstanding Mr. Giles' explanations to the contrary, contended was not *in regola* on account of the date, stating that he knew his business better than Mr. Giles did.

Mr. Giles then exhibited his "celebret" from the Cardinal Vicar of Rome, and on his proceeding to translate its purport, the Brigadier caught at the word "Cardinal" and maintained that Mr. Giles had stated himself to be a Cardinal, which he accordingly proceeded to insert in his report.

Mr. Giles was then desired to dress, when he was taken to the quarters of the carabinieri, his knapsack and his person being searched, and his money and other articles taken from him.

He was then locked up in a small and dirty cell, with no article of furniture but a wooden table, and was obliged to pass the night sitting upon the steps of his cell.

On the following afternoon Mr. Giles was taken to Sora in custody of two armed gendarmes, and was there delivered over to the gaoler of that place, by whom he was civilly treated, and where he was subsequently examined by the Delegato di Pubblica Sicurezza and another individual, who admitted that the passport was quite *en règle*.

Mr. Giles then returned to his prison, and shortly after was released.

The Delegato, it appears, had treated Mr. Giles with courtesy, though he maintained that the Brigadier of Isola was justified in what he had done.

I have not included in the above record the case of Mr. Mercer, which was the subject of a voluminous correspondence between the two Governments, as it did not arise out of any question of identity or of the carriage of passports; but I would refer to it as illustrating to what unnecessary violence and cruelty, especially in the use of thumbscrews, respectable travellers have been exposed at the hands of the Italian police.

Your Excellency will readily perceive from a perusal of the foregoing pages that Her Majesty's Government, when they issued the notification in the "Gazette" relating to passports, had not in view only the case of the Rev. Mr. Giles, as M. Melegari appears to infer in his despatch of the 28th August last, which accompanies your letter of the 12th September, but that this precautionary measure was forced upon them by the numerous acts of violence committed on British travellers since the abandonment of the passport system, and which are due to the inferior officers of police in Italy being permitted to arrest private persons whose identity is not at once established to their satisfaction.

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* Consul Dennis, No. 25, September 22; Mr. Malet, No. 341, September 25, 1876.

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As to judicial proceedings forming subject of diplomatic discussion.

M. Melegari, in his further despatch of the 28th August, also inclosed in your Excellency's note of the 12th ultimo, complains of Sir A. Paget's protest against the proceedings at the trial of Mr. Rainford, and contends that it is opposed to the principles of public law, as accepted both by England and Italy, that the proceedings of the judicial power should form the subject of diplomatic discussion.

On this point I would observe that, in the present case, Mr. Rainford complains of illegal treatment at the hands of a public officer of the Italian Government, who have punished the officer for his misconduct, but disclaim all responsibility in the matter, on the ground that the remedy is to be sought for in the Courts of Law. In the meanwhile, the local authorities have anticipated any such action on the part of Mr. Rainford by instituting proceedings against him, founded on charges brought by the offending officer, which raise the whole question, and put in issue all the facts of the case. It therefore becomes the duty of Her Majesty's Government to watch those proceedings in the interest of justice, and, although the Italian Government may have no power to interfere with the action of the local Tribunals, Her Majesty's Government cannot admit that this is a valid reason why they should abstain from expressing their sense of the proceedings of those Tribunals under the circumstances of such a case as that of Mr. Rainford. Nor can Her Majesty's Government see any reasonable ground for withholding their remonstrance when a public officer of the Italian Government, in his official capacity, uses language before those Tribunals in direct conflict with the statements made by the Italian Government to that of Her Majesty.

Count Tornielli, in his note to Sir A. Paget of the 10th December, 1876,* stated—

"The Minister of the Interior, attributing the arrest made by the Vice-Brigadier Resconi to an excess of zeal not sufficiently justified by the circumstances, and which was the cause of so much disturbance, gave orders that the Vice-Brigadier should be subjected to a suitable disciplinary punishment."

The Deputy Procuratore del Rè, acting as Public Prosecutor, stated to the Tribunal, as reported by Consul Dennis† (and the accuracy of the Report is not impugned), that "the Vice-Brigadier Resconi had been subjected to arrest for his too lenient treatment of these offenders; for having supplied them with mattrasses, and for having allowed them to have supper brought to them, and to speak to their friends while in prison. It was for granting them these indulgences that Luigi Resconi had been punished, and not for 'any excess of zeal' he had displayed in the arrest, as had erroneously been maintained by the defence."

The Deputy Procuratore also "denied that the Sindaco had been dismissed for his refusal or neglect to liberate Messrs. Rainford and Monckton on the evening of their arrest, which was quite beyond his power to effect. He had been dismissed solely for political reasons, entirely apart from the case before the Court."

Whereas Count Tornielli stated: "With reference to the Sindaco, as it resulted from the inquiry that he failed in his duty as an official of public security in not having made use of the power accorded to him by law of putting an end to the arrest, the Minister of the Interior has decreed his destitution from his office, and this notwithstanding his resignation, which he had already presented."

I regret to say that the impression created by these discrepancies has not been removed by the explanation given in M. Melegari's despatch of the 14th September, contained in your Excellency's memorandum of the 19th of that month.

M. Melegari declines to reply to the observations which have been addressed to him by Her Majesty's Ambassador on the subject of this trial, and does not attempt to question the allegations on which they are founded. I have, therefore, nothing to add to the expression of the views of Her Majesty's Government contained in my letter to your Excellency of the 27th August, in reply to your note of the 15th of that month; and I can only trust that all the facts of this unfortunate case will meet with the fullest publicity and investigation in the proceedings instituted before the Supreme Court of Appeal; and that Mr. Rainford will there obtain the measure of justice to which Her Majesty's Government believe he is entitled.

I have the honour to return to your Excellency the Report by Mr. Consul Dennis to Sir A. Paget, of the proceedings at the Messina trial, which accompanied the papers which your Excellency has done me the honour to communicate to me, and which has been received by M. Melegari from Her Majesty's Ambassador for his perusal.

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* Sir A. Paget, No. 486, December 15, 1876.

† Consul Dennis, No. 2, Political, August 25, 1877.

Her Majesty's Government feel convinced that the mere statement of these cases is sufficient to show that the notification in the "Gazette" was not merely justified, but peremptorily called for as a warning to British subjects travelling or residing in Italy.

It is scarcely necessary for me to add that the notification in question was not issued in any unfriendly spirit towards the Italian Government, but in order to obviate complaints and grievances which both Governments cannot fail to have viewed with equal regret.

I am, &c.
(Signed) DERBY.

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### No. 28.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby, December* 12, 1877.

[Italian Blockade-runners.]

[See Turkey, No. 111.]

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## Japan.

### No. 29.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received July* 11.)

My Lord, *Temple, July* 10, 1877.

Case of Elizabeth Searfield.

Crime committed by British subject on board American ship in Japanese waters.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 25th ultimo, stating that he was to transmit a despatch, and its inclosures, from Her Majesty's Minister in Japan, reporting the case of Elizabeth Searfield, a British subject who had been tried in Her Majesty's Consular Court at Kanagawa on a charge of concealment of birth when employed on board an American ship, the "Annie R. Weston," as servant to the wife of the master of that vessel.

That Sir H. Parkes also asked for instructions as to the course which should be pursued if a British subject, serving on board a foreign ship as one of the crew, or being on board in any other capacity, were to commit a crime on board such ship, either on the high seas or in a port in Japan, and were to escape to the shore, where he could only be properly arrested under the warrant of the British Consul.

Trial by British Consular Court at Kanagawa.

That in the case of Elizabeth Searfield the offence was committed by a British subject on board an American ship in the territorial waters of Japan, and that it seemed clear that it was within the jurisdiction of the British Consular Court in Japan, and that it was probably within the jurisdiction of the Courts of the United States if the offender had been brought to justice in America.

But the United States' Consular Courts in Japan had no jurisdiction to try any but American subjects.

The theory that an offender, when he formed part of the crew of an American ship, must be dealt with as an American subject under the Treaty, according to the opinions of the Law Officers of the Crown printed at pp. 8 and 13 of the correspondence transmitted therewith, could only at most apply to offences connected with the discipline or internal management of the ship as to which the foreign seamen, by signing the articles, might be considered to have submitted to the jurisdiction of the flag.

That in the case of Elizabeth Searfield, therefore, it appeared to your Lordship that the United States' Consular Court could not possibly exercise jurisdiction, and that General Van Buren very properly refrained from doing so.

That before expressing those views to Her Majesty's Representatives at Yedo and

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at Washington, your Lordship would be glad to be informed whether we concurred in them.

That as regards Sir H. Parkes' inquiry whether Her Majesty's Consuls in China and Japan should claim jurisdiction over offences committed by British seamen belonging to foreign ships within the territorial waters of those countries, your Lordship presumed that it would be proper to state that such jurisdiction should be claimed in all cases other than offences against the discipline of the foreign ship to which the British seamen belonged; but, in case we should not concur in that view, your Lordship would be glad to be favoured with our opinion as to what other instructions should be issued on the subject.

In obedience to your Lordship's commands we have the honour to report—

**Within jurisdiction of British Consular Court in Japan.**

That we are of opinion that the case of Elizabeth Searfield was within the jurisdiction of the British Consular Court in Japan.

**Except offences against discipline of ship.**

And we are also of opinion that Her Majesty's Consuls in China and Japan may claim jurisdiction over offences committed by British seamen belonging to foreign (private or merchant) ships within the territorial waters of those countries, except in those cases where the offence is against the discipline of the ship to which the British seamen may belong.

**This not applicable to public ships.**

Different considerations may apply to those cases where the ship on board of which the offence has been committed is a public ship, and we have therefore confined ourselves to the cases of private or merchant ships.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 30.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received September* 19.)

My Lord,

*Temple, September* , 1877.

**Publication of newspapers in Japan. (Mr. Black's case.)**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd August ultimo, stating that, with reference to our Reports of the 2nd May and 5th July, 1876, on the subject of Mr. Black's claim on account of the suppression of his newspaper, which was printed in the Japanese language, Sir Julian Pauncefote was directed by your Lordship to transmit to us therewith two despatches from Her Majesty's Minister at Yedo,* asking for instructions as to the course he should pursue in case the Japanese Government should claim a right to interfere with the foreign press in Japan; and Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to the instructions that should be addressed to Sir Harry Parkes in the matter.

That the previous papers on that subject were annexed for convenience of reference, together with a copy of the Treaty between Great Britain and Japan of the 26th August, 1858.

In obedience to your Lordship's commands we have the honour to report—

**Interference with foreign press.**

That, in answer to the general question what course Her Majesty's Minister at Yedo should pursue in case the Japanese Government should claim a right to interfere with the foreign press in Japan, we cannot show other or better rules for his guidance than those which are to be found in the reply of Mr. Fish to Mr. Bingham.

And in reference to the particular questions put by Sir Harry Parkes, we are of opinion—

**Japan may prohibit publication.**

1. That the Japanese Government is not by Treaty or long usage and forbearance disentitled to make a law prohibiting the publication by British subjects of newspapers which may have been long and uninterruptedly published, and the Japanese Government may make the publication of such newspapers subject to any restrictions which it may think right to impose.

The Japanese Government has the same power over newspapers, whether already established or hereafter started.

2. That the Japanese Government having prohibited and thus made unlawful the publication of a newspaper, may prohibit its own subjects, either by a general law or by a special order in any particular case, from serving British subjects in the printing of such newspaper or in the distributing it among Japanese or foreigners.

**But may not prejudice rights of British subjects under Article XXIII of Treaty.**

In the printing and publishing of newspapers in Japan, and in the distribution of newspapers, and the employment of Japanese subjects in relation to such newspapers, British subjects are entitled to the benefit of Article XXIII of the Treaty, and Her Majesty's Minister at Yedo may properly be instructed to see that no law on the subject in question be made which shall prejudice the rights of British subjects under that Article of the Treaty.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Nos. 86 and 96.

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## No. 31.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received October* 15.)

My Lord,

*Temple, October* 15, 1877.

**Robert Miers, resident in Bonin Islands.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th September ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister at Yedo (No. 98), to the concluding paragraph of which he was to invite our attention, relative to a declaration made by one Robert Miers, a British subject, resident in the Bonin Islands (which have recently passed under the sovereignty of Japan), renouncing British protection, and adopting Japanese nationality.

That it appeared from Sir Harry Parkes' despatch that there was no law in force at present in Japan under which foreigners might become naturalized; and, having regard to that fact and to the provisions of section 6 of the Naturalization Act, 1870, Sir Julian Pauncefote was to request us to favour your Lordship with our opinion as to whether it was competent to Robert Miers to throw off his allegiance to the British Crown by declaring himself a Japanese subject, or whether he must be deemed a British subject until he had become naturalized in a foreign State in pursuance of a local law empowering him so to do.

In obedience to your Lordship's commands we have the honour to report—

**Cannot divest himself of British nationality, there being no naturalization law in Japan.**

That Robert Miers cannot avail himself of the provisions of the Naturalization Act, 1870, until he has first become naturalized in some foreign State. As there is no legal mode in Japan by which a British subject can become a Japanese subject, it is not competent for a British subject to divest himself of his British nationality and clothe himself by a mere personal declaration with a Japanese nationality.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Madagascar.

## No. 32.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May* 25.)

My Lord,

*Temple, May* 24, 1877.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us

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Consular jurisdiction in Madagascar.

the papers, noted in the margin,* relative to a question which had arisen respecting the exercise of Consular jurisdiction in Madagascar as regarded claims to which the subjects of Great Britain and France were parties.

That Mr. Consul Pakenham, in his despatch No. 3, Commercial, of the 24th January last, desired to be informed whether, under the Order in Council of the 4th February, 1869, he had power to entertain civil suits brought by foreigners against British subjects.

That Mr. Lister was to inclose copies of the Treaty between Great Britain and Madagascar of the 27th June, 1865, and of Her Majesty's Order in Council above referred to, regulating the exercise of civil and criminal jurisdiction by Her Majesty's Consul in that island.

That having regard to the terms of Article XI of the Treaty, and section 6 of the Order in Council, your Lordship proposed to instruct Her Majesty's Consul that he had no power to entertain suits of a civil nature arising between British subjects and the subjects of other foreign nations, but, before doing so, your Lordship desired to be informed whether we concurred in that view.

In obedience to your Lordship's commands we have the honour to report—

Consul has no power in civil suits between British subjects and foreigners.

That we concur in your Lordship's view, and that Mr. Consul Pakenham may properly be instructed that he has no power in suits of a civil nature arising between British subjects and the subjects of other foreign nations.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Miscellaneous.

### No. 33.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 21.)

My Lord, *Temple, June* 20, 1877.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was directed by your Lordship to acquaint us that the following question had been recently put in the House of Commons to the Parliamentary Under-Secretary of State for Foreign Affairs, viz.:—

Papers presented to Parliament of later date than that of their presentation.

"With reference to the Reports of Her Majesty's Secretaries of Embassy and Legation on the Manufactures, Commerce, &c., of the countries in which they reside (No. IV), how a Report from Mr. Hill, dated Munich, the 23rd August, 1876, and a paper from Mr. Walter Baring, dated Therapia, the 9th September, 1876, came to be included among the Reports presented by command to Parliament on the 9th day of August, 1876, and whether he considers that the publisher of papers thus inserted among papers presented to Parliament would, in case of need, be entitled to the benefit of the provisions of the Act 3 and 4 Vict., cap. 9, for the protection of persons concerned in the publication of papers by or under the authority of either House of Parliament."

As to protection of publisher under 3 & 4 Vict., cap. 9.

Practice founded on ground of public convenience.

That, as regards the first portion of that question, it was sufficient there to state that the practice followed in that Office of occasionally including in a Parliamentary Paper Reports received from Her Majesty's Secretaries of Legation and Consuls subsequent to the prorogation of Parliament was one that was founded upon grounds of public convenience.

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* Consul Pakenham, No. 3, Commercial, January 15; Lord Lyons, No. 230, Commercial, June 12; to Consul Pakenham, No. 1, Commercial, 1874; Consul Pakenham, No. 2, Commercial, January 12; No. 3, Commercial, January 24; Lord Lyons, No. 193, Commercial, May 9, 1877.

That, with regard to the second portion of the question, it was to be observed that the Commercial Reports of Her Majesty's Secretaries and Consuls were printed and published "by command of Her Majesty."

Act does not refer to "command" papers.

That the privilege and protection conferred by the Act referred to applied, however, only to such of the Reports, Papers, Votes, or Proceedings of either House of Parliament "as such House of Parliament may deem fit or necessary to be published;" and that, in order that the printer and publisher should obtain the certificate mentioned in the Act, and which was a bar to legal proceedings, he must have been actually employed by or acting under the authority of the Houses of Parliament, or one of them, in the publication of such Report, &c.

Publisher not privileged.

That the Commercial Reports referred to in question being published by command of Her Majesty, and not in pursuance of the order of either House of Parliament, nor by any person acting under their authority, your Lordship presumed that the inquiry as to whether they were within the privilege conferred by the Act should be answered in the negative; your Lordship would, however, be glad to be favoured with our opinion as to the reply which should be made on that point.

In obedience to your Lordship's commands we have the honour to report—

Concur in above view.

That we concur with your Lordship, and are of opinion that the papers referred to are not within the privilege conferred by the 3 and 4 Vict., cap. 9.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Morocco.

### No. 34.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received April* 11.)

My Lord, *Temple, April* 10, 1877.

Slave embarked on board British vessel and relanded in Morocco.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st March ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch, with its inclosures, from Her Majesty's Minister at Tangier* on the case of a slave who had been embarked on board a British vessel and subsequently relanded on Moorish territory, the vessel having put back from stress of weather.

That the facts of the case were shortly stated in Sir John Hay's despatch, and there appeared to be no ground for supposing that the slave was relanded against his will.

That having regard, therefore, to the judgments of Lord Stowell in the cases of the slave Grace and the slave Jack Martin referred to as the "Antigua Slave Cases" in the papers presented to the Royal Commission on Fugitive Slaves by Mr. H. C. Rothery and printed at p. 229 of the Report, and to the judgment of the Supreme Court of the United States in the Dred Scott case, it would seem that Her Majesty's Government would not be warranted by law in claiming the surrender or liberation of the slave in question on the ground that he had landed from a British vessel or on any other ground; but, before sending any instructions to Her Majesty's Minister at Tangier, your Lordship was desirous of being informed whether there were any circumstances in the case which, in our opinion, lead to a different conclusion; and your Lordship would be glad if we would favour you with any observations which might occur to us on a perusal of the papers transmitted.

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* Sir J. Hay, No. 257.

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In obedience to your Lordships commands we have the honour to report—

Her Majesty's Government not warranted by law in claiming surrender.

That, in our opinion, Her Majesty's Government will not be warranted by law in claiming the surrender or liberation of the slave, who, in the circumstances stated by Sir J. Hay, had embarked upon a British merchant-ship, and subsequently left that ship and returned to his own country, where slavery was part of the law of the country.

Reference to the slave Grace.

Slave returning to his country reverts to slavery.

With the exception of a doubt thrown on the case of the slave Grace by Sir R. Phillimore in his Commentaries on International Law in the following words, that the judgment in that case "was one of the most questionable judgments ever pronounced by Lord Stowell," we believe all the authorities, and these we state in the margin,[*] agree that a slave who has come to this country or been on board a British ship on the high seas, when he returns to the place where he has been a slave resumes on so doing his condition as a slave.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Netherlands.

### No. 35.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received January* 13.)

My Lord,

*Temple, January* 11, 1877.

Extradition Treaty with Netherlands. As to application to Straits Settlements.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 14th December, 1876, stating that he was directed by your Lordship to inclose a letter from the Colonial Office, and to request our opinion on certain points raised by it as to the application to the Straits Settlements of the Extradition Treaty between England and Holland.

That the Treaty, of which a copy was inclosed, was concluded on the 19th June, 1874.

Was not intended to apply to the Colonies.

That, during the course of the negotiations which led to this Treaty, it was ascertained that the Constitution of Holland did not permit of the application of its provisions to her Colonies, and it was consequently agreed that it should apply to the mother-countries only. That it appeared to have been considered at that time sufficient for that purpose to omit the clause usually inserted in Extradition Treaties concluded by this country (of which an example would be found in Article XIV of the Treaty with Sweden and Norway, of which a copy was inclosed) by which the operation of the Treaty was expressly extended to the Colonies of the Contracting Parties.

Lord Tenterden was pleased to say that he was to observe, however, that the 1st Article of the Treaty with Holland provided "for the mutual surrender of any persons who, being accused of certain specified crimes committed within the jurisdiction of the requiring party shall be found within the territories of the other party," and that those words are similar to those of the extradition clause of the Ashburton Treaty, and of the French Treaty of 1843, and of other Treaties which have always been held to apply to the British Colonies, as is shown by the Acts passed to carry them into effect.

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[*] Williams and Brown, 3 B. and P., 69; the slave Grace, 2 Hagg. Adm., 94: Life of Story, i, 552; Strader and Graham, 10 Howard's Repts., 52: Dred Scott and Sandford, 19 Howard's Repts., 393; Le Louis, 2 Dod's Adm.; Marbrage and Willis, 2 B. and C., 353, and the cases there cited by Best, J.; the case of Jack Martin, Report of the Royal Commission on Fugitive Slaves, p. 230.

N.B.—These cases (save the last) are taken from Cockburn's papers in the Report, pp. 47-54.

That, by an Order in Council of the 6th August, 1874, the Extradition Act, 1870, was applied to the Treaty with Holland without any reservation whatever, and the first question upon which Lord Tenterden stated he was to request our opinion is whether, having regard to the language of section 17 of the Act, and to the general terms of the Treaty above cited, both the Act and the Treaty apply to and are legally in force in British Colonies, though contrary to the intention of the two Governments.

That the circumstances which have given rise to the inquiry were the following:—

That in the Colony of the Straits Settlements extradition had hitherto been carried on under the provisions of an Indian Act (No. 7 of 1854) which was in force at the time when the Settlements ceased to form part of the territories of the Government of India. That by this Act, a copy of which was inclosed, fugitives from justice accused of the crimes and offences therein mentioned may be surrendered on the requisition of any foreign State and on complying with certain formalities, without the necessity of any Convention, and without reference to reciprocity. That this large power of extradition is of great advantage to the Colony, as it is only separated from the adjoining territories by a narrow strait which can be crossed in an open boat, and is therefore liable, from its geographical conditions, to be inundated with fugitive offenders.

Is Indian Extradition Act abrogated by the Treaty?

That the Government of the Straits Settlements were, therefore, very desirous not to lose the benefit of the Indian Act, but they were in doubt whether it had not ceased to be in force by reason of the application of the Extradition Act, 1870, to the Treaty with Holland by the Order in Council of the 6th August, 1874, which, as before observed, contains no exception or reservation as to the Colonies or as to the continuance of the Indian Act in the manner provided by sections 17 and 18. That your Lordship therefore desired to be informed whether, in the event of our answer to the first question being in the affirmative (namely, that the Imperial Extradition Acts and the Treaty with Holland are legally in force in British Colonies), we are of opinion that the Indian Act No. 7 of 1854 has ceased to be in force in the Straits Settlements as regards extradition with Holland and her Colonies.

That if we should be of opinion that the legal effect of the Treaty and of the Order in Council applying the Extradition Act, 1870, thereto was to bring British Colonies under their operation, and to suspend in the Straits Settlements as regards Holland the operation of the Indian Act No. 7 of 1874, Lord Tenterden stated that he was to request that we would further advise your Lordship whether the difficulty can be met by issuing a new Order in Council which should repeal that of the 6th August, 1874, and apply the Extradition Act, 1870, to the Treaty with Holland excepting the Colonies of either nation; or whether any other course should, in our opinion, be adopted under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

Extradition Act does apply to Straits Settlements.

That, in our opinion, the Act of 1870 does, by the force of section 17 of that Act, and the general words of the Treaty of the 19th June, 1874, apply to and is in force in the Straits Settlements.

Indian Act may be kept in force by an Order in Council.

The difficulty, if any, may, however, in our opinion be removed, and the wishes of the Government of the Straits Settlements be met by an Order in Council, under section 18 of the "Extradition Act, 1870," directing that the Indian Act No. 7 of 1854 shall have effect in the Straits Settlements without modification or alteration.

And, looking to section 2 of the "Extradition Act, 1870," we do not think that it will be necessary to repeal the Order in Council of August 1874.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 36.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 22.)

My Lord, *Temple, March* 21, 1877.

**Netherlands Extradition Treaty.**

**As to Straits Settlements.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 17th instant, stating that, with reference to our Report of the 11th January last, on the question raised by the Governor of the Straits Settlements as to the application to that Colony of the Imperial Extradition Acts as regards the Treaty between Great Britain and Holland, he was directed by your Lordship to transmit to us a further correspondence which had taken place between the Colonial Office and the Foreign Office, and to request that we would favour your Lordship with our opinion on the question whether fugitives from the Dutch Colonies might legally be surrendered by the Government of the Straits Settlements under the Imperial Extradition Acts and the Treaty with Holland, although, as explained in the previous correspondence, the Dutch Government had no power to include the Dutch Colonies in an Extradition Treaty, and it was not intended that they should be included in the Treaty of 1874. That we should observe that the matter was one of urgency, as it was stated in the telegram from the Governor of the Straits Settlements that a fugitive was at that moment in custody, with a view to his surrender to the Dutch authorities.

That your Lordship would, therefore, be glad to receive our Report on the question then submitted to us at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

**Extradition may take place from Straits Settlements without reciprocity from Dutch Colonies.**

That, in our opinion, fugitives from the Dutch Colonies may be legally surrendered by the Government of the Straits Settlements under the Imperial Extradition Acts and the Treaty with Holland, and without requiring any reciprocity from the Dutch Colonies.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 37.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 13.)

My Lord, *Temple, June* 12, 1877.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 4th instant, stating that he was directed by your Lordship to request our opinion upon the following point:—

Sovereignty of Cocos Keeling Islands.

That in the autumn of 1856 the Naval Officer commanding in the East Indies was directed to take possession, in Her Majesty's name, of the Cocos Islands, the islands which he was intended to annex being a group of that name, situated in the Bay of Bengal, north-east of the Andaman Islands.

Occupied by Captain Fremantle under misapprehension.

That Captain Fremantle, the officer who received the instructions, acting, as he believed, in accordance with them, took possession in 1867* of a group known as the Keeling or Cocos Islands, lying in quite a different situation, 12° south of the Equator.

Mr. Ross appointed Superintendent. Deprived of right to trade under Netherlands flag.

That the islands, at the time of the occupation, were in possession of Mr. Ross, whose father had founded a Colony on them in 1824. That gentleman was appointed by Captain Fremantle Superintendent of the new possession of the Crown. In consequence of the British annexation of the islands, Mr. Ross was deprived by the Netherland authorities in the East of the right which he had therefore exercised of trading under the Netherland flag with the Netherland Colonies.

That Mr. Ross appeared to have suffered from the loss of his coasting trade, and to have made representations to that effect to Her Majesty's Government. It was in consequence at one time contemplated to inform the Netherland Government confidentially that the annexation of the islands was a mistake, and that no further step would be taken for the recognition of Captain Ross in the capacity of Lieutenant-Governor, or for the exercise of any act of authority in them, if he were permitted to resume his coasting trade. Upon consideration, however, that idea was abandoned, and matters remained *in statu quo*.

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* *Sic.* Query 1857. See draft to Law Officers, June 4, 1877.

That in 1866 Mr. Ross was reported to be acting as Governor and Proprietor of the Settlement, and carrying on trade under the British flag with the neighbouring British and Netherland Settlements. No foreign Power appeared at any time to have claimed the islands.

That it had recently been pointed out that they might become valuable possessions, and under those circumstances the inquiry had been put to the Foreign Office by the Colonial Office whether any further action was required to establish Her Majesty's right to them.

That it appeared to your Lordship that the act of taking possession of them by Captain Fremantle being the result of a mistake in his conception of his instructions, it was therefore unauthorized, and that there was no subsequent ratification of it by the Crown. The inchoate title of the Crown was not perfected by a *de facto* occupation, and the appointment of Mr. Ross, conferred on him by Captain Fremantle, was not confirmed; your Lordship was consequently doubtful whether the title of Great Britain to those islands could be satisfactorily maintained against any nation which might impugn it, and before replying to the inquiry of the Colonial Office your Lordship would be glad to be favoured with our opinion on the point.

That papers bearing on the subject were inclosed therewith.*

In obedience to your Lordship's commands we have the honour to report—

**British title doubtful unless occupation is ratified by Her Majesty's Government.**

That so long as the occupation of these islands by British subjects, and the government of these islands under British authority and by British laws, is not ratified and confirmed by Her Majesty's Government, we are of opinion that the title of Great Britain to the islands is open to doubt, and therefore disputable or liable to be impugned by any foreign nation.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Pacific Islands.

### No. 38.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received January* 4.)

My Lord, *Temple, January* 3, 1877.

Western Polynesia.

Order in Council.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 23rd October last, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing a draft Order in Council for the regulation of the exercise of Her Majesty's jurisdiction over British subjects in Western Polynesia; and that he was to request that we would take that draft Order in Council into our consideration, in connection with the explanatory remarks contained in the letter from the Colonial Office, and favour your Lordship with our opinion, at our earliest convenience, whether there was any objection to any of its provisions.

In obedience to your Lordship's commands we have the honour to report—

**As to three-mile limit. (Reference "Franconia" case). Cannot legislate for crimes committed within.**

That if the judgment in the "Franconia" case is to be taken to decide that the sea washing the shores of a State to the distance of three miles is not part of such State, we should, in deference to such decision, come to the conclusion that under the Pacific Islanders Protection Act, 1875, sec. 6, Her Majesty had no power to

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* Colonial Office, May 3, 1877; Memoranda of September 30, 1859, and May 12, 1877.

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make by Order in Council laws which should affect British subjects on board British or foreign ships whilst on such portion of the sea.

**Crimes on the high seas.**

**Cannot confer power for trial of.**

Clause 21 of the Order provides in effect that British subjects found in the Western Pacific Islands can be tried for offences committed on the high seas, according to the procedure prescribed for the trial of persons who have committed offences within the islands. We do not think Her Majesty could confer such a power. It is true the Pacific Islanders Protection Act authorized the establishment of a Court for the trial of persons accused of the perpetration of crimes within the jurisdiction of the Admiralty, but we think it was not intended that the Court so to be established should be at liberty to adopt, in the trial of persons accused of crimes committed on the high seas, a course of procedure unknown to the laws of the realm.

**Deportation without appeal, and interrogation of accused persons, arbitrary.**

Subject to the above observations, the provisions of the Order in Council appear to be such as the Crown had power under the before-mentioned Acts to make. With reference to the question whether there is any objection to the provisions of the Order, we beg to remark that some of such provisions seem to us to be extremely arbitrary, and others appear to introduce novel principles of procedure repugnant to British law. We refer chiefly to the provisions for deportation of British subjects without appeal, and for the interrogation of persons accused of crime. We presume, however, that those by whom the Order in Council has been prepared are in possession of information respecting the condition of the Western Pacific which justifies the extraordinary character of these provisions.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 39.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received January 26.)*

My Lord,
*Temple, January* 25, 1877.

**Reciprocity Treaty, United States and Sandwich Islands.**

**How affecting British Treaty.**

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th of January instant, stating that, with reference to our Report of the 12th September last, he was directed by your Lordship to transmit to us therewith, together with the previous correspondence in the case, the papers noted in the margin,* relative to the question of the Treaty stipulations existing between Great Britain and the Sandwich Islands, as affected by the Reciprocity Treaty between the Hawaiian Government and that of the United States.

Sir J. Pauncefote was also pleased to inclose the draft of an instruction which your Lordship proposed to address on this subject to Her Majesty's Commissioner at Honolulu, and to request that we would take the same into our consideration, and favour your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have the honour to report—

**Approving instructions.**

That the instruction of which the draft is inclosed may, in our opinion, properly be addressed to Her Majesty's Commissioner at Honolulu.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex to No. 39.

*The Earl of Derby to Major Wodehouse.*

(No. 1. Commercial.)
Sir,
*Foreign Office, January* 29, 1877.

HER Majesty's Government have had under their consideration your despatch No. 1, Commercial, of the 4th ultimo, reporting as to the amount of duty levied upon British produce imported into the Sandwich Islands, and the probable effect upon British trade of the differential treatment to which such produce would be subjected under the provisions of the Reciprocity Treaty between the United States and the Sandwich Islands of the 30th January, 1875.

Her Majesty's Government gather from your despatch that a duty of 10 per cent. *ad valorem* is actually levied upon certain goods of British origin, and that by an Act of the Hawaiian Legislature, dated the 27th September, 1876, on and after the 9th October next the duty will in some cases be raised to 25 per cent., while similar goods, the produce of the United States, will be admitted into the Sandwich Islands free of duty.

**While British Treaty lasts, Her Majesty's Government cannot allow differential treatment.**

I have now to instruct you to give formal notice to the Hawaiian Government, that so long as Articles IV, V, and VI of the Treaty of the 10th July, 1851, continue in force, Her Majesty's Government cannot allow of British goods imported into the Sandwich Islands being subjected to treatment other than that which is accorded to similar goods of American origin.

I have to observe, for your own information, that Her Majesty's Government are aware that it is open to the Hawaiian Government, under Article XVII of the Treaty of 1851, by giving twelve months' notice, to terminate the operation of Articles IV, V, and VI of that Treaty, and thus free themselves from all Treaty obligations, so far as Great Britain is concerned, in regard to the imposition of customs duties.

Her Majesty's Government would, it is true, experience some difficulty in reconciling the adoption of such a course by the Hawaiian Government, at the present moment, with the spirit of the Article above quoted, which gives as a reason for allowing the abrogation of Articles IV, V, and VI, that "the two Contracting Parties may have the opportunity of treating and agreeing upon such other arrangements as may tend still further to the improvement of their mutual intercourse, and to the advancement of the interests of their respective subjects;" whereas the effect of now abrogating those Articles would be to place British produce at a grave disadvantage as compared with that of the United States.

Her Majesty's Government would, however, as has been already pointed out, not be prepared to deny that the Hawaiian Government, in so doing, were acting within their strict Treaty rights; but no notice has been given by the Hawaiian Government of their intention to terminate the Articles in question, and Her Majesty's Government must therefore expect, as they are entitled to do by Treaty, that all exemptions or privileges accorded to American produce imported into the Sandwich Islands shall be extended to the produce of Great Britain.

I am, &c.
(Signed) DERBY.

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## No. 40.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March 19.)*

My Lord,
*Temple, March* 16, 1877.

**Western Polynesia. Order in Council.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that, with reference to our Report of the 3rd January last, on the draft Order in Council for regulating the exercise of Her Majesty's jurisdiction over British subjects in Western Polynesia, he was directed by your Lordship to transmit to us the accompanying letters from the Colonial Office,* together with the draft Order, containing some further alterations which had been suggested by Mr. Reilly; and Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion whether, in view of the explanations offered by the Colonial Office in their letter of the 14th February, your Lordship may properly concur in the issue of the proposed Order in its present shape.

In obedience to your Lordship's commands we have the honour to report—

**(Reference to "Franconia" case).**

**Three-mile limit, as to jurisdiction.**

That the case of the "Franconia" seems to us to place limits upon the exercise of any jurisdiction on board foreign ships below low-water mark, and to show a distinction between land and the sea below low-water mark, though within the 3-mile zone.

**Offences committed in Channel cannot be subject to jurisdiction of Western Pacific.**

Section 21, if construed strictly, makes a British subject who may have committed an offence in the British Channel subject to the jurisdiction of and procedure established for the Court of the High Commissioner in, over, and for the Western Pacific Islands. Such British subject, on reaching any of the places described in

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* Memorandum, Foreign Office, October 9; to Major Wodehouse, No. 3, Commercial, October 13; Major Wodehouse, No. 1, Commercial, December 4, 1876.

* Colonial Office, February 14 and 17, 1877.

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Part 2 of the Order in Council, may therefore be put upon his trial for that offence, and interrogated. This provision, with the greatest respect, we submit is beyond the power of the Crown.

In other respects, and subject to the observation made in our former Report upon the arbitrary nature of some of the provisions in the Order of Council, we have no objections to make to the Order as now settled by Mr. Reilly.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Persia.

### No. 41.

*Dr. Tristram to the Archbishop of Canterbury.*

My Lord, 1, *King's Bench Walk, Temple, February* 9, 1877.

Marriages in Persia and in heathen countries.

I HAVE carefully considered the question submitted to your Lordship by the Rev. Henry Wright, Honorary Secretary to the Church Missionary Society, viz., whether a marriage between parties, one or both of whom are British subjects, solemnized by an ordained Minister of the Church of England, at Ispahan or elsewhere in Persia, would be a good marriage in law, and I have now the honour to report to your Lordship my opinion thereon.

In English factories abroad.

It has been decided in the House of Lords in the "Queen *v.* Mills," 10 Clark and Finelly, p. 534, and reaffirmed by the House in "Beamish *v.* Beamish," 9 House of Lords Reports, p. 274, that at common law, to constitute a marriage celebrated in England valid it must, before the Reformation, have been celebrated by a priest, and after the Reformation, by a priest or deacon. It is further certain that the English Marriage Acts do not extend beyond this country, and it also appears by the cases that Englishmen, in a Mahommedan or heathen country, as well as in many other countries where the professing religion is essentially different from ours, carry with them a right to contract a marriage in such countries in the form prescribed by common law. Thus Lord Stowell, in "Ruding *v.* Smith," 2 Haggard's Consistory Reports, p. 385, after stating the marriages of British subjects in the English factories in Europe and in the East are regulated as to the form of the contracts of marriages by the law of England, proceeds :—

"Nobody can suppose that while the Mogul Empire existed an Englishman was bound to consult the Koran for the celebration of his marriage. Even where no foreign connection can be ascribed, a respect is shown to the opinions and practice of a distinct people. The validity of a Greek marriage in the extensive dominions of Turkey is left to depend, I presume, upon their own canons, without any reference to Mahommedan customs. There is a *jus gentium* upon this matter, a comity which treats with tenderness, or at least with toleration, the usages of a distinct people in this transaction of marriage."

At Madras by Roman Catholic priest.

In "Lantom *v.* Teesdale," 8 Toundron's Reports, p. 830 (a case precisely in point), Chief Justice Gibbs, in delivering the unanimous decision of the Court of Common Pleas, held that a marriage solemnized in Madras between parties who were English by a Roman Catholic priest (after the Governor of Madras had refused a licence for the marriage to be celebrated by the English Chaplain) was valid on the ground that in a Mahommedan or heathen country the parties had carried with them their common law right of being married by any person in holy orders.

Consular Marriage Act does not invalidate other marriages.

I am aware that a notion has been set abroad by certain Consular officers that inasmuch as the Consular Marriage Act (12 & 13 Vict., cap. 168) authorizes the marriage of a British subject to be celebrated before the Consuls, and as section . . . ("after reciting that marriages have been entered into abroad by British subjects under circumstances that may occasion doubts as to their validity"), "enacts that all marriages solemnized before the passing of the Act between subjects or a subject of this realm by an ordained minister of our Church or of the Church of Scotland ("as well as other marriages therein specified") "shall be deemed to be valid," marriages of

English subjects abroad can now only be legally celebrated at the Embassy or Minister's residence, or before a Consul.

The construction of the Act is, in my view of the law, untenable. For—

1. The right of British subjects to be married in certain foreign countries by ordained ministers of our Church being established by the cases as existing up to the time of the passing of the Act, such right could only be taken away (if at all) by clear words of an Act of Parliament; on the contrary, section 21 provides "that the Act shall not be construed to confirm or *impair*, or in any wise affect, the validity in law of any marriage solemnized beyond the seas, otherwise than is therein provided."

General principle: marriage according to *lex loci* is good everywhere.

2. As in Russia, according to the decision of the Chancellor of Russia in the Riga case, and in some other foreign countries, and, as far as I am aware, in all Eastern countries, such marriages have always been recognized as valid, the insertion of a provision in the Act invalidating them, or prohibiting them, would be in violation of an established principle of international jurisprudence: "That a marriage valid according to the law of the place is good everywhere else." Ruding *v.* Smith, Ot. 391.

3. This construction is at variance with the object of the Act, which, according to the preamble, was passed "to afford greater facilities for the marriage of Her Majesty's subjects resident abroad." If the Consular construction is correct, the Act in many cases, instead of facilitating such marriages, will throw serious impediments in their way, there being many places, especially up-country, where there are missionaries but no Consuls.

Marriages by an ordained minister in Persia are valid.

I beg leave, therefore, to report to your Lordship that marriages solemnized by an ordained minister of our Church (whether priest or deacon) between parties, one or both of whom are British subjects, at Ispahan or elsewhere in Persia, are valid, and would, according to the case, be upheld by the Courts of this country.

At Tehran should be performed at house of Her Majesty's Minister.

I think it would be undesirable for a missionary to solemnize a marriage at Tehran elsewhere than at this (? Her Majesty's) Minister's residence, excepting under special circumstances.

Duplicate register.

It would be advisable that the Committee of the Church Missionary Society should instruct their missionaries to register all such marriages in duplicate, and to take care that the parties to the marriages and the witnesses sign each register or certificate, and that one of the duplicates be transmitted to the Registry of the Diocese of London.

I have, &c.
(Signed) J. H. TRISTRAM.

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### No. 42.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*[*]

Gentlemen, *Foreign Office, May* 31, 1877.

Administration of oath to a Persian by Her Majesty's Minister at Tehran.

I AM directed by the Earl of Derby to transmit to you a despatch from Her Majesty's Minister and Consul-General at Tehran,[†] reporting the circumstances under which he considered himself justified in declining, pending instructions from the Foreign Office, to take the affidavit of Dost Mahomet Khan, the son of the late Minister of Finance Dost Ali Khan, and also to certify to his signature to a power of attorney, which documents are intended to be used for the purpose of obtaining payment from the Bank of England of a sum of about 15,000*l.* invested by the late Minister of Finance in the 3 per cent. Consols.

With reference to the Act 18 and 19 Vict., cap. 42, Her Majesty's Diplomatic and Consular officers have, from time to time, been instructed that they should offer no obstacle or delay, as a general rule, in taking affidavits, and in certifying to documents intended to be used in any legal proceedings in this country, and that they are not called upon to read such documents, as they only act ministerially in these matters.

In the present case, however, the proposed affidavit contains an allegation that the late Minister of Finance died intestate, whereas it appears that his widow, since deceased, transmitted to the British Legation a copy of a will executed by her late husband, under which, as executrix, she was desirous to have the money deposited in the Bank of England transferred into her own name.

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[*] The Law Officers' Report upon this subject could not be found when this collection of Reports was made, and it was therefore necessary to obtain the original draft of the Report. The Law Officers, however, do not retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the Foreign Office letter to them is recapitulated. It has, therefore, been deemed advisable to print the Foreign Office letter in this instance, as the bare Report, without the usual preamble, would not be wholly intelligible.

[†] Mr. Taylour Thomson, No. 4, Consular, March 19, 1877.

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Suspected fraudulent intention to suppress a will.

Mr. Taylour Thomson, therefore, apprehends that some deceit is about to be practised in this case, and further, he states that in Persia an oath to be legally binding must be taken before one of the High Priests, and for this reason he believes that an oath taken on the Koran before him by a Mahommedan native of Persia would not be binding on his conscience.

Lord Derby, however, apprehends that such a person could be sworn in a Court of Law in this country, according to the well-known rule laid down by Chief Justice Willes, in Omichund *v.* Barker, that belief in a God that can reward or punish is sufficient where a person swears in the form prescribed by his religion, and if you should concur, his Lordship proposes to instruct Mr. Taylour Thomson that he may administer an oath to Dost Mahomet Khan accordingly.

Notwithstanding Mr. Taylour Thomson's apprehension that some deception may be practised through the instrumentality of Her Majesty's Legation on the Court of Probate in this country, the object in view being apparently to suppress the will and to obtain letters of administration, it appears to Lord Derby that Her Majesty's Minister would not be justified in refusing to take the affidavit of Dost Mahomet Khan, or to certify to his signature to the power of attorney, as he would by so doing constitute himself, as it were, the judge of the validity of the will; and if you should concur in that view, his Lordship would be glad to be informed whether, in your opinion, there is any objection to the fact of the deposit of a will in Her Majesty's Legation by the widow of the deceased being recorded on the affidavit as suggested by Mr. Taylour Thomson, and if so, what other precautions should be taken under the circumstances.

I am to request that you will favour Lord Derby, at your earliest convenience, with your views on all the points above-mentioned, in order that instructions may be forwarded without delay to Mr. Taylour Thomson in reply to his despatch.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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*Report.*

Need not administer oaths to other than British subjects.

That in March 1875 the Law Officers reported that it was competent to, but not obligatory upon, British Consular officers to administer oaths, or to take the affidavits of persons other than British subjects, or to do notarial acts at the instance of such persons.

And that, as a general rule, and with the view of avoiding possible inconvenient complications, it was desirable that British Consular officers should, as far as possible, abstain from discharging the duties above named, except in relation to British subjects, or in matters in which British interests are involved.

The case submitted to your Lordship by Mr. Taylour Thomson is, in our opinion, an instance of the inconvenient complication which may be occasioned by the act of the British Consular authority.

Refuse oath, but may certify to signature.

In this state of things we are, therefore, of opinion that Mr. Taylour Thomson may properly be instructed not to administer the oath, but he may certify to the signature of Dost Mahomed Khan to the power of attorney.

J. H.
H. S. G.
J. P. D.

*June* 4, 1877.

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## Peru.

### No. 43.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 21.)

Peruvian ship "Huascar." Engagement with Her Majesty's ship "Shah."

My Lord,

*Temple, July* 21, 1877.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 17th July instant, stating that he was directed by your Lordship to lay before us the papers noted in the margin relating to the naval engagement which had taken place between Her Majesty's ships "Shah" and "Amethyst" and the Peruvian iron-clad "Huascar" while in the possession of rebels.

That the facts of the case, and the grounds upon which Admiral de Horsey considered his action justified under the circumstances, were so fully and clearly set out in

his despatch of the 3rd June that it was only necessary to draw our attention to the Decree of the President of the Republic of Peru inclosed in Mr. Graham's despatch No. 22 of the 12th May last, and to request that we would favour your Lordship with our opinion as to whether the proceedings of Admiral de Horsey reported by him in his despatch above referred to were open to any objection in point of law.

That the attention of Parliament had been drawn to that case; and Sir Julian Pauncefote was to request that we would be good enough to report upon it at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

"Huascar," under no national flag, and repudiated by Peruvian Government, stopped British vessels on high seas.

That the papers transmitted to us show that the "Huascar" had been taken out of the hands of her lawful officers, that the Peruvian Government had disavowed any liability for the acts of the "Huascar," and that vessel was consequently sailing under no national flag, and no redress could be had for any acts which she might commit.

The papers further show that the "Huascar," whilst so sailing and officered, and after the Peruvian Government had disavowed all liability for the acts of the "Huascar," stopped two British mail steamers on the high seas and demanded their mails; took by force a passenger from a ship under British colours, and a quantity of coals out of another British vessel; and lastly, that a British subject was forced to act as engineer on board the "Huascar," and was by violence prevented from communicating with the British authorities.

British Admiral justified in engaging her.

In this state of things, we are of opinion that Admiral de Horsey was bound to act decisively for the protection of British subjects and British property, and that the proceedings resorted to by him were in law justifiable.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 44.

*The Law Officers of the Crown to the Earl of Derby, August* 1, 1877.

Respecting the conveyance of Brazilian troops on board British vessel "Limena."

N.B.—This Report appears to have been cancelled, and replaced by the one of the 7th December, 1877. (No. 48.)

(See Sir J. Pauncefote's minute with MS. Report of the 7th December, 1877.)

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### No. 45.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received September* 20.)

My Lord,

*Temple, September* 19, 1877.

Swann *v.* Vines.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd August ultimo, stating that he was directed by your Lordship to transmit to us a correspondence which had taken place between the Foreign Office and Mr. E. G. Swann on the subject of information requested by Mr. Swann as to the dismissal or retirement of Mr. Vines, formerly Her Majesty's Consul at Islay.*

That the papers relating to Mr. Vines' case had already been to the Law Officers and reported on by them on the 2nd August, 1874.

Subpœna for Secretary of State.

That with reference to the subpœna contained in Mr. Swann's letter of the 10th August, Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether your Lordship would be justified, on grounds of public policy, in declining to give evidence of the circumstances under which Mr. Vines' resignation was accepted, and if so, what steps we would suggest should be taken to inform the Court, and to relieve your Lordship from the necessity of appearing in pursuance of the subpœna.

Reply to Mr. Swann Vines not dismissed.

That no reply had been sent to Mr. Swann's letter, but your Lordship proposed to inform him, if we should concur in the propriety of that course, that no order was at any time issued for the dismissal of Mr. Vines, and it was therefore presumed that Mr. Swann, whose object was to prove the contrary, did not desire to trouble your Lordship any further in the matter.

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* Mr. Swann, May 19, June 5, 6, and August 10; to Mr. Swann, June 4 and 23, 1877.

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In obedience to your Lordship's commands we have the honour to report—

That the reply to Mr. Swann's letter may very properly be made in the terms proposed by Sir Julian Pauncefote.

**Secretary of State may decline to give evidence on grounds of public policy.**

And that your Lordship, when in Court, will be justified, on grounds of public policy, in declining to give evidence of the circumstances under which Mr. Vines' resignation was accepted.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 46.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received October 9.)*

My Lord, *Temple, October* 9, 1877.

**Peruvian ship "Huascar." Anthony and Tate's claim for coals, &c. taken out of British vessel "Imucina."**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo, stating that, with reference to our Report of the 21st July last, upon the subject of the late naval action in the Pacific between Her Majesty's ships "Shah" and "Amethyst" and the rebel Peruvian iron-clad "Huascar," he was directed by your Lordship to transmit to us the accompanying copy of a despatch from Her Majesty's Chargé d'Affaires at Lima, inclosing documents relating to the claim of Messrs. Anthony and Tate for payment from the Peruvian Government for certain coals and sacks forcibly taken from the British barque "Imucina" by the "Huascar," at Agua, on the 12th, 13th, and 14th May.

**Peruvian Decree disclaims "Huascar's" acts.**

That it appeared to your Lordship that in view of the Decree issued by the Peruvian Government on the 8th May (see p. 2 of accompanying print), disclaiming responsibility for the acts of the "Huascar," and in view also of the fact that Her Majesty's Government relied mainly on that Decree in justification of the attack made upon the "Huascar" by Her Majesty's ships, it was impossible for them to present the claim of Messrs. Anthony and Tate to the Peruvian Government; but that, before writing to Mr Graham in that sense, your Lordship would be glad to know whether we concurred in the view which your Lordship took of the question.

**Her Majesty's Government cannot support claim.**

In obedience to your Lordship's commands we have the honour to report—

That, considering the Decree of the Peruvian Government on the 8th May, and the views which Her Majesty's Government have taken throughout of the status of the "Huascar," no claim can properly be made by Her Majesty's Government upon the Peruvian Government for the loss sustained by Messrs. Anthony and Tate through the depredations of the "Huascar."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 47.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received November 1.)*

My Lord, *Temple, November* 1, 1877.

**Swann v. Vines. Papers required respecting dismissal of Vines, &c.**

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 25th ultimo, stating that, with reference to our Report of the 19th September respecting matters connected with the forthcoming action of "Swann *v.* Vines," he was to transmit, for our consideration, two further letters, both dated the 9th ultimo, which had been addressed to your Lordship by Mr. Swann, requesting that further information might be supplied to him from the archives of the Foreign Office for the purpose of his action against Mr. Vines.

That, on receipt of our Report of the 19th September, Mr. Swann was informed that no order was at any time issued for the dismissal of Mr. Vines, and that as the object of Mr. Swann appeared to be to prove the contrary, it was presumed that he would not have occasion to trouble your Lordship further in the matter.

**Decline further information to Swann.**

That, in reply to the two further letters from Mr. Swann then transmitted to us, your Lordship proposed, with our concurrence, to cause him to be informed that your Lordship must decline to furnish him with any further particulars on the subject of his inquiry than were contained in the letters already addressed to him from the Foreign Office, as it was contrary to the usages of the Foreign Office, founded on the grounds of public policy, to supply such information.

**As to production of papers by Mr. Hertslet, &c.**

That Mr. Lister was further to acquaint us that Mr. Hertslet, the Librarian to that Department, had been called upon to produce papers connected with that case at the forthcoming trial, which was set down for hearing on the 2nd November, but that your Lordship proposed to instruct that gentleman to decline to produce the documents called for, or to answer any questions connected therewith or with the circumstances attending the resignation of Mr. Vines, on the ground of its being inconvenient and detrimental to the public service to do so.

That Mr. Lister was to request us to be so good as to inform your Lordship, at our earliest convenience, whether we concurred in the propriety of the course which your Lordship proposed to adopt.

That Mr. Lister also transmitted a letter addressed to your Lordship by Mr. Vines, the defendant in the action, and was to request that we would advise your Lordship as to the reply which it would be proper to return to his application.

We are also honoured with a letter from Lord Tenterden, dated the 27th ultimo, transmitting a letter which had been received from Mr. A. P. Michael, requesting to be furnished with information respecting matters connected with the forthcoming action of "Swann *v.* Vines," and also a copy of the reply which your Lordship had caused to be returned to Mr. Michael.

We have also the honour to acknowledge the receipt of a further letter from Mr. Lister, dated the 30th ultimo, transmitting a letter which had been received from Mr. A. D. Michael, renewing his application for the production of certain documents at the forthcoming action of "Swann *v.* Vines." The documents referred to in Mr. Michael's letter would be found in the accompanying volume.

That Mr. Lister was to request us to take Mr. Michael's letter into our consideration, in connection with the other papers which had been submitted to us, and to cause your Lordship to be informed, with as little delay as possible, as to the course which, in our opinion, should be followed with respect to that matter.

In obedience to your Lordship's commands we have the honour to report—

That the answer which your Lordship proposes to send to Mr. Swann in reply to to his two letters dated the 9th ultimo is, in our opinion, right and proper.

**Certain papers may be returned to Vines.**

With reference to the copy of the Peruvian law proceedings under the seal of the Court, the statutory declarations of Mr. Vines and Mr. Patrick Gibson, and the documents sent therewith, we are of opinion that these are, in strictness, the property of Mr. Vines, and may be returned to him, to make such use of as he may be advised.

But no other documents or papers than these should be sent or communicated, in any way, to Mr. Vines.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 48.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received December 8.)*

My Lord, *Temple, December* 7, 1877.

**Conveyance of Peruvian troops in British vessel "Limena" for suppression of rebellion.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 3rd July last,[*] stating that he was to transmit to us a letter from the Lords of the Admiralty forwarding a despatch from the Commander-in-chief on the Pacific Station, in which Admiral de Horsey applied for instructions as to the course he should pursue in the case of British ships hired by a foreign State for the conveyance of troops dispatched to suppress a rebellion, and reporting the case of the Pacific Steam Navigation Company's steam-ship "Limena," which was recently chartered for that purpose by the Peruvian Government at Callao.

**Bearing of Foreign Enlistment Act.**

That it would seem that Admiral de Horsey took a right view of his duties in abstaining from any interference with that vessel, as the provisions of the Foreign Enlistment Act relating to the dispatch of vessels "in the military or naval service of a

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[*] Foreign Office, July 3, 1877.

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foreign State at war with a friendly State," even if they should apply to such a transaction as that referred to, were limited to acts committed within Her Majesty's dominions.

That as regards the question whether the dispatch of a vessel from a British Colony in the service of a foreign State for the purpose of suppressing a rebellion was an offence against the Act, the reply would seem to depend on the construction of the words "a foreign State at war with any friendly State."

That Sir J. Pauncefote was to inclose our Report of the 10th October, 1876, on a question which arose at the Bahamas with reference to the rebellion in Cuba, and in which we advised that, having regard to the interpretation clause of the Act, the Cuban rebels came within the definition given "of a foreign State at war with a foreign State at peace with Her Majesty," and that the dispatch of a vessel from the Bahamas in the service of the Cuban insurgents, for the purpose of committing hostilities against the Spanish Government, would be a violation of the Act.

That the converse case now presented itself for consideration, and your Lordship desired to be favoured with our opinion as to whether, on the right construction of the Act, where a rebellion occurs in a foreign State at peace with Her Majesty, and the rebels assume to exercise the powers of government over part of a province or people, the rebels must be considered as "a foreign State at peace with Her Majesty," or as a "friendly State" (which expressions are declared synonymous by section 4), so as to render illegal the dispatch of a British ship from Her Majesty's dominions to be employed in the military or naval service of the foreign State for the purpose of suppressing the rebellion.

That that would appear to be the effect of the definition of "foreign State" in the interpretation clause, "if not inconsistent with the context."

That Sir J. Pauncefote was also to request that we would be good enough to advise your Lordship as to the reply which should be given to the inquiry made by the Lords of the Admiralty both as regards the case of the "Limena" and the general question raised.

In obedience to your Lordship's commands we have the honour to report—

Foreign Enlistment Act forbids engagement in military service of foreign State at war with friendly State.

That the granting the use of a ship to convey troops is clearly an accepting of an engagement (see section 4 of the "Foreign Enlistment Act, 1870") in the military or naval service (see section 30 of the same Act for the meaning of these words).

This section 4 provides that if any person, being a British subject, within or without Her Majesty's dominions, accepts an engagement in the military or naval service of any foreign State at war with a foreign State at peace with Her Majesty, he shall be guilty of an offence against the Act, although the engagement was made and carried out not within Her Majesty's dominions.

Definition of "foreign State."

Then, referring to the definition of a "foreign State," in section 30, that term includes "part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, Colony, province, or part of any province or people."

Rebels come within.

The use of a ship to convey troops belonging to a friendly Power to act against rebels to the foreign Power would, under sections 4 and 30, be, in our opinion, an offence against the "Foreign Enlistment Act, 1870."

"Limena" could be detained on high seas for breach of neutrality, but not in Peruvian waters.

In reference to the conduct of Admiral de Horsey in the particular case, and the reply which should be given to the Lords of the Admiralty, their Lordships may, in our opinion, properly be informed that, as long as the "Limena" was in Peruvian waters, he was quite right in not detaining her, and in confining himself to the caution which he gave to the master and crew of that vessel.

We think, however, that, as the master and crew of the "Limena" were engaged in the commission of a breach of neutrality, Admiral de Horsey would, on the high seas, have been justified in stopping the vessel and preventing her proceeding on her voyage whilst the Peruvian troops remained on board.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Portugal.

## No. 49.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received April* 27.)

Commercial negotiations. India and Portugal.

Anglo-Portuguese Treaty of 1842: whether infringed by Indian Tariff.

My Lord, *Temple, April* 26, 1877.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 6th March ultimo, stating that he was directed by your Lordship to transmit to us therewith the papers noted in the margin* relative to a question which had arisen in connection with commercial negotiations now pending between the Indian Government and that of Portugal, as to whether the Indian Tariff on foreign wines constitutes an infraction of the Anglo-Portuguese Treaty of the 3rd July, 1842 (see State Papers, vol. XXX, p. 373); and to request that we would take these papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have the honour to report—

That we have carefully considered the papers transmitted to us.

Mr. March and Mr. Lister have, in our opinion, met the reasoning of Mr. Morier in a satisfactory manner.

Portuguese complaint against Tariff for French wines.

It may be doubtful whether the provision at the end of the IVth Article of the Treaty, and the change made in the Government of India by the Act of 1858, and by the title of Her Majesty in India, might not give some ground, though possibly none in strict construction, for complaint on the part of the Portuguese Government against the Tariff for French still wines. We presume that the territories of British India would not have been excepted from the Portuguese Treaty, had not the commercial legislation of those territories at the time of the Treaty been entrusted by Charter to the East Indian Company.

Portuguese request for modification of Tariff is fair.

The reason for the exception has now ceased, and we respectfully submit for your Lordship's consideration that the Portuguese Government may fairly now ask for a modification of the Tariff.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 50.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received April* 28.)

Indian Tariff.

My Lord, *Temple, April* 27, 1877.

WITH reference to our Report of yesterday's date on the subject of the application of the Anglo-Portuguese Treaty of 1842 to India, we have the honour to acknowledge a further letter from Mr. Lister, inclosing a further despatch from Her Majesty's Minister at Lisbon.

In obedience to your Lordship's commands we have taken Mr. Lister's letter, with its inclosures, into our consideration, and have the honour to report—

Nothing to add to above Report.

That the omitted matter referred to by Mr. Morier in the despatch transmitted to us by Mr. Lister had been previously called to our attention, and is observed upon in our Report, which was signed before we received Mr. Lister's letter, and we have therefore nothing to add to that Report.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Mr. Morier, Nos. 61 and 65, Commercial, 1876; Nos. 11 and 13, Commercial, 1877; Memorandum, Mr. March, February 19; India Office, February 26; Memorandum, February 28, 1877.

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## No. 51.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received August* 10.)

My Lord, *Temple, August* 9, 1877.

Atrocities by British subject, Scott, and by Spanish and Dutch subjects on their slaves in River Congo.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us despatches from Her Majesty's Consul at Loanda, with their inclosures, relating to atrocities committed in the River Congo by white men, subjects of England, the Netherlands, and Spain, on Africans held by them as slaves.

Evidence not forthcoming in England.

That one of the parties implicated in those crimes was a British subject named Scott, but your Lordship feared that there were no practicable means of bringing him to trial. The Courts of this country would, your Lordship apprehended, have jurisdiction to try him under section 9 of the Criminal Law Consolidation Act, relating to injuries against the person (24 & 25 Vict., cap. 100), but that it would be very difficult to procure the attendance of witnesses, and even if they should consent to come to this country, Her Majesty's Government were not in a position to judge whether their evidence would be sufficient to insure a conviction.

That no Court in any of our West African Colonies had jurisdiction in the case, for the Congo River was far beyond the limits of the extra-territorial jurisdiction conferred on them by the Act 34 Vict., cap. 8, nor was there any Order in Council under the Foreign Jurisdiction Acts which would meet the difficulty.

Great Britain has no jurisdiction, and denies claim of Portugal to the territory.

That the territory on which those outrages had been committed was claimed by the Portuguese Government, and that we should observe that in the correspondence between Her Majesty's Consul and the Portuguese authorities at Loanda, the latter seemed inclined to put forward their claim to the territory in question, and more especially in the letter from the Secretary-General to Mr. Hopkins of the 5th June, inclosed in Mr. Hopkins' No. 28, Confidential, of the 12th June.

That Her Majesty's Government had, however, always contested and opposed that claim, and could not admit the jurisdiction of Portuguese Tribunals to deal with the case of Scott.

That Sir J. Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether any steps can legally be taken to bring that criminal to justice.

In obedience to your Lordship's commands we have the honour to report—

No means of bringing Scott to justice.

That since Her Majesty's Government cannot properly allow the Portuguese to try Scott if his arrest should be in any way effected by them, and evidence to insure his conviction in this country would not be forthcoming, if he were captured by British authorities, or handed over to them by the Portuguese, and no other Tribunals exist before whom Scott could be put on his trial, we are of opinion that no steps can be taken to bring Scott to justice.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Russia.

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## No. 52.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby, April* 27, 1877.

[Neutrality. Modified Proclamation.]

[See Turkey, No. 67.]

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## No. 53.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 3.)

My Lord, *Temple, May* 3, 1877.

Torpedoes off Odessa. Regulations for piloting vessels.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Consul-General at Odessa,* forwarding copy of a notice issued by the Governor of Odessa of regulations to be observed by shipmasters and their crews on entering or leaving the port of Odessa, in consequence of the laying of mines and torpedoes for the defence of the port.

That a copy of that notice would be forthwith published in the "London Gazette."

That Lord Tenterden was to add that your Lordship proposed to approve the letter which Mr. Stanley addressed to the Governor of Odessa upon receipt of the notification.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, Mr. Stanley's letter to the Governor of Odessa may properly be approved.

Hardship of detaining vessels because ships of war may be in sight. Represent to Russian Government.

That the attention of the Russian Government might properly be called to the hardship upon a vessel which might be detained under these regulations because a cruizer belonging to another nationality refused to act as the regulations in question require, and, consequently, the propriety of warning all vessels of the danger they may thus incur by entering any Russian port.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 54.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 14.)

My Lord, *Temple, May* 12, 1877.

Messrs. Watts and Milburn. Destrucion of their lighters on the Danube by Turkish authorities.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us four letters from Messrs. Watts and Milburn, complaining of the seizure and destruction of some lighters belonging to them by the Turkish naval and military authorities on the Danube, near Galatz; and that he was to request us to take those letters into our consideration with reference to the instructions issued by the Porte to the Turkish Commander-in-chief on the Danube, which were sent to us in Lord Tenterden's other letter of that day, and to report to your Lordship our opinion as to the course that should be taken with regard to Messrs. Watts and Milburn's representations.

That Lord Tenterden was to add that your Lordship purposed to instruct Her Majesty's Ambassador at Constantinople to urge the Turkish Government to instruct their authorities to permit tugs and lighters belonging to British subjects, now in the Turkish waters of the Danube, to pass up into Austrian waters without molestation from Turkish forts or gun-boats.

That a despatch from Her Majesty's Consul at Galatz relative to the detention at Rustchuk of barges under neutral flag was annexed for our further information.

In obedience to your Lordship's commands we have the honour to report—

Demand reparation for injuries to British property and affronts to British flag.

That, in our opinion, Her Majesty's Ambassador at Constantinople may properly be instructed to communicate to the Turkish Government that Her Majesty's Government expects that no injury will be done to British property and no affront offered to the British flag, and will insist on full reparation in all cases, in the event of either contingency happening.

British vessels should be allowed to go into Austrian waters.

And that in order to avoid all risk of any injury being done to or received by Her Majesty's subjects or their property, all tugs and lighters with any cargo, which the owners of the cargo or their agents may wish to take belonging to British subjects, and now in the Turkish waters of the Danube, should, without delay, be allowed to

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* Mr. Stanley, No 29.

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pass into Austrian waters without molestation from the Turkish military, naval, or other authorities, and Messrs. Watts and Milburn should be informed to the above effect.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 55.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May 14.)*

My Lord, *Temple, May 12, 1877.*

Intestate estate of Richard Kimens.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd May instant, stating that he was directed by your Lordship to transmit to us a correspondence, as marked in the margin,* relative to the course which should be pursued by Her Majesty's Consul-General at Odessa in the matter of the estate of a deceased British subject, named Richard Kimens, who died intestate a short time ago at Olgopol, in Russia, leaving a widow and infant children, and considerable personal property.

Placed at disposal of British Consul-General at Odessa.

That we would observe that the Court of Olgopol, "considering that in accordance with the Convention relative to inheritances, concluded between the Russian and English Governments, the property remaining after the death of British subjects in Russia should be remitted to the Consular authority of the deceased, on whom devolves the further measures for the disposal of the property in the interest of the heirs," made a Decree (a copy of which forms the second inclosure in Consul-General Stanley's despatch) whereby the personal property of the deceased was placed at the disposal of the British Consulate at Odessa.

That in a letter from the Foreign Office to the Treasury of the 8th March, 1877, it was suggested, as a convenient course under the circumstances, that the assets should be transmitted by the British Consul-General to the Treasury with a view to the money being eventually paid to the legal personal representative in this country of the late Mr. Kimens.

Treasury refuse to receive money.

That the Lords Commissioners of the Treasury, however, in their reply, dated the 31st March, declined to receive the money, but requested that instructions might be sent to Consul-General Stanley in conformity with the recommendations contained in the Report of their Solicitor, a copy of which they inclosed.

That those recommendations were to the effect that the Consul-General might administer the estate of the deceased if he was willing to do so, but that if he does so "he would be acting rather as an agent of the widow than as a Representative of Her Majesty's Government: in other words, rather in a private than a public capacity."

Consul-General not to give up assets except on production of letters of administration.

That it appeared to your Lordship that Consul-General Stanley had no power to administer the estate, or, as he suggested in his despatch, "take upon himself the duties of the Court of Probate and appoint an administrator," and that he should be instructed not to part with the assets except on production of letters of administration granted by the Court of Probate of the domicile of the deceased to the widow or other person therein named, and on receipt of a proper discharge from such legal representative.

Sir Julian Pauncefote was pleased to request that we would take the inclosed papers into our consideration, and inform your Lordship whether we concur in that view, and, if not, what other instructions should, in our opinion, be sent to Consul-General Stanley in reply to his despatch.

In obedience to your Lordship's commands we have taken these papers into our consideration and have the honour to report—

Concur in this view.

That we entirely concur in the view taken of this case by your Lordship, and are of opinion that the proposed instructions may properly be sent to Consul-General Stanley.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Consul-General Stanley, No. 8, January 29; to Treasury, March 8; Treasury, March 31, 1877.

### No. 56.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May 18.)*

My Lord, *Temple, May 18, 1877.*

Danube Tug and Lighter Company. Detention of vessels by Roumanian authorities. (Messrs. Watts and Milburn.)

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Agent at Bucharest relative to a complaint made to him by the agents of the Danubian Tug and Lighter Company at Turno-Mogurelli, of the detention by the Roumanian Prefect of that town of a tug and lighters owned by them.

That Lord Tenterden was to request us to take that despatch into our consideration, and to report to your Lordship our opinion as to the action of the Roumanian authorities in the case.

That he was to add that, with our concurrence, your Lordship proposed to approve Colonel Mansfield's proceedings.

In obedience to your Lordship's commands we have the honour to report—

Cannot say whether seizure was justified.

That, from the facts submitted to us, we are unable to say whether the Roumanian authorities were or were not justified in stopping the tug and lighters.

Approve Colonel Mansfield.

We, however, concur with your Lordship in the opinion that the proceedings of Colonel Mansfield may properly be approved.

We presume, however, that the word "nous" in the copy of the telegram should be, and in the original was, "vous," for otherwise it might hereafter be said that Her Majesty's Consul-General had taken the responsibility upon himself in saying, as to the mooring and safety of these vessels, "Cela nous regarde."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 57.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received June 6.)*

My Lord, *Temple, June 6, 1877.*

Messrs. Watts and Milburn. Sinking and seizure of their lighters.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that, with reference to our Report of the 18th ultimo, he was directed by your Lordship to transmit to us a letter from Messrs. Watts and Milburn, forwarding a copy of a protest made in the British Consulate at Galatz against the Ottoman Government for sinking their lighter No. 7, and requesting your Lordship to take the necessary steps to make good their claim when the proper time arrived.

That Sir Julian Pauncefote was to request us to take that protest into our consideration, and to report to your Lordship our opinion as to whether it sets out such a *primâ facie* case for compensation as would justify a formal claim by Her Majesty's Government on behalf of the applicants.

In obedience to your Lordship's commands we have the honour to report—

Confusion in claim.

That there is much confusion in the papers sent in this case to your Lordship, for whilst the letter of Messrs. Watts complains only of the loss of a lighter No. 7, by sinking, the protest, noticing, indeed, the sinking of the lighter by the guns of the Turks on the 6th May, complains mainly of the damage done by fire to the frame of a lighter, and the carrying off the lighter and cargo to Rahova.

Sinking may be a necessity of war. Wilful damage and seizure of cargo gives ground for indemnity

The former act might possibly be justified or excused by the necessities of war, and no *primâ facie* case, or at least no case which could be insisted upon by Her Majesty's Government, could be brought forward against the Turkish Government. In the latter case, if the lighter were wilfully damaged, and the cargo carried off and used by the Turks, a good ground for full indemnification would be laid.

We are, in this uncertain state of the facts, unable to advise your Lordship whether the protest, which we cannot consider alone and apart from the letter, sets out such a *primâ facie* case for compensation as would justify a formal claim by Her Majesty's Government on behalf of Messrs. Watts.

Facts too vague.

We would suggest, for your Lordship's consideration, that Messrs. Watts may properly be told that the facts are too vaguely stated, and that your Lordship cannot

Messrs. Watts should bring claim before Turkish Government.

therefore give them any definite assurance of your support. And that, at all events, they (Messrs. Watts) should, in the first instance, bring their claim to the notice of the Turkish Government, whose answer may prevent or give greater force to any interference on the part of Her Majesty's Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 58.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 30.)

My Lord, *Temple, June* 29, 1877.

Messrs. Watts and Milburn. Sinking of their lighters by Russian military authorities. "Annette."

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Agent and Consul-General at Bucharest, forwarding copies of letters received by him from Mr. Foscolo, the representative of the Danube Tug and Lighter Company, in which that gentleman, on behalf of the said Company, advanced two claims against the Russian Government:—

1. For the sinking, by order of the Russian military authorities, of the iron steamship "Annette" at the Wallachian loading port of Hamnida.

2. For the sinking by the Russian military authorities themselves at Carabia of two iron lighters (Nos. 5 and 11) which were owned by the same Company.

That it was further stated that on this latter occasion the crew were ordered to go ashore without time being allowed them to discharge the cargo or take away their effects.

That Lord Tenterden was to request that we would take that despatch into our consideration, and favour your Lordship with our opinion as to whether Her Majesty's Ambassador at St. Petersburgh might properly be instructed to submit these claims for the consideration of the Russian Government.

In obedience to your Lordship's commands we have the honour to report—

Claims may be submitted to Russian Government.

That, so far as appears upon these papers, Her Majesty's Ambassador at St. Petersburgh may properly be instructed to submit these claims to the consideration of the Russian Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 59.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 4.)

My Lord, *Temple, July* 4, 1877.

Contraband of war. Export from England.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us a draft of a *Pro-Memoriâ* which your Lordship proposed to communicate to the Russian Ambassador, in answer to the accompanying paper, in which his Excellency inquired the views and intentions of Her Majesty's Government in regard to the export from this country of articles which might be deemed contraband of war; and that he (Lord Tenterden) was to request us to report to your Lordship, at our earliest convenience, whether we concurred in the terms of that draft.

That a volume containing the correspondence between Earl Granville and Count Bernstorff during the Franco-German war was annexed for reference, and that he was also to refer us to the case of the "Helen," reported in 1 Law Reports, Ad. and Eccl., as also bearing on the subject.

Approves *Pro-Memoriâ.*

In obedience to your Lordship's commands we have the honour to report—

That we entirely concur in the terms of the draft.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex to No. 59.

*Pro-Memoriâ.*

Contraband of war. Neutrals not bound to prevent export, but enemy may capture.

The practice of Great Britain as a neutral State with respect to articles which may be deemed to be contraband of war is governed by the general law of nations. Her Majesty's Government have always maintained that by the law of nations the neutral shipper of goods which may be deemed to be contraband of war commits no offence against his own Sovereign; and that a neutral State is not bound to restrain or punish its subjects who seek to carry such goods across the seas to a belligerent, the only penalty for so doing being the seizure and condemnation of the goods if intercepted by the enemy during their transport.

The powers vested in the Executive by the Foreign Enlistment Act, passed in 1870 after much careful consideration, are, in the opinion of Her Majesty's Government, amply sufficient for the enforcement of all the duties and obligations of neutrality which the law of nations can require.

Her Majesty's Government cannot further restrict trade.

The existence of war inflicts sufficiently onerous burdens on neutral commerce, and Her Majesty's Government have no intention of adding to them by the imposition of restrictions on the trade of this country in excess of the recognized practice of neutral States.

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## No. 60.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 11.)

My Lord, *Temple, July* 10, 1877.

Messrs. Watts and Milburn. Destruction of tug "Annette" and lighters by Russians.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letters from Messrs. Watts and Milburn,* requesting that Her Majesty's Ambassador at St. Petersburgh might be instructed to put forward their claim on account of the destruction of their tug "Annette," and their lighters Nos. 5 and 11 by the Russians on the Danube; and Lord Tenterden was to request us to take into our consideration the papers forwarded by Messrs. Watts and Milburn, and to report to your Lordship our opinion as to whether Lord A. Loftus might properly be authorized to present their claim to the Russian Government.

In obedience to your Lordship's commands we have the honour to report—

Claim may be brought before Russian Government.

That Lord A. Loftus may, in our opinion, properly be instructed to bring the claim of Messrs. Watts and Milburn before the Russian Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 61.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received October* 26.)

My Lord, *Temple, October* 26, 1877.

Messrs. Watts and Milburn. Seizure of lighter by Russian authorities on Danube.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 30th July, 1877, stating that he was directed by your Lordship to transmit to us therewith a letter from Messrs. Watts and Milburn, transmitting copy of a *procès-verbal* and protest against the Russian Government in relation to the seizure of their lighter No. 6 by the Russian military authorities, who employed it to carry troops across the river to Sistova.

That Lord Tenterden was to request that we would take their letter and its inclosures into our consideration, and favour your Lordship with our opinion as to whether the claim was one which Her Majesty's Ambassador at St. Petersburgh should be instructed to present for the consideration of the Russian Government.

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* June 26 and 27.

1877

We are also honoured with a further letter from Lord Tenterden, dated the 3rd August, 1877, transmitting a despatch from Her Majesty's Agent and Consul-General at Bucharest.

In obedience to your Lordship's commands we have the honour to report—

Claim may be presented to Russian Government.

That, in our opinion, the claim is one which Her Majesty's Ambassador may properly be instructed to present for the consideration of the Russian Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Spain.

## No. 62.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received February* 3.)

My Lord,
*Temple, February* 3, 1877.

Seizure of Spanish vessel "Montezuma" by supposed Cubans.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th January ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, as marked in the margin,* relative to the case of a Spanish steamer named the "Montezuma" or "Mortezama," which vessel was forcibly seized on the 7th November last while on the high seas, on a voyage between Porto Rico and Havana, by a party of armed persons who were on board the vessel as passengers, and are presumed to be Cubans.

That they are stated to have killed the captain, helmsman, and a steward who attempted resistance, and to have wounded at least one other of the crew.

That we should see by the inclosure in the Admiralty letter of the 25th January that the Commander-in-chief of Her Majesty's naval forces on the North American and West Indian Station had directed the Commodore at Jamaica to issue orders to Her Majesty's ships on his division of the station to capture the "Montezuma," should she be fallen in with by them, flying the Cuban flag, either on the high seas or in British waters, and to take her into a British port for trial.

Piracy.

Sir Julian Pauncefote also further stated that it would appear from the judgment of the Privy Council in the case of the "Attorney-General of Hong Kong *v.* Kwok Asing" (5 L. Rep. P. C. 179), and from that of the Court of Queen's Bench in the case of "Reg. *v.* Terman" (33 L. J. M. C. 201), that the Commander-in-chief was right in treating the case of the "Montezuma" as one of piracy, *jure gentium.*

British Admiral right in ordering capture.

That he was, however, to request that we would take the inclosed papers into our consideration, and favour your Lordship, at our earliest convenience, with our opinion as to whether the orders given by Rear-Admiral Cooper Key should be approved.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the orders given by Rear-Admiral Cooper Key may properly be approved.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Consul Pauli, No. 51; Consul Stevens, No. 1; Major Stuart, No. 70; Lloyd's, December 15; Admiralty, December 16; draft to Consuls and Major Stuart, December 25; Colonial Office, December 27; Lloyd's, December 28, 1876; to Vice-Consul Melhado, January 4; Admiralty, January 25, 1877; Hong Kong Case, Judgment.

## No. 63.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 16.)

My Lord,
*Temple, November* 13, 1877.

Sulu. Seizure of the "Sultana" by Spanish war vessels.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th September last, stating that, with reference to our letter of the 13th June, 1876, he was directed by your Lordship to transmit to us a complete printed copy of the correspondence relating to the seizure by Spanish war vessels of the steam-yacht "Sultana," which had been chartered by the Sultan of Brunei to the Victoria Trading Company of Labuan, and to request that we would have the goodness to take these papers into our consideration, and report to your Lordship whether, in our opinion, there existed sufficient proof of injury to British interests to justify Her Majesty's Government in calling upon the Spanish Government to indemnify the Company for the loss they have suffered in consequence of the illegal capture of the "Sultana."

In obedience to your Lordship's commands we have the honour to report—

Compensation may be claimed.

That, in our opinion, the further papers show a sufficient proof of injury to British interests to justify Her Majesty's Government in calling upon the Spanish Government to indemnify the Company for the loss which they have suffered in consequence of the illegal capture of the "Sultana."

But we think that the whole losses stated in the petition inclosed in Mr. Ussher's despatch (No. 23, Consular) cannot be made the ground of claim.

With deductions.

The first two items for uncollected debts are too remote, and the deductions of these will diminish the claim down 7,022 dollars.

The compensation to the Sultan of Brunei for the loss of his steamer cannot form any part of the claim made by Her Majesty's Government, but the amount may properly be claimed as money paid by the Company under the charter to the Sultan for the loss of the steamer. The amount, therefore, will be 22,022 dollars, deducting the 7,022 dollars, and to this may not improperly be added 630 dollars:—for the loss of captain's personal effects, 400 dollars; mate's, 200 dollars; crew, 30 dollars; a loss stated in the memorandum, Inclosure 2 in Mr. Low's despatch (No. 21, Consular).

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 64.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 20.)

My Lord,
*Temple, November* 20, 1877.

"Octavia" seized by Spanish ship of war on high seas. Claims arising out of.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 6th instant, stating that he was directed by your Lordship to lay before us the inclosed correspondence relating to the capture and detention by the Spanish authorities of the British steamer "Octavia."

History of the Case.

That the "Octavia" was seized by the Spanish ship of war "Hernan Cortes" on the 13th March, 1876, on the high seas, about 30 miles off the coast of St. Thomas, laden with arms and ammunition.

That she was taken to Porto Rico and her crew thrust into prison, from whence they were released fifteen days' later on the arrival of Her Majesty's ship "Eclipse."

That there could be no doubt as to the character of the vessel before her transfer in Jamaica to M. Altamond de Cordova.

That she belonged to the Cuban Junta, and was armed, equipped, and used for no other purposes but those of the revolutionary forces.

That M. de Cordova was undoubtedly a British subject; and, although no actual proof could be obtained that her transfer to him was colourable, and that he was a mere agent of the Junta, and that the beneficial interest in the vessel still remained vested in foreigners, there was the strongest presumption that such was the fact.

That when the transfer to M. de Cordova was effected, he was the agent of the nominal owners who were themselves the agents of the Junta. That at the time of

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the supposed sale to him the vessel was under arrest at Kingston on suspicion of a breach of the Foreign Enlistment Act.

That she had recently changed her name, and was then called the "Uruguay," and carried the Uruguayan flag, but that, knowing the character of the vessel, that Government refused to permit her to carry its flag.

That at the instance of M. de Cordova, who represented himself as the *bonâ fide* purchaser, and made the declaration of ownership required by section 56 of the Merchant Shipping Act, the Governor of Jamaica consented to release the vessel from arrest, on condition that he should enter into a bond to secure that she should be taken direct to New York. That the bond was duly executed, and the vessel, which then resumed her original name of "Octavia," was allowed to leave Port Royal. But that instead of proceeding direct to New York, she put in, ostensibly for repairs, first at Morant Bay in Jamaica; secondly at Jacmel, where it was suspected that she was intended to land arms for the use of the party in insurrection against the Haïtian Government; thirdly at St. Thomas, and it was not until she had left the last-named place that she shaped her course for New York, when she was immediately chased by a Spanish ship of war and captured on the high seas.

That the proceedings of the "Octavia," after leaving Port Royal, led the Governor of Jamaica to the conviction that M. de Cordova had wilfully and deliberately broken his engagements that she should proceed direct to New York. And his Excellency accordingly ordered proceedings to be taken against him on the bond, but it appeared that judgment had not yet been delivered.

That the "Octavia," being a British vessel, sailing at the time of her capture on the high seas under the British flag, and having her papers in perfect order, Her Majesty's Government lost no time in demanding her restitution by the Spanish Government.

That, after a protracted correspondence, the vessel was handed over to Her Majesty's Consul at Porto Rico on the 1st July last.

That the national honour having been, so far, vindicated by the restoration of the vessel, it remained to be considered what steps should be taken to demand compensation from the Spanish Government in respect of the private interests affected by her illegal seizure and detention.

That there were various claims arising out of the case. First, the claim of the Board of Trade for maintenance of the crew (see Board of Trade letter of the 9th December, 1876). Second, the claim of the crew for damages for imprisonment (see Colonial Office letter of the 9th January, 1877). Third, the claim of the master of the vessel, and his wife, for damages in respect of imprisonment, and the seizure of their money and effects on board the vessel at the time of capture (see Colonial Office letter of the 9th October, 1876). Fourth, the claim of Cordova for damages in respect of the seizure, detention, and deterioration of his vessel and cargo, consisting of arms and ammunition (see Colonial Office letter of the 5th April, 1877).

That M. de Cordova had from the commencement evinced a great desire that the Spanish Government should take the vessel and cargo off his hands, and pay him an indemnity, which he assessed at no less than 50,000*l*., though, as appeared from the papers, the vessel was sold in New York, not very long ago, to a person named Bambridge for 25,000*l*.

That M. de Cordova now claimed the right to abandon her to the Spanish Government, on the plea that she had suffered such deterioration from her detention in port as to render her unserviceable (see Survey Report in Colonial Office letter of the 5th October, 1877), and he asked Her Majesty's Government to support him in that contention.

That your Lordship was not disposed to accede to the wishes of M. de Cordova in that respect, and, indeed, having regard to the very strong grounds which existed for believing that the vessel at the time of seizure was the property of foreigners, and that the object of her visit to Jacmel after leaving Port Royal was to land arms for the use of the Haïtian insurgents, in violation of M. de Cordova's engagement to the Governor of Jamaica, your Lordship felt some hesitation in presenting any claim for compensation to the Spanish Government without calling upon M. de Cordova, in the first instance, to explain, to the satisfaction of Her Majesty's Government, as to the *bona fides* of the transfer of the vessel to him as a purchaser.

That your Lordship, however, was inclined, on the whole, and subject to our opinion on the case, to present the four claims above enumerated to the Spanish Government, with an intimation that the vessel having now been restored, and reparation having, so far, been obtained for the violation committed on the British flag, Her Majesty's Government were now prepared, in accordance with the assurance previously given by them, to consider, in a spirit of fairness and moderation, the grounds which the Spanish Government desired to urge against the claims of the private individuals who had suffered from the illegal action of their officers.

That as regards the claim of M. de Cordova, it appeared to your Lordship that it should be limited to reasonable compensation for—

1. Deterioration of vessel and apparel.
2. Demurrage.
3. Damage to cargo.

That those items were, as well as those constituting the three other claims, matters of detail to be adjusted hereafter.

That in the meanwhile Lord Tenterden was to request that we would take the papers into our consideration, and inform your Lordship whether we concurred in the views above expressed, and in the course which your Lordship proposed to adopt, and, if not, to favour your Lordship with our views on the case, and as to the action which, in our opinion, should be taken by Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

Compensation to be claimed:—
Board of Trade claim for subsistence of crew.
Claim of crew and master, &c., for imprisonment, seizure of effects, &c.
Claim of Cordova, owner, for demurrage, deterioration, and damage to cargo.

That in our opinion the claim of the Board of Trade, the claim of the crew, and the claim of the master and his wife may properly be made the grounds of a demand for compensation on the Spanish Government.

With respect to the claim of Cordova, it might be satisfactory to have some explanations from him as to the nature of his connection with the "Octavia."

But since the release of the vessel was demanded, on the ground that she was a British ship with all regular papers on board, seized and detained on the high seas and carried in for adjudication by a Spanish man-of-war, and since she has now been released as illegally captured, we think Cordova's claim, but limited, as your Lordship proposes, to a claim for—

1. Deterioration of the vessel and apparel,
2. Demurrage,
3. Damage to cargo,

may be made.

We entirely concur with your Lordship, that the intimation suggested as fitting to be made on these several claims to the Spanish Government should be conveyed to that Government.

The further papers do not bring forward any facts which lead us to modify or alter the above Report.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

# Turkey.*

## No. 65.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 14.)

*Temple, March* 13, 1877.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us a despatch, and its inclosures, from the Acting Judge of the Supreme

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* The Reports on the claims of Messrs. Watts and Milburn against the Turkish and Russian authorities on the Danube, for destruction of their tugs, &c., will be found under "Russia."

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**Assault on Turkish territory by G. Stiglitch, an Austrian belonging to a British ship.**

Consular Court at Constantinople relative to a question of jurisdiction which had arisen from a murderous assault committed on shore on Turkish territory by one Giacomo Stiglitch, borne on the roll of a British ship, but stated to be an Austrian subject.

That Mr. Fawcett inquired whether the accused should be tried by British authorities or handed over to the Austrian authorities at Constantinople.

That Sir Julian Pauncefote was also to inclose a memorandum giving reasons for considering that the British Court at Constantinople had no jurisdiction in the case; and that he was to request that we would take the matter into our consideration, and favour your Lordship with our opinion as to whether we concurred with the conclusion arrived at in the memorandum, in order that a reply might be transmitted to Mr. Fawcett by telegram.

In obedience to your Lordship's commands we have the honour to report—

**British Consular Court has no jurisdiction.**

That we concur in the conclusion arrived at in the memorandum of Sir Julian Pauncefote.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 66.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received April 27.)*

My Lord, *Temple, April 26, 1877.*

**Navigation of the Danube. Collision cases. British Consul at Galatz. Vice-Admiralty jurisdiction.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 10th February last, stating that he was directed by your Lordship to transmit to us a despatch, and its inclosures, from Mr. Fawcett, the Acting Judge of the Supreme Consular Court at Constantinople, in which a question was raised as to whether the Consul at Galatz had power to exercise Vice-Admiralty jurisdiction over vessels navigating the Danube.

That he was also to inclose other documents which bore on that subject.

That we should observe that by the 3rd section of the Order in Council of the 9th April, 1866, British Consular officers within the Ottoman dominions possess, for the purposes of "The Public Act relative to the navigation of the mouths of the Danube" and its annexes, all the powers and jurisdiction which were, by the Order in Council of the 30th November, 1864, vested in the Judge of the Supreme Court of Constantinople.

That by the 41st section of the last-mentioned Order the Supreme Court was constituted a Court of Vice-Admiralty within the Ottoman dominions, and the first question which arose was—

Whether the Vice-Admiralty jurisdiction of the Supreme Court at Constantinople became vested in the British Consul at Galatz, as Judge of the Provincial Court, or otherwise by virtue of the 3rd section of the Order in Council of the 9th April, 1866, so as to enable him to entertain suits *in rem* for damage by collision.

That, if our reply to that question should be in the negative, the next question was that which was raised by the British Consul in Galatz, namely, whether the Court over which he presided had not the power, in the exercise of a "customary jurisdiction," to arrest vessels in suits brought before him for damage by collision, in accordance with the practice of Vice-Admiralty Courts in suits *in rem*.

That on that point Sir Julian Pauncefote was to refer to the section 7 of the Order in Council of the 12th December, 1873, which repealed the Order of the 30th November, 1864, and now regulates the exercise of Her Majesty's jurisdiction in the Ottoman dominions.

That that section, which was similar to section 8 of the repealed Order, contained a saving clause with respect to any "reasonable custom," and it was stated in Mr. Consul Sanderson's letter to the Acting Judge, and in the printed Judgment inclosed in Mr. Fawcett's despatch, that the practice of the Consular Court at Galatz had been to arrest ships in cases of collision "in exercise of a customary jurisdiction."

That, on the other hand, Sir Julian Pauncefote was to point out that section 7 of the existing Order in Council of the 12th December, 1873, as well as the corresponding section of the repealed Order of 1864, saved any reasonable custom, except where the Order "contains some express and specific provisions incompatible with the observance of such custom."

That by section 41 of the Order of 1864 the Supreme Court and every Provincial Consular Court held before a resident Legal Vice-Consul was constituted a Court of Vice-Admiralty.

That by section 5 of the repealing Order of 1873 it was declared that "all Her Majesty's jurisdiction exercisable in the Ottoman dominions for the judicial hearing and determination of matters in difference, and for the administration or control of property and persons," shall be exercised according to the Order, and not otherwise.

That by section 6 the law to be applied and the procedure to be followed is, so far as circumstances permit, and subject to the provisions of the Order, to be in conformity with the law and procedure for the time being in force in England.

That section 15 provided that every commissioned Consular officer should have and form a Court for his own district, referred to in the Order as a "Provincial Court."

That section 31 provided that all Her Majesty's jurisdiction not vested by the Order exclusively in the Supreme Court shall be vested in the Provincial Courts.

That section 88 provided that the Supreme Court should be a Court of Vice-Admiralty within the Ottoman dominions, and also that the Consular Court for Egypt should be a Court of Vice-Admiralty for its own district; but no Vice-Admiralty jurisdiction was expressly conferred on Provincial Courts.

That Sir Julian Pauncefote was to request that we would take all the papers and documents referred to into consideration, and favour your Lordship with our opinion whether the British Consul at Galatz was entitled to exercise Vice-Admiralty jurisdiction in cases of collision occurring in the navigation of the Danube, by virtue of the Order in Council of the 9th April, 1866; and, if not, whether he was entitled to exercise Vice-Admiralty jurisdiction in the discharge of his general functions as Judge of the Provincial Court at Galatz, under the Order in Council of the 13th December, 1873, and that if our reply to this should be in the negative, whether he might lawfully continue to exercise the alleged custom of the Court of arresting vessels in suits brought for damage done to a ship by collision.

In obedience to your Lordship's commands we have the honour to report—

**No Vice-Admiralty jurisdiction in cases of collision on the Danube.**

1. That, in our opinion, the British Vice-Consul at Galatz is not entitled to exercise Vice-Admiralty jurisdiction in cases of collision occurring in the navigation of the Danube by virtue of the Order in Council of the 9th April, 1866.

**Provisions of the Order in Council.**

That Order is not indeed repealed, as other Orders were, by the Order in Council of the 12th December, 1873. But we think that the 3rd section of the Order of the 9th April, 1866, confers upon the Consuls, &c., only the powers required for the purposes mentioned in the Public Act respecting the navigation of the Danube, and that the power to arrest a vessel is not required for these purposes.

2. That if the 3rd section of the Order of the 9th April, 1866, admits of a construction wider than we are inclined to give to it, a further limitation is put upon the jurisdiction of the Consul by section 5 of the Order of the 12th December, 1873, which provides that all Her Majesty's jurisdiction shall be exercised according to the provisions of the Order of 1873, and not otherwise.

This Order of 1873, by sections 9, 14, and 15, provides for the Supreme Court, the Court for Egypt, and the Provincial Courts, and by section 88 the Supreme Court and the Court for Egypt are respectively made Vice-Admiralty Courts; but the Order of 1873, whilst providing, by section 15, that every commissioned Consular officer shall, subject to the provisions of the Order, hold and form a Court, which shall be a Provincial Court, does not re-enact the 2nd paragraph of section 41 of the Order of 1864, that "every Provincial Court held before a resident Legal Vice-Consul shall be a Court of Vice-Admiralty."

3. Section 7 of the Order of 1873, though placed under the head of general provisions respecting Her Majesty's jurisdiction, is, we think, not sufficient to preserve a customary jurisdiction in Vice-Admiralty matters, since the Order apparently intended to confer that jurisdiction only upon the Supreme Court and the Court for Egypt.

Section 31 of the Order of 1873, directing that all Her Majesty's jurisdiction, civil and criminal, not under the Order vested exclusively in the Supreme Court, shall, to the extent and in the manner provided by the Order, be vested in the Court for Egypt and in the Provincial Courts, is explained, as we think, by sections 86, 87, 88, 89, 90, and 91.

Thus each of the Courts is to have jurisdiction in bankruptcy.

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Special jurisdiction of Supreme and other Courts.

The Supreme Court and the Court for Egypt jurisdiction in Vice-Admiralty cases.

The Supreme Court jurisdiction in lunacy and in matrimonial causes.

The Supreme Court a full, and the Court for Egypt and the Provincial Courts a limited, jurisdiction in probate matters.

These sections, 86 to 91, come under the head of civil authority and procedure, and the saving of the Consular customary jurisdiction in Vice-Admiralty matters is, we think, excluded by the words of section 88.

Vice-Consul at Galatz has no Vice-Admiralty jurisdiction, and cannot arrest vessels in cases of collision.

We are, therefore, further of opinion that the British Vice-Consul at Galatz is not entitled to exercise Vice-Admiralty jurisdiction in the discharge of his general functions as Judge of the Provincial Court at Galatz under the Order in Council of the 12th December, 1873. And that he cannot legally continue to exercise the alleged custom of the Court, of arresting vessels in suits brought for damage done to a ship by reason of collision.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 67.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received April* 27.)

*Temple, April* 27, 1877.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 26th instant, stating that Her Majesty's Government, having received intelligence that the Russian forces had crossed the Turkish frontier, and Her Majesty being resolved to maintain the strictest neutrality in the war, he was directed by your Lordship to request that we would immediately prepare a draft of Proclamation notifying her resolution, and also a draft of letter to the Board of Admiralty, Treasury, Colonial Office, War Office, and India Office, announcing Her Majesty's resolution.

That to facilitate the preparation of those documents Lord Tenterden was to transmit to us copies of those issued for the same purpose at the breaking out of war between France and Germany in 1870, together with a copy of the Report of the Neutrality Laws Commissioners, in the Appendix to which would be found the documents of the same kind issued on previous occasions.

That Lord Tenterden was to add that your Lordship would be glad to receive our reply as soon as possible.

In obedience to your Lordship's commands we have the honour to report—

Turco-Russian War. Proclamation of Neutrality and letters to public Offices.*

That we have made in the Proclamation of Neutrality, and in the draft of letter to the Board of Admiralty, Treasury, Colonial Office, War Office, and India Office the alterations which are in our opinion now proper. These alterations appear in the copies now transmitted with this Report.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* See Confidential Papers, Nos. 3166 and 3167.

## No. 68.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received April* 28.)

*Temple, April* 28, 1877.

My Lord,

Turkish Regulations. Treatment of Russian subjects and vessels, and right of search in the Bosphorus.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 26th instant, stating that he was directed by your Lordship to transmit to us telegrams from Mr. Layard reporting that the Turkish Government was about to issue certain Regulations, with regard to the treatment of Russian subjects and vessels, and the exercise of search and visit of neutral merchant vessels proceeding through the Bosphorus to Russian ports, or to places in the occupation of Russia.

That Mr. Layard desired to be furnished, with as little delay as possible, with the views of Her Majesty's Government on the proposed Regulations, and that Lord Tenterden was to request that he would favour your Lordship with our opinion, at our earliest convenience, as to any instructions which should be sent to Mr. Layard, in reply, and with any observations which might occur to us on the matter.

In obedience to your Lordship's commands we have the honour to report—

No objection to.

That, in our opinion, the proposed Regulations of the Turkish Government transmitted by Mr. Layard are such as that Government has the right to impose.

In obedience to your Lordship's request, we suggest that Mr. Layard might be instructed to suggest to the Turkish Government that—

Measures for protection of neutral vessels requisite; also notice of blockades.

1. Immediate and proper measures should be taken for the protection and safety of all neutral vessels navigating the waters, and entering or leaving ports and roadsteads where torpedoes have been laid.

2. Due notice of blockades should be given, and a proper warning given to vessels on their way to blockaded ports, and due time allowed to vessels within and wishing to leave blockaded ports.

Neutral navigation of Suez Canal.

Porte should surrender belligerent rights, reserving rights against belligerent.

3. The proposed Regulations for the navigation of neutral vessels through the Suez Canal are, as we have said, within the rights of the Turkish Government. But Mr. Layard may be instructed, if a fit opportunity occurs, or he can make the opportunity, to suggest to the Turkish Government that it would be expedient, prudent, and wise for that Government at once to declare that it surrenders, in the Canal and its approaches, the exercise of the usual rights which a belligerent, in reference to neutrals, may exercise in his own territory and waters, reserving all rights against the other belligerent and his allies.

Very little danger or inconvenience will be suffered by Turkey should she so far neutralize and keep open the navigation of the Canal, whilst the moral, political, and military advantages which she will acquire by such a course should induce her Government readily to withdraw the Regulations now proposed for the Canal, and substitute a declaration to the effect suggested.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 69.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 2.)

*Temple, May* 2, 1877.

My Lord,

Turkish iron-clad in Victoria Docks.

WE have the honour to acknowledge the receipt of a letter from Lord Tenterden, inclosing a draft letter to the Customs, respecting a Turkish iron-clad in the Victoria Docks, which vessel was ready to sail, and had stores and coal on board and sails bent, and was in charge of the person who had contracted to find a crew and take her to Constantinople.

In obedience to your Lordship's commands we have taken this draft letter into our consideration, and have the hour to report—

Approving letter to Customs.

That the draft letter to the Customs may properly be sent.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Annex to No. 69.

*Lord Tenterden to the Secretary to Her Majesty's Customs.*

Sir, *Foreign Office, May* 1, 1877.

Turkish iron-clad in Victoria Docks.

WITH reference to the Report furnished by the Board of Customs this day, and of which a copy has been sent to the Foreign Office, respecting the case of the iron-clad in the Victoria Docks built for the Turkish Government, I am directed by the Earl of Derby to request that you will state to the Commissioners of Customs that his Lordship is consulting the Law Officers as to the proper steps to be taken with regard to this vessel, and that he is of opinion that in the meanwhile she should not be allowed to leave, and that in the event of any attempt being made to dispatch her, the officers of customs should exercise all the powers vested in them by the Foreign Enlistment Act for her detention.

To watch and detain her, &c.

I am at the same time to suggest that the contractors, or other persons in whose possession she now is, should be asked whether they intend to avail themselves of the provision of the 8th section of that Act whereby it is competent to them to give notice to the Secretary of State of the equipment of the vessel, and to take the measures therein provided for insuring that she shall not be dispatched contrary to the Act.

I am, &c.
(Signed) TENTERDEN.

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## No. 70.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May* 3.)

My Lord, *Temple, May* 3, 1877.

Contraband of war. Coal in neutral vessel for use of British ship of war in Turkish port.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 2nd instant, stating that a question had arisen as to the liability to seizure and condemnation, as contraband of war, of coal carried in a neutral merchant-vessel and destined for the use of a British ship of war lying in a Turkish port.

That Lord Tenterden was directed by your Lordship to request that we would favour you with our opinion as to whether, in the case suggested, the coal would, by the law of nations, be liable to seizure on the high seas, and to condemnation in a Russian Prize Court, by reason of the vessel's destination being a belligerent port, notwithstanding that it were clearly proved that the coal was intended for delivery on board a British ship of war lying in such port for the use of such ship, in pursuance of a contract with Her Majesty's Government.

That the above question assumed that coal suitable for steaming purposes, if carried to a belligerent port, would, under the present condition of maritime warfare, properly come within the category of contraband of war.

That if we should be of opinion that proof of the coals being destined solely for delivery on board a British ship of war for the purposes and under the circumstances mentioned would relieve the cargo from liability to condemnation, Lord Tenterden was further to request that he would inform your Lordship whether we could suggest any measures whereby the neutral merchant-vessel carrying such cargo could be protected from capture and detention pending the adjudication of a Prize Court.

In obedience to your Lordship's commands we have the honour to report—

Such coal is not contraband of war.

That coal carried in a neutral vessel, and destined for the supply of Her Majesty's ships of war is not contraband of war.

No doubt a belligerent cruizer has a right to require some evidence of the destination and intended use of coal found on board a neutral vessel bound for an enemy's port, and if there exists any reasonable grounds for suspicion that the coal is destined for the use of the enemy, the cruizer will have the right to detain the vessel until a Prize Court adjudicates upon the cargo.

Should arrange with Russian Government as to exempting it from capture.

We suggest that it will be advisable for Her Majesty's Government to communicate with the Russian Government in order to ascertain whether an arrangement cannot be made that the possession by the master of the neutral vessel of some official document, to be agreed upon between the two Governments, shall be considered satisfactory proof that the coal cargo is destined for the use of Her Majesty's ships of war.

In the meanwhile, the only safe course will be to send a commissioned officer on board the neutral vessel in charge of the cargo.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER. DEANE

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## No. 71.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May* 3.)

My Lord, *Temple, May* 3, 1877.

Turkish iron-clad in Victoria Docks.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 2nd instant, stating that he was to transmit to us papers relating to an iron-clad vessel now lying in the Victoria Docks, and which had been built for the Turkish Government.

That the Acting Surveyor of Customs reported that he was informed that the vessel was now in the charge of a British subject, who had contracted to find the crew, and take her out to Constantinople; and that Lord Tenterden was to request whether we were of opinion that the dispatch of the vessel under the circumstances therein mentioned would be a violation of the Foreign Enlistment Act, 1870, and that a warrant should be issued for her detention.

That we should observe that your Lordship had recommended that, pending the receipt of our Report, steps should be taken to prevent her departure.

In obedience to your Lordship's commands we have the honour to report—

Should be detained under Foreign Enlistment Act.

That, in our opinion, the dispatch of the vessel in the circumstances mentioned would be a violation of the Foreign Enlistment Act, section 8, sub-section 4.

And that the vessel should be detained under section 24 of the same Act.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 72.

*Dr. Deane to Lord Tenterden.—(Received Muy* 5.)

*Temple, May* 4, 1877.

My Lord,

Foreign ships of war building in England. Receipt of Report.

I HAVE the honour to acknowledge the receipt of a letter from your Lordship, dated the 3rd instant, stating that your Lordship was to transmit to the Attorney- and Solicitor-General and myself, by direction of the Earl of Derby, a letter from the Treasury, forwarding a Report from the Board of Customs, giving particulars as to the men-of-war now building in the ports of the United Kingdom on account of foreign Governments.

I have, &c.
(Signed) J. PARKER DEANE.

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## No. 73.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received May* 8.)

*Temple, May* 8, 1877.

My Lord,

Neutrality. Supplementary instructions to Her Majesty's fleet.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 4th instant, stating that, with reference to our letter of the 27th ultimo, he was directed by your Lordship to transmit to us the inclosed letter from the Admiralty,* calling attention to certain supplementary instructions on questions of neutrality which were issued during the Franco-Prussian war, and inquiring whether your Lordship wished similar instructions to be now issued to Her Majesty's fleet; and Lord Tenterden was to request that we would take this question into our consideration, and favour your Lordship with our opinion as to whether the aforesaid regulations should be confirmed in the case of the present war.

In obedience to your Lordship's commands we have the honour to report—

Confirming those issued during Franco-German war.

That, in our opinion, the instruction conveyed in the letter of the 18th July, 1870,† may properly be confirmed.

Secrecy as to movements of belligerents.

The instruction dated the 4th August, 1870, and relative to British pilots, may also, in our opinion, properly be confirmed, but we suggest, for your Lordship's consideration, that some words should be added defining the nature of the danger out of which ships

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* Admiralty, May 2. 1877.

† This had reference to preservation of secrecy respecting naval movements of belligerents.

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of war may be piloted, and on that suggestion we submit that the instruction might be worded as follows:—

**Piloting of belligerent ships in distress.**

"But ships of war in distress may always be piloted out of danger other than the danger of immediate or imminent capture."

The instructions of the 23rd August, 1870,* and 18th November, 1870,† may also, in our opinion, properly be confirmed.

With reference to the instruction of the 1st January, 1871, we suggest that in the present circumstances it should be altered by embodying the letter of the Foreign Office of the 19th July.

The instructions might, therefore, be framed by the Lords Commissioners of the Admiralty in this form:—

**Coaling and provisioning of belligerents in British ports.**

"I am commanded by my Lords Commissioners of the Admiralty to acquaint you that no ship of war of either belligerent shall hereafter be permitted while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination, and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.

"When such a supply of coals as mentioned above can be procured in the ordinary way of commerce, it would not be proper for the officers of Her Majesty's Government to furnish the coal."

"When no sufficient supply can be procured from private stores, Her Majesty's officers may properly supply the coals, if they do so consistently with due provision for the wants of Her Majesty's service, in the same way as they might properly supply a spar or an anchor, if it could not otherwise be procured by the belligerent vessel."

Subject to this alteration in form, we are of opinion that this instruction may also properly be confirmed.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 74.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 8.)

My Lord, *Temple, May* 8, 1877.

**Iron-clads building for Turkish Government by Messrs. Samuda.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us a letter from Messrs. Samuda Brothers, bringing to the notice of Her Majesty's Government the fact that they had two iron-clad vessels building, under contract, for the Turkish Government, and that he was to request us to report to your Lordship our opinion as to the course which Her Majesty's Government should pursue in regard to those vessels.

In obedience to your Lordship's commands we have the honour to report—

**Search and inquiry under Foreign Enlistment Act.**

**Security for their non-removal before conclusion of war.**

That, in our opinion, Her Majesty's Government may properly inform Messrs. Samuda that measures will be taken, under section 25 of the Foreign Enlistment Act, in respect to the two vessels contracted for by the Turkish Government, and now stated to have been assigned to Messrs. Gadban and Watson. And we respectfully advise that all the powers conferred by that section 25 should be exercised. And also that Messrs. Samuda should be called upon to give, under the provisions of the last paragraph of section 8 of the Act, security for insuring that the two vessels in question

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**Capture of British vessels. Entry of Her Majesty's ships into blockaded ports.**

* Relative to British merchant vessels captured by belligerents, and to the entry of Her Majesty's ships into blockaded ports.

**Beligerent vessels with prisoners or prizes in neutral ports.**

† Relative to belligerent vessels with prisoners on board, or with prizes, remaining in neutral ports.

shall not be removed from their premises without the licence of Her Majesty, until the termination of the war.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 75.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 8.)

My Lord, *Temple, May* , 1877.

**Mr. Fell's railway for the seat of war.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us therewith a letter from Mr. Fell, C.E., inquiring whether it would be illegal to supply the Governments of Russia or Turkey with the materials for the construction of railways, it being well understood that such railways might be used for the transport of military stores; and also whether it would be illegal for British subjects to assist in the construction of railways under such circumstances; and that Lord Tenterden was to request that we would take that letter into our consideration, and inform your Lordship as to the nature of the reply which should be returned to Mr. Fell, both as regards the supply of railway materials, and further, the sending out of artizans to construct the line.

In obedience to your Lordship's commands we have the honour to report—

That we gather from Mr. Fell's letter to your Lordship that the railway to which he refers is one more immediately adapted to military rather than to ordinary civil and commercial purposes, and that he intends to transport such railway to the seat of war, where also the engineers and artizans who are to aid in laying down the rails and putting into use the materials supplied will be sent.

**Materials liable to capture and condemnation by Prize Court. Engineers, &c., punishable under Foreign Enlistment Act.**

If we are right in taking this view of the intention of Mr. Fell, and the nature of his railroad, we are of opinion that the rails and other materials supplied will be open, if captured, to be condemned by a Prize Court, and that the engineers and artizans who are sent out to aid in laying down the rails, &c., and the person sending these men out, may be punishable under the provisions of section 5 of the Foreign Enlistment Act.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 76.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 8.)

*Temple, May* 8, 1877.

My Lord,

**Mr. Carigan's claim. "City of Waterford" forced to leave Galatz by Russian authorities.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us therewith a letter from Mr. Daniel Carigan,* drawing attention to the loss occasioned to him by the circumstances under which his steamer "City of Waterford" was forced to leave Galatz at a few hours' notice, in consequence of orders issued by the Russian military Commander, and asking for the advice of Her Majesty's Government; and he was to request that we would take this letter into our consideration, and favour your Lordship with our opinion as to the answer which should be returned to Mr. Carigan's application.

In obedience to your Lordship's commands we have the honour to report—

**Military necessity probable excuse. May represent case to Russian Government.**

That Mr. Carigan's case may and will probably be explained by the absolute necessity of the case and military reasons; but it is a hard case, and one which, in our opinion, your Lordship may properly bring to the notice of the Russian Government with a view of inducing that Government to take a favourable view of the matter, and make Mr. Carigan some compensation.

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* May 2, 1877.

Mr. Carigan may, in the meantime, be answered to the above effect, and not led to rely too much upon the result of your Lordship's interference on his behalf.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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### No. 77.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 8.)

*Temple, May* 8, 1877.

My Lord,

Turkish blockade of Black Sea ports.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 5th May instant, stating that he was directed by your Lordship to transmit to us a note from the Turkish Ambassador,* forwarding the official notification of the blockade of the ports in the Black Sea issued by the Turkish Government, and to request us to take the same into our consideration, and report to your Lordship, at our earliest convenience, our opinion thereupon.

Lord Tenterden was pleased to add that a translation of the notification, as telegraphed home by Her Majesty's Ambassador at Constantinople, and published in an Extraordinary "London Gazette" of that day, was also inclosed.

In obedience to your Lordship's commands we have the honour to report—

If maintained, and confined to enemy's coasts, it is right.

That if the notified blockade can, notwithstanding its extent, be effectually maintained, and includes no port or coast not belonging to or in possession of the enemy, we are of opinion that the notification is right.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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### No. 78.

*Lord Tenterden to the Law Officers of the Crown and Dr. Deane.*†

*Foreign Office, May* 7, 1877.

Gentlemen,

Treatment of neutrals. Turkish instructions.

I AM directed by the Earl of Derby to transmit to you a copy of a telegram from Her Majesty's Ambassador at Constantinople, stating the instructions issued by the Porte to the Turkish Commander-in-chief on the Danube with regard to the treatment of neutral vessels on that river; and I am to request you to report to Lord Derby your opinion thereupon.

I am specially to call your attention to the passage which states that contraband of war, and the vessels carrying it, when duly determined by the Court, are liable to "seizure." It is presumed that the word "seizure" means or implies "confiscation." If so, the Porte proposes to apply the obsolete rule under which the carriage of contraband of war entailed a forfeiture of the ship, and Lord Derby would wish to be informed whether you think it desirable that Mr. Layard should be instructed to call the attention of the Turkish Government to this point.

I have, &c.  
(Signed) TENTERDEN.

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*Report.*

Her Majesty's Government may require indemnity for loss.

That, in our opinion, the instructions issued by the Porte to the Turkish Commander-in-chief may be justified by military reasons, but Her Majesty's Ambassador at Constantinople may properly be instructed to inform the authorities at Constantinople that Her Majesty's Government will require the fullest indemnity for every loss or damage which any of Her Majesty's subjects may actually sustain in consequence of those instructions being put into execution.

Contraband of war may be seized, but vessel carrying it released.

The general rule applicable to vessels captured with contraband of war on board is that the contraband part of the cargo alone is liable to capture, the other goods and the ship being released.

Exceptions.

To this general rule, however, there are exceptions. Thus, the ship will be liable to condemnation where the same person owns both ship and contraband goods. So, also, where the ship carries false papers, or any fraud is proved against the ship.

Remonstrance should be made, &c.

The modern rule and the authorities are stated and referred to in Calvo's "Droit International," tom. ii, p. 482. On this point Her Majesty's Ambassador may properly be instructed to call the attention of the Porte to that part of the instructions which says, "En tout cas la contrebande de guerre est saisissable, et entraîne la confiscation du navire et de toute la cargaison;" and to inform the Turkish Government that Her Majesty's Government cannot allow the condemnation of ships and their whole cargo, the property of British subjects, to be in all cases the consequence of the ships having on board some contraband articles; and the modern rule of international law on this matter should be, at the same time, brought to the notice of the Turkish Government.

J. H.  
H. S. G.  
J. P. D.

*May* 9, 1877.

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### No. 79.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 12.)

*Temple, May* 11, 1877.

My Lord,

Danube Commissioners and Her Majesty's ship "Cockatrice" detained at Sulina by Russians.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence in regard to the detention of the Danube Commissioners and of Her Majesty's ship "Cockatrice" at Sulina, in consequence of the suspension of the navigation of the Danube by order of the Russian Commander-in-chief; and that he (Lord Tenterden) was to request us to take into our consideration the question of the interference with the rights of the Commission, as guaranteed by Treaty, resulting from the proceedings of the Russians, and to report our opinion as to the course it would be proper to pursue in the matter.

Rights of Commission under Treaty.

That he was at the same time desired to draw our special attention to the accompanying letter from the Board of Trade, offering some general observations on the question of the free navigation of the Danube, and to—

1. The Act of Congress of Vienna, Article CIX (Hertslet's Map of Europe by Treaty, vol. i, p. 270);
2. Treaty of Paris, 30th March, 1856 (Ibid., vol. ii, p. 1257, Article XV);
3. Treaty of 13th March, 1871, Article VII (Ibid., vol. iii, p. 1921).

In obedience to your Lordship's commands we have the honour to report—

Danube is neutral, but stoppage of navigation by torpedoes, &c., is justified by necessities of war.

That no doubt can, in our opinion, be even raised on the question whether the Danube be a neutral river or the navigation of the Danube free.

But the question at issue is of a totally different kind, and is whether the Russians (and Turks) being at war, and carrying on military operations on the banks of the Danube, are shut out from impeding, for military purposes, by torpedoes and other obstructions, the use of the river.

The case is exceptional, and the stoppage of navigation can be justified only by the necessities of the war. But these necessities may, and in our opinion do, justify the stoppage of navigation.

Considering, then, that the Russians may stop the navigation of the Danube, we think no exception can be made in favour of Her Majesty's gun-boat or the Commissioners.

Commissioners must get a pass. Her Majesty's gun-boat cannot go up.

In this state of things, in our opinion the proper course will be to obtain a pass, if possible, from the Russian Commander, and perhaps also from the Turkish Commander.

And if that pass cannot be obtained, the Commissioners may avail themselves of the safe-conduct by land offered by the Russian Commander, and Her Majesty's gun-boat must not endeavour to proceed up the river.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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* Porte to Musurus Pasha: communicated May 4, 1877.

† The Law Officers' Report upon this subject could not be found when this collection of Reports was made, and it was therefore necessary to obtain the original draft of the Report. The Law Officers, however, do not retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the Foreign Office letter to them is recapitulated. It has, therefore, been deemed advisable to print the Foreign Office letter in this instance, as the bare Report, without the usual preamble, would not be wholly intelligible.

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## No. 80.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 14.)

*Temple, May* 12, 1877.

My Lord,

Navigation of Danube stopped by Russians.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us three letters which had been addressed to Her Majesty's Consul at Galatz by the Russian Consul at that port on the subject of the suspension of the navigation of the Danube by order of the Russian military authorities;* and Lord Tenterden was to request us to report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

Course adopted is justified.

That, in our opinion, the reasons given by the Russian Consul at Galatz, in his letter of the $\frac{\text{22nd April}}{\text{4th May}}$, 1877, justify the suspension of the navigation of the Danube in the manner and to the extent notified.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 81.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 14.)

*Temple, May* 12, 1877.

My Lord,

Navigation of Danube stopped by the Turks.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 10th instant, stating that, with reference to his letter of the 7th instant, he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Consul at Rustchuk,† inclosing translation of a notice issued by the Turkish Commander-in-chief prohibiting the navigation of the Danube; and that Lord Tenterden was to request that we would favour your Lordship with any observations which we might have to offer upon this notice.

Lord Tenterden was to call our special attention to the passage in the 3rd paragraph which stated that the captains would be considered and treated as spies.

In obedience to your Lordship's commands we have the honour to report—

Not justified except as regards that portion of the river actually commanded by Turkish forces.

That, in our opinion, Abdul Kerim has, in the notice which he issued on the 30th April, exceeded his instructions and the powers accorded to him by international law, inasmuch as he has made the restrictions and regulations imposed and laid down by him applicable to the whole of the Danube "surrounding the territory of the Ottoman Empire," and not merely to that part of the river of which the Turkish forces shall have for the time being the actual command for war purposes.

British captains cannot be treated as spies unless proved to be such.

With regard to that part of the notice which declares that the captains of vessels will be treated as spies, we think if this course were pursued the Turkish Commander-in-chief would be guilty of a gross breach of international right. In our view, no neutral can be treated as a spy unless facts exist which establish that he is one. We therefore advise that the Turkish Government be informed that Her Majesty's Government will hold the Porte responsible if the threat of treating British captains or subjects as spies be put into execution.

We certainly did not understand that the instructions of the $\frac{17}{29}$th April, which state "et au besoin en leur appliquant les règles relatives à l'espionnage," were intended to warrant a general declaration that all captains of vessels infringing the regulations which should be imposed should be considered and treated as spies.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 82.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 14.)

*Temple, May* 12, 1877.

My Lord,

Navigation of Danube stopped by Russians.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 11th instant, stating that, with reference to his letter of the 10th instant, he was to transmit to us for consideration, with the papers then before us on the subject, a despatch from Her Majesty's Ambassador at St. Petersburgh, inclosing a note from the Russian Foreign Office stating that the suspension of navigation on all points of the Danube occupied by Russian troops had been ordered in the interest of the safety of merchant vessels.

In obedience to your Lordship's commands we have the honour to report—

Justified: but on grounds of military necessity; not out of regard to safety of neutral vessels.

That the Commander-in-chief of the Russian army may have a right to suspend the navigation of that part of the Danube which is occupied by the Russian forces. His justification for doing this, however, must be the exigency of military operations, and not his regard for the safety of neutral merchant vessels.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 83.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 18.)

*Temple, May* 17, 1877.

My Lord,

Detention of Turkish iron-clad "Mendoukié."

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 9th instant, stating that, with reference to our Report of the 3rd instant, he was directed by your Lordship to transmit to us, for our immediate consideration and opinion, the accompanying letter from the Treasury referring to the detention of the Turkish iron-clad "Mendoukié," and stating that the Commissioners of Customs suggested that a warrant should be issued in accordance with the 23rd section of the Foreign Enlistment Act.

That the former papers relating to the case were annexed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Warrant should be issued under Foreign Enlistment Act.

That, in our opinion, the warrant, under the 23rd section of the Foreign Enlistment Act, 1870, should be issued as suggested by the Treasury.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 84.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 18.)

*Temple, May* 18, 1877.

My Lord,

Closing of Bosphorus and Dardanelles at night, and prohibition against firing guns in foggy weather.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us two official notifications which had been received from the Turkish Ambassador, the first relating to the measures to be observed during the war at the entrance of the Dardanelles and Bosphorus, the second containing the decision of the Porte respecting the Russian vessels which were in Ottoman ports at the time of the declaration of war, and the commerce of neutrals; and that Lord Tenterden was to request us to take those documents into our consideration and to report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

Justified by exigencies of war.

That the closing of the entrances of the Bosphorus and Dardanelles by night may, we think, be justified by the necessity of providing means for keeping out enemy's ships, which might pass in the dark on to Constantinople, and the prohibition in respect to firing guns in foggy weather may also be justified by the necessities of war.

In our opinion, no objection can properly be made to the notifications.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* April $\frac{15}{27}$, $\frac{18}{30}$, and $\frac{\text{April 22}}{\text{May 4}}$, 1877.

† Mr. Reade, No. 5, May 2, 1877.

## No. 85.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 18.)

*Temple, May* 18, 1877.

My Lord,

Iron-clads building for Turkish Government.

Sale to Messrs. Gadban and Watson before war.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 7th instant, stating that, with reference to our letter of the 3rd instant, he was directed by your Lordship to transmit to us for our consideration, and for any observations which we might have to offer thereupon, a letter from Mr. W. C. Watson, stating that the two armour-clad corvettes contracted for in this country by the Turkish Government in 1874, and now in course of construction, had been transferred to himself and his partner, Mr. Paul Gadban, for money actually paid by them before the outbreak of the war.

That Mr. Watson further engaged that neither vessel should be sold to either of the belligerents so long as the war lasted, and offered to negotiate for the sale of the vessels to Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government may purchase them.

That we see no objection to the purchase of the two vessels by Her Majesty's Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 86.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 25.)

*Temple, May* 25, 1877.

My Lord,

Coal for use of Her Majesty's ships of war in belligerent ports.

As to form of certificate of destination, &c.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st instant, stating that, with reference to our Report of the 3rd instant, suggesting that, in order to secure from capture coal shipped on board a neutral vessel, and destined for the use of one of Her Majesty's ships of war lying in a belligerent port, an arrangement should be proposed to the Russian and Turkish Governments whereby the possession by the master of the neutral vessel of some official document, to be agreed upon between the two Governments, should be considered satisfactory proof that the coal cargo was destined for the use of Her Majesty's ships of war, he was directed by your Lordship to transmit to us, for our consideration and opinion, the accompanying correspondence on the subject which had passed between the Foreign Office and the Admiralty.

That Sir Julian Pauncefote was to request us to take into our consideration the draft certificate inclosed in the Admiralty letter of the 16th instant, and to report to your Lordship whether we concurred in the form of it, and considered that it might properly be proposed to the Russian and Turkish Governments.

In obedience to your Lordship's commands we have the honour to report—

Agree, if belligerents will accept it.

That the certificate in the form suggested by the Admiralty, but with the changes in date, and official character of the person signing the certificate, as the circumstances of the case may require, will, in our opinion, be sufficient if the belligerent Governments will consent to accept it.

Query as to security of belligerents that the certificate is genuine.

The difficulty which occurs to us is, that the belligerent Governments may object that they will have little or no security that the certificate is genuine, and really signed by the person whose name appears upon it.

We are not aware whether forms of certificate bearing the description of the ship carrying the coals, the quantity of coals carried, and the destination in blank, signed by the Secretary of the Admiralty, and authenticated by the Russian and Turkish Ambassadors in London, could be issued to Her Majesty's naval officers abroad, to be used by them when coal is to be procured for Her Majesty's ships.

But, if such forms could be issued without practical inconvenience, and the belligerent Governments would consent to accept such certificates when properly filled up, we suggest the adoption of that course.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 87.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received May* 25.)

*Temple, May* 25, 1877.

My Lord,

Turkish iron-clad "Mendoukié."

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th instant, stating that, with reference to our letter of the 17th instant, reporting our opinion that a warrant, under the 23rd section of the Foreign Enlistment Act, should be issued for the seizure and detention of the Turkish iron-clad "Mendoukié," he was directed by your Lordship to transmit to us a draft warrant which had been prepared in the form agreed upon between the Foreign Office and the Treasury in 1871, and approved by the then Law Officers in a letter dated the 4th September of that year; and that he was to request us to take that draft into our consideration, and to report to your Lordship our opinion as to whether it was right and proper to be issued.

That the previous papers relating to the case were inclosed for convenience of reference.

That he was to add that a letter had been sent to the Board of Customs, requesting them to communicate the name and official description of the officer to whom the warrant should be directed.

That Sir Julian Pauncefote was to request that we would state, in our reply, whether the warrant should be under seal.

We are also honoured with a further letter from Sir Julian Pauncefote, dated the 19th instant, stating that, with reference to his letter of the preceding day, forwarding for our concurrence a draft of warrant for the seizure of the Turkish iron-clad "Mendoukié," he was to request that we would report to your Lordship our opinion whether the warrant in question should be actually executed or should only be issued to the officer of the Customs to be used in case of need.

In obedience to your Lordship's commands we have the honour to report—

Approve warrant for seizure.
No seal required.

That, in our opinion, the form and wording of the warrant are sufficient and proper, and the warrant need not be under seal.

Should only be used in case of need.

But, referring to the engagement voluntarily given by Messrs. Watson, we suggest, for your Lordship's consideration, that the warrant should only be issued to the officer of the Customs to be used in case of need, and should not be actually executed till the necessity arises.

Security should be given.

And Messrs. Watson may properly be asked to give such security as your Lordship may prescribe, under the provisions of the Foreign Enlistment Act, 1870, section 2, sub-section 2.*

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 88.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 1.)

*Temple, June* 1, 1877.

My Lord,

Turkish iron-clad "Mendoukié" handed over to Turkish Government before Declaration of Neutrality.

Name changed to "Hamadieh."

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st ultimo, stating that, with reference to our Report of the 25th instant and previous correspondence in regard to the Turkish iron-clad "Mendoukié," he was directed by your Lordship to transmit to us a letter and inclosures from the Board of Customs, from which it appeared that the vessel in question was the property of the Turkish Government, and was handed over to them nine days before the issue of the Queen's Proclamation of Neutrality; and, further, that her name had been changed to the "Hamadieh."

That Sir J. Pauncefote was to request that we would take the letter into our immediate consideration, and favour your Lordship, at our earliest convenience, with our opinion as to the steps that should be taken in the matter.

That Sir J. Pauncefote was to call our attention to the fact that war was formally declared by Russia on the 24th April, and that Her Majesty's Proclamation of Neutrality was issued on the 30th April.

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* On the original Report there is the following note: "*Query* § 8. Proviso (1) (2)."

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In obedience to your Lordship's commands we have the honour to report—

Not satisfied that she was completely handed over.

That the information supplied by the Customs does not satisfy us that the ship in the Victoria Docks became, before the declaration of war, a Turkish man-of-war, or was completely delivered over to the Turkish Government, and still less that no addition of any equipment of war has not been made to her since the declaration of war; and we therefore advise that the ship should be immediately arrested and detained till further information has been received.

Should be arrested,

and warning given against infringement of Foreign Enlistment Act.

We also advise that Mr. Hayward, the manager of the Victoria Docks, and all other persons who may have access or be concerned with this vessel, should be cautioned that they do not incur the penalties provided against those who may infringe the Foreign Enlistment Act, 1870.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 89.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received June 1.)*

*Temple, June* 1, 1877.

My Lord,

Mr. Fell's railways.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th May, stating that, with reference to our Report of the 17th ultimo, he was directed by your Lordship to transmit to us therewith a further letter from Mr. Fell, stating that he held patents for a system of constructing cheap local railways; that before the war he had been in treaty with the Governments of Russia and Turkey; and that probably the two Governments would be disposed to use the system for supplementing existing railways at the seat of war.

That Mr. Fell added that it was now decided that he was to take no part in carrying them out for military purposes, and concluded by inquiring whether it would be lawful for him to furnish the belligerent Governments with information of a purely civil engineering character.

Sir Julian Pauncefote was pleased to request that we would take that letter into our consideration, and favour your Lordship with our opinion as to the answer which should be returned to Mr. Fell's inquiry.

In obedience to your Lordship's commands we have taken this letter into our consideration, and have the honour to report—

Cannot answer as to supply of engineering information to belligerents.

Must not connect himself with any military operation.

That Mr. Fell may properly be answered that your Lordship cannot undertake to reply to the general question whether it would or would not be lawful to furnish to either of the belligerents information of a purely engineering character. Much would depend upon the stipulations with regard to the terms upon which the information should be furnished. Mr. Fell will, however, be guilty of an offence against the law if he accepts, or agrees to accept, any engagement in or in connection with any military operation.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 90.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received June 2.)*

*Temple, June* 1, 1877.

My Lord,

Tugs, &c., on Danube. Interference of Roumanian authorities with navigation.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd instant, stating that, with reference to our Report of the 18th instant[*] relative to the interference of the Roumanian authorities with certain tugs and lighters on the Danube, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Paris,[†] forwarding a note from the Roumanian Agent stating that the Roumanian Government had prohibited navigation on the Danube and declared that it would not be responsible for any losses occasioned thereby.

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[*] See No. 56, p. 52.

[†] Lord Lyons, No. 415.

That Sir Julian Pauncefote was to request us to take this note into our consideration, and to report to your Lordship our opinion as to whether the Roumanian Government was justified in taking such measures.

In obedience to your Lordship's commands we have the honour to report—

If a belligerent, Roumania is justified in measures taken.

That, assuming the Roumanian Government is a belligerent, and such we believe is the case, that Government is, in our opinion, justified in taking the measures which its Agent in Paris informs Her Majesty's Ambassador in Paris have been adopted relative to the navigation of neutral vessels in the Lower Danube.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 91.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received June 6.)*

*Temple, June* 6, 1877.

My Lord,

Belligerent ships of war: Regulations: Who is to enforce?

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Board of Admiralty,[*] inquiring who were to be considered the "authorities" for enforcing the regulations with regard to belligerent ships of war laid down in your Lordship's letter to the Admiralty of the 30th April.

That Lord Tenterden was at the same time to inclose for our consideration a draft of the answer which your Lordship proposed to return to the above letter; and that he was to request us to inform your Lordship, at our early convenience, whether we concurred in the terms of that draft, or would suggest any additions or modifications.

In obedience to your Lordship's commands we have the honour to report—

That at page 2, line 5 from the foot, we think the word "and" might, for greater precaution's sake, be substituted for the words "or if not." And page 3, line 5 from the end, the words "or actual" should be inserted between the words "intended" and "infraction." And at the end of the paragraph, in place of the words "its prevention," the words "the prevention of any such intended infraction" should be used."

Approving draft.

Subject to these suggestions, we concur in the terms of the draft submitted to us.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex to No. 91.

*Lord Tenterden to the Secretary to the Admiralty.*

*Foreign Office, June* 8, 1877.

Sir,

Principal officer of Customs to report breaches of neutrality, &c.

Lord Derby has had under his consideration your letter of the 23rd May, inquiring who should be considered the "authorities" responsible at the home ports for enforcing the regulations as to belligerent vessels laid down in Lord Derby's letter of the 30th April; and I am directed by his Lordship to state to you, for the information of the Lords of the Admiralty, that the principal officer of Customs at every port should, in his opinion, be charged with the duty of watching the proceedings of every belligerent ship of war in the port, and should report any breach of the Neutrality Proclamation to the Senior Naval Officer, if there is one, and to the Board of Customs by telegraph, and in the meanwhile take all available measures to prevent any violation of the law.

It should at the same time be borne in mind that it is the duty of all officers in the public service to give the earliest information of any intended or actual infraction of

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[*] Admiralty, May 23, 1877.

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neutrality which may come to their knowledge, and to lend assistance in the prevention of any such intended infraction.

I am, &c.
(Signed) TENTERDEN.

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## No. 92.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 14.)

*Temple, June* 13, 1877.

My Lord,

**Warrant to search ships, &c., under Foreign Enlistment Act.** WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st June instant, stating that he was directed by your Lordship to transmit to us a draft of warrant which had been prepared by the Solicitor to the Board of Customs, and which it was proposed should be issued to the Commissioners by your Lordship, in order to enable them legally to exercise their powers of search, &c., under the provisions of the 25th section of the Foreign Enlistment Act, 1870; and to request us to take that draft into our consideration and report to your Lordship our opinion whether it was right and proper to be issued, and as to any instructions which we might think it advisable that the Commissioners should receive with regard to the manner in which the warrants should me made use of.

In obedience to your Lordship's commands we have the honour to report—

That the 25th section of the Foreign Enlistment Act, 1870, provides that the person empowered may enter any dockyard or other place within Her Majesty's dominions.

**As to limits of a port.** The warrant refers only to a ship within a "port."

We do not know if all the shores in Her Majesty's dominions are or are not within the limits of a "port."

The Board of Customs will probably know how this is. But if any of the places under the 25th section are not within a "port," the warrant should be altered to meet the case of a ship in a place within Her Majesty's dominions, yet not within the limits of any port.

The warrant follows the words of the Statute, using the term "friendly State." We are of opinion that the words Turkey or Russia, as the circumstances of each case require, should be substituted, and the warrant altered in the way noted in the margin.

The section (25) enacts that the person employed may "inquire as to the destination of the ship," and may "search such ship."

**Instructions for using warrant.** In our opinion, the instructions which the Commissioners of Customs may properly receive with regard to the manner in which the warrant should be made use of are:—

1. That whilst all watchfulness is used to prevent any ship intended to be employed in the naval or military service of Russia or Turkey from leaving Her Majesty's dominions, the warrant should not be resorted to vexatiously or unnecessarily.

2. That the person employed to "inquire" and search be a careful and intelligent man, well acquainted with the specific objects of his "inquiry" and "search," and capable by his knowledge and experience of discharging properly the duties of "inquiry" and "search."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

### Annex to No. 92.

*Warrant.*

**Warrant.** The Right Honourable (*a*) Her Majesty's Principal Secretary of State for (*b*)

To (*c*) the (*d*) of Her Majesty's Customs at and for the port of (*e*) and to all and every other officers and officer for the time being of Her Majesty's Customs at and for the said port.

Whereas it appears to me that a certain ship now lying or being within the said port (*f*) is intended to be employed in the naval or military service of (Turkey *or* Russia) now at war with (Russia *or* Turkey) which said foreign States are at peace with Her Majesty.

Now I, the said Secretary of State, in pursuance of the powers vested in me by the 25th section of the "Foreign Enlistment Act, 1870," do hereby authorize and require you the said (*g*) and all and every other officers and officer for the time being of Her Majesty's Customs at the said port, to enter any dockyard or other place where the said ship may be, and to inquire as to the destination of such ship, and to search the same.

Given under my hand this day of 18 .

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## No. 93.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 7.)

*Temple, July* 6, 1877.

My Lord,

**British vessels with coal for Port Saïd. Russian Consular certificate of protection against seizure.** WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us therewith a letter from the Russian Ambassador,* stating that in consequence of representations which Lord A. Loftus had, by desire of Her Majesty's Government, addressed to the Russian Minister for Foreign Affairs, the Russian Government had authorized their Consular officers at British ports to grant, on certain conditions, certificates of protection against seizure by Russian cruizers to owners and masters of vessels bound for Port Saïd with cargoes of coal destined for commercial use.

**Notice for "Gazette"** That a draft notice to that effect had been drawn up for insertion in the "London Gazette," and was therewith inclosed, and Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion thereon.

That Sir Julian Pauncefote was at the same time to inquire whether, in our opinion, it was desirable that Her Majesty's Government should state to the Russian Government that Port Saïd being a commercial port, and not a port of naval equipment, they did not wish it to be assumed from that arrangement that in their opinion coal would properly be condemned as contraband of war on the sole ground of its being shipped to that port, but they had learnt with satisfaction that the Russian Government had acceded to it, as it would have a beneficial effect in relieving the apprehensions of shipowners and others engaged in the coal trade with Egypt.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the notice may properly be inserted in the "London Gazette."

**Not necessary to raise question of coal being contraband, or Port Saïd being a commercial port.** But it does not seem to us desirable to raise any question with the Russian Government on the character of coal as an article of contraband, or the nature of Port Saïd as a commercial port, and not a port of naval equipment.

The coal conveyed to and landed at Port Saïd may at any time be taken for the use of Turkish men-of-war, or transports carrying Turkish troops, or troops of the allies of Turkey. Some such contingency the Russian Government probably has in

(*a*) Insert name of Secretary of State who signs the warrant.
(*b*) " Home or Foreign Department, as the case may be.
(*c*) " name of particular officer selected.
(*d*) " official description of officer.
(*e*) " name of port.
(*f*) " name, if known, and description of ship, and where lying.
(*g*) " name of officer repeated.

* Count Schouvaloff, June 27, 1877.

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view when reserving the power to rescind the permission, and it will be, we respectfully suggest to your Lordship, the better course to wait till the necessity of the case requires, if ever, some remonstrance on the part of Her Majesty's Government.

And the application to the Russian Government for, and the insertion in the "Gazette" of, the permission to take coals to Port Saïd are scarcely consistent with the suggested doubt whether coal would be properly taken as an article not contraband of war to Port Saïd, a mere commercial port.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 94.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received July 25.)*

*Temple, July* 25, 1877.

My Lord,

Case of the "Hermes." British insurers of French cargo on Greek vessel seized by Turks.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th ultimo, stating that he was to transmit to us papers relative to the case of the British insurers of a French cargo laden on board the Greek vessel "Hermes," who claimed the assistance of Her Majesty's Government to obtain compensation for the loss sustained by them in consequence of the alleged illegal seizure and detention of that vessel by the Turkish military authorities.

That Sir J. Pauncefote was to request us to favour your Lordship with our opinion as to whether your Lordship would be justified in interfering diplomatically on behalf of the British underwriters.

That it was stated that the assured gave notice of abandonment, and that the underwriters had paid for a total loss. The cargo was insured in the Archangel Marine Insurance Company (a British Company) for 1,300*l.*, and for a like sum "with various underwriters at Lloyd's." That Sir J. Pauncefote was to request that we would take those papers into consideration with reference, not only to the case of the "Hermes," but also to the general question as to the right of Her Majesty's Government to interfere diplomatically on behalf of British underwriters claiming in respect of losses illegally inflicted by a belligerent on foreign ships and cargoes insured by them, a proceeding which appeared to your Lordship to involve a serious and novel responsibility.

That the point was discussed in the Report of the Committee of the Board of Trade on the "Alabama" claims (Appendix to British Case, Vol. vii, p. 5), and was raised in the cases of the "Dashing Wave," p. 114, and the "Circassian," pp. 124 and 133 of the Report of the Awards of the Mixed Commission on British and American Claims, sent therewith.

In obedience to your Lordship's commands we have the honour to report—

Insurers have legal claim to compensation. Her Majesty's Government may support.

That the cargo of the "Hermes" became, after the seizure of that vessel by the Turkish Government, the property of the insurers, British subjects, by reason of the abandonment by the assured; and if that cargo has been subsequently detained or destroyed by the Turkish Government, the insurers have a legal right to compensation from that Government, and such right may properly be supported diplomatically by Her Majesty's Government.

With regard to the general question, we are of opinion that the mere act of seizure of an insured ship or cargo would not confer upon the insurers such a right to compensation as may be made the subject of diplomatic interference by their own Government.

Cargo abandoned by owners becomes property of insurers.

If, however, the subject of the insurance is* seized and afterwards remains *in esse*, and becomes, in consequence of abandonment, the property of the insurers, the detention or destruction of their property by the belligerent would inflict an injury upon them for which their Government might properly require the belligerent to pay compensation.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* *Query* "illegally."—J.P.

### Annex to No. 94.

*The Lord Chancellor to Lord Tenterden.*

*Glentruim, Newtonmore, N.B., August* 18, 1877.

Lord Chancellor's opinion. British Government cannot complain of seizure of a foreign ship by the Turks.

I have not here any means of referring to any authorities or precedents there may be on this subject; but upon principle, convenience, and good sense, my own opinion is strongly against the right of the English underwriters to call on Her Majesty's Government to make any diplomatic demand in support of their claim. When the ship was seized, she was a foreign ship, with a foreign-owned cargo, and if she had been then sent to the bottom, the seizure and destruction, if a wrong, would have been a wrong done to foreigners, and one of the risks which the English underwriters undertook. Having been thus seized, wrongfully (as I will assume), the owners abandon the ship to the English underwriters, as (between the owners and the underwriters) the owners are entitled to do. The underwriters thus have thrown on their hands, as a natural consequence of their insurance, a foreign ship which has been wrongfully seized, but of the seizure of which the English Government cannot complain. I don't see on what principle the underwriters can say to Her Majesty's Government, "You must make a complaint that at a certain *punctum temporis*, namely, the moment when the abandonment was complete, the retainer of the cargo and ship became a wrong done to a British subject." I think the English underwriter who insures a foreign ship and cargo takes the risk of having it in such a case abandoned and thrown on his hands as property which has got into the power of a belligerent under circumstances which give the British Government no right to interfere.

British underwriters insuring a foreign ship run the risk of loss. British Government no right to interfere.

(Signed) CAIRNS.

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*The Lord Chancellor to Lord Tenterden.*

(Private.) *Glentruim, Newtonmore, N.B., September* 3, 1877.

My dear Tenterden,

I return the draft despatch ("Hermes") with some suggested alterations.

I still am strongly of the opinion expressed in my memorandum, but I observe Sir J. Pauncefote, in his memorandum (which I don't think I saw before), refers to some cases (the "Dashing Wave," &c.) as if they were in point, and bore in an opposite direction. I cannot think the circumstances were the same; but if they are, and if they are precedents binding on us, we ought to be careful not to appear to set them at defiance.

Ever yours,
(Signed) CAIRNS.

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*The Lord Chancellor to Lord Tenterden.*

*Glentruim, Newtonmore, N.B., September* 11, 1877.

I don't think the "Dashing Wave" or "Circassian" cases apply to the "Hermes" case.

In those cases the ship captured was British, and the British Government might well interfere diplomatically to complain of the capture as a wrong done to the English flag, for the benefit of all whom it might concern.

Moreover, there was in those cases an absolute contract in the Washington Treaty by the United States' Government to adjudicate on all claims arising out of acts "against the property of subjects of Her Britannic Majesty," and the detention or sale of property abandoned to British underwriters was clearly an act against the property of subjects of Her Britannic Majesty.

In the "Hermes" case the abandonment is equivalent to an assignment of the property *in hoc statu* by the assured to the underwriters. It is assigned with all its incidents and risks, and, *inter alia*, with the risk arising out of the fact of its being within the clutches of a foreign belligerent Power, who have seized it while on board a foreign ship.

(Signed) CAIRNS.

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## No. 95.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 25.)

*Temple, July* 25, 1877.

My Lord,

Black Sea blockade. Licence granted to Messrs. Valiano to pass through.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Ambassador at Constantinople, stating that the firm of Valiano and Co. had recently obtained from the Turkish Minister of Marine a pass through the blockading squadron in the Black Sea for one of their ships, and that some of Mr. Layard's colleagues were disposed to make that transaction the grounds of a protest against the blockade. That, according to the principle laid down in the case of the "Franciska" (Dr. Deane's "Law of Blockade," pp. 114, 115), it would seem to your Lordship that the grant of the pass or licence to Valiano and Co. on the peculiar and special occasion mentioned would not affect the validity of the blockade, but as a contrary opinion appeared to prevail among some of the foreign Representatives at Constantinople, Sir J. Pauncefote was to request that we would favour your Lordship with our opinion as to the instructions which should be given to Mr. Layard on that question.

In obedience to your Lordship's commands we have the honour to report—

Licences allowable in certain cases.

That we are not prepared to say that occasions may not arise in which a belligerent may properly grant a licence to a particular ship to pass into, or out of, a blockaded port; but we think no such occasion has arisen in the case in question.

Special privileges to individuals to break blockade cannot be recognized.

We are therefore of opinion that Mr. Layard should be instructed to inform the Porte that a blockade, during the maintenance of which licences are issued to individuals to carry on that trade which is interdicted to the world at large, is a blockade which is not authorized by the law of nations, and which will not be recognized by Her Majesty's Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 96.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received July* 31.)

*Temple, July* 30, 1877.

My Lord,

Coal for Port Saïd. Russian Consular certificate for protection from capture.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 17th instant, stating that, with reference to the last paragraph of our Report of the 6th instant, respecting the proposed notification in the "Gazette" in relation to the shipment of coal to Port Saïd, he was directed by your Lordship to inform us that no application was made to the Russian Government for permission to take coals to Port Saïd, but that in order to obviate any interruption in the supply of coal for the use of steamers navigating the Suez Canal, they were requested to authorize their Consuls in this country, on production of shipping documents of coals destined for Port Saïd, showing that the cargo was destined for commercial purposes, to issue certificates which would protect the vessel from interference by Russian cruizers on suspicion of the cargo being destined for the use of the Turkish naval forces.

That a similar arrangement had been entered into with our concurrence in regard to coal shipped for the use of Her Majesty's ships of war lying in Turkish ports, with this modification, that in such cases the certificate was to be granted by the Lords of the Admiralty, or the Senior Naval Officer on the station, in cases where a floating cargo might be purchased abroad.

That your Lordship had no reason to believe that the Russian Government considered that coal might be treated as contraband of war from the mere fact of its being shipped to an enemy's port.

Russian Ukase. Sulphur not contraband of war unless for enemy's use, &c.

That on that point Lord Tenterden was to inclose a despatch from Sir A. Paget, forwarding an extract from the Italian "Gazette" to the effect that by a recent Ukase of the Russian Government it was declared that sulphur should not be deemed contraband of war unless it was shipped to an enemy's port, and was destined for military or naval uses.

That your Lordship, however, desired to be informed whether in the last paragraph of our Report we intended to convey the opinion that the proposed arrangement with respect to coal shipped to Port Saïd implied an admission on the part of Her Majesty's Government that in the absence of a certificate from the Russian Consul the cargo would be liable to condemnation as contraband of war from the mere fact of it having been shipped to an enemy's port, and if so, whether, after the above explanation as to the real nature and object of the arrangement, we were still of opinion that the proposed notice in the "Gazette" might be inserted without further communication on the subject with the Russian Government.

Lord Tenterden was also pleased to request that we would also favour Lordship with our opinion as to whether steps should be taken for the publication in the "London Gazette" of the declaration made by the Russian Government as regards sulphur, reported in the despatch of Sir A. Paget.

In obedience to your Lordship's commands we have the honour to report—

Coal is always liable to *seizure*.

That coal being an article *ancipitis usus*, the ship carrying coal will always be liable to seizure and detention, and to being carried in for adjudication.

Use of Russian Consular certificate does not imply admission that coal is otherwise liable to *condemnation*.

The Consular and naval certificates will save ships furnished with those documents from the inconvenience of seizure, and the proposed arrangement with respect to coals shipped to Port Saïd does not, in our opinion, do more than provide for the free navigation of certificated ships, and does not imply an admission on the part of Her Majesty's Government that in the absence of the certificate coal will be liable to condemnation as contraband of war from the mere fact of its having been shipped to the port of a belligerent, and we think the proposed notice may be inserted in the "Gazette" without further communication on the subject with the Russian Government.

Sulphur notice not to be published without further information.

The slip forwarded by Sir A. Paget contains only an extract of some communication between the Italian and Russian Governments, and should not, in our opinion, be published in the "London Gazette" without further information, and also without communication with the Russian Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 97.

*The Attorney-General and Dr. Deane to the Earl of Derby.*—(*Received August* 6.)

*Temple, August* 6, 1877.

My Lord,

Black Sea blockade.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd instant, stating that, with reference to the question which will be put in the House of Commons on Monday next as to the efficiency of the Turkish blockade of the Black Sea ports, he was directed by your Lordship to transmit to us therewith two despatches from Her Majesty's Ambassador at Constantinople on that subject; and that Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion, at our earliest convenience, as to whether Hobart Pasha's explanations might be accepted as satisfactory as regards the efficiency of the blockade of the Black Sea ports, and especially with reference to Odessa and the line of Russian steamers running along the coast between that port and Nicolaieff.

In obedience to your Lordship's commands we have the honour to report—

Efficiency not impaired by navigation of small vessels under protection of Russian shore guns.

That the communication with Russian ports, and especially that between Odessa and Nicolaieff, is apparently confined to small vessels which are enabled to run along the coast in shallow water and under the protection of Russian guns on the shore, and probably within a line of torpedoes.

And, in our opinion, upon this state of facts, the explanation of Hobart Pasha as regards the efficiency of the blockade of the Black Sea ports may be accepted as satisfactory.

We have, &c.
(Signed) JOHN HOLKER.
J. PARKER DEANE.

As this matter is pressing, we send in our Report without having obtained the signature of the Solicitor-General, who is out of town to-day.

J. H.
J. P. D.

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## No. 98.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received August* 17.)

*Temple, August* 16, 1877.

My Lord,

Navigation of Danube and neutral commerce.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 29th June, stating that, with reference to our Reports of the 11th and 12th May, relative to the question of the navigation of the Danube, and the measures affecting neutral commerce which had been taken by the Turkish military and naval authorities, he was directed by your Lordship to transmit to us therewith two despatches from Her Majesty's Ambassador at Constantinople,* forwarding the Porte's reply to the representations which his Excellency, by desire of Her Majesty's Government, had addressed to them on that subject; and Lord Tenterden was to request that we would take those papers into our consideration, and favour your Lordship with our opinion whether the explanations and assurances therein given were satisfactory and sufficient.

That the former papers were inclosed for convenience of reference.†

In obedience to your Lordship's commands we have the honour to report—

Porte's explanations satisfactory.

That, in our opinion, the explanations and assurances given by the Porte in the replies transmitted with two despatches from Her Majesty's Ambassador at Constantinople are satisfactory and sufficient.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 99.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received September* 15.)

*Temple, September* 14, 1877.

My Lord,

Black Sea blockade.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 17th August ultimo, stating that, with reference to our Report of the 6th August respecting the efficiency of Black Sea blockade, he was directed by your Lordship to transmit to us, for any observations we might have to offer thereon, a despatch from Her Majesty's Ambassador at Constantinople,‡ forwarding the reply of the Porte to his inquiries on the subject.

In obedience to your Lordship's commands we have the honour to report—

Permission for Greek vessels to pass through.

That the fact which is admitted in the reply of the Porte, namely, that one or two vessels under the Greek flag have received permission to pass through the line of blockade, is open to grave question. The Porte suggests that, as a belligerent Power which has instituted a blockade *de facto* of the ports of the other belligerent, she has, by the same right which gives her the power of raising the blockade altogether, "la faculté dans certaines circonstances de permettre à des navires, destinés à des services spéciaux, de franchir la ligne du blocus à titre exceptionnel."

No right to make exceptions in favour of one neutral.

Exceptions in cases of disabled vessels.

Blockade must be equal for all.

This claim, in our judgment, cannot properly be entertained. In a case of blockade the rights and obligations of neutrals are equal, and a blockading Power has not the right to grant liberty to vessels of one or more particular neutral Powers to pass the blockading line and communicate freely with the ports of the belligerent which are subject to blockade, whilst she withholds such liberty from the vessels of all other neutral Powers. There is an exception to this general rule, namely, that the vessels of a neutral Power which are in a sinking or disabled state may be permitted to pass into a blockaded port in order to save life and property. This, however, is not the exception which the Porte by her reply suggests to have been the cause for which the "permission de communiquer librement avec des ports Russes" was granted to the vessels sailing under a Greek flag, and we would suggest to your Lordship that the Porte should be informed that the permission in question was given in breach of the rights of neutrals, and that the blockade, so long as it exists, should be a blockade

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* Mr. Layard, Nos. 593 and 594.

† Mr. Layard, No. 371; Consul Reade, No. 5; Law Officers, May 11 and 12; to Mr. Layard, Nos. 121, 126, and 139; to Lord A. Loftus, No. 202; to Sir A. Buchanan, No. 450.

‡ Mr. Layard, No. 898, August 7, 1877.

equally good against all and every neutral Power without exception, save as to vessels which may be in fact in a sinking or disabled state, requiring to get into the nearest port for the purpose of saving life and property.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 100.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received October* 30.)

*Temple, October* 30, 1877.

My Lord,

Porte's proposal to allow vessels to leave blockaded ports on condition of selling their grain cargoes at Constantinople.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 27th October instant, stating that he was directed by your Lordship to transmit to us therewith the accompanying decypher of a telegram which had been received from Her Majesty's Ambassador at Constantinople,* stating that he had reason to believe that the Porte would permit foreign ships detained on account of the blockade of the Russian ports in the Black Sea and Sea of Azoff to leave, on condition that the cargoes consisting of grain should be sold at Constantinople, no duty being levied upon them; and Lord Tenterden was to request that we would take that proposal into our immediate consideration, and favour your Lordship with an early opinion as to whether Her Majesty's Government could properly be a party to such an arrangement.

In obedience to your Lordship's commands we have the honour to report—

Contrary to law of blockade.

Neutrals might then treat blockade as at an end.

That, in our opinion, Her Majesty's Government cannot properly be a party to the proposed arrangement, which is opposed to the principles of the law of blockade. Blockade has been defined to be a uniform universal exclusion of all vessels not privileged by law. If some vessels are allowed to pass, others will have a right to infer that the blockade is raised. In blockade there are no conditions, the veto is absolute, and must either be existing or non-existing. If, therefore, the Porte act upon the principle suggested in Mr. Layard's telegram, the blockade is, by law, at an end, and neutral vessels will be justified in treating it as at an end.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 101.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 5.)

*Temple, November* 3, 1877.

My Lord,

Seizure of Turkish iron-clad under Foreign Enlistment Act.

Turkish protest against. It was Turkish property before war began.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th August, 1877, stating that, with reference to our Report of the 25th May last, he was directed by your Lordship to transmit to us therewith a note from the Turkish Ambassador at that Court protesting against the seizure of the iron-clad frigate "Hamidieh" (or "Mendoukieh") on the ground of her having been the property of the Turkish Government since the 21st April last, when the last payments were made to the builders.†

That Sir Julian Pauncefote was, at the same time, to transmit a letter from the Board of Customs,‡ containing copies of Reports on the subject from the Controller of the Outdoor Department of Customs in the port of London, by whom the "Hamidieh" was detained under your Lordship's warrant of the 2nd June last, from the Assistant Surveyor of Customs at the Victoria Docks, and from Mr. Hamel, the Solicitor to the Customs; and he was to request us to take those papers into our consideration, and to acquaint your Lordship with our opinion on that matter at our earliest convenience.

That the previous papers relating to the detention of the vessel were inclosed for convenience of reference.

We were also honoured with a further letter from Sir Julian Pauncefote, dated 10th September, 1877, transmitting to us the accompanying further letter which had

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* Mr. Layard, Telegraphic, No. 455.

† Musurus Pasha, August 16, 1877.

‡ Customs, August 25, 1877.

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been received from the Board of Customs,* forwarding copies of certain documents in connection therewith.

In obedience to your Lordship's commands we have the honour to report—

That the question whether this vessel comes within the provisions of the Foreign Enlistment Act, 1870, depends upon matters of fact which the evidence before us does not enable us to advise your Lordship satisfactorily upon.

Complainant may apply to Court of Admiralty for decision of question.

We are of opinion that the suggestion made to your Lordship by Mr. Hamel in his letter of the 25th August last is one which may properly be adopted, and that the proper course will be, in replying to the Turkish Ambassador's letter, to direct his attention to the concluding paragraphs of the 23rd section of the Foreign Enlistment Act as providing a satisfactory mode of disposing of the question.†

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

## No. 102.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*‡

*Foreign Office, August* 18, 1877.

Gentlemen,

Danube and Black Sea Railway used by Russians without payment. Mr. Tipping's claim.

I AM directed by the Earl of Derby to transmit to you a letter from Mr. Tipping, Chairman of the Danube and Black Sea Railway, in which he protests against the Russians making use of the railway without payment;§ and I am to request you to take this letter into your consideration, and to acquaint his Lordship with your opinion as to the answer which should be returned to Mr. Tipping.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

*Report.*

6, *Crown Office Row, Temple, E.C.*

If a Turkish Company, must look to Turkey for protection.

That, in our opinion, Mr. Tipping should be informed that if the Danube and Black Sea Railway Company is a Turkish Company, formed and carrying on its business under the protection of the Turkish Government, it is to that Government and not to the British Government that the shareholders of that Company must look to protect them against any injuries which may be inflicted upon the Company and its property by the Russians.

J. H.
H. S. G.
J. P. D.

*November* 5, 1877.

## No. 103.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received November 5.)*

*Temple, November* 5, 1877.

My Lord,

Five Greek vessels loading at Nicolaieff.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 2nd instant, stating that, with reference to our Report of the 30th ultimo, he was to transmit a despatch from Mr. Consul-General Stanley, forwarding a despatch from Mr. Vice-Consul Wagstaff, detailing the circumstances under which five Greek vessels had loaded cargoes of wheat at Nicolaieff; and that Sir Julian was also to transmit a letter from the Secretary to Lloyd's, stating that, to the best of his knowledge, there were no British ships remaining in any of the Russian ports of the

Black Sea and Sea of Azoff; and that he was to request our opinion as to whether, in the event of the five Greek vessels mentioned in Mr. Wagstaff's despatch being allowed to proceed on the intended voyages, either with passes or without, Her Majesty's Government would be justified in declaring to the Turkish Government that they no longer considered the blockade valid *quoad* Nicolaieff, and whether an intimation to that effect might properly be given at once to the Turkish Government.

In obedience to your Lordship's commands we have the honour to report—

If permitted to leave, Her Majesty's Government may declare Nicolaieff blockade no longer valid.

That, in our opinion, Her Majesty's Government will be justified in declaring and at once intimating to the Turkish Government that, if the five Greek vessels named in Mr. Wagstaff's despatch are allowed (with or without passes, and whatever their destination may be) to proceed on their voyages, Her Majesty's Government will no longer consider the blockade valid *quoad* Nicolaieff.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

## No. 104.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received November 7.)*

*Temple, November* 5, 1877.

My Lord,

Danube Public Act. Surplus funds.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 17th September last, stating that he was to transmit papers relative to a question which had arisen regarding the interpretations to be placed upon Article 14 of the Danube Public Act, so far as concerned the application of the reserve fund to the payment of current expenses in the event of a deficit of income arising in any year.

That Mr. Lister was to request our opinion as to whether, on the right construction of the Public Act, it was competent to the Commissioners to apply the whole or any part of the surplus in hand for the time being, whether invested or not, and whether carried or not to a reserve account, to making up any deficit of income which might occur in any year subject to the priorities declared in Article 14, or whether the surplus of any one year, from the time when it had been invested or carried to the reserve account, or otherwise set apart and declared to be surplus, was applicable only to the purposes specified in that Article in respect of any surplus, and could not be applied from time to time in satisfaction of the preferential charges.

In obedience to your Lordship's commands we have the honour to report—

That there is nothing in the Act which says that there shall be a yearly appropriation of the whole balance as surplus, and in our opinion the word "surplus" in Article 14 means a declared surplus as distinguished from the whole balance which, at the end of any year, may be found in the hands of the Commissioners.

Surplus carried to reserve fund cannot be used to make up deficit of income.

In our opinion, when once a surplus has been declared and carried to the reserve account, such surplus must be considered as part of the fund held in reserve for the purposes specified in the Act, and it is not competent to the Commissioners to draw upon that fund and apply the proceeds to the making up of any deficit of income which may have occurred.

But any balance not so carried may be applied for the purpose.

But, if there remains in the hands of the Commissioners, after paying the priorities named in Article 14, any balance which has not been declared surplus, and carried into the reserve fund, we think that such balance may be applied to make up any deficit of income.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Board of Customs, September 4, 1877.

† Section 23 provides that "the owner of the ship so detained, or his agent, may apply to the Court of Admiralty for its release, and the Court shall as soon as possible put the matter of such seizure and detention in course of trial between the applicant and the Crown." (See letter to Musurus Pasha, November 17, 1877.)

‡ The Law Officers' Report upon this subject could not be found when this collection of Reports was made, and it was therefore necessary to obtain the original draft of the Report. The Law Officers, however, do not retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the Foreign Office letter to them is recapitulated. It has, therefore, been deemed advisable to print the Foreign Office letter in this instance, as the bare Report, without the usual preamble, would not be wholly intelligible.

§ Mr. Tipping, August 11, 1877.

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## No. 105.

*Dr. Deane to Sir J. Pauncefote.*—(*Received November* 14.)

My dear Sir Julian, 3, *Paper Buildings, Temple, November* 12, 1877.

**Blockades. Licences for passing through. Allowable in exceptional cases. Reference to cases during Crimean War.**

I RETURN Harding's Reports on Licences.* No doubt there may be cases in which such exceptional permits may be granted without much danger to a blockade. Each case, however, must depend upon its own very special circumstances. And you will see how very careful Harding has been in all these Reports, particularly those in 1855, in keeping to the general rule, pointing out the risk of an exception being made and throwing the responsibility off the British Government.

In the present Turkish cases I do not remember that there was even put forth any good reason for granting the passes.

I shall see the Attorney- and Solicitor-General to-morrow afternoon on the Railway case and on the Peruvian case, and hope to send the Reports on them in on Wednesday morning.

Sincerely yours,
(Signed) J. PARKER DEANE.

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## No. 106.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 14.)

My Lord, *Temple, November* 13, 1877.

**Black Sea blockade. Inefficiency.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us a letter from M. Petrocochino, temporary Chairman of the Black Sea Blockade Committee,† calling attention to the alleged inefficiency of the Turkish blockade of the Russian ports in the Black Sea and Sea of Azoff, and urging that Her Majesty's Government should take some action in the matter.

**If vessels are allowed to pass, Her Majesty's Government will no longer recognize blockade.**

That your Lordship proposed to inform the Committee, in reply to that communication, that if the numerous vessels then reported to be loading in certain ports of the Black Sea should be permitted to proceed to Constantinople or elsewhere through the line of blockade, your Lordship was of opinion that Her Majesty's Government would be justified in declaring to the Turkish Government that they were unable any longer to recognize the blockade of those ports as effective within the meaning of the Declaration of Paris.

That Lord Tenterden was to request that we would inform your Lordship whether we concurred in the terms of the proposed reply, or would suggest any addition or modification therein.

That a despatch from Her Majesty's Consul at Taganrog on the same subject was likewise inclosed for our consideration.

In obedience to your Lordship's commands we have the honour to report—

**Approve reply to Black Sea Blockade Committee (M. Petrocochino).**

That we concur in the terms of the reply which your Lordship proposes to return to the Black Sea Blockade Committee.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 107.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 19.)

My Lord, *Temple, November* 17, 1877.

**Iron-clad building for Turkish Government.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us a letter from Messrs. Samuda Brothers, requesting to be relieved from the obligations of a bond which they entered into in the month of July last in respect of an iron screw corvette which they were building under contract for the Ottoman Government at the time that war was declared between Russia and Turkey, and which had since been assigned to Messrs. Gadban and Watson, with a view to the delivery of the said vessel, which was now completed, to the owners, Messrs. Gadban and Watson, and that Sir J. Pauncefote was to request that we would advise your Lordship what steps should be taken to relieve Messrs. Samuda from the difficulty in which they were placed.

**Proposal to release Messrs. Samuda from bond entered into, and to obtain bond from Messrs. Gadban, to whom she will be transferred.**

That it appeared to your Lordship that, under the circumstances, some arrangement might be proposed whereby either Messrs. Gadban and Watson should agree to enter into a bond (on taking delivery of the vessels) similar to, and in substitution of, the bond executed by the builders, and engage to "permit to be taken such other measures, if any, as the Secretary of State may prescribe for insuring that such ship shall not be dispatched, delivered, or removed without the licence of Her Majesty until the termination of the war," as provided by section 8 of the Foreign Enlistment Act. And that in case they should decline to agree to that course a warrant should issue for the seizure and detention of the vessel when delivered to Messrs. Gadban and Watson, with a view to such proceedings as they might be advised to take in the High Court of Admiralty for her release under section 23 of the Act.

That Mr. Gadban was Turkish Consul-General in London, and the vessel in question was a very powerful one, and of the value of about 280,000*l*.

That some of the former correspondence was annexed for convenience of reference; and that Sir J. Pauncefote was to request that we would be good enough to inform your Lordship whether we concurred in the course above suggested, and if not, that we would favour your Lordship with our opinion as to the reply which should be made to the application of Messrs. Samuda.

In obedience to your Lordship's commands we have the honour to report—

**Approve, but vessel must be watched.**

That we concur with your Lordship in the course which you propose to take in releasing Messrs. Samuda, and requiring a bond and security from Messrs. Gadban.

We would, however, suggest to your Lordship that the Board of Customs should be specially directed to watch the movements of the ship, and report any change which may be made, or attempted to be made, in or upon her, or in her position.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 108.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 21.)

My Lord, *Temple, November* 20, 1877.

**Russia prohibits shipments by vessels bound for Turkish ports (M. Petrocochino).**

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 14th November instant, stating that, with reference to his letter of the 10th instant, he was directed by your Lordship to transmit to us therewith the accompanying letter from M. Petrocochino,* stating that information had been received that the Russian Government had prohibited all shipments by vessels bound for, or passing through, Turkish ports; and Lord Tenterden was to request that we would take that letter into our consideration in connection with the other papers now before us on the subject of the Turkish blockade of the Russian ports in the Black Sea and Sea of Azoff.

In obedience to your Lordship's commands we have the honour to report—

**Legitimate act of sovereignty. Does not touch blockade question.**

That the prohibition of all shipments from Taganrog by vessels bound for or passing through Turkish ports declared by the Russian Government is a legitimate act of sovereignty; and does not affect the questions pending on the efficacy of the Turkish blockade.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* For Reports referred to respecting licences, see "Law Officers' Reports on Questions arising out of the Crimean War" (Confidential, No. 3576: Nos. 63, 64, 240, 249, 252, 255, and 360.)

† November 7, 1877.

* November 9, 1877.

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## No. 109.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 27.)

*Temple, November* 26, 1877.

My Lord,

Danube and Black Sea Railway. Gratuitous use by Russians.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th August last, stating that he was directed by your Lordship to transmit to us a letter from Mr. Tipping, Chairman of the Danube and Black Sea Railway, in which he protested against the Russians making use of the railway without payment; and that he (Sir J. Pauncefote) was to request us to take that letter into our consideration, and to acquaint your Lordship with our opinion as to the answer which should be returned to Mr. Tipping.

In obedience to your Lordship's commands we have the honour to report—

Railway on Turkish soil. Company (though an English one) must look to Turkey to protect them.

That, in our opinion, Mr. Tipping should be informed that, although the Danube and Black Sea Railway Company may, in some sense, be an English Company, yet, as the Company is carrying on its business under the protection of the Turkish Government and upon Turkish soil, it is to that Government, and not to the British Government, that the shareholders of that Company must look to protect them against any injuries which may be inflicted upon the Company and its property by the Russians.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 110.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received December* 7.)

*Temple, December* 7, 1877.

My Lord,

Turkish blockade of coast of Albania.

WE are honoured with your Lordship's commands signified in Lord Tenderden's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us two telegrams from Her Majesty's Ambassador at Constantinople, reporting that the Turkish Government had sent a Circular to the Foreign Representatives declaring the coast in the Vilayet of Scutari in Albania, between Spezzia and Dulcigno, in a state of blockade, and that a sufficient number of ships would maintain it, and inquiring whether he should make any representation on the subject to the Porte.

Reference to case in 1861.

That a question was raised in 1861 as to the right of the Porte to blockade the coast of Albania, and on that occasion Her Majesty's Government were advised that, before recognizing the blockade, they should be satisfied that "such a state of armed insurrection or revolt against the Turkish Government existed throughout the coasts blockaded as to render the imposition of the blockade by the Turkish Government justifiable by the law of nations;" and that before inserting a notification in the "Gazette," Her Majesty's Government should obtain more precise information as to dates, &c., but might in the meanwhile communicate to Lloyd's the note from the Turkish Ambassador in which the intention to establish the blockade was made known.

Propose to inform Lloyd's, but wait for dates before sending to "Gazette."

That your Lordship proposed to pursue a similar course on the present occasion, and that Lord Tenterden was to request us to report to your Lordship whether we concurred in your doing so, in which case the substance of the two telegrams from Mr. Layard would be communicated to the Chairman of Lloyd's, but no notice of the blockade would be inserted in the "Gazette" until the Turkish Circular had been received, and Mr. Layard had reported whether the whole line of Albanian coast intended to be blockaded was in a state of insurrection or hostility to the Porte.

That your Lordship would be glad to be favoured with an answer to that letter at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

Concur.

That your Lordship may, in our opinion, properly, before inserting any notification in the "Gazette," obtain more precise information as to the dates, &c., of the blockade, and in the meanwhile communicate to Lloyd's the first of Mr. Layard's telegrams.

Blockade of insurrectionary coasts is legal by law of nations.

With reference to the second of Mr. Layard's telegrams, we think that should not be communicated to Lloyd's, since the blockade by the Turkish Government of the Turkish ports and coasts in possession of an insurrectionary force is legal by the law of nations; and the doubts of Mr. Layard upon the validity of such a blockade may, if published, lead to difficulties and mischief.

Subject to the suggestion in reference to the second telegram, we concur with your Lordship in the course you propose to take.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 111.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received December* 12.)

*Temple, December* 12, 1877.

My Lord,

Breach of blockade: seizure of Greek vessels (chartered by Italians) in Bosphorus for.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 5th December instant, stating that he was directed by your Lordship to transmit to us the accompanying telegram received from Her Majesty's Ambassador at Constantinople,* referring to the seizure in the Bosphorus, for alleged breach of blockade, of two Greek vessels chartered by Italians, and the release of which it was reported that the Italian Government had demanded for the reasons stated in the telegram.

That the accompanying letter from M. Petrocochino contained further particulars respecting that case.

That Lord Tenterden was further to transmit to us the draft of a memorandum which your Lordship proposed to communicate unofficially to the Italian Ambassador at this Court, as your Lordship thought it might be desirable that the Italian Government should be informed of the views of Her Majesty's Government on the case.

That before, however, communicating that memorandum to General Menabrea, your Lordship would be glad to be informed whether we concurred in the statements as to the law of blockade therein contained, and to be favoured with any observations we might desire to offer on the subject of the proposed communication.

In obedience to your Lordship's commands we have the honour to report—

Approving memorandum for Italian Ambassador.

That the statements in the memorandum as to the law of blockade are, in our opinion, accurate.

But we suggest for your Lordship's consideration that the passage in the memorandum on p. 3 beginning with the words "as to which the neutral Powers," and ending on p. 4 with the words "this important question," might conveniently be modified as follows:—

"Hitherto the Porte has been pressed by the foreign Representatives to take such measures as would increase the efficiency of the blockade which was thus recognized as existing, and Her Majesty's Government is not, with the information at present before it, prepared to say that the fact that the two Greek vessels in question got out of a port said to be blockaded is a sufficient proof of the inefficiency, and therefore justifies Her Majesty's Government in impugning the validity of the blockade."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex to No. 111.

### *Memorandum.*

Memorandum. Views of British Government.

It has been reported to Her Majesty's Government from Constantinople that amongst the vessels lately seized in the Bosphorus for alleged breach of the blockade are two Greek vessels chartered by Italians, which, it is understood, will be condemned by the Prize Court. It is represented that the Italian Government have demanded the release of these vessels, on the following grounds:—

1st. That there has not been an effective blockading squadron; and

2nd. That the vessels in question were seized after they had passed through the line of blockade.

Her Majesty's Government have also learnt from an unofficial source that a further objection has been raised to the confiscation of the vessels on the ground that they were captured when driven through stress of weather into the Turkish port of Baltshick.

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* November 25, 1877.

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Blockade recognized as existing.

As regards the efficiency of the blockade, this is a question of fact. Hitherto the Porte has been pressed by the foreign Representatives to take such measures as would increase the efficiency of the blockade, which was thus recognized as existing; and Her Majesty's Government is not, with the information at present before it, prepared to say that the fact that the two Greek vessels in question got out of a port said to be blockaded is a sufficient proof of the inefficiency, and therefore justifies Her Majesty's Government in impugning the validity of the blockade.

As regards the other objections raised, Her Majesty's Government, founding themselves on the decisions of the maritime Tribunals of this country and of the United States, conceive that they are not sustainable in law.

Ship breaking blockade may be captured even during return voyage, and after touching at a port when driven by stress of weather.

It has been laid down by British and American Judges and jurists that if a ship which has broken a blockade is taken in any part of the same voyage, she is taken *in delicto*, and is subject to confiscation, and this liability even continues to the end of the return voyage; and it has further been laid down that a vessel which has committed a breach of blockade by egress shall not have her offence purged by being driven by stress of weather into a port which is not her port of destination.

*Foreign Office, December* 15, 1877.

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## No. 112.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received December* 15.)

*Temple, December* 14, 1877.

My Lord,

Blockade of coast of Albania.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 11th instant, stating that, with reference to our Report of the 7th instant, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Constantinople, inclosing a copy of the opinion of the Law Advisers of the Turkish Government, upon which the Circular of the Porte notifying the blockade of the Albanian coast from Spizza to Dulcigno was issued; and that Lord Tenterden was to request that we would take that despatch into our consideration, and favour your Lordship with any observations which we might have to offer thereon.

That the former papers bearing on the subject were annexed for convenience of reference, and that Lord Tenterden was to call our special attention to your Lordship's telegram of the 8th December to Mr. Layard, inquiring whether the whole line of coast blockaded was in possession of insurrectionary or hostile force. That he was also to transmit a telegram which had just been received from Mr. Layard in answer to your Lordship's telegram of the 8th instant.

In obedience to your Lordship's commands we have the honour to report—

Disagree with Turkish lawyers.

That we are not able to agree with the opinion of the Legal Advisers of the Turkish Government.

(Reference to American blockades: Southerners became belligerents.)

The establishment of a blockade is an act of war, and in the case of the United States referred to by the Turkish Legal Advisers the Governments of France and Great Britain considered that by the blockade of the Confederate ports the Southern States became belligerents.

Blockade is an act of war. Must be confined to coasts in enemy's possession.

The blockade, being an act of war, must be confined to those ports and parts of the coast which are in the possession of the enemy, in the present case in the possession of the Montenegrins.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 113.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received December* 20.)

*Temple, December* 19, 1877.

My Lord,

Breach of blockade: seizure of vessels with British cargoes in Bosphorus for.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Constantinople, forwarding a memorandum having reference to the seizure in the Bosphorus of certain vessels containing cargoes belonging to British subjects, for breaking the blockade in the Black Sea.

Owners' protest on grounds of—

That that memorandum Mr. Layard believes to have been drawn up by the legal advisers of the owners of the cargoes in question.

That the memorandum raised three objections to the legality of the seizure of those vessels:—

1. Inefficiency.

1. That the blockade was not efficient within the meaning of the Declaration of Paris.

2. Terms of notification.

2. That the terms of the notification of the blockade were insufficient to justify the seizure of vessels, except by the blockading squadron.

3. Treaty rights.

3. That the vessels were seized in Turkish waters by the local authorities, contrary to the Treaty rights of foreigners.

That as regards the first objection, it turned upon a question of fact.

That the existence of a legal blockade had been recognized by the neutral Powers, and it appeared to your Lordship that one neutral Power ought not to disregard the opinions and attitude of the other neutral Powers in determining that difficult question. That Sir J. Pauncefote was to draw our attention on that point to the opinion of our predecessors in 1862.

That as regards the second objection, the blockade was notified in the usual form, and the power to seize vessels which had broken the blockade, until the end of the voyage, flows from the general law of blockade, as interpreted by the principal maritime nations, and not from the terms of the notification, and unless the seizure must be made by a vessel of the blockading squadron in order to be valid, your Lordship apprehended that there was no force in that objection.

As to the third objection, the seizure was made under a belligerent right, and it was conceived that the vessel seized could not claim the benefit of any Treaty of Ex-territoriality which would alter the general law of blockade *inter gentes* in favour of any particular nationality.

That we should perceive that the memorandum concluded by suggesting that the Porte should release the vessels and commence the blockade *de novo* with a fresh notification, and declare its intention of adhering to the English rule as to the right of seizure at any part of the voyage.

That, as at present advised, your Lordship was of opinion that that vacillating policy would be unwise, and that the Turkish Government should adopt one rule or the other and adhere to it.

That they insisted that the blockade had been and was effective, and to adopt the course proposed would be to admit that everything done under it was illegal.

That Sir J. Pauncefote was to request that we would take the above-mentioned despatch and memorandum into consideration, and favour your Lordship with our opinion as to whether the legality of the seizure of the vessels in question could be disputed on any of the points raised in the memorandum, and advise your Lordship as to the course which we considered that Mr. Layard should be instructed to recommend the Porte to pursue in that matter.

That Sir J. Pauncefote was further directed to inclose two despatches from Her Majesty's Ambassador at Constantinople, relating to the seizure for breach of blockade of two vessels chartered by Italians, and reporting the action of the Italian Legation in that matter, as well as the proceedings of the Turkish Prize Court; and that Sir J. Pauncefote was to request that we would take those despatches also into consideration and report thereon.

That the Italian Ambassador in this country had more than once called your Lordship's attention to the subject, and we should observe that Mr. Layard requested that the views of Her Majesty's Government might be communicated to him by telegraph, and that Sir J. Pauncefote was consequently to request that we would favour your Lordship with a Report upon the questions submitted to us at our earliest convenience.

We are also honoured with a further letter from the Foreign Office, bearing date the 17th instant, inclosing further papers on the above subject.

In obedience to your Lordship's commands we have the honour to report—

Doubtful efficiency, when many vessels pass blockading force.

That we have no evidence before us which enables us to say whether or no the blockade was, as a fact, efficient. We entirely agree with the Report of the Law Officers of the 25th January, 1862.* But we desire to point out that great doubt may be thrown upon the practical efficiency of a blockade, where a large number of ships pass the blockading force.

British, French, and American practice. Vessels may be captured during voyage.

The practice in France ("Ortolan," Règles Internationales 2, 324) we believe to be the same with that in Great Britain and the United States, and that a ship which has broken a blockade is liable to capture during the voyage by any ship in the service of the blockading belligerent.

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* See Confidential Paper 1301, No. 10, p. 14.

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Not protected while in Bosphorus.

And a neutral ship which has broken the blockade is not protected from capture whilst in the Bosphorus.

The Porte cannot, we think, properly be asked to commence again everything in reference to the blockade, and so to nullify all which has been hitherto done in that matter.

Legality of seizure is undoubted.

The legality of seizure of the vessels in question, assuming, as we do, in the absence of evidence to the contrary, that they got out from the blockaded port without the permission of the blockading force, cannot, in our opinion, be disputed.

Porte should be urged to keep blockade efficient and grant no more licences, &c.

We think, however, considering the number of vessels which apparently have reached the Bosphorus coming from blockaded ports, and the system in some instances adopted of granting licences, that Mr. Layard may properly be instructed to call the attention of the Turkish Government strongly to the need of keeping up a really efficient blockade, to the necessity of granting no more licences, and to the urgency of clear, sound, and consistent decisions in the Prize Court.

Case of Italian vessels seized is similar.

The case of the Italian vessels comes within the observations which we have had the honour of placing before your Lordship already in this Report, and we therefore consider that it would be useless to add anything in relation to the particular case of those two vessels.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 114.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received December 28.)*

*Temple, December* 27, 1877.

My Lord,

Marriage at Smyrna of British subject with deceased wife's sister. Valid by *lex loci.*

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 5th December instant, stating that he was directed by your Lordship to transmit to us the inclosed letter from the Rev. James Dombrain, British Chaplain at Smyrna, who requested to be informed whether the marriage of a British subject in that city with his deceased wife's sister would be held valid by the Courts of Law in this country, the husband being at the time of the marriage "legally domiciled" in Turkey, and such marriages being valid according to the *lex loci.*

That Mr. Dombrain stated that the Registrar-General had given his opinion in favour of the validity of such a marriage.

That your Lordship proposed, in reply, to transmit a copy of the inclosed Circular (July 1, 1857) to Mr. Dombrain, and to inform him that British subjects who desired to be "married" abroad according to the laws of the foreign country in which they resided must be guided by the opinion of their legal advisers as to whether the marriage would be recognized as valid by British Courts of Justice under the circumstances of each particular case.

As to question of domicile in Turkey.

That your Lordship would, however, be glad to be favoured with our opinion as to whether, having regard to the ex-territorial jurisdiction exercised by Her Majesty in the Levant, it was competent to a British subject, while retaining his nationality of origin, to abandon his British domicile and acquire a domicile in Turkey in the technical sense, so as to bring him within the class of cases referred to by some of the Judges in the case of "Brook *v.* Brook" (3 S. and G., 493), as not coming within the decision in that particular suit that the marriage of a British subject with his deceased wife's sister, both being English-born subjects and domiciled at the time in England, was void though the marriage was celebrated in a foreign country, by the law of which such marriages were legal.

In obedience to your Lordship's commands we have the honour to report—

British subject retaining nationality of origin cannot abandon British domicile.

That, in our opinion, it is not competent to a British subject, while retaining his nationality of origin, to abandon his British domicile and acquire a domicile in Turkey, so that the validity or invalidity of his marriage in Turkey with his deceased wife's sister should not be governed by the decisions in "Brook *v.* Brook," 3 Sm. and G., 493, G. H. L. 193.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# United States.

## No. 115.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received February 6.)*

*Temple, February* 5, 1877.

My Lord,

Fisheries. Halifax Commission under Treaty of Washington.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 18th October last, stating that he was directed by your Lordship to transmit to us therewith a copy of the Treaty of Washington of the 8th May, 1871, and that he was to call our especial attention to Articles XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXXII, and XXXIII, by which we should perceive that provision was made for the establishment of a Commission to meet at Halifax, Nova Scotia, to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of the Treaty, the amount of any compensation which ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of the Treaty.

Case of Her Majesty's Government.

That Lord Tenterden was further to inclose a volume of printed correspondence, showing the steps which had been taken by Mr. Ford, Her Majesty's Agent to the Commission, in conjunction with the Governments of Canada and of Newfoundland, for drawing up the Case of Her Majesty's Government for presentation to the Commission on behalf of both Colonies; and that, in transmitting to us a copy of the "Case" thus prepared, he was to request that we would take it carefully into our consideration, in connection with the correspondence on the subject, and to favour your Lordship with our opinion whether it was drawn up in such a manner as to meet with the requirements of the case.

That Lord Tenterden was to add that your Lordship would also be glad to be furnished with our opinion on the following points which might arise on the meeting of the Commission at Halifax:—

1. The construction of Article XXIV of the Treaty as regards the unanimity of the three Commissioners in giving their award, of which mention is made in Mr. Ford's despatches No. 6 of September 1875, and No. 15, Confidential, of the 24th November of the same year.

2. The position to be adopted by Her Majesty's Agent before the Commission, in the event of the Headland question being unavoidably introduced into the discussions from the United States' side. That, with regard to that point, Lord Tenterden was to inclose a memorandum by Dr. Deane, and to refer us to Mr. Ford's despatch No. 7 of the 17th September, 1875, and also to his despatch No. 15, Confidential, of the 24th November of that year.

3. The question of the valuation of the customs remissions on either side, as an offset to the value of the fisheries, and especially whether, in our opinion, the offers made by the United States' Commissioners during the negotiations which preceded the conclusion of the Treaty of Washington would be admissible as evidence before the Commission of the value placed by the United States themselves on the privilege of admission to the British North American fisheries.

That, with reference to that point, which was especially important, Lord Tenterden was to inclose a volume of the proceedings of the Joint High Commission at Washington, and to refer us to the latter portion of Mr. Ford's despatch No. 15, Confidential, of the 24th November, 1875, bearing in mind that the "Case," as now submitted for our opinion, had been framed on the principle of "non-committal," as explained in Mr. Ford's despatch No. 6, Confidential, of the 6th August 1876, and in the memorandum inclosed therein, from which we should perceive the alterations which had been made in the "Case" as at first drawn.

That, in connection with that point, your Lordship desired to be favoured with our opinion as to the interpretation of Article XXII of the Treaty, mentioned in

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the memorandum inclosed in Mr. Ford's despatch No. 15, Confidential, of the 24th November, 1875.

That those were the points which occurred to your Lordship as those on which our opinion was especially required; but that Lord Tenterden was to say that your Lordship would be glad to be furnished with any general observations which might suggest themselves to us with regard to the arguments which might be used in support of the "Case" of Her Majesty's Government, or to the general conduct of the proceedings before the Commission.

In obedience to your Lordship's commands we have the honour to report—

That your Lordship desires our opinion upon five points connected with the Fishery Commission under the Treaty of Washington of May 1871.

First, whether the "Case" prepared on behalf of Her Majesty's Government is drawn up in such a manner as to meet with the requirements of the case.*

**Case.**

In our opinion the "Case" is ably and carefully drawn, and is a fair and full statement of the grounds upon which a claim for compensation is based, and a right and proper estimate of the amount of compensation in respect of the Dominion fisheries and the Newfoundland fisheries. We suggest, however, the omission of the passage beginning with the words "in addition," on p. 34, and ending with the word "Treaty," on p. 36, as suggesting topics which can hardly be considered appropriate upon a question of pecuniary compensation.

**Suggest certain omissions.**

This opinion we come to considering that an opportunity will be offered for meeting and answering the "Case," prepared on behalf of the United States, and that Her Majesty's Government is not required to set out, in the first instance, those matters which may evidently be raised on the part of the United States.

Thus, in pp. 4 and 5 of the "Case," the Ist Article of the Convention of 1818 is set out in full; but in the argument upon that Article no notice is taken of the fact that, whilst that Article gave no rights or privileges at all to Her Majesty's subjects, the XIXth and XXIst Articles of the Treaty of Washington give British subjects certain rights on the shores of, and the admission of certain fish and fish-oil free of duty into, the United States.

**French rights lessen United States' benefits.**

The rights claimed by the French to fish on the west coast of Newfoundland are not in any way noticed in the second part of the "Case" relating to Newfoundland, and yet it is obvious that if the French claims are good for anything, the benefit to, and the right of, the United States' fishermen on the west coast must be to some extent lessened.

The amount of compensation claimed both for the Dominion Fisheries and the Newfoundland fisheries seemed to us, when we first read the Case, very large, indeed beyond all proportion, either to any loss which may be sustained by British subjects or to any benefit which may be conferred on United States' citizens.

And this view, which we were inclined to take, was confirmed by the speeches at Ottawa in May 1872 (p. 211 of the Correspondence), in April 1873 (p. 216 of the Correspondence).

**Agree to amount of compensation claimed.**

We have, however, again carefully considered the calculations upon which the amounts of compensation are respectively based, and, so far as we are able to form an opinion, we now think the figures justify the result reached; yet the speeches above referred to may place great difficulties in the way of Her Majesty's Agent, who should be able to lay before the Commissioners the clearest and most convincing evidence of the real relative values accorded to either party under Articles XVIII, XIX, and XXI of the Treaty of Washington.

2. The construction of Article XXIV of the Treaty as regards the unanimity of the Commissioners in giving their award.

**Commissioners' award must be unanimous.**

Articles II, X, and XIII of the Treaty expressly state that a majority of the arbitrators or assessors shall be sufficient, and the silence, accidental or designed, in Article XXIV upon the decision of the majority, leads, in our opinion, directly to the conclusion that the unanimity of the Commissioners is necessary to the giving their award.

**Headland question must be strongly supported.**

3. We are of opinion that, in the event of the Headland question being introduced into the discussion from the United States' side, Her Majesty's Agent should be prepared to adopt the strongest ground, and support it by the fullest reasons which the subject affords.

**Customs remission as an offset.**

4. The question of the valuation of the customs remission on either side as an offset to the value of the fisheries cannot, in our opinion, be shut out from consideration if introduced from the United States, since it appears that a large market will, by such remission, be in the United States opened to British subjects, which is a clear advantage to the British subject, and may, therefore, fairly be put forward on behalf of the United States.

**Question must not be raised by British Government.**

But as the Case has been framed, and we think rightly, upon the principle of "non-committal," the question should not be raised on behalf of Her Majesty's Government, though Her Majesty's Agent should be prepared to give evidence and bring forward arguments in support of the advantages to the citizens of the United States by the remission of the duties.

We have on this head carefully considered the letter from Mr. Ford (No. 6, Confidential, p. 192), and the two inclosures, and we entirely agree with the opinions stated in those documents.

Further, we think that the offers made by the United States' Commissioners during the negotiations which preceded the conclusion of the Treaty of Washington, if admissible in evidence, which we doubt, cannot properly or prudently be used as evidence of the value placed by the United States themselves on the privilege of admission to the British North American fisheries, because among those offers we find one was to purchase in perpetuity for 1,000,000 dollars, or 400,000*l.*, the rights for which, during twelve years only, Her Majesty's Government in the Case now claim for 22,880,000 dollars.

**Values to be assessed only on privileges under Article XVIII compared with Articles XIX and XXI.**

Lastly. In our opinion, the strict construction of Article XXII requires the Commissioners to compare and assess the relative values only of those privileges which are accorded to the citizens of the United States under Article XVIII, compared with the privileges accorded to British subjects under Articles XIX and XXI.

Article XXI, in words, grants apparently equal or equivalent privileges to the two countries; but it may well be that owing to the small value of the United States' fisheries, as limited by the Convention of 1818, and the distance of those fisheries from a market in the Dominion or in Newfoundland, and from other circumstances, that the framers of the Treaty left out, in Article XXII, as valueless, the privilege of the admission into the Dominion and Newfoundland, free of duty, of fish-oil and certain fish, the produce of the United States' fisheries.

However, the words of Article XXII confine the Commissioners to assess merely the privileges accorded to the citizens of the United States under Article XVIII, and do not permit any set-off by reason of the value of the privilege of admission, free of duty, of fish-oil and certain fish into the Dominion of Canada.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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### No. 116.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received February 21.)*

*Temple, February* 21, 1877.

My Lord,

**Lacepède Islands: right of Great Britain to sovereignty over.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th ultimo, sating that he was directed by your Lordship to transmit to us correspondence relative to a question which had been raised as to the title of the Colony of Western Australia to the Lacepede Islands. That those islands, which had been lately found to contain deposits of guano, were first discovered and surveyed in 1822, by Captain King, of His Majesty's ship "Endeavour," and that, on the formation of the Colony of Western Australia in 1829, they were included within its limits by the terms of the Governor's Commission. That they were situated at a distance of about 15 miles only from the coast, and no formal possession appeared to have been taken of them on behalf of the Sovereign: but that in 1875 the Colonial Government granted a licence to a colonist to occupy them, which licence he forfeited through the non-fulfilment of its conditions. That in the following year, however, a Mr. Geddes was licensed by the Colonial Government to remove guano from the islands, with full powers to proceed against trespassers. That he had, however, been but eight days in possession of the islands under that licence, when a Mr. Roberts arrived for the purpose of hoisting the American flag, and removing guano from the islands, as agent for a Mr. Lord, who claimed to have taken possession of the islands on behalf and in the name of the United States' Government, through his agent Mr. Roberts, and by virtue of a warrant

**Mr. Geddes licensed to occupy by Governor of Australia.**  
**Mr. Roberts subsequently hoisted United States' flag, as agent for Mr. Lord, who claimed on behalf of United States.**

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* For the Case of Her Majesty's Government, see Confidential Paper No. 2926.

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granted by the United States' Consul-General at Melbourne, under an Act of Congress of 1856, authorizing United States' citizens to take possession of guano islands on behalf of their Government.

That Mr. Lord claimed to have taken possession of the Lacepede Islands under that Act, on the 26th June, 1876, which was eight days after Mr. Geddes had taken possession of them under his licence from the Colonial Government, and he insists that the title of Her Majesty to the islands is invalid by reason of the omission on the part of the Colonial Government to take formal possession of them in the name of the Queen.

That, having placed before us the foregoing brief statement of facts, Sir Julian Pauncefote was to request that we would take the papers, then sent, into our consideration, and favour your Lordship with our opinion on the specific questions raised by the Secretary of State for the Colonies, as well as on the general questions whether the claim of the United States' Government to the Lacepede Islands, which had been set up on their behalf by their Consular authorities in Australia, could be supported by international law.

In obedience to your Lordship's commands we have the honour to report—

That we have considered the 10 Geo. IV, cap. 22, which provided for the government of unoccupied lands on the western coast of New Holland, and the islands adjacent, those settlements being known as Western Australia.

We have also considered the terms of the Commissions of the 4th March, 1830, and 10th July, 1873, granted to the Governors of Western Australia, and defining the boundaries of the Colony, which include the Lacepede Islands.

Governor of Australia had the right to grant licence for occupation if not previously occupied, &c., by another country.

And we are of opinion that the Governor of Western Australia had, by the law of this country, and by international law, the right and the power to direct and license the occupation of, and exercise jurisdiction on, the Lacepede Islands, if, at the time when the occupation was taken and the jurisdiction was first claimed, those islands were still neither occupied by the citizens or subjects of any other Government, and not within the jurisdiction of any other Government.

From the facts stated in the papers transmitted to us, it appears that in 1875 the Colonial Government granted a licence to a colonist to occupy the islands, and that in 1876 Mr. Geddes was also licensed by the Colonial Government to remove guano, with full powers to proceed against trespassers.

Mr. Geddes was in this occupation of the islands, and had been so for ten days, when on the 26th June, 1876, Mr. Roberts, acting as the agent of Mr. Lord, an American citizen, came to the islands for the purpose of removing guano, and Mr. Roberts then ran up the flag and claimed possession in the name of the United States.

It is not said when Mr. Lord discovered the guano.

The Act of Congress (18th August, 1856), under which Mr. Lord claims is as follows:—

"When any citizen of the United States discovers a deposit of guano on any island, rock, or key, *not within the lawful jurisdiction of any other Government, and not occupied by the citizens of any other Government*, and shall take peaceable possession thereof, and occupy the same, such island, rock, or key may, at the discretion of the President of the United States, be considered as appertaining to the United States, and the land and naval forces may be employed by the President to protect the rights of such discoverers, or their assigns."

Act of Congress does not justify Mr. Roberts' action.

In our opinion the islands were, on the 26th June, the date of Mr. Lord's agent taking possession, within the lawful jurisdiction of, and occupied by a subject of, Great Britain; and neither the warrant granted by the United States' Consul-General at Melbourne, nor the Act of Congress, could oust the jurisdiction, nor dispossess the subject of Great Britain.

We are not aware of any formalities which should have been gone through by the Colonial Government in order to make the possession and occupation of the islands absolute and indefeasible.

The issuing of the licences and the fact of occupation were, in our opinion, within the authority given to the Governor by his Commission, and the islands were, in the words of the Act of Congress, within the lawful jurisdiction of the British Government, and occupied by a subject (that is a citizen) of the British Government.

United States' Government have no claim.

The claim of the United States' Government to the Lacepede Islands cannot, therefore, in our opinion, be supported by international law.

In answer to the specific questions raised by the Secretary of State for the Colonies:—

Royal Commission to a Governor is not questionable by Powers who have not claimed the territory previously.
Actual possession to be taken.

1. A Royal Commission expressly authorizing a Governor to govern a territory in the name of and as belonging to the Crown of England is not questionable by any Power which has not, previously to the issue of such Commission, asserted any claim to such territory.

We assume, in thus answering the question—

*a.* That the territory is *res nullius*.

*b.* That actual possession and occupation are taken of the territory.

Power of a Consul in a Colony. Governed by Colonial law.

2. The power of a Consul residing in a Colony is governed within the Colony by the law of the Colony.

In the present case, however, Mr. Lord contends that the act done by him was done outside the Colony, where the law of the Colony did not consequently reach.

The Act of Congress, under which the whole of the proceedings of Mr. Lord are alleged to be justified provides that any American citizen may do that which Mr. Lord has done on behalf of the United States; and no question seems to us to be properly raised as to the extent of a Consul's authority.

Her Majesty's Government might withdraw Mr. Lord's exequatur.

3. But we think the acts committed and attempted to be justified by the United States' citizen Mr. Lord against the jurisdiction of the Government justify that Government in withdrawing his exequatur as Consul.

In concluding this Report we submit to your Lordship, for your consideration, the general principle on which (as appears from Mr. Herbert's letter of the 16th January last)—

General principles.

"Her Majesty's Government has hitherto proceeded in annexing to a Colony, by the Queen's Letters Patent, such islands adjacent to it, at greater or less distances, as it may be found necessary to treat as British possessions."

And we refer also to the instance given by Mr. Herbert, that—

"All islands within 60 miles of the coast of Queensland were thus annexed to that Colony."

And that—

"It had not been supposed necessary to take formal possesion of each island in the name of the Crown."

Validity of a declaration to annex is doubtful.
Actual possession, or evidence of ownership, necessary.
Also visits from ships of war.

Since, in our opinion, the validity of a mere declaration to annex the territory is, in the present state of international law, extremely doubtful, and we respectfully suggest that in all cases, past and future, actual possession should be taken, that if possible the place annexed should be occupied, and if occupation be impracticable, that evidence by inscription or in some other way should be left of possession being taken, and that the unoccupied islands should be visited as frequently as possible by Her Majesty's ships.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 117.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received June* 4.)

*Temple, June* 2, 1877.

My Lord,

Case of Peter Martin, conveyed in custody down the Stickine River.

Question of right of navigation of rivers of Alaska.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 11th May, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, as marked in the margin, relative to the case of Peter Martin, a prisoner who was conveyed in custody from Laketown to Victoria, in British Columbia, by the Stickine River, a portion of the journey being effected through Alaska. That the party landed on the bank of the river for the purpose of cooking food, and the prisoner there attempted to escape, but was overpowered and conveyed to Victoria, where he was tried for that offence, and sentenced to imprisonment. That Peter Martin alleged that he was an American citizen, and the Government of the United States claimed his liberation, not only in respect of the above sentence, but of previous sentences under which he was then undergoing imprisonment at Victoria, on the ground that the place where the party landed on the bank of the river was American territory, and that in any case his conveyance by the Stickine through Alaska was illegal.

That the point was one of considerable importance, involving, as it did, among

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other matters the question of the right to the free navigation of the Stickine through Alaska, which was conceded to British subjects by a Convention entered into between Great Britain and Russia in 1825.

Lord Tenterden was further pleased to transmit to us a memorandum which had been drawn up at the Foreign Office containing a précis of the facts; and to request that we would favour your Lordship with our opinion on the several points submitted for consideration at pp. 8 and 9, and advise your Lordship generally as to the course which we would recommend in relation to the case.

Lord Tenterden was pleased to add that maps of the locality referred to were attached to the Report of the Committee of the Privy Council of Canada, which formed the first inclosure in the letter of the Colonial Office to the Foreign Office of the 22nd March, 1877.

In obedience to your Lordship's commands we have the honour to report—

That in advising your Lordship upon the seven questions raised in the memorandum of Sir Julian Pauncefote, and submitted for our consideration, we will deal in the first place with the last five questions:—

**Privileges of Great Britain under Treaty with Russia in 1825.**

1. Whether Great Britain, on the sale of Alaska by Russia to the United States in 1867, lost her rights to the free and unrestricted navigation of the rivers flowing through that territory to the sea, secured to her by the Convention with Russia of 1825, depends upon the construction of the VIth clause of the Convention of 1825.

That clause gives to British subjects the right of free navigation upon the rivers in question in perpetuity, and Russia could not, in our opinion, voluntarily and without the consent of Great Britain withdraw this permission.

**Revoked by Treaty between Russia and United States of 1867;**

By clause VI, however, of the Treaty of the 30th March, 1867, between Russia and the United States, Russia declared the cession of the territory and dominion to be free and unincumbered by any reservation, &c., and, therefore, did virtually revoke the permission she had granted, and by so doing gave Great Britain ground for serious complaint.

**and forfeited by conduct of British Government in negotiating Treaty of Washington.**

2. Whatever may have been the nature of the right conferred upon Great Britain by the Convention of 1825, we are of opinion that by the subsequent conduct of her Government, especially by the negotiations which led to the Treaty of Washington, and by that Treaty itself, she has lost that right. It may be suggested that the XXVIth clause of the Treaty of Washington was merely declaratory, but we cannot take this view. We consider that, fairly construed, the stipulations in that clause give new rights, and amount to that extent, and in that sense, to an admission that any former rights were abrogated.

**Right to convey a prisoner doubtful in any case;**

3. If the rights of free navigation under the Convention of 1825 still existed, we should doubt very much whether the conveying a prisoner through American waters, and still more the landing him in custody upon American territory, would be within the terms of the Convention.

**and unlawful under navigation clauses of Treaty of Washington.**

4. And being of opinion that the rights of free navigation now depend upon the XXVIth Article of the Treaty of Washington, which expressly states the navigation to be open for the purposes of commerce, we think a prisoner cannot lawfully be conveyed through Alaska by the Stickine River.

**Peter Martin must be given up to United States.**

5. The demand of the United States for the release of Peter Martin cannot, in our opinion, properly be rejected. His surrender should be conceded on the ground that he was as a prisoner conveyed through United States' territory, and no reference need be made to the doubtful point whether the attempted escape and recapture were made within the boundary of the States or of the Dominion.

6. For the unauthorized conveyance of a prisoner through the territories of a foreign Power is an infraction of the rights of sovereignty of such Power, and entitles that Power to demand the liberation of the prisoner even after he has left those territories in which he was detained, and from which he has been taken without the authority and in violation of the law of the country.

7. And this right to demand the liberation of a prisoner conveyed without authority through the territory of a foreign Power is not affected by the fact that the prisoner is a subject of the foreign Power.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 118.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received August* 10.)

*Temple, August* 9, 1877.

My Lord,

**Halifax Fishery Commission.**

**Mr. Ford's answer to United States, and views on the Headland question.**

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 7th instant, stating that, with reference to the letters of the 2nd instant and 21st ultimo, he was directed by your Lordship to transmit to us a further despatch from Mr. Ford, Her Majesty's Agent at the Halifax Fishery Commission, inclosing a copy of the reply to the Answer of the United States which he had delivered to the Secretary of the Commission, and reporting his views with regard to the Brief on the Headlands question which he was drawing up, and which he was anxious to lay before the Commissioners as soon as possible.

That he was to request that we would take those papers into our consideration, with those relating to that subject which are already before us, and favour your Lordship with our opinion thereupon at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

That we had to some extent considered and prepared a Report upon the papers transmitted to us by Lord Tenterden.

**Approving.**

The subsequent despatch to your Lordship from Mr. Ford, No. 19, and the reply on behalf of Her Britannic Majesty's Government to the Answer of the United States of America, inclosed with that despatch of Mr. Ford, so entirely agree with the opinion which we should have submitted to your Lordship in answer to the questions proposed to us, that we need merely say that we are of opinion that the reply may properly be approved of throughout.*

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 119.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received November* 17.)

*Temple, November* 16, 1877.

My Lord,

**Canadian Extradition Act.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 7th July last, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing copy of an Act recently passed by the Legislature of Canada to make provision for the extradition of fugitive criminals from the Dominion, and that he was to request our opinion whether the Canadian Act sufficiently provided for the execution of existing Treaties [*Query*, "or for any future Treaties"] which Great Britain might conclude with foreign Powers in virtue of the Extradition Act of 1870.

That your Lordship apprehended that so long as the Imperial Act of 1870 was neither repealed nor amended, any new Treaty which Great Britain might conclude must be in accordance with the provisions of that Act, and must therefore contain a stipulation in conformity with Section III, sub-section 2, of that Act, which was as follows:—

"A fugitive criminal shall not be surrendered to a foreign State unless provision is made by the law of that State or by arrangement that the fugitive criminal shall not, until he has been restored, or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign State for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded."

**No stipulation as to trial for other than the extradition crime.**

That the Canadian Act, as we should observe, contained no restriction to the surrender of a fugitive criminal similar to that contained in the section of the Act of 1870 above recited.

**But Canadian Minister may refuse extradition, &c.**

That Section IV, sub-section 2, of the Canadian Act provided, however, that: For the avoidance of doubts, "any provisions of this Act which may be deemed to be inconsistent with any term of the arrangement shall not have effect to contravene the arrangement; and this Act shall be so read and construed as to provide for the execution of the arrangement." And by Section XVI (3) of the same Act, the

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* For text of reply, see Confidential Paper No. 3404, Appendix (D).

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Canadian Minister of Justice was empowered to refuse the surrender of a fugitive criminal if he thought that for any reason he should not be surrendered.

That your Lordship therefore apprehended that the Canadian Act did sufficiently provide for the execution of existing Treaties, or for any future Treaties which Great Britain might conclude with the United States or any foreign Power under the existing Imperial Act.

That your Lordship would, however, be glad to be informed, at our earliest convenience, whether, in our opinion, that view was correct, and if so, whether we were aware of any legal objection to the issue of an Order in Council under Section XVIII of the Act of 1870, suspending the operation of that Statute within the Dominion of Canada so long as the new Canadian Act remained in force.

That Sir Julian Pauncefote was to state, for our information, that at that time extradition from Canada to the United States under the Ashburton Treaty was carried on under the Imperial Act of 1870, and a local Act No. 94 of 1868, which was applied conjointly therewith by virtue of section 27 of the Imperial Act.

That the local Act was passed to carry out the extradition clause of the Ashburton Treaty.

In obedience to your Lordship's commands we have the honour to report—

Act is sufficient for execution of Treaties under Extradition Act of 1870.

That the Canadian Act does sufficiently provide for the execution of existing Treaties, and of any further Treaties (the stipulations contained in which shall be consistent with the provisions of the Imperial Act of 1870), which Great Britain may conclude with any foreign Powers.

Latter may be suspended in Canada while Canadian Act remains in force; but power conferred on Canadian Minister is very extensive.

We are not aware of any strictly legal objection to the issue of an Order in Council under Section XVIII of the Act of 1870, suspending the operation of that Statute within the Dominion of Canada so long as the new Canadian Act remains in force; but we beg to point out that the power conferred upon the Minister of Justice by section 26 of the Canadian Act, sub-section 3, is very extensive, and that the exercise of such power would in most cases constitute a breach of Treaty obligations.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Venezuela.

### No. 120.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received November 6.)*

*Temple, November* 5, 1877.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd August last, stating that he was directed by your Lordship to transmit to us the correspondence noted in the margin, and to request that we would be good enough to advise your Lordship on the following question:—

Seizure of the "Jane Francis" for putting in at port of Tucácas, for which she was cleared by Venezuelan Consul at Demerara.

That in the month of May last year the British vessel "Jane Francis" left Demerara for the port of Tucácas, in Venezuela, having previously obtained the necessary documents from the Venezuelan Consul, as required in the case of vessels bound for a port in that State. On arrival at Tucácas she was seized, on the ground that she should not have proceeded to that port without having previously entered at Puerto Cabello. (Mr. Middleton, No. 70 of the 29th July, 1876.)

That the vessel was ultimately released, through the exertions of Her Majesty's Minister, it being admitted that the master had no intention of infringing the law, and had been involuntarily led into doing so by an inadvertence of the Consul of the Republic in Demerara, who had in consequence been dismissed from his post.

Compensation paid for losses.

That the owners of the "Jane Francis" had in the meantime incurred losses and expenses, to the amount of 260*l*., on account of demurrage and law costs; and an application was made on their behalf by Her Majesty's Government for the payment of compensation by the Venezuelan Government, who, while denying the right to demand any such compensation, agreed to pay the amount claimed, out of deference towards Her Majesty's Government, and subject to the sanction of Congress. (Mr. Middleton, No. 22 of the 4th February, 1877.)

Decree issued denying compensation for breaches of law caused by improper acts of Venezuelan Consuls.

That immediately afterwards the President of the Republic issued a Resolution to the effect that no captain of a foreign vessel arriving in an unqualified port of Venezuela, for which he was furnished with a clearance from a Venezuelan Consul, could claim indemnity on account of the measures taken against him for having infringed the law. (Mr. Middleton, No. 30 of the 23rd February, 1877.)

That thereupon Her Majesty's Minister was instructed to inform the President of the Republic that, in the opinion of Her Majesty's Government, the Municipal Enactment in question could not relieve the Venezuelan Government from the liability which, under the circumstances contemplated, might attach to them by the law of nations to make compensation for the injuries improperly caused to foreigners by officers and agents of Venezuela in discharge of their public functions. (To Mr. Middleton, No. 22 of the 10th April, 1877.)

That Her Majesty's Minister had now forwarded to your Lordship a copy of a note which he had received from the Venezuelan Minister for Foreign Affairs, Dr. Andueza Palacio, stating, in reply to Mr. Middleton's communication, that the Venezuelan Government could not, for the reasons contained therein, participate in the opinion of Her Majesty's Government on the subject of that Enactment. (Mr. Middleton, No. 66 of the 26th June, 1877.)

That your Lordship requested that we would take those papers into our consideration and favour your Lordship with our opinion as to whether, notwithstanding the Enactment referred to, compensation might be claimed under the law of nations in the circumstances contemplated therein.

In obedience to your Lordship's commands we have the honour to report—

Municipal law will not relieve Venezuela from responsibility for acts of its Consular officers attaching to her by international law.

That, in our opinion, a municipal law will not relieve the Government of Venezuela from making compensation for injuries caused to foreigners by the officers and agents of Venezuela in discharge of their public functions.

It does not follow, as Dr Palacio reasons, that because a Government is liable for the acts of certain agents, military or diplomatic, that the Government is not also liable for the acts of its agents who may have other duties to perform in relation to the subjects of another country.

One of the duties thrown upon a Consul being to give clearances for foreign vessels sailing for the ports of Venezuela, the Consul, in giving such clearances, is the agent of the Government, and acting within the scope of his authority, and for any mistake of this agent, causing loss or injury, the Government who appointed him is responsible by international law.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Zanzibar.

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## No. 121.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*[*]

*Foreign Office, May* 17, 1877.

Gentlemen,

Legal Vice-Consul Powers.

I AM directed by the Earl of Derby to state to you that, in consequence of the great increase in the judicial work in the Consular Court at Zanzibar, it has been found necessary to provide an assistant to Her Majesty's Consul-General there, and it is proposed, therefore, to appoint a Legal Vice-Consul to assist Her Majesty's Agent and Consul-General in carrying out his judicial duties.

On referring, however, to the Order in Council of 1866, under which the Consular Court at Zanzibar is established, it will be seen that the Order in question makes no provision for the appointment of a Vice-Consul or Vice-Consuls, but makes mention of a Consul only in the singular number, except in the 1st and 17th Articles, in which the word Consuls in the plural number is used. The 34th Article, however, provides that, in the construction of the Order, words importing the singular number shall, if, necessary, be understood to include several persons, matters, or things.

I am to request that you will favour Lord Derby with your opinion as to whether it is clear that more than one Consul may exercise the judicial and other powers conferred on Her Majesty's Consul by the Order, and if so, whether such powers may be legally exercised by a Vice-Consul without a supplemental Order in Council making special provision on that behalf.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

### *Report.*

Order in Council confers powers on *Consuls*, not on *Vice-Consuls.* Supplemental Order requisite.

That, in our opinion, more than one Consul may exercise the judicial and other powers conferred by the Order in Council of the 7th August, 1866.

But we think those powers may not be legally exercised by a Vice-Consul without a supplemental Order in Council providing for the appointment of such a Consular authority and giving the required powers.

J. H.
H. S. G.
J. P. D.

*May* 18, 1877.

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## No. 122.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*[*]

*Foreign Office, June* 26, 1877.

Gentlemen,

Suits between British subjects and subjects of Zanzibar.

I AM directed by the Earl of Derby to transmit to you a despatch (No. 73), with its inclosure, from Dr. Kirk, Her Majesty's Agent and Consul-General at Zanzibar, relative to a question which has recently been raised in the Consular Court at that place with reference to an appeal from a Decree made by the Vice-Consul, wherein a subject of the Sultan was the plaintiff, and a British subject the defendant.

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[*] The Law Officers' Report upon this subject could not be found when this collection of Reports was made, and it was therefore necessary to obtain the original draft of the Report. The Law Officers, however, do not retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the Foreign Office letter to them is recapitulated. It has, therefore, been deemed advisable to print the Foreign Office letter in this instance, as the bare Report, without the usual preamble, would not be wholly intelligible.

It appears to Lord Derby that the judgment pronounced in this case, which is fully stated in Dr. Kirk's despatch, is invalid on two grounds:—

1. Because the case was heard before the Vice-Consul, who has no judicial powers under the Order in Council.

2. Because the Order in Council does not provide for the carrying out of that part of the Treaty whereby it is agreed that suits by native subjects against British subjects shall be tried by the British Consul.

The latter is only empowered under the Order in Council to try suits arising between British subjects, and if, as it is presumed, the Consul derives his judicial powers from the Order in Council alone, and not from the Treaty, there would appear to have been a grave omission in the Order which should be remedied in the supplemental one about to be issued for the purpose of extending the judicial powers of the Consuls and Vice-Consuls.

Jurisdiction hitherto exercised by British Consul.

I am to state that Her Majesty's Consul has been in the habit of exercising the jurisdiction now questioned for a considerable period; and I am to request that you will take this matter into your consideration, and favour Lord Derby with your opinion as to whether Her Majesty's Consul has by so doing exceeded his powers, and, if so, whether you would advise the insertion of a clause in the supplemental Order validating his proceedings.

A copy of the Treaty and of the Order in Council are inclosed for your reference.[*]

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

### *Report.*

Consul has no jurisdiction. Order in Council must provide for case.

That we are of opinion that Her Majesty's Consul at Zanzibar has, by exercising civil jurisdiction in suits in which one of the parties is not a British subject, exceeded his powers; and we should advise the insertion of a clause in the supplemental Order validating his proceedings.

J. H.
H. S. G.
J. P. D.

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## No. 123.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received November* 28.)

*Temple, November* 27, 1877.

My Lord,

Scheme of British subjects to administer Sultan of Zanzibar's territory on mainland.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd September last, stating that he was directed by your Lordship to transmit to us the accompanying printed correspondence respecting a scheme of certain gentlemen, British subjects, for taking over and administering, for a period of years, the possessions of the Sultan of Zanzibar on the mainland of Africa.

That the objects of that scheme were clearly stated in the above-mentioned correspondence, and Sir Julian Pauncefote was to request that we would take these papers into our consideration and favour your Lordship with our opinion whether it was competent to those gentlemen to carry out the scheme without the sanction of Her Majesty, and, if not, whether there were any Constitutional objections to a general sanction of that undertaking by Her Majesty's Government.

That a paper by Her Majesty's Agent and Consul-General at Zanzibar[†] on the bearing of the various Commercial Treaties with Zanzibar, and a copy of the Treaty which regulated the position of England towards that State, were therewith inclosed, for our information and for convenience of reference, together with certain other papers which bear upon the subject, as marked in the margin.[‡]

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[*] For Treaty, see "Hertslet's Commercial Treaties," vol. v, p. 611.

[†] No. 63.

[‡] To India and Colonial Offices, June 23; Colonial Office, July 28; Mr. Mackinnon, August 23; to Mr. Mackinnon, August 29; India Office, September 13; Order in Council, 1866.

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May be adopted without Her Majesty's consent, which might cause complications with other countries. Foreign Enlistment Act might be infringed.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, it is competent to the intended Company to carry out the proposed scheme without the sanction of Her Majesty, but the members of the Company should bear in mind that the execution of the scheme will probably involve the commission of acts which the Foreign Enlistment Act, 1870, or some other law or statute, forbids to be done without the licence of Her Majesty.

We suggest, for your Lordship's consideration, that if Her Majesty's Government should in any way give authority to this Company to carry out the proposed undertaking, Her Majesty's Government may on some future occasion be involved in serious difficulties with the Sultan of Zanzibar as well as with other foreign Powers.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

P.S.—Since the above Report was written we have received the further papers inclosed in Sir Julian Pauncefote's letter of the 27th instant, but those papers do not cause us to modify or alter our Report.

J. H.
H. S. G.
J P. D.

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*Printed for the use of the Foreign Office. August* 1880.

CONFIDENTIAL.

# REPORTS

FROM

# LAW OFFICERS OF THE CROWN.

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*Printed for the use of the Foreign Office. July* 1880.

CONFIDENTIAL.

# REPORTS FROM LAW OFFICERS OF THE CROWN: 1878.

## Africa.

### No. 1.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March* 28.)

*Temple, March* 27, 1878.

My Lord,

Slave dealing. Power of Consul at Fernando Po to send British subject to Lagos for trial.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* in relation to a question which had arisen as to the power of Her Majesty's Consul at Fernando Po to send a British subject for trial to Lagos on a charge of slave-dealing. That the judicial powers of Her Majesty's Consul were regulated by Her Majesty's Order in Council of the 21st February, 1872, a copy of which accompanied the papers.

That by that Order in Council the Consul had power to deal with the offences against the Slave Trade Acts mentioned in section 16, but he had no authority to send offenders for trial to a British Colony under the provisions in that behalf contained in the Foreign Jurisdiction Act.

That we would observe, however, that the Colonial Office considered that that power might be exercised by him under the terms of the concluding paragraph of section 26 of the Slave Trade Act, 1873 (36 and 37 Vict., cap. 88), and they inquired whether your Lordship concurred in the instructions to that effect which they proposed to send out to the Governor of the Gold Coast Colony.

That Sir Julian Pauncefote was to request we would favour your Lordship with our opinion as to whether the proposed instructions might be approved.

In obedience to your Lordship's commands we have the honour to report—

He has no such power.

That, in our opinion, the Consular Officer has not, by 36 and 37 Vict., cap. 88, sec. 26, the power to send a person, charged with an offence under that Act, for trial to a British Colony; for we think such Consular Officer is not a Judge having "jurisdiction to try" within the meaning of that section.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 2.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 15.)

*Temple, April* 13, 1878.

My Lord,

Decree of forfeiture of Arab dhow "Mambo Sara." Violation of Slavery Acts.

WE were honoured with the commands of the Earl of Derby signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he was directed by his

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* W. Tait, Nos. 1 and 2 of 1877; Colonial Office, February 20 and March 4, 1878; Order in Council, February 21, 1872.

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Lordship to transmit to us papers relating to a Decree of Forfeiture of an Arab dhow, the "Mambo Sara," and of the owner's cargo, for a violation of the Acts for the suppression of slavery, which Decree was made on the 7th day of June last by Her Majesty's Consul-General at Zanzibar.

That in his despatch No. 158 of the 12th November last, Dr. Kirk raised several questions as to which he solicited instructions from Her Majesty's Government, and his despatch was accordingly referred in the usual course to the Lords Commissioners of the Treasury for the opinion of their Legal Adviser on Slave Trade matters.

Question whether owner must suffer for illegal acts of the master.

That the Report of Mr. Rothery was transmitted to the Foreign Office by their Lordships in their letter of the 5th ultimo, and we should observe that it dealt with a question of great importance in the administration of justice under the Slave Trade Acts, namely, whether a violation of sections 2 and 4 of the Act 5 Geo. IV, cap. 113, committed by the master of a vessel, entails the forfeiture of the vessel and of the cargo belonging to her owner, in cases where there was no evidence whatever of any complicity or guilty knowledge on the part of the latter.

That Mr. Rothery had arrived at the conclusion that, on the true construction of section 4 of the Act 5 Geo. IV, cap. 113, that question must be answered in the affirmative, and that Sir Julian Pauncefote was to request that we would inform the Earl of Derby whether, having regard to the decision of the Judicial Committee of the Privy Council in the case of the "Newport" (Swabey 317), we concurred in Mr. Rothery's view of the effect of the Act.

That if we should consider that in the case of the "Mambo Sara" there was a miscarriage of justice as regards the forfeiture of the vessel and of the portion of her cargo belonging to the ship-owner, the Earl of Derby requested our opinion as to whether, under the circumstances detailed by Dr. Kirk, it was competent to him to review his judgment, notwithstanding that the time limited for appeals had elapsed, and, if so, whether, in the event of the Decree being varied as regards the forfeiture of the vessel and the owner's cargo, the claim and title of the captors to the proceeds thereof would be annulled, and the amount become payable to the owner.

In obedience to his Lordship's commands we have the honour to report—

Owner is exonerated. Ship and cargo must be restored.

That, in our opinion, there has been a miscarriage of justice in this case. The owner of the ship and condemned cargo cannot, upon the evidence as we gather from Dr. Kirk's Report, be brought within the words of 5 Geo. IV, cap. 113, sec. 4, and is, on that evidence, "exonerated from any guilty knowledge of an illegal purpose." (See the "Newport," Swab. Adm. Reports, p. 333.)

We think the owner is entitled to be repaid the value of his seized and destroyed ship, and of his sold goods, and to be repaid any expenses which the illegal condemnation and loss of his property may have inflicted upon him.

The claim and title of the captors to the proceeds should also be annulled.

There may be some technical difficulties in the way, which may prevent Dr. Kirk from reviewing his Judgment and varying his Decree, and we observe that the owner, in his petition, makes no complaint in respect to his vessel.

Nevertheless, in our opinion, the case is one of so great a miscarriage of justice that no technical difficulties nor mistake of the owner should prevent his having full redress from Her Majesty's Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 3.

*Memorandum by the Lord Chancellor.*

*Slave Trade.—Case No.* 17 *of* 1877.

Slave Trade. "Mambo Sara" case. Vessel and cargo rightly condemned.

IN my opinion, the dhow in this case and so much of the cargo as belonged to the owner were rightly condemned, and no claim for compensation should be entertained.

2. As I understand the 5 Geo. IV, cap. 113, sec. 4, if any person fits out, navigates, or uses a ship for the unlawful objects in the Act, *i.e.*, for the Slave Trade, the ship and the cargo on board belonging to the owner are forfeited.

Owners must suffer for master's acts.

3. Therefore if the master uses the ship in this way the ship is forfeited, and the owner must suffer. Either he was privy to it, or, if not, he ought to have employed a better master. The master represents the owner, and the owner must take the responsibility, as he would reap the profit, of the master's acts.

Difficulty of proving complicity of owner.

4. If this were not so the whole of the proceedings for putting a stop to the Slave Trade would be paralysed. A ship might be filled with slaves under the eye of one of Her Majesty's cruizers, and yet, if a guilty knowledge of the owner must be proved, the cruizer would either have to hold her hand until she obtained evidence of that guilty knowledge, or else, if she seized the ship, she would do it at the peril of having to make restitution if the knowledge were not proved. All that a slaver would have to do would be to send out his ship under an unscrupulous and worthless captain, to give him regular papers and strict written orders to pursue a legitimate trade, and prohibiting any trade that was illegal, and give him a private hint that he was free to do any slave business if he had an opportunity. If not detected the owner would get the profit; if detected, the papers of the ship and the orders of the owner would be relied upon, and if guilty knowledge could not be proved the ship would escape.

5. The course taken by the Legislature is, in my opinion, a much simpler and more effective one. The case is to be tried against those who are navigating or using the vessel. If there is a case against them the vessel is forfeited and the owner's goods on board. If it were a case of penalties or punishments it would, of course, be different. There, in order to exact a penalty or inflict a punishment there must be personal guilt.

6. In the present case I cannot doubt that there was a sufficient *primâ facie* case against the captain and the crew for forfeiture and condemnation. There was a slave on board, there were manacles and handcuffs, and the captain ran the ship aground to escape capture.

Precedents.

7. The cases referred to do not really conflict with this view. In "Bartham *v.* The Queen," 2 Moore 19, the question was whether three persons on board a ship seized in the port of Gibraltar were really slaves or not. This depended on some arguable questions as to their letters of freedom, &c. The Court held that it was doubtful whether they were slaves, but if they were, it was not proved that the owner, master, or mate was cognizant of the fact. It was not a question of the master being cognizant and the owner ignorant. On the contrary, Mr. Baron Parke, throughout the judgment, assumed that it would be sufficient to prove either that the owners or persons having the conduct and management of the vessel were cognisant.

8. As to the case of "Hocquard *v.* The Queen," 11 Moore 155,* the marginal note, no doubt, states that the ship was restored on the ground that there was no sufficient proof of any guilty knowledge on the part of the owners of the ship or shippers of the goods. But here, again, it was not a question of the master and crew having knowledge and the owners being ignorant. The question was, whether there was any evidence whatever that the ship was employed in the Slave Trade *de facto*. And the Court held that there was not such evidence, either against the owners or the shippers of the goods, or any one engaged in navigating the ship.

(Signed) CAIRNS.

*July* 10, 1878.

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# Austria.

## No. 4.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received December* 20.)

*Temple, December* 19, 1878.

My Lord,

Bills of exchange. Queries as to law of England.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 5th ultimo, stating that he was directed by your Lordship to state to us that

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* The "Newport" (Swabey 317).

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the Austro-Hungarian Ambassador had informed your Lordship that the Tribunals of his country had before them a law-suit between Austrian subjects on which a considerable sum depended, and in the course of which a question had been raised respecting bills drawn in this country by one of the parties to the suit, husband and wife, at the time resident here.

Power of women to draw, accept, &c.

That the Tribunals requiring information on certain questions of English law in such cases, the Ambassador had forwarded the accompanying series of questions, to which he requested that answers might be returned.

That Lord Tenterden was to request that we would be good enough to advise your Lordship as to the nature of the reply that should be given to his Excellency.

In obedience to your Lordship's commands we have the honour to report—

That having considered the questions submitted to us, the following are the answers which we return:—

Answers.

1. It is correct that, according to English law, a woman married or unmarried is of full age at 21 years.

2. It is correct that, according to English law, a woman of the full age of 21 years (provided she is not a married woman with a living husband) is able in England to draw, accept, or indorse a bill of exchange, or to make a promissory note, and that she is liable in England to pay the amount of such bill of exchange or promissory note, but, although generally, a married woman is not, during coverture, liable on bills of exchange or promissory notes accepted, made, or indorsed by her, yet, if she has separate estate, such estate is chargeable with the bills of exchange or promissory notes accepted, made, or indorsed by her, provided such separate estate is not settled on her without power of anticipation.

3. If the words "in this country" in question 3 mean "in England" we answer in the affirmative.*

4. It is correct that the requisites mentioned† are the requisites of a promissory note, save only that a promissory note may be made payable to bearer, in which case the name of the person to whom the sum is to be paid is, of course, not mentioned. This answer assumes that the question means by "promissory note" a negotiable instrument; many notes not negotiable might yet constitute an acknowledgment of indebtedness from the promiser to the promisee.

5. According to English law a promissory note, after it has been indorsed, stands on the same footing as a bill of exchange, and confers the same privileges and advantages and creates the same liabilities, and that it is not necessary that either a promissory note or a bill of exchange should have expressly noted or written thereon the words "bill" or "exchange" or "promissory note."

6. It is correct that, according to English law, if two or more persons give a joint and several promissory note, each is liable separately for the whole amount for which the note is given.

7 and 8. It is correct that, according to English law, the law of the foreign nation is a fact to be proved by the evidence of experts. The competency of the witness to prove as an expert foreign law is a question for the Court, and the only general rule that can be collected from the reported cases is, that the witness must from his profession or business have had peculiar means of becoming acquainted with that branch of law which he is called to prove.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Question 3 was as follows: "Is it correct that according to English law a foreign woman is liable for a bill of exchange or promissory note which she, acting according to the English law, has given in this country, and which is to be paid in this country, although, according to the laws of her own country, she may not be able to give a bill of exchange or promissory note?"

† The requisites mentioned in the 4th question were the following:—
1. The signature of the maker, namely, the person who promises to pay.
2. The statement of the sum promised to be paid for value received.
3. The date when the sum promised to be paid is to be paid.
4. The name of the person to whom or to whose order the amount is to be paid.
5. That the instrument bears the proper amount of stamp duty.

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# Brazil.

## No. 5.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received May .)*

*Temple, May* 13, 1878.

My Lord,

St. Juan del Rey Mining Company. Charge against of Slave Trading.

WE were honoured with the commands of the Earl of Derby signified in Sir Julian Pauncefote's letter of the 23rd March last, stating that he was directed by his Lordship to transmit to us the accompanying printed correspondence, relating to a charge brought against the St. Juan del Rey Mining Company, of violating the provisions of the Slave Trade Acts. That the Company was a British Company originally established in 1830, and now registered under the Limited Liability Act, its office being at 8, Tokenhouse-yard, in the City of London. That it possessed mines at Marro Vehlo in Brazil, which were worked partly by slaves hired from the "Brazilian Company," another English Mining Company formerly carrying on business at Cata Branca in Brazil (and frequently referred to as the Cata Branca Company), under an Agreement in writing made in 1845, and subsequently therefore to the passing of the Act 6 and 7 Vic., cap. 98.

That the Brazilian Company "had been unsuccessful, and suspended operations in 1845, when it sold its land and plant, and hired out its slaves to the St. Juan del Rey Company, but it appeared that it never wound up its affairs, and still existed as a Company.

"That the Agreement of 1845 for the hire of the Cata Branca slaves was for a period of fourteen years, and would have expired in 1859, were it not for a further Agreement having been entered into between the two Companies, which was not reduced to writing, but the substance of which was given in the affidavit of Mr. Frederick Thomas Cutbill, a Director of the Brazilian Company, a copy of which formed the Inclosure 3 in Mr. Buckley Mathew's despatch No. 8 of September 7, 1877 (Correspondence, p. 21).

"That a copy of the original Agreement of 1845 formed the Inclosure 2 of the same despatch.

"That it had only recently come to light that that Agreement contained provisions stipulating that such of the slaves as were then under 21 years of age should on attaining that age before the expiration of the Agreement be liberated, and that at the expiration of the Agreement in 1859 the whole of the slaves and their issue should become absolutely free and emancipated. That these provisions have not been observed, for the reasons given in Mr. Cutbill's affidavit above mentioned, and also in the letter of Mr. Hockin, Managing Director of the Company, of the 23rd October, 1877 (Correspondence, p. 58), such of the Cata Branca blacks as have not been voluntarily emancipated by the Company were still held by them in slavery, and their yearly hire paid to certain parties in this country, to whom it was alleged that the benefit of the contract for the hire of the slaves was transferred in consideration of advances" (Mr. Buckley Mathew's No. 3, Correspondence, p. 9; Mr. Consul Hunt's Report, Correspondence, p. 65).

That legal proceedings have been instituted in Brazil against the St. Juan del Rey Company, the particulars of which would be found in Mr. Buckley Mathew's despatch No. 8 of September 7, 1877, above referred to (Correspondence, p. 21), and at the close of Mr. Consul Hunt's Report (Correspondence, p. 66). That in the meanwhile Mr. Consul Hunt, who had been dispatched to Morro Vehlo, in pursuance of instructions from the Earl of Derby, to make full inquiries into certain grave charges brought against Mr. J. N. Gordon, Her Majesty's Vice-Consul at Morro Velho, as well as in regard to the detention in slavery of the Cata Branca blacks by the Company, had furnished a Report of his inquiry, which formed the first inclosure in Mr. Buckley Mathew's despatch No. 100 of December 20, 1877 (Correspondence, p. 61).

Vice-Consul Gordon's complicity.

Sir Julian Pauncefote was to draw our special attention to that Report, and further to state that Vice-Consul Gordon, who was now in this country, was Superintendent of the Company in Brazil. That he had been dismissed from his office by the Company, and suspended in the exercise of his Consular functions.

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That the charges against Mr. Gordon were not only that he was cognizant of all the proceedings of the Company, and gravely implicated therein, but he was accused, among other things, of having illegally detained in slavery after the death of her former owner, Mr. P. Brown, a coloured woman named Quintilliana Theresa Le Brun, although, as Mr. P. Brown's executor, he was in possession of a duly executed document by which she had been made free; and further, of having illegally registered as a slave a woman named Camilla Francisca, who was not on the list of the Cata Branca slaves transferred to the Company, by falsely signing himself as a member of the "National Brazilian Association." That for the particulars of these and other charges, he was to refer us to Mr. Buckley Mathew's despatches No. 15 of July 26, 1877, and its inclosures (Correspondence, p. 9), No. 16 of July 31, 1877, and its inclosures (Correspondence, p. 16), and to Mr. Consul Hunt's No. 31 of August 6, 1877 (Correspondence, p. 18). That Mr. Gordon's defence against these charges was contained in Mr. Consul Hunt's despatch No. 37 of November 3, 1877 (Correspondence, p. 29). That as regards the St. Juan del Rey Company, we would observe that in the letter of their Managing Director (Correspondence, p. 58) it was stated that, according to the opinion of their legal advisers in this country, the legality of their proceedings was unquestionable, and that the facts of the case as regarded the Agreement of 1845 were well known to Mr. Gordon.

That the proceedings of the British Mining Companies in Brazil with reference to the employment of slave labour have been the subject of correspondence with the Foreign Office for many years, and Sir Julian Pauncefote was to refer us to the memorandum at page 3 of the Correspondence, which showed what the position of the question was at the time of the receipt of the letter addressed to the Earl of Derby by the British and Foreign Anti-Slavery Society on the 7th June, 1877, which we would find at page 1 of the printed Correspondence.

That, in addition to the various Reports of the Law Officers of the Crown adverted to in that memorandum, Sir Julian Pauncefote was to refer us to that of the Queen's Advocate, dated the 30th November, 1867, and printed at page 5 of the collection of Law Officers' opinions for that year; and to request that we would take these papers into our consideration, and favour Lord Derby with our opinion as to whether Mr. Gordon and the directors of the St. Juan del Rey Company, and its officers and shareholders, or any of them, have rendered themselves liable to criminal proceedings in this country, and, if so, as to what steps Her Majesty's Government should take in the matter.

In obedience to the commands contained in Sir Julian Pauncefote's letter, we have the honour to report—

The British Companies are punishable under 6 and 7 Vict., cap. 98.

That, in our opinion, the Articles of Agreement (Inclosure 2 in Mr. Mathew's despatch of the 7th September, 1877, page 21 of the Correspondence) are a contract for the dealing or trading in, or transfer of, slaves, or persons intended to be dealt with as slaves; and, therefore, the parties to those Articles of Agreement, being British subjects, were punishable under the 6 and 7 Vict., cap. 98.

And we are also of opinion that all persons who, subsequent to the date of the Articles of Agreement, and being privy to those Articles, have become members of the Company which so dealt with the slaves, are punishable under the same Statute, unless they are within the exceptions of the 6th section of the Act.

Mr. Gordon may be proceeded against.

We think Mr. Gordon may be proceeded against, and those directors of the St. Juan del Rey Company, the officers, and shareholders of the Company who do not come under the exceptions of the 6th section above referred to are liable to criminal proceedings; which of those persons, however, may be so liable, and which may avail themselves of the exceptions, there is no evidence before us at present to show.

We therefore suggest that further inquiry should be made with the view of ascertaining the position as to date of acquiring and manner of acquiring shares in the Company by the directors and other shareholders, and we think Mr. Gordon may be proceeded against alone. When this information has been obtained, and if it be found sufficient for the purpose, your Lordships may properly consider whether Her Majesty's Government shall undertake any prosecution, or merely lend such aid as may be in its power to the Anti-Slavery Committee.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Central America.

## No. 6.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March* 30.)

*Temple, March* 30, 1878.

My Lord,

Guatemalan Decree. Trials for sedition, rebellion, &c.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th February ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, as marked in the margin,* relative to a Decree issued by the President of Guatemala providing for the trial and punishment by a military Court of persons who might in future be guilty of sedition, rebellion, or conspiracy, and of their accomplices, abettors, or concealers.

That Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether Her Majesty's Government were entitled to claim for British subjects exemption from the provisions of the Guatemalan Decree; and whether it was advisable that Her Majesty's Minister should be instructed to make any representation on the subject to the Guatemalan Government.

In obedience to your Lordship's commands we have the honour to report—

Cannot claim exemption for British subjects.

That Her Majesty's Government cannot, in our opinion, claim for British subjects an exemption from the provisions of the Guatemalan Decree.

Crimes, &c., not defined. Notice must be given to British Minister of proceedings.

But as no definition of the words or crimes, sedition, rebellion, conspiracy, accomplices, abettors, or concealers is to be found in the Decree, we think Her Majesty's Minister may properly be instructed to officiously call the attention of the Guatemalan Government to the large meaning which might be given to these words, and request that no proceedings should be taken against British subjects without informing the British Minister and giving the accused the opportunity and means of defending himself.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 7.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 6.)

*Temple, April* 5, 1878.

My Lord,

Forced loans. Mr. A. Smythe's claim against Honduras.

WE were honoured with the commands of the Earl of Derby signified in Sir Julian Pauncefote's letter of the 9th March ultimo, stating that he was directed by his Lordship to transmit to us the accompanying despatch from Her Majesty's Minister in Central America, inclosing correspondence† relative to a claim put forward against the Honduras Government by Mr. Archibald Smythe, a British subject, on account of forced loans said to have been exacted from him, and of losses caused to him by the measures which he alleged to have been taken by Honduras officers in consequence of his refusal to pay certain contributions demanded from him.

That we should see that Her Majesty's Minister had informed Mr. Smythe that his claim was much exaggerated, and that he was not entitled to compensation for the losses entailed upon him through his refusal to pay the contributions required from him, inasmuch as his proper course would have been to pay the money under protest and seek redress through the proper channel. That Mr. Locock based his reply upon an instruction addressed to his predecessor by Earl Granville in 1871 relative to the

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* Mr. Locock, Nos. 134 and 139 of 1877; to Mr. Locock, No. 2 of 1878.

† Mr. Locock, No. 12; Queen's Advocate, January 31, 1871; and List.

1878

claim of Mr. Goussen, after consulting Her Majesty's Advocate-General (whose Report was sent to us with Sir Julian's letter); and to request that we would take the inclosed papers into our consideration, and favour his Lordship with our opinion as to whether Mr. Locock's answer to Mr. Smythe should be approved, and the claim on behalf of Mr. Smythe limited to the amount of the tax levied under protest, without reference to the loss sustained by reason of the forced sale of his effects; and generally as to the proper measure of compensation in that case.

The previous papers relating to both claims were inclosed for convenience of reference.

In obedience to the commands contained in Sir Julian Pauncefote's letter we have the honour to report—

That we have carefully considered the papers transmitted to us, and we are of opinion that the letter from Mr. Locock to Mr. Smythe cannot be approved.

Mr. Locock, we think, took a right view of Mr. Smythe's case when, in the letter of the 13th January, 1875, he claimed "fair compensation for the losses and injuries" which Mr. Smythe had suffered and been subjected to.

We think this claim so made was well founded upon the representations made by Mr. Smythe in his letter of the 10th November, 1874.

And since Mr. Locock's first communication on the subject (13th January, 1875), Mr. Smythe has been again, without excuse on the part of the Honduras Government, and after Mr. Smythe had written to the British authorities claiming protection, been subject to further exactions and annoyances (in January, February, April, and June 1876).

**Mr. Smythe should be reimbursed sums levied and compensated for annoyances, &c.**

This being so, the claim of Mr. Smythe should not now be limited to the amounts of the tax levied under protest and the legal interest upon those amounts. But Mr. Smythe is entitled to claim the repayment of the sums taken from him, the interest upon those sums, and a "fair compensation" for the expenses to which he has been put and the annoyances and injuries to which he has been subjected.

Had Mr. Smythe inserted in his claim a demand for compensation for the loss sustained by reason of the forced sale of his effects, we should have been strongly inclined to think him well founded in making that demand.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 8.

*Sir J. Holker to Sir J. Pauncefote.*—(*Received April* 16.)

*6, Crown Office Row, Temple, E.C.,*
*April* 15, 1878.

My dear Sir Julian Pauncefote,

Free port.
Want definition of term.

THE Law Officers and Dr. Deane find it impossible to answer the question submitted to them without being made acquainted with the exact meaning of the term "free port."

Will you then be so kind as to furnish the information required, *i.e.*, whether "free port" means a port where, as a rule, no import or export duties are levied, or merely a port to which the vessels of all nations are allowed to resort?*

I remain, &c.
(Signed) JOHN HOLKER.

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## No. 9.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received May* 14.)

*Temple, May* 13, 1878.

My Lord,

Treaty of Managua.
Subsidy due to Mosquito.

WE were honoured with the commands of the Right Honourable the Earl of Derby signified in Sir Julian Pauncefote's letter of the 14th March last, stating that with reference to our Report of the 12th December last on the subject of the arrears of

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* For Memorandum by Sir E. Hertslet on the definition of the term "free port" see Confidential Paper No. 3866.

subsidy payable by the Government of Nicaragua to the Mosquito Indians under the Treaty of Managua, he was directed by the Earl of Derby to transmit to us the papers noted in the margin,* with reference to certain further questions arising out of the same Treaty which gave rise to discussion in 1866, and which had been revived by the Nicaraguan Government on that occasion. That one reason assigned by the Nicaraguan Government for the non-payment of the subsidy was, among others, put forward by them from time to time, that they had not been allowed to enter upon the "full sovereignty" of the Mosquito Reserve conferred upon them by the Treaty, and in our Report above referred to we pointed out that the words "full sovereignty" did not occur in the Treaty.

**Import and export duties at Greytown.**

That we would perceive from Mr. Gollan's despatch No. 18 of the 6th November last that the Nicaraguan Government had recently issued and carried out an order for the levy of export duties at Greytown, in violation, as was contended by Her Majesty's Government, of Article VII of the Treaty, by which Greytown was declared a free port.

That we would observe also from Mr. Gollan's despatch No. 7, Political, of the 18th November last, that the Nicaraguan Government persisted in levying import duties at Greytown on goods introduced at that port, and intended for consumption in the Mosquito territory, a proceeding which Her Majesty's Government considered to be also in violation of Article VII of the Treaty.

That, as before stated, the claims of the Nicaraguan Government over the Mosquito Reserve under the Treaty had been the subject of previous discussion.

That thus, in 1865, they claimed the right to grant mahogany cuttings in the Reserve.

That on that question, which was disposed of, but which was not irrelevant to the present inquiry, as touching the limits of the sovereignty claimed by Nicaragua over the Reserve, Sir Julian Pauncefote was to refer us to the Foreign Office memorandum of the 25th January, 1866, and to the Reports of the Queen's Advocate No. 16 of the 5th February, 1866, and No. 20A of the 19th July, at pp. 9 and 186 of the printed collection of Law Officers' Reports for that year. That the claims now contested related to the levy of duties. That as regarded the levy of an export duty at Greytown, Sir Julian Pauncefote was to refer us to Article VII of the Treaty, and to the following papers:—

1. Foreign Office memorandum of the 20th December last.
2. Mr. Gollan's despatch No. 6 of the 18th November last.
3. Mr. Locock's despatch No. 13 of the 17th January last.
4. Parliamentary Papers relating to Central America, to which references were made in the last-mentioned despatch.

That as regarded the levy of duties on goods intended for consumption in the Mosquito territory, Sir Julian Pauncefote was to refer us to the same Article of the Treaty, and to the following Papers:—

1. A despatch to Mr. Buckley Mathew No. 1 of the 3rd January, 1866.
2. Mr. Buckley Mathew's despatch No. 18 of the 10th May, 1866, containing the reply of the Nicaraguan Minister for Foreign Affairs (Señor Silva) to the representations of Her Majesty's Government and Mr. Buckley Mathew's rejoinder.
3. Mr. Consul Paton's despatch No. 4 of the 21st June, 1866, inclosing a copy of his correspondence with Mr. Buckley Mathew on the subject, containing his remarks on Señor Silva's reply, and among other documents a copy of a letter of the 25th September, 1865, addressed by Mr. J. H. Hooker, Government Secretary of Mosquito, to Messrs. Jones and Vaughan, in which the construction placed upon the Treaty by the Mosquito Indians was declared and explained in the form of a protest.
4. The Report of the Queen's Advocate No. 20 of the 10th July, 1866, p. 11 of the printed collection of Law Officers' Reports for that year.
5. Foreign Office memorandum of the 14th July, 1866.
6. Despatch to Consul Willis No. 6 of the 25th July, 1866.

Finally, Sir Julian Pauncefote was to refer us to the despatch to Mr. Locock No. 12 of the 16th February, 1878.

That Sir Julian Pauncefote was to request that we would be good enough to take

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* Memorandum, January 25, 1866; to Mr. Locock, No. 33, July 29; Mr. Gollan, No. 2, September 1; Mr. Locock, No. 95, October 6; to Mr. Locock, No. 55, November 13, 1875; Mr. Gollan, No. 8, December 13, 1876; to Mr. Locock, No. 13, February 26; Mr. Locock, No. 23, April 6; to Mr. Locock No. 32, May 26; Mr. Locock, No. 51, July 7; No. 87, August 22; No. 89, August 28; Law Officers, December : Mr. Gollan, No. 2, October 27; Memorandum, December 20; Mr. Locock, No. 131, November 12; Mr. Gollan No. 6, November 18; No. 7, November 18; No. 8, December 16, 1877; Memorandum, January 16; to Mr. Locock, No. 12, February 16; Mr. Locock, No. 13, January 17, 1878.

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the papers relating to this case into our consideration, and to favour Lord Derby with our opinion as to whether, having regard to the provisions of the Treaty of Managua, the protest of Her Majesty's Government against the action of the Nicaraguan Government in levying an export duty at Greytown, and an import duty on goods imported there, and intended for consumption within the Mosquito Reserve, was well founded.

In obedience to the commands of the Earl of Derby we have the honour to report—

**Export duty unjustifiable. Import duty on goods for consumption in Mosquito Reserve justifiable.**

That we are of opinion that the protest of Her Majesty's Government against the action of the Nicaraguan Government in levying an export duty at Greytown is well founded; but the protest against the action of the Nicaraguan Government in levying an import duty on goods imported there, and intended for consumption within the Mosquito Reserve, is not well founded.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 10.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August 9.)*

My Lord, *Temple, August* 8, 1878.

Import duties at Greytown on goods for consumption in Mosquito Reserve.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th ultimo, stating that with reference to our Report of the 13th May, he was directed to state to us that there was one point connected with the question of the levy of duties at Greytown on which your Lordship would be glad of a further expression of our opinion.

That we stated that, in our opinion, a protest would not be well founded "against the action of the Nicaraguan Government in levying an import duty on goods imported there, and intended for consumption within the Mosquito Reserve;" and that we made no distinction between goods intended for conveyance by land into the Mosquito Reserve and goods brought to Greytown in transit by sea to the Reserve.

That with regard to goods to be forwarded by land the question was of no practical importance, as the high range of mountains which intervened between Greytown and Mosquitia practically prevents the conveyance of goods by land.

But that if the opinion expressed in our Report was to be understood as applying to goods brought to Greytown in transit by sea to the Reserve, that opinion was in conflict with the views hitherto acted upon by Her Majesty's Government.

That Sir Julian Pauncefote was therefore to request that we would be good enough to inform your Lordship whether we intended the opinion quoted above to be understood as applying to goods brought to Greytown in transit by sea to the Mosquito Reserve, or only to goods intended for conveyance thither by land.

That Sir Julian Pauncefote was to add that it was proposed to submit the question of the Greytown duties, and all other questions between Great Britain and Nicaragua, arising out of the Treaty of Managua, to arbitration, and that our opinion on the point then submitted to us will probably be required for the purpose of preparing the case to be laid before the Arbitrator.

That the papers previously submitted to us were again sent therewith, together with some others lately received.

In obedience to your Lordship's commands we have the honour to report—

Justifiable, whether goods are conveyed to Mosquito by land or by sea.

That, by force of the last sentence in Article VII, the Nicaraguan Government has the right to put an import duty on goods brought into the port of Greytown, and destined for consumption within the territory of the Republic, whether they are conveyed to the place of consumption by land or by sea.

The expression in the Article VII "from sea to sea" apparently means from the Atlantic to the Pacific.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 11.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August 9.)*

My Lord, *Temple, August* 8, 1878.

**Landing of ammunition from British vessel "Emmeline" at Greytown prevented by German ship of war "Medusa."**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us the despatches inclosed, as marked in the margin,* reporting the proceedings of the Commander of the German ship of war "Medusa" in preventing, under a threat of confiscation, the landing of some ammunition from the British schooner "Emmeline" while lying in Greytown harbour.

That a dispute had for some time past existed between the Governments of Germany and Nicaragua, arising out of an outrage committed on the German Consul at Leon, and the "Medusa" had arrived at Greytown to enforce compliance with the demands of Germany.

Hostilities apprehended.

That the Commander of the "Medusa" refused to allow the ammunition in question to be landed, on the ground that hostilities might break out at any moment between the two countries, and he stated that he was ready to hold himself responsible for the consequences.

That the master of the "Emmeline" subsequently agreed to give up the ammunition to the German Commander on receipt of an undertaking on his part to pay the value.

War not declared.

That war not having been declared, the action of the German Commander would seem to have been premature and unwarranted by international law.

That Sir Julian Pauncefote was therefore to request that we would favour your Lordship with our opinion as to whether the proceedings of the Commander of the "Medusa" in that case call for a remonstrance on the part of Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

German action illegal.

That the proceedings of the Commander of the "Medusa" were illegal.

Remonstrate and claim indemnity.

In our opinion, therefore, Her Majesty's Government may properly call the attention of the German Government, or German Minister in this country, to the facts, and, in addition, request that the persons, if any, who may have suffered loss from the proceedings of the Commander of the "Medusa," be fully indemnified.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# China.

## No. 12.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received January 26.)*

My Lord, *Temple, January* 25, 1878.

"Cadiz" hulk at Chinkiang. Customs privileges stopped by China.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 7th instant, stating that, with reference to our Report of the 11th ultimo on the case of the hulk "Cadiz" at Chinkiang, he was directed by your Lordship to submit, for our consideration, the draft of a proposed reply to the communications of the Chinese Envoy on the subject of the controversy which had arisen touching the action of the Chinese authorities, in demanding the removal of the hulk without a previous inquiry before British authorities as to the necessity for her removal, and in withdrawing certain customs facilities from the hulk, in consequence of the owners having refused to comply with such demand.

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* Mr. Thomas, No. 8, Political; Mr. Graham, No. 57.

That the draft of the proposed reply then submitted to us had been prepared by Sir Thomas Wade, and that Sir Julian Pauncefote was to request that we would take it into consideration in conjunction with our Report on the case, and favour your Lordship with our opinion as to whether it might properly be adopted as it stood, or required any modification.

In obedience to your Lordship's commands we have the honour to report—

Cannot concur in proposed reply to Chinese Envoy.

That we have very carefully considered the proposed reply to the communications of the Chinese Envoy prepared by Sir Thomas Wade.

China is in the right.

This reply cannot, we submit, properly be adopted. The opinion which we formed upon the effect of the Treaty obligations of China and upon the facts was that the Chinese authorities in the whole transaction were in the right.

Sir Thomas Wade, however, in his reply goes into a justification of the proceedings of the owners of the hulk "Cadiz," and thus indirectly throws, if not the whole, yet a great part of the blame upon the Chinese.

The facts (with the exception, of course, of the cause of damage to the wall) being admitted, it seems to us needless to recite the different statements, as Sir Thomas does in his reply.

We much doubt whether it is worth while to say what Her Majesty's Government would have done had the circumstances been different.

Answer that Her Majesty's Government will not support claim of China Steam Company.

We submit, also, it is not prudent to raise questions of extra-territoriality, or to go with any matter beyond that which is the immediate subject of discussion.

We find it, for the same reasons, impossible to modify the proposed reply.

And we respectfully suggest that the Chinese Envoy would be best answered by simply informing him that upon an examination into the whole facts as they appear in the papers communicated Her Majesty's Government does not intend to support the claim for indemnity made by the British merchants representing the China Steam Company.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Inclosure in No. 12.

### *Draft of Letter to Kuo Ta Jen.**

Draft letter to Kuo Ta Jen.

Sir, *December* , 1877.

WITH reference to the correspondence on record regarding the hulk "Cadiz," stationed at Chinkiang, I have the honour to state to you that the whole of the papers have been carefully considered by the Law Officers of the Crown. Her Majesty's Government understand the chief facts of the case to be as follows:—

History of the "Cadiz" case.

The foreign trade at the port of Chinkiang appears to be carried on almost exclusively by steamers, which, from the rapidity of the current, could not load or discharge with sufficient dispatch without the assistance of certain hulks or store ships which are moored along the river bank. The "Cadiz" was one of these hulks.

The British merchants representing the China Steam Company, the British firm to which the "Cadiz" belongs, having received notice from the Harbour-master at Chinkiang that the hulk must be removed, objected. They appear, in the first instance, to have understood this direction to be absolute, and to be based on the assumption that their hulk was causing damage to the retaining wall of the river bank. A discussion ensued, at an early stage of which the merchants were invited to consent to the removal of the hulk, merely as a temporary measure, in order that it might be ascertained whether she were the cause of the damage alleged or not. To this the owners also objected. They contended not only that the damage to the wall was not the consequence of the hulk's position, but that if there were ground for such a charge it ought properly to be investigated by the British Consul before the hulk were interfered with. Her removal would seriously prejudice their business.

The Superintendent of Customs declined to bring the case before a Consular Court, and having threatened that if, within a given time, the hulk were not removed, certain facilities, without the enjoyment of which these hulks become useless, would be withdrawn, did eventually withdraw those facilities.

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* An amended letter was sent on February 6, 1878. (See MS. correspondence, "case of the 'Cadiz' hulk.')

This step occasioned a considerable loss to the owners of the hulk, for which they now seek to be indemnified. On the other part, the Chinese Government continues to maintain that the hulk, which still lies in her old berth, is really occasioning the mischief originally complained of, and to require removal of the hulk in order that the truth may be ascertained.

The best professional opinions obtainable on the spot have been taken as to the influence of the hulk upon the current. There is a serious conflict between these opinions; but upon the value of the evidence either for or against the hulk, it is not proposed at present to pronounce. The Chinese Government being alone responsible for the conservancy of its waters, it appears to Her Majesty's Government but reasonable that, if any doubt existed as to the fact in dispute, the hulk should have been removed at the instance of the Superintendent of Customs, pending inquiry, and in the opinion of Her Majesty's Government it is to be regretted that her owners were not advised to consent to her temporary removal when this was first required of them. Had they been able, after the survey had taken place, to prove themselves aggrieved, Her Majesty's Government would have been in a position to recover indemnity for whatever loss they might show to have been sustained. Under the circumstances, it is not the intention of Her Majesty's Government to support their claim for indemnity, and instructions will be sent to Her Majesty's Chargé d'Affaires at Peking to direct that the Harbour-master at Chinkiang be at once authorized to assign the hulk "Cadiz" another berth until the necessary investigation shall be completed.

The decision which I have now the honour to communicate to you will not, I trust, be misunderstood by the Chinese Government. It must not be taken as implying any abandonment whatever of the claim to exclusive jurisdiction over British subjects and their property in China, heretofore maintained by Her Majesty's Government. Were that right less explicitly declared than it is in the existing Treaties between China and foreign nations, it would be incumbent* upon Her Majesty's Government, either alone or in concert with the other Treaty Powers, at once to secure the addition of such provisions as would place it beyond dispute.

These remarks appear to me called for by the action taken at Chinkiang in the case of the hulk "Cadiz," by the Superintendent of Customs. The reasonableness of his demand that the hulk should be temporarily removed is perfectly admitted; but [the propriety of†] the course pursued by him when the owners appealed to their Consul does not appear to Her Majesty's Government equally capable of defence. To compel them to remove the hulk, her "facilities,"‡ as they are termed, that is to say, the arrangements under which alone the hulk was enabled to do her business, were withdrawn. In other words, the business of her owners was annihilated; a tremendous penalty, in the infliction of which the Chinese authority virtually assumed the right to decide that the British subject was a wrong-doer, and to punish him for the wrong he was alleged to have done. It is much to be deplored that before a measure so extreme was resorted to, the case was not referred to Her Majesty's Government for consideration.

Nothing would more sincerely gratify Her Majesty's Government than to perceive that the laws and usages of the Chinese Empire had been brought into such accord with those of foreign nations as to justify surrender of the right to ex-territorial jurisdiction in China, but until the necessary modification has been achieved there is no right which, in the interests of peace, it will be the duty of Her Majesty's Government more watchfully to maintain.

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## No. 13.

### *The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 23.)

My Lord, *Temple, March* 22, 1878.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th January last, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,§ and to request that we would favour your Lordship with our opinion on the question therein raised.

Marriage at Shanghae in English Church by English clergyman. (Mr. W. H. Fazan's case.)

That the Foreign Office Department had been repeatedly advised by successive Law Officers of the Crown that, as regarded Mahommedan or heathen countries, such,

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* Or—"Were that claim less clearly supported than it is by the practice so far uniformly adhered to by every Power having a Treaty with China, it would be incumbent," &c.

† Query omit.—J. P.

‡ "Privileges."—J. P.

§ Sir H. Parkes, No. 143, August 29, 1876; Mr. W. H. Fazan, December 28, 1877.

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for instance, as Zanzibar, Madagascar, Turkey, &c., the marriage of a British subject solemnized in such countries by a priest in holy orders would be upheld by English Courts of Law as a valid marriage.

Citing precedents. Marriages in heathen countries.

That the question whether a marriage solemnized between British subjects in Japan by a clergyman of the Church of England, but not under the Act 4 Geo. IV, cap. 91 (Marriages in Embassies or Missions), or the Act 12 and 13 Vict., cap. 68 (Consular Marriages), would be held valid by English Courts, was raised by Sir H. Parkes in his despatch No. 143 of the 29th August, 1876, and he transmitted therein, among other papers, a memorandum by Mr. Wilkinson, attached to Her Majesty's Consulate at Kanagawa, containing an elaborate argument tending to show that the common law of England, as it existed before Lord Hardwicke's Act, would not apply to such a marriage, and that it would consequently be void.

That the Order in Council for China and Japan, however, by section 5, declared that Her Majesty's jurisdiction in those countries should be exercised in conformity with the common and statute law of England, as far as circumstances admitted.

That a similar provision existed in the Order in Council for the Levant, and as, in our Report of the 18th October, 1876, we advised that a marriage celebrated between British subjects in Turkey by a Roman Catholic priest, according to the rites of the Roman Catholic Church, would be held valid in this country, it was not deemed necessary to trouble us with the papers above referred to, especially as the contemplated marriage was shortly afterwards solemnized under the Consular Marriages Act.

That we would observe, however, that the same question had again been raised in the inclosed letter from Mr. W. H. Fazan, who desired to be informed whether a marriage between two British subjects solemnized at Shanghae, in China, by a clergyman of the Church of England in the English Church, and not under the Imperial Acts above referred to, would be valid.

That Sir Julian Pauncefote was to request that we would be good enough to inform your Lordship whether Mr. Fazan's inquiry might be answered in the affirmative.

In obedience to your Lordship's commands we have the honour to report—

The marriage will be valid.
Not annulled by fact of not being under the Act.

That Mr. Fazan may, in our opinion, be answered that the fact of the marriage not having taken place at the Embassy or Consulate at Shanghae will not annul the marriage in a legal point of view, but that such marriage would be a good and valid marriage.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 14.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received May* 11.)

My Lord,

*Temple, May* 10, 1878.

Supreme Court. China and Japan.

Powers of delegating duties to Assistant Judge, Law Secretary, &c.

WE were honoured with the commands of the Earl of Derby signified in Sir Julian Pauncefote's letter of the 13th March last, stating that he was directed by his Lordship to transmit the correspondence, together with a memorandum thereon,* relating to the discharge of judicial functions in Japan by Mr. Wilkinson, in his capacity of Acting Law Secretary to Her Majesty's Supreme Court for China and Japan, and to arrangements which had been made for holding the Supreme Court in Japan whilst the Acting Chief Judge had been holding the Supreme Court at Shanghae.

That Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour Lord Derby with our opinion on the following questions:—

Simultaneous sittings in China and Japan, &c.

1. Is it competent to the Chief Judge, under Her Majesty's Order in Council for China and Japan of the 9th March, 1865, to delegate for hearing and determination by the Assistant Judge or Law Secretary any class of cases in general terms, or is his power under sections 14, 15, 19, and 21 limited to the delegationof particular cases *nominatim?*

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* Sir H. Parkes, No. 32, Confidential, October 21, 1876; No. 35, Confidential, October 30, 1876; to Sir H. Parkes, No. 35, Confidential, December 20, 1876; No. 36, December 20, 1876; Mr. Goodwin, No. 5, November 1; Sir H. Parkes, No. 61, Confidential, December 31, 1877; No. 7, January 24, 1878; Memorandum by Sir J. Pauncefote, March 7, 1878.

2. Can the Supreme Court sit at the same time in two places, the Chief Judge presiding over the Court at one place and deputing the Assistant Judge or the Law Secretary to preside over the Court at another place; or can the Chief Judge alone hold sittings of the Supreme Court "all over China and Japan," under section 37?

3. Was the authority given by the late Acting Chief Judge (Mr. Goodwin) to Mr. Wilkinson, as Acting Law Secretary, to hear and determine "all summary civil and criminal cases arising in the Supreme Court (at Kanagawa), and such other cases as the Acting Judge might specially refer to him," warranted by the Order in Council?

4. Was the arrangement whereby, on the departure of the Acting Chief Judge from Japan, Mr. Wilkinson was left as Acting Law Secretary in charge of the Supreme Court at Kanagawa, warranted by the Order in Council, and, if so, what are his powers as regards the trial of civil and criminal cases?

5. Having regard to the terms of section 18, is the appointment of Mr. Hall to act as Registrar of the Supreme Court at Kanagawa warranted by the Order in Council?

That Sir Julian Pauncefote was to state that a new Chief Judge of the Supreme Court had recently been appointed, and was then on his way to China, and that it was important that instructions on the subject of the arrangements which had given rise to the above questions should be dispatched as soon as possible. That Lord Derby would therefore be obliged if we would favour him with our report at our earliest convenience.

In obedience to the commands of the Earl of Derby we have the honour to report—

That clauses 14 and 15 refer to the Assistant Judge, clauses 19 and 21 to the Law Secretary. The wording of the two sets of clauses is almost the same, and, in our opinion, the Assistant Judge or Law Secretary can hear only the cases, civil or criminal, which are specially referred by the Judge from time to time. This being so, we are further of opinion that the Judge cannot, under the Order in Council, delegate for hearing and determination any class of cases in general terms, but only particular cases *nominatim.*

We think this opinion is strengthened by a reference to that part of the Order in Council which provides for the jurisdiction of Her Majesty's Provincial Court beyond the district of the Consulate of Shanghae. (Section 35 and sections 36 to 80.)

2. The Supreme Court may, in our opinion, specially refer matters and questions in civil cases, and in criminal cases originally instituted in, or brought before the Supreme Court, to the Assistant Judge. (Clauses 14 and 15.)

And for the dispatch of urgent business, the Judge of the Supreme Court may refer similar matters and cases to the Law Secretary. (Clauses 19, 21.)

And, in our opinion, clause 37 does not require that the Chief Judge alone should hold sittings of the Supreme Court all over China and Japan.

3. We think the authority given by the late Acting Judge to Mr. Wilkinson as Acting Law Secretary to hear and determine "all summary, civil, and criminal cases arising in the Supreme Court at Kanagawa" was not warranted by the Order in Council; but an authority to hear and determine cases specially referred to the Law Secretary by the Acting Judge would be warranted by the Order in Council.

4. We think the arrangement made when, on the departure of the Acting Chief Judge from Japan, under which Mr. Wilkinson was left as Acting Law Secretary in charge of the Supreme Court at Kanagawa, was not warranted by the Order in Council.

5. The appointment of a fit person, in this case of Mr. Hall, to act as Registrar of the Supreme Court at Kanagawa, might, in certain cases (for instance, where the Law Secretary is properly sitting as Judge), be fairly brought within clause 22 of the Order in Council; but, as the authority to Mr. Wilkinson to hear and determine cases purporting to have been referred to him was not warranted, and as Mr. Wilkinson was neither absent, nor ill, nor employed temporarily in any capacity other than that of Law Secretary, the appointment of Mr. Hall to act as Registrar was, in the circumstances, not warranted by the Order in Council.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 15.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received May* 14.)

My Lord, *Temple, May* 13, 1878.

**Foreign jurisdiction.**

WE were honoured with the commands of the Earl of Derby signified in a letter from Sir Julian Pauncefote of the 23rd March last, stating that he was directed by his Lordship to transmit to us the accompanying printed copies of correspondence, as marked in the margin,* which had taken place between the Foreign Office and Mr. Reilly, who was engaged in the preparation of a new Order in Council for China and Japan.

**Proposed Act for extending powers of administering justice.**

That we would observe that, with a view of facilitating the administration of justice in Her Majesty's Consular Courts in those countries, and generally in all foreign countries where Her Majesty enjoyed exterritorial jurisdiction, it had been suggested that the Foreign Jurisdiction Acts should be supplemented by a further Act enabling the Queen, by Order in Council, to confer on foreign jurisdiction Courts any of the powers relating to the administration of justice which were vested in Colonial Courts by various Acts of Parliament, and also empowering Her Majesty to provide for the administration of justice among British subjects in any place out of Her Majesty's dominions not being within the jurisdiction of any civilized Power.

**Places not within jurisdiction of any civilized Power, &c.**

That other enactments were also suggested, the precise nature of which was shortly explained in the inclosed correspondence; and to request that we would favour his Lordship with a Report thereon, and also inform his Lordship whether, in our opinion, a Bill to carry out the proposed legislation might properly be introduced in Parliament.

In obedience to the commands contained in Sir Julian Pauncefote's letter we have the honour to report—

No objection.

That, in our opinion, a Bill to carry out the proposed legislation may properly be introduced into Parliament; but we suggest for consideration whether such Bill should not repeal the existing Foreign Jurisdiction Acts, and re-enact such Statutes and contain such fresh clauses as may now be required, so that all the provisions respecting the Queen's foreign jurisdiction should be under one Act and the necessary Orders in Council.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Columbia.

### No. 16.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received June* 6.)

My Lord, *Temple, June* 5, 1878.

Panama Railroad Company.
Complaint of Atlas Steam-ship Company against, for refusing through bills of lading.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 14th ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, papers relating to a complaint by the Atlas Steam-ship Company against the Panama Railway Company, in respect of which they claimed the intervention of Her Majesty's Government.

That their complaint was that the Railway Company had withdrawn from them the privilege of through bills of lading in respect of merchandise destined for transmission across the Isthmus of Panama, a privilege accorded to other Steam-ship Companies.

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* To Mr. Reilly, December 22, 1877; Mr. Reilly, January 17 and March 2, 1878.

That they contended that that proceeding, which was most injurious to their interests, was in violation of the obligations imposed on the Railway Company by their contract with the Columbian Government; and they urged that, considering the great national importance of the question involved, Her Majesty's Government were bound to exercise their influence with the Columbian Government with a view to procuring the redress of the grievance of which they complained.

That Mr. Lister was to refer us, in the first place, to the inclosed printed correspondence on the subject, which passed between the Foreign Office and the Managers of the Atlas Steam-ship Company, and also to the correspondence between Mr. Archibald, Her Majesty's Consul-General at New York, and the Panama Railway Company, contained in Mr. Archibald's despatch No. 5 of the 3rd December last.

**Equality claimed with American companies.**

That the representations addressed by Her Majesty's Consul-General to the Panama Railway Company having proved unavailing, the Managers of the Atlas Steam-ship Company had appealed again to Her Majesty's Government, and, in their letter of the 2nd ultimo, they transmitted a printed Case, showing the grounds upon which they claimed "that Her Majesty's Government should require the Government of the United States of Columbia to place the Atlas Steam-ship Company, and all other British subjects, on an equal footing with American Companies in regard to the traffic across the Isthmus of Panama by the Panama Railroad Company."

That your Lordship was informed that that printed Case had been prepared on behalf of the Company by Mr. Cohen, Q.C., and that Mr. Lister was to request that we would take all the accompanying papers into consideration, and report to your Lordship whether we concurred in the views expressed in the case as to the obligations of the Panama Railway Company under their contract with the Columbian Government, and as to the claim of the Atlas Steam-ship Company to the intervention of Her Majesty's Government for the purpose therein indicated.

That the matter was one of considerable importance, and your Lordship would be glad to be favoured with our opinion on the above questions at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

That the question is whether the Panama Railroad Company is bound to grant *through bill of lading privileges* to all using their line if they grant those privileges to one Company.

The Railway Company say that in the exercise of their rights they may appoint whom they please as their agents, and that those agents are the persons who shall grant the *through bills of lading*.

But if the Company are bound under any contract to grant equal privileges to all, they cannot evade that obligation by authorizing an agent to grant or withhold the privilege.

The argument put forward by the President of the Panama Railroad Company, in his letter to Consul-General Archibald (30th November, 1877), so far as it is based upon the right of the Company to appoint agencies with or without power to issue *through bills of lading* as may best serve the interests of the Company, is therefore unsound if taken alone.

The Vice-President, in his letter to Messrs. Leech (19th November, 1877), however, takes larger ground.

1. That the Company perform their whole duty when they receive goods or passengers for transportation *without preference*, and deliver the same, as consigned, at the other end of their line.

That the Company are not bound to make business arrangements of any kind, or have any understanding with persons or commercial lines trading with the isthmus.

2. That the Company are authorized to own, run, or have interests in, vessels on either ocean, and have a general right to increase the business of the line, through agencies for the sale of through *bills of lading*, by agents on connecting lines.

Referring to the contract of 1867 (the now subsisting contract)—

By the Preamble the work of the railroad is so to be perfected that it may better answer the necessities of the commerce of the world.

By Article 6 the Company may collect such tolls as they may deem proper to establish.

By Article 13 the railroad enterprise is to be esteemed [*sic*] of public utility.

By Article 15 the Tariffs shall be fixed and modified as the Company may deem best.

Article 16 provides for the transportation of foreign mails gratis and free to all nations.

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Article 25 binds the Company to transport at certain prices to be fixed.

So far, there is nothing in the words of the contract, nor arising from the monopoly granted to the Company, which binds the Company to grant *through bills of lading* to all persons using their line if they grant such bills to any particular persons.

The Treaty between the United States of Columbia and Great Britain of December 1866 does not, under the most-favoured-nation clause, touch the question at issue; and the contract of 1867 does not derogate, as seems to be suggested in the printed case (p. 4), from the rights and privileges conceded to British subjects under the Treaty of 1866. Still, although the words of the contract may not control the action of the Company, "considerations of justice and public policy and the duty to receive goods and passengers for transportation without preference" may have that effect.

As Railway Company profess to treat all alike,

And, since it is the admitted (see p. 6 of printed Case) "policy and duty of the Company that no charges or conditions shall be imposed upon the traffic passing over its road, and all legitimate facilities connected therewith should be open to the citizens and subjects of all nations without discrimination;"

"In accordance with which rule," it is added, "the citizens, subjects, and vessels of all countries have been, and are, placed on a precise equality, and this rule will be continued under all circumstances;"

And, since it is clear that the privilege of a "*through bill of lading*," granted to a United States' Steam-ship line, and withdrawn from the Atlas line, causes great delay to and throws increased cost upon the latter, thereby giving greater facilities to, and making a great discrimination in favour of the United States Steam-ship Company to the prejudice of the Atlas line, and thus destroying the precise equality between the vessels of these lines;

Her Majesty's Government may urge that the case be brought before Columbian Tribunals.

In our opinion, your Lordship may use the influence of Her Majesty's Government with the Columbian Government to the extent of urging the Columbian Government to bring the grievance complained of by the Atlas Steam-ship Company, and the question raised on the understanding and fulfilment of the contract of 1867, in relation to that grievance, before the Tribunals of the Columbian Union, as provided by the substituted Article 33, at page 47 of the printed Contract.

The Report of the Committee (inclosed in Sir Julian Pauncefote's letter of the 23rd ultimo) upon the powers of the Legislature in the United States, and the cases and authorities and general principles referred to in the Report, do not, we think, affect the powers of the Panama Railway Company and the Government of the States of Columbia.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Cyprus.

### No. 17.

*The Solicitor-General to the Marquis of Salisbury.*—(*Received September* 10.)

My Lord, *Temple, September* 10, 1878.

Order in Council, and Commission and Instructions to High Commissioner.

I AM honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that he was directed by your Lordship to transmit to me the draft of an Order in Council, constituting the office of High Commissioner and Commander-in-chief over the Island of Cyprus, and making provision for the government of that island; and also the drafts of a Commission and Instructions under the Royal Sign Manual and Signet, the former appointing Lieutenant-General Sir Garnet Wolseley, G.C.M.G., K.C.B., to be Her Majesty's High Commissioner, and the latter regulating the exercises of the powers and authorities conferred upon that office. And that the above drafts are accompanied by an explanatory memorandum, and with copies of the documents therein referred to and noted in the margin.* Sir Julian Pauncefote also requested that we would take these papers into our consideration, and favour your Lordship, at our earliest convenience, with our opinion as to whether the drafts of the proposed Order in Council, Royal Commission, and Instructions are sufficient in law to carry out the objects indicated in the memorandum, and may properly be laid before the Queen for Her Majesty's approval.

In obedience to your Lordship's commands I have the honour to report—

Approving. As to members of Legislative Council being natives of Cyprus.

That inasmuch as the urgency of the matter prevents any opportunity of communicating with the Attorney-General and Dr. Deane, I have the honour to report my own opinion that the drafts of the proposed Order in Council, Royal Commission, and Instructions are sufficient in law to carry out the objects indicated in the memorandum, and may properly be laid before the Queen for Her Majesty's approval; but I would suggest, for your Lordship's consideration, whether the provision at the end of paragraph 6 of the draft Order in Council, that the unofficial members of the Legislative Council shall be natives of the island, is appropriate to the peculiar circumstances of the Island of Cyprus.

I have, &c.
(Signed) HARDINGE S. GIFFARD.

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### No. 18.

*The Attorney-General to the Marquis of Salisbury.*—(*Received September* 12.)

My Lord, *Temple, September* 11, 1878.

Order in Council, Commission and Instructions to High Commissioner.

I AM honoured by a letter of the 9th instant, addressed to myself, the Solicitor-General, and Dr. Deane, by Sir Julian Pauncefote, in which that gentleman informed us that he was directed by your Lordship to transmit to us the drafts of an Order in Council constituting the office of High Commissioner and Commander-in-chief over the Island of Cyprus, and making provision for the government of that island; and also the draft of a Commission, and Instructions under the Royal Sign Manual and Signet, the former appointing Lieutenant-General Sir Garnet Wolseley, G.C.M.G., K.C.B., to be Her Majesty's High Commissioner; and the latter regulating the exercise of the powers and authorities conferred on that office. That the above drafts were accompanied by an explanatory memorandum, and with copies of certain documents referred to.*

Sir Julian Pauncefote also stated that he had to request that we would take the papers into our consideration and favour your Lordship, at our earliest convenience, with our opinion as to whether the drafts of the proposed Order in Council, Royal Commission and Instructions, were sufficient in law to carry out the objects indicated in the memorandum, and might properly be laid before the Queen for Her Majesty's approval.

In compliance with your Lordship's wishes signified in the above-mentioned letter, I have the honour (writing for myself, for I have not had an opportunity of learning the views of the Solicitor-General and Dr. Deane) to report—

Approving with an amendment.

That I have carefully considered the draft of the Order in Council, Royal Commission, and Instructions in question. That I would suggest that in clause 6 of the Order in Council, line 10, after the word "Signet," the words, "or shall be provisionally appointed, subject to Her Majesty's will and pleasure, by the High Commissioner, in pursuance of any instruction or instructions, warrant or warrants, under such Sign Manual or Signet as aforesaid," should be inserted.

If this alteration in the draft Order in Council is made, I think the proposed Order in Council, Royal Commission, and Instructions will be sufficient in law to carry out the objects indicated in the memorandum, and may properly be laid before the Queen for Her Majesty's approval.

I have, &c.
(Signed) JOHN HOLKER.

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* Convention of June 4, 1878 (Turkey No. 36, p. 3). Annex to Convention (ibid., p. 4). Additional Article. Foreign Jurisdiction Act.

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## No. 19.

*The Attorney-General to Sir J. Pauncefote.—(Received September 14.)*

My dear Sir Julian, *Colthurst, Clitheroe, September* 12, 1878.

Order in Council, &c. Dr. Deane's Report. Turkish law in Cyprus.

I INCLOSE a letter touching the Cyprus Order in Council, &c., which I have this morning received from Deane.

I cannot say that I share in the doubts and difficulties which present themselves to Deane's mind.

I take it that the Turkish law will prevail in Cyprus until it is altered by the exercise of the powers conferred by the Order in Council, and I do not think that the High Commissioner can get into any trouble by administering the Turkish law, and inflicting punishments prescribed by it, if he takes care not to do anything contrary to the spirit of our laws; for example, by authorizing punishment by torture.

As to granting pardons and commuting punishments, there is ample power given to the Commissioner to exercise the prerogative of mercy.

With regard to the Executive Council, I do not see any objection to some of the members of this Council being natives of Cyprus, especially when we consider that the province of the Council will be simply to advise.

Foreign Consular jurisdiction under Treaties with Turkey.

There is a point to which Deane does not allude, and to which I did not think it necessary to refer in the Report I sent in yesterday. That is—What will be the powers of the High Commissioner, under the Order in Council, so far as concerns the subjects of Powers having Conventions or Treaties with the Porte giving jurisdiction to the Consuls of such Powers in Turkish territory? In my view, the Sultan cannot—not without making an absolute cession of Cyprus—confer upon the Queen a more extensive power of legislating than he possesses himself, and therefore the additional Treaty does not enable Her Majesty to make a law which will have the effect of abrogating any Convention between the Porte and any foreign State.

In order that Deane's views may be formally before Lord Salisbury I have copied the Report he proposes, and have signed it in his name.

I have, however, not been able to recite the covering letter, as I find that I returned it to you. Perhaps you will be kind enough to get one of your clerks to introduce the usual recital in the blank space I have left.

I have not heard from the Solicitor-General. I presume he must have sent in his Report to the Foreign Office.

I have, &c.
(Signed) JOHN HOLKER.

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### Inclosure in No. 19.

*Dr. Deane to the Attorney-General.*

*Achnagonal'n, Grantown, N.B., September* 10, 1878.

My dear Attorney-General,

Dr. Deane's opinion.

I HAVE been through these Cyprus papers.

I wish that we had more time to consider them.

As to Turkish or British law, &c. (Reference to Sir T. Picton's case).

For instance, what punishment for crimes is to be inflicted. You will remember Sir Thomas Picton's case, in one of the West India Islands, who got into trouble for punishing under the Spanish law. Is the Governor of Cyprus to sanction Turkish punishments? To pardon or commute? To follow the common law of England, or that of the island?

Executive Council. Native members.

Then I doubt very much the wisdom of the proposed constitution of the Executive Council, so far as the native members are concerned.

Proposed Report. (See No. 20).

With these and some other difficulties in my mind, with very little time to think them out, and without the opportunity of our meeting, I should suggest that we report—

That the draft of the proposed Order in Council, Royal Commission, and Instructions are sufficient in law to carry out the objects indicated in the memorandum, and may properly be laid before the Queen for Her Majesty's approval.

In so advising your Lordship, we have considered merely the present emergency requiring the island to be brought in some shape under British government, and we think that it will be necessary to consider, at no distant time, the state of the law, civil and criminal, as it now exists in Cyprus, and what modifications those laws should receive so as to bring them into accord with British rule.

And we doubt whether the constitution of the Executive Council, so far as relates to native members, will not have to be reconsidered.

Will you notify this Report as you think right, and send it in for this hurried Council, signing for me?

Sincerely yours,
(Signed) J. PARKER DEANE

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## No. 20.

*Dr. Deane to the Marquis of Salisbury.—(Received September 14.)*

My Lord, *Temple, September* 12, 1878.

Order in Council, &c.

I AM honoured by a letter of the 9th instant addressed to myself, the Attorney-General, and the Solicitor-General, by Sir J. Pauncefote, in which that gentleman informed us that he was directed by your Lordship to transmit to us the drafts of an Order in Council constituting the office of High Commissioner and Commander-in-chief over the Island of Cyprus, and making provision for the government of that island; and also the drafts of a Commission and Instructions, under the Royal Sign Manual and Signet, the former appointing Lieutenant-General Sir G. Wolseley to be Her Majesty's High Commissioner, and the latter regulating the exercise of the powers and authorities conferred on that office. That the above drafts were accompanied by an explanatory memorandum, and with copies of certain documents referred to.

Sir J. Pauncefote also stated that he had to request that we would take the papers into our consideration, and favour your Lordship, at our earliest convenience, with our opinion as to whether the drafts of the proposed Order in Council, Royal Commission, and Instructions were sufficient in law to carry out the objects indicated in the memorandum, and might properly be laid before the Queen for Her Majesty's approval.

In compliance with your Lordship's wishes, as signified in the above-mentioned letter, I have the honour (writing for myself, for I have not had an opportunity of learning the views of the Attorney- and the Solicitor-General) to report—

Approving provisionally.

That the draft of the proposed Order in Council, Royal Commission, and Instructions are sufficient in law to carry out the objects indicated in the memorandum, and may properly be laid before the Queen for Her Majesty's approval.

Modifications in the law will be necessary later.

As to native members of Council.

In so advising your Lordship I have considered merely the present emergency, requiring the island to be brought in some shape under British government, and I think that it will be necessary to consider, at no distant time, the state of the law, civil and criminal, as it now exists in Cyprus, and what modifications those laws should receive so as to bring them into accord with British rule; and I doubt whether the constitution of the Executive Council, so far as relates to native members, will not have to be reconsidered.

I have, &c.
(Signed) J. PARKER DEANE.

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## No. 21.

*The Lord Chancellor to Sir J. Pauncefote.—(Received September 24.)*

(Confidential.)

Dear Sir Julian, *Cluny Castle, Kingussie, N.B., September* 23, 1878.

Capitulations in Cyprus. Inclosing memorandum.

I INCLOSE a memorandum which I have made on the subject of your letter of the 21st. I don't think that, until the Capitulations are analyzed, the question can be completely answered. It would also be desirable to know whether any and what claims are put forward by foreign States.

Yours, &c.
(Signed) CAIRNS.

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## Inclosure in No. 21.

### *Memorandum on Turkish Capitulations with Foreign Countries as affecting Cyprus.*

Capitulations in Cyprus.

IN considering this question, I do not think we can look on Cyprus as in any sense acquired by conquest. It is quite true that we might have taken it by force, and that had we done so we should have held it free and clear of all obligations attaching on Turkey. But we did not take it by force, and we acquired it, deliberately, and for obvious reasons, by an arrangement which was described to be the reverse of alienation, and still more of forcible alienation. We could not, in my opinion, now contend that this arrangement carried with it the incidents of conquest.

England has no rights of conquest.

Same powers that Turkey had.

2. We must take the arrangement, then, as it really is. The Porte has given us every power in and over Cyprus which it possessed, but we have got nothing more than what the Porte could give. And we have this for a limited time, the Porte retaining the reversion.

3. In order to appreciate the exact effect of this state of things on the Capitulations, it would be desirable to have a careful analysis of the Capitulations; for under that term, I fancy, are included provisions as to Courts and Judicature, and also fiscal arrangements, such as exemptions from duties, and privileges *ejusdem generis*.

Foreign extra-territorial jurisdiction.

4. As regards the provisions as to judicature, including the extra-territorial privileges of Consuls and subjects of foreign Powers, I do not imagine that if we were to institute a satisfactory Tribunal for the exercise of civil and criminal jurisdiction in the island, with a proper Code, foreign nations would decline to submit to it, or desire anything better. If they did demur, I think there would be fair ground to contend that Capitulations, so far as they relate to jurisdiction and procedure, and set up an *imperium in imperio*, are a device invented to meet the anomaly and inconveniences arising in the case of subjects of Christian States trading and sojourning in a Mussulman country, and that their *raison d'être* ceases where the legislation and administration is no longer in Mussulman hands.

Argument may be used against.

Exemptions, &c. under Capitulations cannot be done away with.

5. But this does not apply to stipulations as to duties, exemptions, Tariffs, &c. As to these, Capitulations are Treaties, and Turkey could not terminate its Treaties by assigning a part of its territory to be administered by England. It may, however, be that, on examination, the stipulations will be found to point to specific duties, and to grant exemptions as to them; and that, under our legislative power, we may so alter the whole system of Customs as to make the Capitulations no longer applicable.

C.

*September* 23, 1878.

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## No. 22.

### *The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received November* 11.)

*Temple, November* 11, 1878.

My Lord,

Cypriote accused of killing Ottoman subject. Whether amenable to jurisdiction of Alexandria Consular Court.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th October ultimo, stating that he was directed by your Lordship to transmit to us the accompanying telegram from Her Majesty's Acting Agent and Consul-General in Egypt, informing your Lordship that a native of Cyprus, accused of being concerned in the death of an Ottoman subject, had been brought before the Consular Court of Alexandria, and asking whether he was to be considered as amenable to its jurisdiction.

Sir Julian Pauncefote was also to transmit to us as bearing on the question:—

Copy of the Convention of 4th June last assigning Cyprus to this country.

Copy of an Agreement giving Her Majesty the Queen legislative and other powers with respect to that island.

A memorandum drawn up in the Foreign Office on a telegram, also inclosed, from Her Majesty's Minister at Athens, inquiring whether natives of Cyprus were entitled to British protection beyond the limits of their island, and your Lordship's reply to that telegram.

Sir Julian Pauncefote further stated that a collection of the Commercial Treaties between Great Britain and Turkey, at p. 39, of which would be found the Xth Article of the Treaty of the 5th January, 1809, stipulating that British protection should not be granted to Ottoman subjects without the permission of the Porte.

That, lastly, a copy of Her Majesty's Order in Council of the 12th December, 1873, regulating the exercise of Her Majesty's jurisdiction in the dominions of the Porte; that we would observe that by sections 16 and 262 of that Order provision was made for the registration of persons enjoying British protection, and for the exercise of criminal jurisdiction over them.

That it did not appear that the accused in this case had ever obtained registration as a protected person.

Sir Julian Pauncefote was pleased to request that we would take these papers into our consideration and favour your Lordship, at our earliest convenience, with our opinion as to the answer which should be given to Mr. Lascelles' inquiry.

Further despatches were forwarded to us in a note from Mr. Philip Currie, dated the 5th November instant.

In obedience to your Lordship's commands we have the honour to report—

Cypriotes are not protected subjects of the Queen beyond Cyprus. Consular Court has no jurisdiction.

That, in our opinion, natives of the Island of Cyprus are not protected subjects of the Queen in Egypt, or in other parts of the Ottoman dominions beyond Cyprus, or in foreign countries, and beyond the limits of the island, and the native of Cyprus accused of being concerned in the murder of an Ottoman subject is not amenable to the jurisdiction of the Consular Court in Egypt.

We form this opinion upon the terms of the Convention and the Agreement of the 14th August.

If, however, the Ottoman subject has been, by the permission of the Porte, expressly placed under British protection, and registered under Article 16 of the Order in Council, we are of opinion that he is amenable to the Consular jurisdiction.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 23.

### *The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received December* 4.)

*Temple, December* 4, 1878.

My Lord,

Deportation Ordinance.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd instant, stating that Sir Garnet Wolseley, Her Majesty's High Commissioner for Cyprus, was apprehensive that attempts might be made by some turbulent characters of Greek and Levantine nationality to create political agitation in the island, and he was desirous of being armed with the necessary legal powers to deal summarily with such persons, and to expel them from the island.

That Sir Julian Pauncefote was directed by your Lordship to transmit to us the printed draft of an Ordinance empowering the High Commissioner, with the advice of the Executive Council, to prohibit persons whom he should believe to be dangerous to the peace and good order of the island from residing therein, and containing such provisions for enforcing the prohibition as appeared sufficient to meet the necessities of the case.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether the proposed measure might properly be laid before the Legislative Council of Cyprus.

That Sir Julian Pauncefote was to inclose copies of certain Ordinances of the Colonies of Hong Kong and Fiji on the same subject, which contained analogous provisions; also copies of the Order in Council establishing the Legislature of Cyprus and of the Royal Instructions to the High Commissioner, and of the Conventions between Great Britain and the Porte relating to the British occupation of the island.

That it was desirable that the draft Ordinance, if, in our opinion, it presented no objections in point of law, should be dispatched to Sir Garnet Wolseley by the mail which leaves London on Friday, the 6th instant, and that your Lordship would therefore be glad if we should be able to transmit our Report thereon in time for that purpose.

In obedience to your Lordship's commands we have the honour to report—

Not inconsistent with Order in Council, &c.

That, in our opinion, the proposed measure is one which may be laid before the Legislative Council of Cyprus not inconsistently with the Order in Council establishing the Legislature of Cyprus, the Royal Instructions to the High Commissioner, and the Conventions between Great Britain and the Porte.

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Grants too arbitrary a power.

But the measure, in many respects, goes beyond the precedents at Hong Kong and Fiji, and gives the High Commissioner very great and arbitrary powers, which, we think, should not be placed in his hands.

Deportation without trial, as to.

The power to remove, without trial, should be confined, in our opinion, to persons who may have come to Cyprus without ostensible business.

Deportation after trial and conviction.

In the case of other persons, if it is deemed desirable to provide that they shall be removed from the island, the power to remove should be conferred only after they have been tried for, and convicted of, some offence.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 24.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received December* 19.)

*Temple, December* 18, 1878.

My Lord,

Deportation Ordinance amended.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th instant, stating that, with reference to our Report of the 4th instant respecting the draft of a proposed Ordinance for the expulsion from Cyprus of persons believed to be dangerous to the peace and good order of the island, he was directed by your Lordship to transmit to us the draft of an amended Ordinance for that purpose.

Giving power to Legislative Council instead of to High Commissioner.

That it would be seen that the Ordinance would provide that dangerous persons might be prohibited from remaining in the island by a resolution of the Legislative Council, whereas the draft Ordinance submitted to us in Sir Julian Pauncefote's letter of the 3rd instant vested the power of such prohibition in the High Commissioner with the advice of the Executive Council.

That the papers inclosed in the former letter were returned to us, and that Sir Julian Pauncefote was to request that we would take them into our consideration, together with the draft of the amended Ordinance then transmitted to us, and favour your Lordship with our opinion as to whether the amendments therein made disposed of the objections which the original draft appeared to us to present.

In obedience to your Lordship's commands we have the honour to report—

Better, but still too arbitrary.

That though the amendments to the Ordinance considerably modify the objections we entertained to it in its original form, it may be a question whether the Ordinance, even now, does not confer too arbitrary an authority.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Dominica.

### No. 25.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received June* 1.)

*Temple, May* 31, 1878.

My Lord,

Closing of Puerto Plata to foreign trade by Decree.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from the British Vice-Consul at Santo Domingo* forwarding a Decree issued by the Provisional Government of that Republic ordering the closing of the harbour of Puerto Plata to foreign commerce.

That that Decree had not been officially notified to Her Majesty's Government, and was perhaps intended to operate as a Municipal Act only; but, from the terms of the Decree, it would seem to be intended that the closing of the ports should be enforced by the rules of blockade.

Port in hands of rebels.

That your Lordship would therefore be glad to be favoured with our opinion whether, the port of Puerto Plata being in the hands of the rebels, it was competent to the Government of Santo Domingo to close it to foreign commerce otherwise than by establishing a belligerent blockade, duly notified to neutral Powers and effectively maintained. That, if we should be of opinion that the port could be closed to foreign commerce by force only of the Decree, Sir Julian Pauncefote was to request that we would be good enough to advise your Lordship as to whether foreign vessels arriving at the port after the dates specified in the Decree could be legally seized and condemned, or, as stated in the Decree, would be liable to the "laws of blockade."

In obedience to your Lordship's commands we have the honour to report—

Closing is equivalent to blockade, and must be duly notified and maintained.

That, taking the words of the Decree, we are of opinion that the act of closing the port to foreign commerce is a belligerent act, and must be taken to mean a blockade in the proper sense of the word, and requiring due notice and efficient maintenance before vessels arriving at the port could be legally seized and condemned.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 26.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received October* 26.)

*Temple, October* 25, 1878.

My Lord,

Dominican Decree respecting confiscation of vessels carrying contraband of war. British protest.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd September, 1878, stating that on the 4th July, 1876, our opinion was requested by the Earl of Derby as to the steps that should be taken by Her Majesty's Government with regard to a Decree issued by the Government of Santo Domingo, prohibiting the introduction into the Republic of arms and munitions of war, and ordering the confiscation of all vessels discharging such articles, or having such articles on board, under the circumstances specified in the said law.

That in our Report of the 15th July, 1876, we advised his Lordship that the 1st Article of the Decree, namely, the prohibition to introduce arms, &c., was within the competence of the Dominican Government, but that the remaining Articles, ordering the confiscation of vessels carrying the forbidden articles, were contrary to the rules and practice of civilized nations, and we referred to the general rule as to the penalty for carrying "contraband of war."

As to existence of a state of war.

That we added that we assumed, as the basis of our opinion, that a state of war existed. That there was room for some doubt whether the actual state of affairs in Santo Domingo amounted to a "state of war" in the sense in which that expression was used in our Report. That undoubtedly there were at least two parties in the Republic carrying on hostilities against each other, but that state of things was of very frequent occurrence in the Dominican Republic, and the contest going on in 1876 was not considered to call for any formal recognition on the part of Her Majesty's Government, nor, as far as Her Majesty's Government were aware, on the part of any other Government.

That it was, however, considered advisable, in view of the danger with which British vessels were threatened by the Decree, to act in the sense of our Report without further delay; and accordingly notice was given in the "London Gazette" of the 1st Article of the Decree, and Her Majesty's Representative accredited to the Dominican Republic was instructed by telegraph to protest against Article 2 to state that the provisions of that Article were illegal, and that confiscation of British vessels under it would not be submitted to; and to warn the Dominican Government that they would be held responsible for the seizure of any British vessel under the Article in question.

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* Mr. Coën, No. 3, Political, March 15, 1878.

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Seizure of Dutch vessel "Havannah Packet."

That after that nothing further was heard of the Decree until March last, when the Netherlands Minister at this Court asked for information as to the course taken by Her Majesty's Government in 1876, which information was furnished to him.

That on the 5th June this year the British Vice-Consul at Santo Domingo reported that a Dutch brig, "Havannah Packet," had been seized within Dominican waters and confiscated by the Dominican authorities under Article 2 of the Decree of 1876.

Sir Julian Pauncefote was pleased to state that he was to point out that, according to information received by Mr. Coën, the Dominican Government justified its proceedings in that case, on the ground that the Netherlands Government had not protested against the Decree in due time, as had been done by Her Majesty's Government, thereby apparently admitting the validity of the British protest.

That it would be seen from the above summary that the Decree of 1876 was issued at a time of revolution, and when actual hostilities were going on in Santo Domingo, although the insurgents had not been formally declared or recognized as belligerents by Her Majesty's Government. That since the date of the Decree four other revolutions have taken place, with brief intervals of comparative peace.

Netherlands Government ask grounds of British protest.

That the Netherlands Minister in his letter of the 12th ultimo had requested, on behalf of his Government, to be informed of the grounds on which Article 2 of the Decree of 1876 was held by Her Majesty's Government to be illegal, and also whether they still hold the same opinion.

That it became important, therefore, to ascertain whether the hostilities going on in Santo Domingo at the date of the Decree, and during the revolutions which had since broken out there, constitute a "state of war" within the meaning of that expression as used in our Report of the 15th July, 1876, and, if not, whether the protest of Her Majesty's Government could be deemed to have operated of itself, as a recognition of the belligerent status of the contending parties.

That the correspondence relating to the question was inclosed therewith, and Sir Julian Pauncefote was to request that we would take the same into our consideration, and favour your Lordship with our opinion as to the answer which it would be advisable to return to Count Bylandt's inquiry.

In obedience to your Lordship's commands we have the honour to report—

Adhere to former Report.

That we adhere to our former opinion.

Dominica, in using words "contraband of war," adopted a state of war.

Confiscation of vessels illegal.

Article 2, sections 1 and 8, speak of "materials of war," and section 10 has the words "materials deemed by the terms of this law to be contraband of war." The Santo Domingo Government by the use of these terms adopted "a state of war." The penalties which the Decree imposed upon the attempted introduction of articles contraband of war into the territory of the Republic, and more particularly (Article 2, section 4) the confiscation of any ship anchored on any part of the coast of the Republic, with articles contraband of war, were, in our opinion, contrary to, or in excess of, the usage and practice of civilized nations, and consequently illegal.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Egypt.

### No. 27.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received January* 23.)

*Temple, January* 22, 1878.

Slave Trade Convention with Egypt.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th instant, stating that he was directed by your

Lordship to transmit to us a letter from the Treasury, inclosing copies of two Reports from Mr. Rothery, with a draft memorial to Her Majesty in Council which had been prepared with a view to an Order in Council for the purpose of bringing the Slave Trade Convention recently concluded with Egypt under the operation of the Slave Trade Acts; and that Sir J. Pauncefote was to request that we would inform your Lordship whether we concurred in the Reports of Mr. Rothery generally, and especially in his view that a British vessel captured by an Egyptian cruizer could be condemned in one of the East African Courts under the East African Courts Act, 1873 (which gave jurisdiction only where seizure had been made by the Commander of one of Her Majesty's ships), by the vessel being handed over by the captors to a British Commander, who would institute the proceedings against her in the British Court.

In obedience to your Lordship's commands we have the honour to report—

Vessels captured by Egyptian cruizer may be condemned under East African Courts Act if handed over to a British Commander.

That we concur in Mr. Rothery's Report generally, and in his view that a British vessel captured by an Egyptian cruizer could be condemned in one of the East African Courts under the East African Courts Act, 1873 (which gives jurisdiction only where seizure has been made by the Commander of one of Her Majesty's ships), by the vessel being handed over by the captors to a British Commander, who would institute the proceedings against her in the British Court.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 28.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby, March* 2, 1878.

[Respecting the Egyptian Civil Code.]

THIS Report appears, from a note on the draft Report in the possession of the Law Officers, to have been withdrawn, and the Report of the 14th March substituted for it.

[See No. 29.]

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### No. 29.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March* 16.)

*Temple, March* 14, 1878.

Civil Code. Decree modifying.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Agent and Consul-General in Egypt, inclosing a copy of a Decree issued on the 24th December last by the Khedive, whereby certain modifications were introduced into the "Code Civil" in respect to the valuation and sale of articles seized by order of the Courts.

That the following questions had arisen with reference to that Decree:—

1. Did the Decree effect any change in the system within the meaning of Article 12 of the Civil Code?

2. Was it incumbent on the Egyptian Government to submit, for the approval of the foreign Powers, all additions to the Codes made under the authority conferred by Article 12?

3. Was the question whether such additions effect a change in the system, for the sole decision of the magistracy, as contended by Chérif Pasha?

That Lord Tenterden was to inclose a copy of the Règlement d'Organisation Judiciaire and of the Codes for convenience of reference, and to request that we would favour your Lordship with our opinion on the above questions at our early convenience.

Modifications do not affect "system." All changes of "system" must be submitted to Powers for approval.

In obedience to your Lordship's commands we have the honour to report that—

1. The modifications introduced by the Decree are mere details in working out the orders of the Courts, and do not, in our opinion, effect any change in the system, within the meaning of the 12th Article of the "Code Civil."

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2. In all cases where the proposed change, by addition or modification, would affect the system, the proposed change must, in our opinion, be submitted for the approval of the foreign Powers. But where the system is not affected, we think there is no obligation so to submit the change.

3. The question whether the additions or modifications effect a change in the system is not one for the sole decision of the magistracy.

Article 12 gives the magistracy merely a power of advising and suggesting.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 30.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received May* 13.)

My Lord, *Temple, May* 11, 1878.

**Claims of Cocca Brothers against Egyptian Government.**

WE are honoured with the commands of the Earl of Derby signified in Sir Julian Pauncefote's letter of the 2nd ultimo, stating that he was directed by his Lordship to transmit to us the despatches and their inclosures which had been received from Her Majesty's Agent and Consul-General in Egypt, together with a minute on the subject of a decision recently given by a Commission of Arbitration, consisting of a selection from the Judges of the Mixed Tribunals, on a claim for damages made by the brothers Cocca (Greek subjects) against the Egyptian Government for their forcible expulsion in the year 1867 from a tenement which was considered by the British Consular authorities to belong to the estate of a deceased trader named Stathi Stano, who enjoyed British protection.

**Expulsion from house considered to belong to Stano, a British-protected subject, on responsibility of Consul-General Stanton.**

That for reasons stated in the inclosed papers, the Egyptian Government claimed to be relieved by Her Majesty's Government from all liability on account of the decision of the Commission, by which they were condemned to pay damages amounting to over 70,000*l.*, and to reinstate the plaintiffs in their property.

That Sir Julian Pauncefote was to request us to take those papers into our consideration, and to favour Lord Derby with our opinion as to the course which Her Majesty's Government should adopt under the circumstances, and as to whether the action of Her Majesty's Consul at Alexandria, as reported in his letter to Mr. Vivian of the 19th instant (inclosed in Mr. Vivian's despatch No. 33 of the 11th instant), should be approved.

We are also honoured with further papers on this subject, inclosed in Sir Julian Pauncefote's letter bearing date the 1st instant.

In obedience to his Lordship's commands we have the honour to report—

That in 1860 the Okella was transferred to Anastacy, and Sotiri Cocca remained in undisturbed possession till Stathi's death in 1864.

The widow and administratrix of Stathi took no steps to recover the property till 1867, when she applied to the British Consular authority.

No legal proceedings of any kind as between party and party seem to have been instituted, but possession recovered by an armed force lent to the British authorities by the Egyptian Government at the request and on the responsibility of General Stanton, under the direction of the late Sir P. Francis.

**Damages given against Egyptian Government, who claim to recover them from British Government.**

In the present year, by a decision of three Judges of the Court of Appeal of the Mixed Tribunals, in a proceeding brought by members of the family of Anastacy against the Egyptian Government, that Government is found liable for the forcible seizure of the Okella in 1867, and heavy damages are found against the Government.

In these proceedings against the Egyptian Government, the widow who had remained in undisturbed possession was not made a party, and no notice of the proceedings was given to the British authorities, till some time after the Decree the Egyptian Government put forward a claim against Her Majesty's Government for indemnity, on the ground that the forcible measures resorted to in 1867 were taken on the responsibility of General Stanton.

**Latter cannot repudiate General Stanton's acts.**

We think Her Majesty's Government cannot disavow or repudiate the acts of General Stanton, and we agree with Sir Julian Pauncefote, that the Egyptian Government should be told that Her Majesty's Government decline, looking to the delay on the part of the family of Anastacy, and the fact that no notice of the proceedings

before the Judges was given, nor notice of the intended submission to arbitration to be in any way bound by the decision of the Judges.

**Had better agree to fresh investigation, &c.**

But that Her Majesty's Government will agree to an arrangement between the Egyptian, Hellenic, and British Governments for a fresh investigation into the whole of the case in reference to the rights of ownership over the Okella.

And that, in the meanwhile, the proceedings of the Commission should be stayed.

We think this action on the part of Her Majesty's Government would be better than the course which Mr. Cookson, with the sanction of Mr. Vivian, has advised, and which has apparently been acted upon, since it is desirable to ascertain the real merits of the case, and not to bring the question down to an amount of damages.

Whilst differing, however, from Mr. Cookson, we must observe that he has probably a more accurate knowledge of the facts than we have, and that the course advised by him will have the effect of delaying execution, and give time for the intervention of Her Majesty's Government.

With reference to the further papers transmitted to us in Sir Julian Pauncefote's letter of the 1st instant, we have the honour to state to your Lordship that as they relate merely to a question of amount, and not to the principle involved in this case, they do not, in our opinion, call for any further report.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury, September* 9, 1878.

[Suit in Mixed Tribunals. United States' Protected Subject.]

This Report has been inadvertently printed under "Turkey." See No. 83, p. 76.

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## No. 31.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received November* 7.)

*Temple, November* 7, 1878.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 11th ultimo, stating that he was directed to transmit to us papers, and to request that we would advise your Lordship on the following questions:—

**Judicial reforms. Immunity of Consuls from jurisdiction of Mixed Tribunals under the Capitulations.**

That foreign Consuls in the Levant, and more particularly in Egypt, enjoyed, as we were aware, under the Capitulations and the usages engrafted thereon, certain privileges analogous to those of Diplomatic Agents in Christian countries, and, among them, they claimed absolute immunity from the jurisdiction and process of the local Tribunals.

That that immunity, which did not attach to the Consular office in Christian countries, had grown out of the peculiar conditions under which the subjects of Christian Powers resided in Mahommedan States.

That, consequently, upon the establishment of the Mixed Tribunals in Egypt, the French Government thought it necessary, by Article 7 of the Protocol of the 10th November, 1874, to reserve expressly the privileges of their Consuls, and to stipulate that they should not be justiciable by the Mixed Tribunals. That that last stipulation was probably deemed necessary, on the ground that the *raison d'être* of the immunity of foreign Consuls from the jurisdiction of Mahommedan Tribunals was inapplicable to the Tribunals of the Reform, which were presided over by a majority of foreign Judges, and in which justice was administered on the general principles of jurisprudence common to all Christian States.

**Great Britain may claim benefit of French and German Protocols.**

That, by an Agreement between the British and Egyptian Governments, dated the 31st July, 1875, it was declared that the benefit of all the stipulations and reservations contained in the French Protocol, as well as those contained in a Protocol of the 5th May, 1875, concluded between the German and Egyptian Governments, would immediately be extended to Great Britain, "should the British Government at any time express a wish to that effect."

**Has not done so.**

That Great Britain had not, up to that time, expressed such a wish, and one of

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the questions which had there arisen was whether, notwithstanding that Her Majesty's Government might not claim the benefit of the French Protocol, Her Majesty's Consuls in Egypt were entitled to exemption from the jurisdiction of the Mixed Tribunals.

That, on that point, Mr. Lister was to refer us to Mr. Vivian's despatch No. 189 of the 25th May, and to the Foreign Office despatch No. 118 of the 14th June in reply thereto.

That it was considered that the Protocols in question, and the claim of Great Britain to the benefit thereof, if Her Majesty's Government should so desire, constituted an admission that foreign Consuls were, in the absence of a special stipulation, subject to the jurisdiction of the Mixed Tribunals, and the question was answered in that sense.

But that we should observe that in a further despatch from Mr. Vivian, No. 266 of the 30th July, and its inclosures, and also in the letter from the Austro-Hungarian Chargé d'Affaires of the 8th August, a contrary view was advocated to that expressed in the Foreign Office despatch No. 118 of the 14th June, and that it was contended that the establishment of the Mixed Tribunals had in no respect affected the immunities of foreign Consuls in Egypt; and that although Her Majesty's Government might not claim the benefit of the French and German Protocols, British Consuls were not subject to the jurisdiction of those Tribunals.

That another question had arisen, namely, whether, assuming that British Consuls were exempt from that jurisdiction, under the Capitulations, or should become so by reason of Her Majesty's Government deciding to claim the benefits of the French and German Protocols, they were entitled to waive the privilege, and to institute a suit in those Courts, thereby submitting to the jurisdiction.

That Mr. Vivian stated in his despatch No. 189 of the 25th May that the Court of Appeal at Alexandria had decided that upon the proper construction of the 7th Article of the French Protocol foreign Consuls, to whom the benefit of that Protocol extends, could neither sue or be sued in the Mixed Tribunals.

That Mr. Lister was to request that we would take all papers transmitted therewith into our consideration, and favour your Lordship with our opinion on both the questions above stated.

In obedience to your Lordship's commands we have the honour to report—

Consuls' immunities not affected by the Mixed Tribunals.

That the establishment of the Mixed Tribunals in Egypt has not changed, or in any way affected the immunities of foreign Consular officers in Egypt.

It may therefore be unnecessary to claim the benefit of the Agreement between the British and Egyptian Governments of the 31st July, 1875.

But British should be on same footing as other Consuls.

But it is, in our opinion, desirable that British Consular officers in Egypt should be expressly put on the same footing with other (for instance, the French) Consuls, and we therefore suggest that it will be proper to obtain, in general terms, the benefit of all the stipulations and reservations contained in the French and German Protocols.

Consuls may waive their privileges.

We think that British Consuls may, in strictness, waive their privilege, and either sue or be sued in the Mixed Tribunals, unless the constitution of those Tribunals provides that Consuls shall not be amenable to their jurisdiction.

But not where official rights are concerned.

We are, however, of opinion that no Consul should be allowed to waive his privilege in any case in which his official rights and duties are concerned.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 32.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January 1, 1879.)*

*Temple, December* 31, 1878.

My Lord,

Mixed Tribunals. Liability of foreign Consuls to be sued in.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th December last, stating that, with reference to our letter of the 7th November, relative to the liability of foreign Consuls to be sued in the new mixed Egyptian Tribunals, Lord Tenterden was directed by your Lordship to transmit to us a draft of a despatch which your Lordship proposed to address to Her Majesty's Agent and Consul-General in Egypt on that subject.

That Lord Tenterden was to request that we would take that paper into our consideration, and would favour your Lordship with our opinion whether the course proposed was right and proper.

That the former papers were sent therewith for convenience of reference.*

In obedience to your Lordship's commands we have the honour to report—

Approving draft.

That the course proposed is, in our opinion, right and proper.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex.

*Draft to Mr. Vivian.*

*Foreign Office, December* , 1878.

Sir,

Draft.

YOUR despatches Nos. 266 and 292 of the 30th July and 28th August last relative to the liability of foreign Consuls to the jurisdiction of the new Egyptian Tribunals were duly received and have had careful attention.

Establishment of Mixed Tribunals has not affected immunities of Consuls.

Upon further consideration of the question in communication with the Law Officers of the Crown, Her Majesty's Government have arrived at the conclusion that, notwithstanding the reservations in the French Protocol and the declaration of the right of Great Britain to claim the benefit thereof contained in the agreement of the 31st July, 1875, the establishment of the Mixed Tribunals in Egypt has not affected the immunities of British Consular agents.

As to claiming privileges of French Protocol.

Consuls' right to waive privilege would be affected.

Powers must come to an understanding.

In order to dispose of any doubts on this question arising out of the judgment of the Court of Appeal in the case of the Belgian Consul at Damietta (copy of which was inclosed in your despatch No. 189 of the 25th May last), Her Majesty's Government would be disposed at once formally to claim the benefit of the reservations contained in the French Protocol, were it not that, by the same judgment, it has been declared that the Mixed Tribunals, on the proper construction of the French Protocol, have no power to entertain a suit instituted by a Consular officer who may be willing to submit to the jurisdiction, and the result would be that British Consular officers would, in that respect, be in a less advantageous position than at present. Before taking this step, therefore, Her Majesty's Government consider it necessary that some understanding should be arrived at among the Governments concerned by means of a supplemental agreement explanatory of the term "justiciables" in the VIIth Article of the French and other Protocols, which will dispose of the difficulty created by the judgment of the Court of Appeal, and remove all doubt as to the power of Consular officers, under those Protocols, to waive their privilege, and either sue or be sued in the Mixed Tribunals.

I am, &c.

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## France.

## No. 33.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received November 12.)*

*Temple, November* 11, 1878.

My Lord,

Chesterfield Islands. Occupied by French, after Governor of New South Wales had granted guano licences to British subjects.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us papers relative to the occupation of the Chesterfield Islands by the French, which

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* Mr. Vivian, Nos. 189, 266, and 292; to Mr. Vivian, No. 118; Count Deym, August 8; Law Officers, November 7.

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had given rise to the following question:—That the correspondence which formed Inclosure 1 to the Colonial Office letter of the 15th October details the circumstances under which the Governor of New South Wales, in March 1877, acting under instructions from the Colonial Office, granted a lease of those islands to Messrs. Poole, Picken, and Co. Sir E. Robinson, in his despatch No. 83 of the 12th July (inclosure in Colonial Office, 13th September), related how the lessees, having become insolvent, the lease was cancelled; and that he subsequently promised a lease of the islands to Messrs. Scott, Henderson, and Co., having, on the 4th June last, received from them a deposit of 100*l.*

That he proceeded to state that the usual licence was engrossed and ready for execution, and that the new lessees or licensees had, on the strength of the agreements, purchased and fitted out a vessel for working the guano deposits on the islands, when he received a letter from the Governor of the French Colony of New Caledonia, notifying to him the formal annexation of the islands on behalf of the French Government, on the 15th June last, by a French vessel of war. That that annexation appeared to have been effected by direction of the Governor of New Caledonia, although, on the day preceding the dispatch of the French vessels of war from Nouméa to take possession of the islands, the Governor was formally warned by Her Majesty's Consul of the British claim, and was informed by him that the islands had been recently surveyed by Her Majesty's ship "Reynard," preparatory to being leased out to several Englishmen who had made application for them.

That we should perceive from Sir E. Hertslet's memorandum of the 3rd August [1878], and from the letters of the Admiralty to the Colonial Office of the 5th June, 1877, and 2nd October, 1878 (Inclosure 1 in Colonial Office letter of 15th October), that the islands in question, which were of no value except in respect of their deposits of guano, were not marked on any ordinary map. It was believed that they were first discovered, in 1793, by the British ships "Normujier" and "Chesterfield," the former of which vessels was commanded by Captain Bampton; hence the islands were known as the Chesterfield and Bampton reefs. They were examined and surveyed in sufficient detail for all nautical purposes by Captain Denham, in Her Majesty's ship "Herald," in 1860, but they had never been taken possession of on behalf of the British Crown.

As to declaration of annexations (reference to Lacepede Islands).

That in our Report of the 21st February, 1877, in the case of the Lacepede Islands,* we advised that the validity of a mere Declaration to annex territory was, in the present state of international law, extremely doubtful. That in the present case, however, though possession of the islands was not actually taken on behalf of the British Government, still, as it appeared that they were originally discovered and named by British subjects, and that acts of ownership were performed on behalf of the British Crown by the Governor of New South Wales, by the grant of leases thereof to British subjects in March 1877, and again in June 1878, and further, that those facts and the claim of Great Britain to the islands was formally notified to the Governor of New Caledonia, by Her Majesty's Consul, before their annexation by his direction, on the 15th June, the title of the French Government could hardly be said to be founded on equity and good conscience.

That Lord Tenterden was, therefore, to request that we would take those papers into our consideration, and favour your Lordship with our opinion whether the circumstances therein set forth would justify Her Majesty's Government in making any representations to the French Government on the subject.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government not justified in remonstrating.

That, in our opinion, there is no circumstance stated in the papers which have been referred to us which would justify Her Majesty's Government in making any representations to the French Government on the subject of the Chesterfield Islands.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* See Confidential Paper No. 4216, p. 95.

# Germany.

## No. 34.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received January* 5.)

*Temple, January* 3, 1878.

My Lord,

German "Imperial Registration and Marriage Law." Fine on clergymen who solemnize a marriage not previously concluded before the Registrar.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 16th October, 1877, stating that he was directed by your Lordship to request that we would favour your Lordship with our opinion upon the following point:—

That on the 6th February, 1875, a Law was promulgated at Berlin, known as the "Imperial Registration and Marriage Law," by the 67th clause of which it was enacted that "a clergyman or other minister of religion who proceeds to perform the rites of marriage without its having been previously proved to him that the marriage has been concluded before the Registrar, will be punished by a fine not exceeding 300 marks, or by imprisonment, the maximum term of which is three months."

Law not applicable persons enjoying diplomatic privileges.

That the point having been raised whether the penalties of that clause would apply to a British clergyman marrying British subjects within the walls of a British Mission, Her Majesty's Ambassador at Berlin was directed to inquire what were the views on the subject of the German Foreign Office. That the instruction was carried out in the note, which was inclosed, of the 18th August last, and that on the 27th September* an answer was sent, which was also inclosed, communicating a memorandum to the effect that a British clergyman celebrating a marriage without complying with the requirements of the law would subject himself to the prescribed penalties, unless he enjoyed diplomatic privileges as a member of the Mission, *e.g.*, as a Chaplain; or unless the parties married should both enjoy such privileges.

That your Lordship would be glad to know whether, in our opinion, the view taken in the memorandum was a correct exposition of the bearing of international law on the subject.

Ex-territoriality of Embassies, &c.

Lord Tenterden was also to inclose, with further reference to the question, a despatch from Her Majesty's Chargé d'Affaires at Berlin,† inclosing some observations as to the German interpretation of the law which have been made by the British clergymen resident in that capital, and likewise despatches on the subject from the various British Missions in Germany,‡ and to draw our attention as regards the question of the so-called ex-territoriality of the residences of Ambassadors to the cases referred to at pp. 31, 32 of the memorandum by Sir A. Cockburn, contained in the Appendix to the Report of the Royal Commission on Fugitive Slaves.§

In obedience to your Lordship's commands we have the honour to report—

Cannot take advantage of for purpose of breaking laws. Minister and Consul, with their families, only exempt.

That the German memorandum is, in our opinion, a correct exposition of the bearing of international law upon this subject. The house of a Foreign Minister cannot be made use of as a privileged place to which persons may resort for the purpose of breaking the laws of the country in which that house is situated, and the only persons who can claim exemption from obedience to those laws are the persons properly accredited to that country as Minister or Consular officer, his family, and his officers. The law now in question does not affect the religious liberty of any person, but simply insists, and enforces by means of penalties, that a civil procedure shall be a condition precedent to the religious ceremony.

As to application of law to foreigners not domiciled in Germany.

We have some doubt whether the law was intended to apply to all foreigners in the German Empire, whether domiciled in that country or not, and we would respectfully suggest to your Lordship that it would be advisable to get an answer from the German Government at Berlin upon the point.

The introduction to the pamphlet containing the law states that the law was

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* Mr. Dering, No. 363, September 28, 1877.

† Mr. Macdonell, No. 367.

‡ Mr. Petre, Nos. 17 and 22; General Stanton, No. 42; Mr. Jerningham, No. 32.

§ Parliamentary Paper, Foreign Office No. 1846.

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passed in order to assimilate the laws of marriage in all the States of the German Empire, and section 46, dealing with the question of the publication of banns, is entirely based upon the doctrine of domicil, and if that section is construed strictly, the law seems to be only applicable to persons domiciled in Germany. Undoubtedly, if the law is intended to apply to every marriage which is contracted in Germany, it will bear hardly on foreigners who are not actually domiciled in that country, and who wish to be married there, but in our opinion the law cannot be objected to on any other ground.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 35.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received February 27.)*

*Temple, February* 26, 1878.

My Lord,

Slave Trade Treaty of 1841. Extension to German Empire.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that with reference to our report of the 26th of October last respecting the proposed extension to the German Empire of the Slave Trade Treaty between Great Britain, Austria, Prussia, and Russia of the 20th December, 1841, Sir Julian Pauncefote was directed by your Lordship to transmit to us some further papers relating to that matter, and he was to request that we would take them into our consideration, and favour your Lordship with our opinion whether the proposal of the German Government contained in Count Münster's note of the 22nd December last, to conclude a separate Convention with Great Britain, in which the consent of Austria and Russia to the modifications of the Treaty of 1841 introduced into such Convention should be expressly reserved, is one that should be accepted by Her Majesty's Government, or whether they should insist on the new Convention being concluded by all the parties to the Treaty of 1841.

Separate Convention with Great Britain. Austria and Russia to consent.

In obedience to your Lordship's commands we have the honour to report—

That the object of the Convention is merely to meet the altered state of Prussia and Germany, and the change to be introduced into the engagement of Great Britain is almost, if not wholly, immaterial.

No objection.

This being so, we are of opinion that the course (though an unusual one) suggested by Count Münster in his note of the 22nd December last may be followed, and Count Münser's proposal as contained in that note be accepted.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 36.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August 8.)*

*Temple, August* 6, 1878.

My Lord,

Marriage, at British Consulate at Geneva, of a German to a British subject.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he was to transmit to us a correspondence with the German Embassy, in which a question arose as to the validity of a marriage celebrated at the British Consulate at Geneva between Baron von Mengerson and a Miss Berwick, a British subject.

British Acting Consul had no warrant. Consul had resigned at time of marriage.

That the present Consul at Geneva, Mr. Auldjo, was empowered to celebrate marriages, under "The Act 12 and 13 Vict., cap. 68," by a warrant dated the 15th July, 1872; but it appeared that the marriage in question was solemnized by him on the 26th June, 1872, when he was only acting as Consul in the place of Mr. Mackenzie, the former Consul, who was the holder of a warrant to celebrate marriages, but had resigned his Consular office at the date of the marriage, his resignation having been accepted on the 20th June, 1872.

That from the inclosed Report of the Law Officers of the 13th December, 1872, it would seem that notwithstanding the provisions of "The Act 31 and 32 Vict., cap. 61," the marriage was invalid by reason of its celebration having taken place between the date on which Mr. Mackenzie ceased to hold his Consular office and the date of the new warrant to celebrate marriages issued to Mr. Auldjo. But that, before replying to Baron von den Brincken's communication, your Lordship desired to be informed whether we concurred in the Report from the Law Officers above referred to, and to be favoured with our opinion as to the answer which should be returned to the inquiry of the German Government.

That Sir Julian Pauncefote was to add that the Foreign Office despatch authorizing Mr. Auldjo to be Acting Consul in the place of Mr. Mackenzie was dated the 21st November, 1871, and that he was to transmit, for convenience of reference, a copy of the Acts 12 and 13 Vict., cap. 68, and 31 and 32 Vict., cap. 61.

In obedience to your Lordship's commands we have the honour to report—

Invalid.

That we concur in the Report of the Law Officers of the 13th December, 1872. The inquiry of the German Government may, in our opinion, be properly answered by stating that the marriage in question was not valid, since at the date of the marriage there was no Consular officer at Geneva properly authorized to celebrate marriages.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Hayti.

### No. 37.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August 7.)*

*Temple, August* 6, 1878.

My Lord,

Haytian Consular fees in foreign ports. Law.

WE were honoured with the commands of the Earl of Derby signified in Sir Julian Pauncefote's letter of the 20th February last, stating that he was directed by his Lordship to transmit to us therewith the papers noted in the margin* relative to a law which had been passed by the Haytian Republic, regulating the fees to be levied by their Consular officers in foreign ports.

That we would observe that Her Majesty's Minister at Port-au-Prince, under instructions from Her Majesty's Government, had strongly protested against the imposition of the fees in question, on the ground that their excessive amount must tend to injure trade, and more especially that those mentioned in the first two Articles of the Decree were virtually of the nature of an export duty upon goods shipped to Hayti, in addition to the import duty levied in the ports of the Republic.

Equivalent to an export duty from British ports.

That Her Majesty's Government did not contest the right of the Haytian Republic to levy any customs duties, however onerous, in their own ports, but the ground of objection was that the Haytian Consuls virtually exacted export duties on British goods from British subjects in British ports, and that those duties were levied in a vexatious manner, under regulations which seemed to have been framed with a view to extorting fines, and that they were levied upon goods which might possibly (as pointed out in Messrs. Maxwell, Savage, and Co.'s letter of the 8th October) never enter Hayti.

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* M. Villevaleix, September 22; Major Stuart, No. 3, Commercial; to Board of Trade, September 29; to M. Villevaleix, October 3; Board of Trade, October 10; Messrs. Maxwell, Savage, and Co., October 8; to Messrs. Maxwell, Savage, and Co., October 18, 1877; to Lord Lyons, No. 205, Commercial; Lord Lyons, No. 364; to Major Stuart, No. 3, Commercial; Major Stuart, No. 1, Commercial, 1878.

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That it would be seen that the Haytian Government, in the answer returned to Major Stewart's protest, evade a discussion on the above-mentioned point.

That Sir Julian Pauncefote was accordingly to request that we would take those papers into our consideration, and favour Lord Derby with our opinion as to whether the levy of the fees in question by the Haytian Consuls was a violation of the rights of this country, and a proceeding which justified the protest of Her Majesty's Government.

We were also honoured with Mr. Lister's letter of the 1st June last, stating that he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Minister at Port-au-Prince.

In obedience to your Lordship's commands we have the honour to report—

That the preamble and clauses 8 and 9 of the Decree show that the object is not to provide funds for the support and pay of the Consulates and Consular Agents, but to raise money for the Haytian Government by means of a customs duty imposed in this country, and possibly upon goods which may never be carried to Hayti.

**Her Majesty's Government may protest against violation o ftheir rights.**

We are therefore of opinion that the levy of the fees in question is to some extent a violation of the rights of this country, and is a proceeding which justifies the protest of Her Majesty's Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Italy.

### No. 38.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 22.)

*Temple, March* 21, 1878.

My Lord,

**Letters from Pope and Cardinals announcing death of Pius IX, &c.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us translations of two letters which had been addressed to the Queen by the College of Cardinals and the Pope.

That the former letter notified to Her Majesty the death of the late Pope Pius IX, the latter the elevation of Pope Leo XIII to the Supreme Pontificate.

That Lord Tenterden was to request that we would take those letters into our consideration, and favour your Lordship with our opinion whether, having regard to the repeal of the Statute 5 Elizabeth, cap. 1, by the Act 9 and 10 Vict., cap. 59, there was any objection in point of law to a suitable acknowledgment by the Secretary of State of the letters in question.

That Lord Tenterden was likewise to transmit to us for reference a printed memorandum* respecting the relations of Great Britain with the See of Rome between the years 1814 and 1846, and to call our attention to a Report of the Law Officers of the Crown, dated the 5th November, 1823, which would be found at p. 44 of the printed memorandum.

That he was to add that should there be any doubt on the point of law referred to us, or should we be aware of any other reason why, in our opinion, the Secretary of State should not enter into direct communication either with the Pope or with the College of Cardinals, a verbal acknowledgment of those letters might be given by Lord Lyons to the Papal Nuncio at Paris, from whom his Excellency received them.

In obedience to your Lordship's commands we have the honour to report—

**Secretary of State may answer them.**

That we see no legal objection to a suitable acknowledgment of the letters in question by the Secretary of State.

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[*] Confidential Paper No. 65.

**Avoid acknowledging "Supreme Pontificate," &c.**

In the Pope's letter there are two expressions, "Supreme Pontificate" and "Catholic Church," to which we would call your Lordship's attention, since we think the answer should be so framed as not to admit, even by silence, the claim of the Pope to Supreme Pontificate.

The word "Catholic" has a peculiar and exclusive meaning when used by persons called, we believe, in every Act of Parliament, "Roman Catholics." The answer should, we submit, have the words "Church of Rome," or, "persons in communion with the Church of Rome."

**Formal address: "Most Eminent Sir."**

Your Lordship will probably adopt the formal address, "Most Eminent Sir," hitherto used.

In reference to the Cardinal's letter, the like observations apply to the expressions "Catholic Church," "Supreme Pastor," and "Apostolic See." And in the answer we suggest that words should be used carefully avoiding the recognition of those titles or descriptions.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 39.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received September* 17.)

*Temple, September* 16, 1878.

My Lord,

**Tuscan Gas Company. Refusal of Italian Government to grant privileges under Joint-Stock Companies Convention.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 10th ultimo, stating that he was directed by your Lordship to transmit to us, for our opinion, the correspondence relating to the complaint of the Tuscan Gas Company (Limited), that the Italian Government declined to grant to them a Royal Decree of authorization to enable them to carry on their business within the Kingdom of Italy.

That the facts of the case appeared to be briefly as follows:—

The Tuscan Gas Company was a Company duly incorporated in this country, and formed for the purpose of lighting with gas various towns in Italy.

That by a Declaration exchanged between the Governments of Great Britain and Italy on the 26th November, 1867,* it was stipulated that Joint-Stock Companies constituted and authorized in conformity with the laws in force in either of the two countries might freely exercise in the dominions of the other all their rights, in conformity, however, with the laws and customs in force in the said countries.

That in accordance with that stipulation the Tuscan Gas Company applied to the Italian Government for the Royal Decree of authorization necessary to enable them to carry on their business in Italy, but it was refused, on the ground that the authorization could only be extended to Companies constituted and doing business in a foreign State, and desirous of extending their operations to Italy.

That the Tuscan Gas Company had appealed against that decision to Her Majesty's Government. That your Lordship was disposed to think that the action of the Italian Government was not in accordance with the terms of the Declaration above referred to; and Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether just grounds existed for a representation being addressed to the Italian Government on the subject.

**Opinions of various foreign countries.**

That Sir Julian Pauncefote was to add that your Lordship took steps to obtain the views of those foreign Governments with which Great Britain or Italy had concluded Conventions of a similar kind; and he was to transmit to us the replies which had been received,† together with copies of the Conventions to which they referred.‡

That we would perceive that the general tenour of those replies was favourable to the contention of the Tuscan Gas Company; and Sir Julian Pauncefote was to

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[*] Hertslet's "Treaties on Trade," &c.—Italy, p. 25.

[†] These replies were apparently from France, Germany, Belgium, Netherlands, and Russia. See Lord Lyons, No. 198, July 1; Lord Odo Russell, No. 36, July 9; Mr. Lumley, No. 21, July 24; Mr. Stuart, No. 21, June 25; Lord A. Loftus, No. 25, July 1, 1878. (Commercial Series.)

[‡] Hertslet's "Treaties on Trade," &c.—Italy, p. 138.

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draw our attention more especially to the note from the Netherlands Government, which pointed out that the additional Protocol annexed to and explanatory of their Convention with Italy (of which this country, under most-favoured-nation treatment, would have the benefit) precluded in the most explicit way any restriction of the kind which the Italian Government sought now to impose.

That Sir Julian Pauncefote was to request that, as it was of great importance to the Company that early action should be taken in the matter, your Lordship might be favoured with our opinion at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

**May remonstrate with Italian Government.**

That, in our opinion, just grounds do exist for a representation being addressed to the Italian Government on the subject.

We suggest, for your Lordship's consideration, that this representation should be so framed that it may draw from the Italian Government their reasons for refusing to "The Tuscan Gas Company (Limited)," which has been constituted and authorized in conformity with the laws in force in this country, the free exercise in Italy of all rights in conformity with the laws and customs in force in Italy.

The attention of the Italian Government may, in the representation, properly be called to the intention of the British and Italian Governments, and obvious meaning which Her Majesty's Government puts upon the words of the Declaration of the 26th November, 1867.

And the Italian Government should be directly asked to state in what respects "The Tuscan Gas Company" has failed to comply with the terms and meaning of the Declaration, or is not in conformity with the laws in force in Italy.

The attention of the Italian Government may also be properly called to the Italy and Netherlands Convention 11th April, 1868, and the Italy and Russian Declaration 8th November, 1866, and the bearing of those two documents with reference to the most-favoured-nation clause.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Japan.

### No. 40.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 2.)

*Temple, July* 2, 1878.

My Lord,

**Opium smuggling. Charge against John Hartley.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th June ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, as marked in the margin,* relative to a case the details of which had not yet been received, in which one John Hartley was charged with attempting to smuggle opium into Japan; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion whether, under the Tariff, opium being a prohibited article (Class 3), it was lawful to import medicinal opium, as distinguished from smoking opium, under Class 4, which fixed an *ad valorem* duty of 5 per cent. on "drugs and medicines such as ginseng, &c."

**Tariff prohibits opium.**

Sir Julian Pauncefote was pleased to inclose copies of the Treaty between this country and Japan of 25th August, 1858, and of the Convention of 25th June, 1866, for convenience of reference.

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* Wooyeno Kagenori, June 4; Anti-Opium Society, May 31 and June 7.

In obedience to your Lordship's commands we have the honour to report—

**"Medicinal" not distinguishable from "smoking" opium. Cannot import as a drug.**

That, in our opinion, medicinal opium, unless expressly named in Class 4 amongst "drugs and medicines," is a prohibited article under Class 3, and cannot be distinguished from "smoking opium."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 41.

*The Attorney- and Solicitor-General to the Marquis of Salisbury.*—(*Received August* 12.)

*Temple, August* 12, 1878.

My Lord,

**Separate Court for Japan. Draft Order in Council.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the inclosed draft of an Order in Council, which had been prepared by Mr. F. S. Reilly, under instructions from the Foreign Office Department, for the purpose of amending the existing Order in Council for China and Japan of 9th March, 1865, a copy of which was annexed for convenience of reference.

**Appeal to Supreme Court in China.**

That Sir Julian Pauncefote was to refer us to our Report of the 10th May last* on the subject of the judicial powers of the Acting Law Secretary of the Supreme Court established under that Order, and Sir Julian Pauncefote was to state that, in order to place the administration of justice in Japan on a more convenient footing, and to obviate in future the irregularities which had occurred, it had been decided to establish a separate court for Japan, with an appeal to the Supreme Court at Shanghae. That the inclosed draft Order had been framed as a temporary measure only, as it was proposed in the course of next year to issue a consolidated and comprehensive Order in Council for China and Japan, which should contain amended rules of procedure, and confer on both Courts the additional powers contemplated by the Foreign Jurisdiction Bill introduced this Session in Parliament.

That, in the meanwhile, it was of the utmost importance that the proposed Order in Council should be issued with the least possible delay; and unless it could be passed at the next Council, which was expected to be held on Wednesday next, serious inconvenience would be occasioned. That under those circumstances your Lordship desired Sir Julian Pauncefote to request that we would be so good as to take the draft Order in Council into our immediate consideration, and that, if it was possible, we would favour your Lordship with our opinion by Monday next as to whether it might properly be laid before the Queen for Her Majesty's approval.

In obedience to your Lordship's commands we have the honour to report—

**Cancel "Law Secretary" clauses in 1865 Order, &c.**

That a clause should be inserted in the draft Order, providing that the China and Japan Order in Council, 1865, should be read as though all provisions with regard to the Law Secretary were expunged.

In Clause 11 the words, "in respect of any such claim," should be struck out of the second line and inserted after the word "same;" and the words "and shall be *in personam* only" should be struck out.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.

N.B.—This Report has not been signed by Dr. Deane. Dr. Deane is in Scotland, and the Attorney- and Solicitor-General have not been able to obtain his opinion.

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* See No. 14 (China), p. 14.

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## Miscellaneous.

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### No. 42.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received November* 22.)

*Temple, November* 21, 1878.

My Lord,

Naval Courts. New Board of Trade instructions.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 23rd September last, stating that several instances have arisen of late years in which the proceedings of Naval Courts summoned abroad by Her Majesty's Consular officers and the Commanders of Her Majesty's ships have been invalid by reason of the absence of full and complete instructions for the guidance of those officers.

That accordingly, the Board of Trade have caused to be prepared a new set of "instructions relating to Naval Courts," and in now transmitting to us the inclosed proof of those instructions, he was directed by your Lordship to request that we would take them into our consideration, and favour your Lordship with our opinion as to whether they might properly be issued, and with any remarks and suggestions which we might have to offer thereupon.

In obedience to your Lordship's commands we have the honour to report—

Approving, with slight alteration.

That we think the instructions at p. 5, line 18, should use the words of the Statute, "Master or any of the crew," in lieu of the words "Master, officer, or seaman."

At p. 11, lines 11 and 12, it is stated that "the sections specially alluded to of certain Statutes" are appended to these instructions. On p. 9, secs. 23 and 24 of the Act of 1862 (25 and 26 Vict., cap. 63) are alluded to, but only section 23 is set out in the appendix. We think section 24 should be also set out.

Subject to the above remarks we approve of the proposed instructions, and think they may be properly issued.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Monte Video.

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### No. 43.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received December* 20.)

*Temple, December* 19, 1878.

My Lord,

Marriages. Rules to be observed. Previous civil ceremony. Uruguayan Decree.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us a translation of a Decree of the Government of Uruguay relating to the rules to be observed in the solemnization of marriages in that country which had been received from the Acting British Consul at Monte Video.*

Penalties on foreign Consuls and clergymen for breach of.

That, by Article 6 of that Decree, it was declared that clergymen of dissenting

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* Inclosure 3 in Acting Consul Lemm's No. 39 of September 27.

### No. 41*.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received January* 1, 1879.)

*Temple, December* 31, 1878.

My Lord,

Publication of news papers, &c. Japanese Municipal Laws generally. Whether binding on British subjects.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 5th November last, stating that the Earl of Derby addressed to Her Majesty's Minister in Japan an instruction, in the sense of our Report of the 19th September, 1877, on the subject of the right of the Japanese Government to interfere with the foreign press in that country, and that Mr. Lister was now directed by your Lordship to transmit to us the accompanying despatches,* which had been received from Sir H. Parkes, raising certain further questions in connection therewith, and generally with the ex-territorial rights of British subjects in Japan.

That in his despatch No. 4, Sir H. Parkes requested that he might be informed whether the conclusions at which we arrived with reference to the foreign press were founded on grounds peculiar to the publication of newspapers, or whether the same reasons applied to other occupations in which British subjects were engaged, and whether the Japanese municipal laws, which regulated the exercise of certain trades or vocations, which he specified, were binding on British subjects.

That on that point Mr. Lister was to observe that it was hardly reasonable to contend that British subjects should be allowed to compete with the natives in the trades or vocations referred to, without being subject to the burdens or restrictions imposed on the latter, and the consequence of such a state of things would probably be, that Japanese subjects would carry on business in the name and through the medium of British subjects, for the sake of the privileges and immunities which they would thereby enjoy.

But that where British subjects exercised trades or vocations which were carried on among the foreign community only, or which did not bring them into competition with the natives, a tacit understanding seemed to have prevailed, that the municipal laws of Japan relating to such trades do not apply to them, and that they were subject only to British laws, and to such regulations as Her Majesty's Minister might issue under Her Majesty's Order in Council for China and Japan of the 9th March, 1865 (sections 85 and 90).

Japanese Shooting Regulations. As to.

That Mr. Lister was to transmit to us, among the papers, copies of the Treaty of 1858 between Great Britain and Japan, and of the Protocol of the 6th June, 1862, which comprised all the existing Treaty stipulations between the two countries, and also a copy of a correspondence which took place in 1876, respecting shooting regulations in Japan, in which the subject under consideration was discussed with reference to the application of the Japanese Game Laws to foreigners. In that case Her Majesty's Minister issued regulations to enforce obedience thereto on the part of British subjects.

That Sir H. Parkes, in his despatch No. 3, pointed out that, on the reply to the general question then raised, depended the future policy of Her Majesty's Government with regard to Her Majesty's jurisdiction in Japan, and he proceeded to argue that the doctrine laid down in Mr. Fisher's despatch to Mr. Bingham of the 2nd May, 1876, referred to, with approval, in our Report of the          September, 1877, was at variance with the principles which Her Majesty's Government had hitherto consistently maintained in their relations with Japan under the Treaty of 1858, and also with China under a similar Treaty. In support of that allegation, he cited a passage from a despatch from Earl Granville to Sir T. Wade of the 21st August, 1871, having reference to missionaries, but that the extract which he gave from that despatch did not appear to sustain the position that British subjects, though only amenable to British Tribunals, were entitled to disregard the laws of China.

That Mr. Lister was to request that we would take all the papers transmitted therewith into our consideration, and favour your Lordship with our opinion as to the reply which should be made to the questions submitted in Sir H. Parkes' two despatches.

In obedience to your Lordship's commands we have the honour to report—

Municipal Laws apply to British subjects in Japan, except when inconsistent with Treaty rights.

That, in our opinion, the municipal laws of Japan apply to British subjects in Japan in all cases where those laws are not contrary to, or inconsistent with, Treaty rights.

Our former opinion upon the press laws in Japan was founded on the general

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* Sir H. Parkes, Nos. 3 and 4, January 30, 1878

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principle that the laws of Japan were to be observed and obeyed by all residents in Japan, except in those cases where the Japanese Government had surrendered a part of the powers inherent in, and belonging to, every independent State within its own territory.

This general principle is not limited to the publication of newspapers, but applies to other occupations in which British subjects in Japan may be engaged, including the examples given by Sir H. Parkes in his despatch No. 4 (30 January, 1878).

No tacit understanding should, we think, be allowed to have any operation against the municipal laws of Japan, whether newly-executed, or of earlier date, but not heretofore put into action, unless those laws are an infraction of Treaty rights, and conflict with the privileges and immunities enjoyed by British subjects under the provisions of Treaties.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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creeds solemnizing marriages where the previous civil formalities prescribed had not been observed, and without the certificates of the Civil Judge, were liable to certain penalties, and by Article 6 the same provision was made applicable to foreign Consuls.

Reference to German laws.

That, in submitting the above-mentioned Decree for our consideration, Sir Julian Pauncefote was to observe that in Germany, by the Imperial Registration Law of 1875, it was enacted that any *clergyman* solemnizing a marriage without proof of the previous civil formalities having been observed he is liable to certain penalties, and in expressing our opinion on that law, we reported in our letter of the 3rd January last* that Her Majesty's Government could not object to its provisions, and we concurred in the view expressed in a memorandum furnished by the German Government, that it applied to an English clergyman solemnizing marriages at the British Embassy or at British Consulates under our Acts of Parliament in that behalf, and not enjoying Diplomatic privileges as an officer of the Mission.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether Her Majesty's Government had any valid ground for objecting to any of the provisions of the Decree of the Uruguayan Government.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government cannot object.

That, in our opinion, Her Majesty's Government has no valid ground for objecting to any of the provisions of the Uruguayan Government Decree.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

## Netherlands.

### No. 44.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 20.)

*Temple, March* 19, 1878.

My Lord,

Marriages between brothers- and sisters-in-law.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th ultimo, stating that he was directed by your Lordship to request that we would be good enough to favour your Lordship with our opinion as to the answer that should be returned to the inquiry made, in the inclosed note, by the Netherlands Minister† as to the principles of the legislation in force in this country respecting marriages between brothers-in-law and sisters-in-law, legitimate or illegitimate.

In obedience to your Lordship's commands we have the honour to report—

Illegal in United Kingdom.

That the Netherlands Minister may, in our opinion, be properly answered that the marriages between brothers-in-law and sisters-in-law, whether legitimate or illegitimate, are illegal and forbidden in the United Kingdom.

With deceased wife's sister, legal in some Colonies.

Your Lordship will, however, probably think that the Netherlands Minister should be informed that the marriage of a man with the sister of his deceased wife is valid in some British Colonies, which have their own Legislature.

And that for some years past attempts have been made, and will probably be renewed, to induce Parliament to make the marriage of a man with the sister of his deceased wife valid in this country.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* See No. 34 (Germany), p. 33.

† Count Bylandt, February 14, 1878. See also memorandum by Mr. Hertslet, March 20, 1878.

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## No. 45.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March* 29.)

*Temple, March* 28, 1878.

My Lord,

Operation of Extradition Act in Straits Settlements.

Surrender of fugitives from Dutch Colonies.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th February last, stating that, with reference to the operation of the "Extradition Act, 1870," in the Colony of the Straits Settlements, and to our Reports of the 11th January and the 21st of March, 1877,* relating thereto, and more especially to the surrender of fugitives from the Dutch Colonies, he was directed by your Lordship to transmit to us the accompanying letter from the Colonial Office,† inclosing a copy of a despatch from the Governor of the Straits Settlements, in which his Excellency applied for instructions from Her Majesty's Government on the question stated in the second paragraph of Mr. Malcolm's letter.

That the Extradition Act of 1870 by section 2 provided that, where an extradition arrangement had been made with any foreign State, Her Majesty might, by Order in Council, direct that the Act should apply "in the case of such foreign State," and by section 5 it was declared that, on the publication of the Order, the Act should apply "in the case of such foreign State."

Fugitives from native States under Indian Act of 1854.

That Orders in Council have from time to time been issued and published, applying the Extradition Acts, 1870 and 1873, in the case of certain foreign States without any exception as to British Colonies, and the question submitted by the Colonial Office was whether the Indian Act No. 7 of 1854, under which fugitives from native States were surrendered prior to 1870, was still in force in the Straits Settlements as regarded foreign States with which no extradition arrangement had been made, within the meaning of section 2 of the "Extradition Act, 1870," and to request that we would favour your Lordship with our opinion on that point, for the information of the Colonial Office.

Papers bearing on the case were inclosed, as marked in the margin.‡

In obedience to your Lordship's commands we have the honour to report—

Cannot issue Order in Council under Extradition Act when no arrangement with foreign country exists.

That the Extradition Act, 1870, sec. 2, enables Her Majesty to apply the Act by Order in Council only where an arrangement has been made with the foreign State.

No arrangement has been made, as we understand, with the Malay or native States near the Straits Settlement.

So that Her Majesty could not, as in the former case (where the difficulty arose with respect to Holland), make any Order in Council under section 18 of the Act of 1870.

May issue one under 29 and 30 Vict., cap. 115.

Doubt if Indian Act is in force.

But we think Her Majesty may, by Order in Council, under 29 and 30 Vict., cap. 115, sec. 2, establish a law providing for the surrender of fugitive criminals in the Straits Settlements, and that such law may be conveniently framed upon the India Act No. 7, and we advise this course because we doubt whether the India Act could now with safety be resorted to.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* See Confidential No. 4216, pp. 36 and 38.

† Colonial Office, February 4, 1878.

‡ Colonial Office, February 19; to Colonial Office, January 31; Law Officers, January 11 and March 21, 1877; Extradition Acts, 1870 and 1873; Indian Acts, No. 7 of 1854; Order in Council, August 6, 1874

# Pacific Islands.

## No. 46.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received March* 28.)

*Temple, March* 27, 1878.

My Lord,

Illegal execution at Apia of American, named Cochrane, for murder.

As to punishment of British subjects implicated in.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st instant, stating he was directed by your Lordship to transmit to us a letter and its inclosures from the Colonial Office* on the subject of the illegal execution of an American sailor, named Cochrane, at Apia for the murder of another American named Fox, and of the steps to be taken to punish those British subjects who were concerned in the proceedings, and observing that, as the acts complained of were committed before the Proclamation of the Western Pacific Order in Council, the matter would appear to be one to be dealt with by Her Majesty's Consuls.

That the Order in Council establishing the High Commission Court was issued under the Foreign Jurisdiction Act and section 6 of the Pacific Islanders Protection Act, 1875, and as regards Samoa Her Majesty's jurisdiction would be exercised solely under the powers conferred by the last-mentioned Act, as it could not be claimed by Treaty, usage, or sufferance.

That it was presumed that, as pointed out in the letter from the Colonial Office, the Order in Council could not have a retro-active operation so as to give jurisdiction to the High Commissioners' Court to try offences committed before it came into force and operation; but, as instructions were to be sent to Sir A. Gordon on the subject, Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion on the question raised.

Consul has no authority.

That it would seem that the Colonial Office were under the impression that the case was one which could be dealt with by the Consuls representing the nationality of the different offenders, but that Sir Julian Pauncefote was to observe that, as regards the British Consul, his authority only extended to the summoning of a Naval Court and to the exercise of the powers conferred upon him by sections 267 and 268 of the "Merchant Shipping Act, 1854," and that those powers applied only to offences committed by masters, seamen, and apprentices belonging to British ships, whereas the offenders in the present case did not come under that category.

That Sir Julian Pauncefote was therefore further to request that we would be good enough to inform your Lordship whether, in our opinion, the offence alleged to have been committed by the British subjects who took part in the execution of the American sailor at Apia under the circumstances detailed in these papers was justiciable by any British Tribunal out of the United Kingdom.

We are also honoured with a further letter from Sir Julian Pauncefote, dated the 21st instant, stating that, with reference to the letter from the Foreign Office of the 1st instant, he was to transmit to us a further despatch which had been received from Her Majesty's Consul at Samoa (No. 26, December 20, 1877), relating to the hanging by Lynch law of a United States' citizen named Corcoran at that place.

That Sir Julian Pauncefote was to request us to return that despatch, together with the other papers which had been already transmitted to us on that subject.

High Commissioners' Court.
No jurisdiction over crimes committed before it came into force.
British subject may be justiciable under Acts of Geo. III, or may be tried in United Kingdom.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the High Commissioners' Court has no jurisdiction over crimes committed before it came into force and operation.

And the British subject who took part in the hanging of the citizen of the United States may be justiciable under 57 Geo. III, cap. 53, and 46 Geo. III, cap. 54, but, unless he is justiciable under these Statutes, he can be tried only in the United Kingdom.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Colonial Office, February 7, 1878.

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### No. 47.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received May* 14.)

*Temple, May* 10, 1878.

My Lord,

Case of illegal execution at Apia, and Slave Trade atrocities by Mr. Scott on the Congo.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th ultimo, stating that, with reference to our Report of the 27th March last in relation to the execution of an American sailor at Apia in the Samoan Islands, and to our previous Report of the 9th August last* in relation to the outrages committed by a British subject, named Scott, on the Congo River, he was directed by your Lordship to request that we would further advise your Lordship on the following points:

As to offenders being justiciable under Acts of Geo. III.

That the Act 57 Geo. III, cap. 53, provided for the trial and punishment, in the manner therein mentioned, of all murders and manslaughters committed on land at the settlement on the Bay of Honduras by any person residing or being within that settlement, and of all murders and manslaughters committed in the Islands of New Zealand and Otaheite, or within any other islands, countries, and places not within His Majesty's dominions, nor subject to any European State or Power, nor within the territory of the United States of America, by the master or crew of any British vessel, or by any person sailing therein or belonging thereto, or that should have sailed in or belonged to and have quitted any British vessel to live in any of the said islands, countries, or places, "or that shall be there living."

That Sir George Cornewall Lewis, in his treatise on foreign jurisdiction, published in 1859, in noticing that Act, observed that "this Statute is now probably obsolete, if, indeed, it ever had any operation." That the Act was repealed by the Statute Law Revision Act of 1873 as regarded the Bay of Honduras, New Zealand, and Otaheite, and the question arose whether it was still in force as regarded the other places therein mentioned.

That, if our answer to that question should be in the affirmative, your Lordship would be glad to be also advised whether the Act applied to any British subject who might be living in such other places, or only to the master or crew of a British vessel, or to a person sailing in or belonging thereto, and who should have quitted such vessel to live in such places. That it was important in dealing with the case which had arisen in the Samoa Islands, and also with reference to the outrages on the Congo River, to ascertain whether the accused were justiciable under that Act, and for that purpose your Lordship would be glad to be favoured with our opinion on the questions above stated.

In obedience to your Lordship's commands we have the honour to report—

Acts still in force.

That, with the exception of the provisions repealed by the Statute Law Revision Act, 1873, the 57 Geo. III, cap. 53, is now in force.

Parties are justiciable under them.

And we are of opinion that any British subject who may be living in any of the places described in the 57 Geo. III, cap. 53, though he may not have been brought there by or quitted a British vessel to live there, is justiciable under the 46 Geo. III, cap. 54, and 57 Geo. III, cap. 53.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Confidential No. 4216, p. 50.

## Persia.

### No. 48.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received August* 10.)

*Temple, August* 9, 1878.

My Lord,

Foreign jurisdiction in Persia.

Order in Council.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 10th June last, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council, under the Foreign Jurisdiction Acts, for the Persian coast and islands, which had been prepared by Mr. F. S. Reilly in communication with the Foreign Department and with the India Office, together with an explanatory memorandum and a copy of the official correspondence referred to therein; and to request that we would be good enough to take these papers into our consideration, and to favour your Lordship with our opinion as to whether the draft Order in Council might be approved by your Lordship.

In obedience to your Lordship's commands we have the honour to report—

Approving, with alterations.

That we entertain the same doubt as that felt by Mr. Reilly, and expressed in the margin of page 4, on the word "coast," and we suggest that any difficulty arising from the use of the word might be met by defining "coast" in the Interpretation Clause.

At page 27, Article 1, line 3, the word "or" should, we think, be used for the word "and."

Subject to these observations, the draft Order may, in our opinion, be approved.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

## Peru.

### No. 49.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received January* 14.)

*Temple, January* 12, 1878.

My Lord,

Attack on British Vice-Consulate at Iquitos by the Mayor and others.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us despatches reporting the particulars of a gross outrage perpetrated on the British Vice-Consulate at Iquitos by the Mayor and others at that place, and inclosing copies of the correspondence which had passed between the British Chargé d'Affaires at Lima and the Peruvian Government on the subject.

That the facts of the case were stated in the letter of Vice-Consul Johnston to Mr. Graham of the 2nd August last, which formed the first inclosure to despatch No. 50, and that Sir Julian Pauncefote was to draw our attention to Mr. Graham's letters to Señor Rospigliosi of the 12th October (Inclosure No. 2 in No. 50) and of the 3rd November (Inclosure No. 1 in No. 56), to Señor Rospigliosi's reply of the 7th

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November (Inclosure No. 2 in No. 56), and to Mr. Graham's rejoinder to that reply of the 9th November (Inclosure No. 4 in No. 56).

Peruvian Argument that remedy lies in Law Courts.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether, under the circumstances of the case, Mr. Graham acted rightly in refusing to admit the argument of the Peruvian Government, that Mr. Johnston should seek his remedy in the Law Courts of the country in order to recover his losses, and whether Her Majesty's Government could properly demand reparation and compensation from the Peruvian Government for the outrage committed and the losses sustained.

We are also honoured with a further letter from Sir Julian Pauncefote, dated the 4th instant, stating that he was to transmit a further despatch from Her Majesty's Chargé d'Affaires at Lima, from which we should see that the Peruvian Minister for Foreign Affairs had agreed to pay the sum of 200 soles, to which Mr. Graham concluded the damage might possibly amount, and that he (Sir Julian Pauncefote) was to request that we would take that despatch into our consideration, together with the previous papers already before us.

Precedent quoted in "Calvo."

That he was at the same time to call our attention to a case mentioned in "Calvo," vol. i, pp. 417-418, which afforded a precedent for the claim made by Mr. Graham. In that case a mob having attacked the houses and persons of Spaniards in New York and ransacked the Spanish Consulate, the United States' Government, while refusing compensation to unofficial Spaniards, paid for the damage done to the Consulate on the ground put forward by Mr. Graham in the Iquitos case, that foreign Consuls are entitled to a higher degree of protection than unofficial foreigners.

In obedience to your Lordship's commands we have the honour to report—

Consul is under protection of Government in whose country he resides. Compensation due.

That a Consul is, in our opinion, under the protection of the Government within whose territory he resides officially, to a greater degree than an ordinary resident foreigner, and the case in "Calvo," referred to in Sir Julian Pauncefote's letter, is a precedent upon which Her Majesty's Government might properly have insisted upon the payment of some compensation, had not the Peruvian Government consented to pay the compensation.

Repudiating "Law Court" argument.

The argument of the Peruvian Government, that the Vice-Consul should seek his remedy in the Law Courts of Peru, was, in the circumstances of the case, properly not admitted by Mr. Graham.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 50.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received March* 6.)

*Temple, March* 5, 1878.

My Lord,

Attack on Peruvian iron-clad "Huascar" by Her Majesty's ship "Shah."

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th February ultimo, stating that with reference to our Report of the 21st July last[*] on the subject of the attack on the Peruvian iron-clad "Huascar" by Her Majesty's ships "Shah" and "Amethyst," he was directed by your Lordship to transmit to us the accompanying letter from the Peruvian Minister at this Court,[†] inclosing a memorandum which he had been instructed by his Government to place in the hands of Her Majesty's Government.

That that memorandum contained an exposition of the case from the point of view in which it was regarded by the Peruvian Government, and concluded with a demand of satisfaction for the acts of Rear-Admiral de Horsey, which they consider an outrage on the rights of Peru.

That the inclosed draft of reply had been drawn up by your Lordship's directions, and Sir Julian Pauncefote was to request that we would take it into our consideration, and inform your Lordship whether it met with our concurrence, or whether we would suggest any modifications in it.

In obedience to your Lordship's commands we have the honour to report—

Approve reply to Peru.

Object to word "reprisals."

That the draft reply meets with our concurrence, but we submit, for your Lordship's consideration, that the word "reprisals" in the third line from the foot of page 2 of the draft is objectionable.

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[*] Confidential No. 4216, p. 44.

[†] Señor Galvez, November 27, 1877.

The word "reprisals" is a term of art,[*] and in our opinion not applicable to the "Huascar," and the circumstances in which that vessel was attacked.

We suggest the words "immediate and severe treatment" in the place of the word "reprisals."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex.

*Draft of Letter from the Earl of Derby to Señor Galvez.*

*Foreign Office*, , 1878.

M. le Ministre,

HER Majesty's Government have had under their consideration your letter of the 27th November last, inclosing a memorandum which you state contains the exposition of the "Huascar" question addressed to them by you in the name of your Government, and expressing the hope that the demand of your Government for satisfaction on account of the proceedings of Rear-Admiral de Horsey in relation to the "Huascar" will be received with those sentiments which are characteristic of the equity of the British Government.

Attack on "Huascar" no outrage on rights of Peru.

Her Majesty's Government have given to this memorandum the careful attention which it deserves, with every desire to treat the question in that spirit of justice which you so courteously recognize as guiding their relations with foreign States in the discussion of international difficulties. They find it, however, impossible to reconcile their views of international law and of justice with the arguments advanced by the Peruvian Government in this case, and although they deeply regret that circumstances should have arisen which necessitated a recourse to the measures complained of, it appears to them that the memorandum entirely fails to establish the proposition that the proceedings of Rear-Admiral de Horsey constitute an outrage on the rights of Peru.

There can be no dispute as to the main facts of the case, which are fully and accurately set out in the papers laid before Parliament, a copy of which I have the honour to inclose for convenience of reference.

She was a rebel ship.

Peruvian Government repudiated her acts.

The "Huascar" was a rebel ship, and the Peruvian Government, by a public Decree dated the 8th May, 1877, which was officially communicated to Her Majesty's Minister at Lima and to the other foreign Representatives, declared that the Republic would not be responsible for the acts of the rebels in whose possession she had fallen, of whatsoever nature those acts might be. By the same Decree they publicly authorized the capture of the "Huascar," and offered to recompense properly all those who, not belonging to the crews of the vessels forming the squadron of operations, should bring her under the authority of the Government, or who might contribute to do so.

"Huascar's" outrages on British flag.

After the promulgation of this Decree, the "Huascar" committed a series of outrages on the British flag. She boarded and detained the "John Elder" at sea. She boarded and demanded despatches from the "Santa Rosa;" she forcibly took coal from the "Imuncina;" she removed a Peruvian officer from the "Columbia," and she compelled the engineer of the latter ship,[†] a British subject, to serve against his will.

"Huascar" sailed under no flag.

The "Huascar" having been taken out of the hands of her lawful officers, and the Peruvian Government having disavowed any liability for her acts, it follows that she was sailing under no national flag, and that no redress could be obtained from that Government for any acts which she might commit.

British Admiral forced to protect British property.

Under these circumstances Her Majesty's Government consider that Rear-Admiral de Horsey was bound to act decisively for the protection of British subjects and British property by visiting upon the vessel herself and her crew the consequences of her unwarrantable proceedings, and they cannot admit the right of the Peruvian Government, whilst disclaiming, by a public Decree, all responsibility for the acts of the "Huascar" as a rebel ship, to regard her at the same time as a national vessel, and to

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[*] *Sic in orig.* Query, "term of *war*."

[†] Should be, "the engineer of the 'Huascar'" (see Admiralty letter of March 27, 1878).

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resent as a national injury the reprisals* which she brought upon herself by the outrages which she committed on a foreign flag.

**As to attack being made in Peruvian waters.**

It is argued, however, in the memorandum, that Rear-Admiral de Horsey cannot justify his action by an appeal to the Decree of the 8th May, as that Decree did not authorize the capture of the "Huascar" in Peruvian waters; and that from the fact that he did not intimate to the Peruvian Government that he intended to act under the Decree, as well as from the character of the attack made upon the monitor, it must be inferred that he could have had no intention to co-operate in her recovery, but was bent only on her destruction.

Her Majesty's Government dissent altogether from those views.

**Decree authorizing capture specified no locality.**

Having regard to the general terms of the Decree, they are at a loss to perceive how the exercise of the authority thereby conferred, whether on the high seas or in Peruvian or any other waters, can afford any legitimate ground of remonstrance or complaint on the part of the Peruvian Government. There is nothing whatever in the Decree to indicate that the authority to capture the "Huascar" did not extend to Peruvian waters, or that any previous notice to the Government of an intention to act upon the Decree was necessary. On the contrary, the vessel and the rebels on board of her were declared outlawed, and the natural presumption, as well as the only practical purpose of the Decree, was that the vessel should be seized wheresoever and whensoever she could be found.

**Intention of British Admiral to deliver her to Peruvian Government.**

With reference to the character of the attack on the "Huascar," and to the intention attributed to Rear-Admiral de Horsey, I would observe that neither the "Shah" nor the "Amethyst" being armour-plated vessels, the capture of so powerful a monitor as the "Huascar" could not reasonably be attempted without the employment of all the force at their command; and that the intention of Rear-Admiral de Horsey to deliver her into the hands of the Peruvian Government, if he should effect her capture, is evidenced by the terms of the letter which he addressed to her rebel commander on the 16th May, and to which reference is made in the early part of the memorandum. In that letter he distinctly stated that any further interference with British subjects or property would cause him to capture the vessel "and deliver her to the lawful authority."

As regards the strictures contained in the memorandum respecting the use of torpedoes by Her Majesty's ships on that occasion, the necessity for this proceeding and its propriety under the circumstances must be left to the appreciation of those best qualified to form a judgment thereon from a professional point of view; and I need only express the satisfaction of Her Majesty's Government that no casualty resulted therefrom.

The exact meaning and effect of the Decree of the 8th May having given rise to discussion, it may not be out of place to invite your attention to the following remarks:

The intention of the Peruvian Government in promulgating that Decree, if it admitted of any doubt, was very clearly manifested in the correspondence which passed between Señor Zegarra, the Peruvian Chargé d'Affaires accredited to Chile, and the Chilean Minister of Foreign Affairs, and which is published in the Chilean official "Gazette."

**Peru requested Chile to capture her.**

It appears from this correspondence that on the occasion of the Mutiny and escape of the "Huascar" from Callao, Señor Zegarra, acting under telegraphic instructions from his Government, addressed a note to the Chilean Minister for Foreign Affairs, requesting that if the "Huascar" should enter a Chilean port, she should be seized by the authorities and placed at the disposal of the Peruvian Legation.

On the 17th May, it having become known that the "Huascar" had entered the port of Caldera, Señor Zegarra renewed most formally his demand for the detention of the vessel, which he stated was then in Chilean waters, and in fulfilment of the decisive orders of his Government, he required that the Chilean Minister should telegraph with the least possible delay the necessary instructions for the carrying out of such action.

Señor Zegarra on the 22nd May again addressed a note to the Chilean Government remonstrating against their refusal to comply with the wishes of his Government, and criticizing the grounds put forward by them in justification of their refusal, namely, that the "Huascar" was not a pirate, that there was no reason to fear that she would interfere with Chilean commerce, and, therefore, that Chile had no right to assume a hostile attitude towards her.

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* Alteration suggested by the Law Officers: "the immediate and severe treatment."

**Admission of Peru that "Huascar" was a pirate.**

In this note Señor Zegarra used the following language, which, being addressed under instructions from his Government, is deserving of special attention:—"If a vessel under such conditions is not a pirate, I confess I do not know what to term her; she navigates without a commission from any Government, acknowledges no territorial authority, and to establish more precisely her position has detained on the high sea a commercial packet, forcibly compelling the delivery of the correspondence on board; if such a vessel is not a pirate, at the least she has placed herself completely outside international right; the flag she flies does not belong to her."

Señor Zegarra concludes his note by repeating his protest against the Chilean Government for not having arrested the "Huascar."

Her Majesty's Government, concurring as they do in the views above expressed as to the status and condition of that vessel at the time of her engagement with Her Majesty's ships "Shah" and "Amethyst," and considering the terms of the Decree of the 8th May, are of opinion that the demand of the Peruvian Government is not sustainable on any principle of law or justice. Although Rear-Admiral de Horsey did not succeed in capturing the "Huascar," it is incontestable, from the fact of her surrender to the Peruvian Government immediately after her encounter with the British ships, that he contributed to her recovery in the manner contemplated by the Decree, and while discharging his duty in the protection of British interests, he intended to render, and did actually render, material service to the Government of Peru.

**British Admiral committed no offence against dignity of Peru.**

Her Majesty's Government cannot but believe that the popular excitement which has been caused by the event in question is to be attributed to an imperfect knowledge of the true facts of the case, and they trust that the friendly explanations which I have given in this letter will satisfy your Government that Rear-Admiral de Horsey is quite innocent of the charge imputed to him in the memorandum, of having violated the rights of Peru, and that he has committed no act which can justly be construed as an offence against the dignity of the Republic.

I avail myself of this occasion to renew the expression of the friendship and goodwill with which Her Majesty's Government are animated towards the Government which you so worthily represent.

I have, &c.

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# Portugal.

## No. 51.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received May* 13.)

*Temple, May* 11, 1878.

My Lord,

**Exportation of negroes from Africa to Island of San Thomé. Suspected Slave Trade.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers from Mr. Hopkins, Her Majesty's Consul at Loanda, and from the Admiralty, reporting the circumstances under which the Portuguese brig "Pensamento" was boarded by a boat from Her Majesty's ship "Swallow" off the coast of Angola in the month of December last, with a view to verify the status of certain native passengers, who were being transported on board that vessel, as free labourers, from the Portuguese port of Novo Redondo, on the mainland of Africa, to the Island of San Thomé, a Portuguese Possession off the African Coast.

That Sir Julian Pauncefote was, in the first place, to refer us to the correspondence which took place between Captain Borlase Warren, of Her Majesty's ship "Swallow," and Mr. Hopkins, which was contained in Inclosures 1, 2, 3, and 3A of the Consul's despatch No. 4 of the 27th December, 1877.

That in consequence of the suspicions entertained that the system carried on by

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the Portuguese authorities for the supply of labourers to the Island of San Thomé was in violation of the Treaty between Great Britain and Portugal for the suppression of slavery, Captain Borlase Warren stopped and searched the Portuguese brig "Pensamento" on the high seas, and the result of that proceeding was given in his letter to Consul Hopkins of the 17th December, 1877 (Inclosure 3A in No. 4).

**Portuguese law.**

That thereupon a correspondence took place between Consul Hopkins and the Governor of Angola (Inclosures 4, 5, 6, and 7 in No. 4), from which we should perceive that the system carried on was stated to be based on certain Colonial Regulations of the 25th December, 1875, made under the authority of a law passed by the Portuguese Parliament on the 29th April, 1875.

**Slaves purchased, then ransomed and exported free.**

That under that system slaves were purchased from native Chiefs and others on the mainland of Africa, and brought to Loanda or Novo Redondo, where they became free, the status of slavery having been abolished throughout the Portuguese dominions by the Law of the 29th April, 1875, a copy of which was annexed for convenience of reference. It was admitted that the system was one of ransoming slaves. In the words of the Governor of Angola, "Slaves, yesterday, when in the hands of the Chiefs of the interior, acquire, when ransomed, all the freedom which the subjects of His Most Faithful Majesty's have, and pass to the land in which flutters the Portuguese flag."

That on arrival, however, at Loanda or Novo Redondo, those ransomed slaves were taken before the Guardian General, and, after being examined by that functionary, enter, it is said, "voluntarily and freely, and with perfect knowledge of the cause," into contracts as labourers for the Island of San Thomé. That Consul Hopkins, as we should perceive from his despatch No. 29 of the 13th June, was at first disposed to take a favourable view of that system, but in consequence of further information which he had obtained he arrived at the conclusion that he had been deceived, and in his letter to the Governor of Angola of the 17th December, 1877 (Inclosure 4 in No. 4), he characterised that free emigration as a "farce," and stated his reasons for that opinion. That, whether the system of emigration thus carried on was really a system of slavery under the cloak of laws and regulations ostensibly directed to humanitarian objects, was a question which could only be solved satisfactorily by further investigation, but, in the meanwhile, Sir Julian Pauncefote was directed by your Lordship to request that we would favour your Lordship with our opinion as to whether the purchase of slaves for the purpose of enabling them to obtain their freedom in the manner contemplated by the Portuguese Law of the 29th April, 1875, and the Colonial Regulations made thereunder, constituted a violation of the terms or of the spirit of the Treaty of 1842 between Great Britain and Portugal for the suppression of slavery.

In obedience to your Lordship's commands we have the honour to report—

That the offence named in the Treaty of 1842 (Articles I and II) is the transporting negroes by sea for the purpose of consigning them to slavery.

**Purchase of slaves for purpose of freeing them is no violation of Slave Trade Treaty.**

In our opinion, the purchase of slaves for the purpose of enabling them to obtain their freedom in the manner contemplated by the Portuguese Law and Regulations does not constitute a violation of the terms or of the spirit of the Treaty of 1842.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 52.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received November* 23.)

My Lord, *Temple, November* 23, 1878.

**Draft Treaty with Portugal, Article XVIII.**

**Extradition in India.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a printed draft of a Treaty between Her Majesty and the King of Portugal, Article XVIII of which dealt with the question of extradition between the possessions of their respective Majesties in India; and that he was to request that we would take that Article into our consideration, together with a letter from the India Office which Lord Tenterden was likewise to inclose, and that we would favour your Lordship at our earliest convenience with our opinion:—

1. Whether, in view of section 3 of the Imperial Extradition Act of 1870, it was competent for the Crown to enter into the proposed arrangement?

2. Whether, in the event of our being of opinion that the Crown was not competent to enter into such arrangement, the difficulty might be got over by the issue, under section 18 of the Act of 1870, of an Order in Council suspending the operation of the Imperial Act in India.

That Lord Tenterden was also to request any suggestions regarding that matter which might occur to us.

We are also honoured with a further letter from Sir Julian Pauncefote, bearing date the 19th instant, stating that with reference to the letter of the 1st instant relative to the draft Treaty with Portugal, he was directed by your Lordship to submit the following question for our opinion:—

Whether, having in view the Imperial Extradition Acts of 1870 and 1873, and the Indian Extradition Act of 1872, copies of which were inclosed, the proposed Article in the draft Treaty relating to extradition between British and Portuguese India could be entered into by the Crown.

That Sir Julian Pauncefote was to add that Mr. Hope, a Member of the Council for India, who had been for some time occupied in the negotiation of the proposed Treaty, would be happy to furnish us with any information on that matter, either verbally or in writing, should we desire it.

In obedience to your Lordship's commands we have the honour to report—

**Cannot suspend Extradition Acts.**

That the Imperial Acts of 1870 and 1873 cannot, in our opinion, be applied by Order in Council, suspending the operation of those Acts in India, and by that means giving effect to the XVIIIth Article of the proposed Treaty with Portugal.

**Indian Legislature must provide for carrying out Treaty.**

But we think this proposed Article relating to extradition between British and Portuguese India can be entered into by the Crown, and that provision for carrying the Article into effect can be made by the Legislature of India.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 53.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January* 1, 1879.)

My Lord, *Temple, December* 31, 1878.

**Extradition between Hong Kong and Macao.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th instant, stating that the serious attention of the Governments of this country and Portugal had of late been drawn to the necessity of coming to some arrangement for checking the immunity now enjoyed by criminals in the neighbouring Colonies of Hong Kong and Macao, who, by reason of the absence of an Extradition Treaty between this country and Portugal, were enabled to evade the pursuit of justice.

**Portuguese objection to capital punishment.**

That the aversion felt by the Portuguese Government to capital punishment in cases of murder had hitherto presented an obstacle to the conclusion of an Extradition Treaty between the two countries.

That to obviate that difficulty Her Majesty's Government were now considering the expediency of coming to a local arrangement with the Government of Portugal for the mutual surrender of criminals between the Governments of Hong Kong and Macao, such as was proposed in the letter from the Foreign Office to the Colonial Office of the 28th September last, by consenting to strike out altogether the crime of murder from the schedule of Extradition Crimes in "the Hong Kong and Macao Extradition Ordinance, 1870," which had not yet come into operation for the reasons above mentioned, or by undertaking that in the event of a fugitive surrendered to the Hong Kong Government by the Macao authorities being tried for murder and sentenced to death, the sentence should be commuted to one of imprisonment for life, or for a shorter period.

**As to undertaking to commute sentences of death.**

Sir Julian Pauncefote was pleased to inclose, for our information, together with the papers relating to this matter, copies of the Hong Kong and Macao Extradition Ordinance (No. 13 of 1870) and of the Hong Kong Ordinance No. 1 of 1860 relative to conditional pardons; and to state that your Lordship would be glad if we would take the question into our consideration, and favour you with our opinion whether the

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above proposal could legally be carried out as regards the undertaking to commute any sentence of death.

In obedience to your Lordship's commands we have the honour to report—

Government has no power to do so. Sir T. Henry's opinion.

That, in our opinion, the proposal to commute any sentence of death is inadmissible,—"The Government has no power to stipulate that the punishment ordained by law should not be carried into effect." These words are taken from the letter of Sir Thomas Henry to Mr. Liddell, 19th August, 1871, and we entirely concur with the opinions expressed in that letter.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Russia.

### No. 54.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received February* 21.)

*Temple, February* 20, 1878.

My Lord,

Marriage at Taganrog.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th January ultimo, stating that he was directed by your Lordship to transmit to us therewith, for our consideration, a despatch which had been addressed to your Lordship by Her Majesty's Consul at Taganrog, asking for instructions as to whether he was legally entitled to perform the marriage ceremony at his Consulate between Duncan Lewis Hoyland, a British subject, and a Russian lady named Daria Smalianinoff, these persons having already been united in wedlock at a Russian Orthodox Church.

British and Russian subject, first married at Russian church.

As to Consular district of Taganrog.

That from the wording of Mr. Consul Carruthers' Commission, a copy of which was inclosed, your Lordship presumed that the Province of Ekaterinoslaff, which seemed to be divided into two portions, in one of which Taganrog was situate, was part of the Consular district of Taganrog within the meaning of the Consular Marriage Act, and that, therefore, Mr. Carruthers might properly marry the parties, who resided in the province in question, upon the conditions and formalities prescribed by the Consular Marriages Act being complied with, as if no previous ceremony had taken place, the words "bachelor" and "spinster" being left out of the marriage notice. That before, however, replying to the Consul's despatch, your Lordship would be glad to be informed whether we concur in that view, and if not to be favoured with our opinion on the questions raised by Mr. Carruthers.

In obedience to your Lordship's commands we have the honour to report—

May be performed at British Consulate, but unnecessary.

That we assume first that Mr. Carruthers is a Consul duly authorized to solemnize and register marriages under the 12 and 13 Vict., cap. 68, and 31 and 32 Vict., cap. 61, and secondly, that the 6th section of the former Act, requiring the residence of both the parties for one calendar month within the district of the Consul, and the other conditions there required, have been complied with, and on these assumptions we are of opinion that Mr. Carruthers may properly solemnize the intended marriage.

Previous marriage by *lex loci* is valid everywhere.

We would, however, submit, for your Lordship's consideration, that the previous marriage, if valid according to *lex loci*, is valid everywhere, and that the intended Consular marriage may have effect only within Her Majesty's dominions, so that the Consular marriage is possibly unnecessary.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

### Annex.

(L.S.) VICTORIA R.

Consul Carruthers' Commission.

VICTORIA, by the grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., to all and singular to whom these presents shall come, greeting:

Whereas, We have thought it necessary for the encouragement of Our subjects trading to the ports and places on the Sea of Azoff, to appoint a Consul to reside at Taganrog to take care of the affairs of our said subjects, and to aid and assist them in all their lawful and mercantile concerns, and to endeavour to procure for them that justice and equity which shall be agreeable to the friendship and good correspondence subsisting between Us and Our good brother the Emperor of all the Russias:

Now, know ye that We, reposing especial trust and confidence in the discretion and faithfulness of Our trusty and well-beloved John Patrick Carruthers, Esquire, have nominated, constituted, and appointed, and do by these presents nominate, constitute, and appoint him, the said John Patrick Carruthers, to be our Consul at Taganrog. Hereby giving and granting unto him full power and authority by all lawful means to aid and protect Our merchants and others our subjects trading or that shall trade to or reside at Taganrog aforesaid, and all other ports and places on the Sea of Azoff. To have and to hold the said office during Our pleasure in as full and ample a manner as the Consul of the most favoured nations resident in the dominions of our said good brother do hold and enjoy their employments. And We do in a friendly manner desire Our said good brother the Emperor of all the Russias to receive and admit him, the said John Patrick Carruthers, for our Consul as aforesaid, and upon all reasonable requests to do him that justice and afford him that assistance which may testify his friendship to Us, and which We shall upon all occasions be ready to acknowledge.

And We do hereby strictly enjoin and require all Our subjects to take due notice of this Our Commission, and yield obedience thereto.

Given at Our Court at St. James, the twenty-first day of June, one thousand eight hundred and fifty-six, in the twentieth year of Our reign.

By Her Majesty's command,
(Signed) CLARENDON.

A true copy,
(Signed) F. B. ALSTON, *Chief Clerk.*

*Foreign Office, January* 8, 1878.

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### No. 55.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August* 12.)

*Temple, August* 10, 1878.

My Lord,

Claim of Messrs. Bailey and Leatham ("Elizabeth" collision case).

Refusal to return money paid into Russian Court.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 29th June last, stating that he was directed to transmit to us the papers* relative to the misappropriation by a Russian official, since deceased, of a sum of money deposited by Messrs. Bailey and Leatham on the occasion of a collision between their steamer "Elizabeth" and a Russian coal lighter, and that he was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to the further steps which should be taken in regard to that case.

In obedience to your Lordship's commands we have the honour to report—

That Lord A. Loftus may properly be instructed to bring this case again to the notice of M. de Giers, and to represent that the case is not one in which a creditor is seeking to recover money from the representatives of a deceased debtor. But it is a case in which a British subject, having an action brought against him in a Russian Court of Justice, could not, by the law of Russia, defend himself until he had deposited in the hands of an officer of that Court a sum of money.

Russia must repay money.

Messrs. Bailey and Leatham not obliged to sue defalcating officer of Russian Court.

That the action having been decided in favour of the British subject, and he now being entitled by the law of Russia to receive back the money deposited in the hands of the officer of the Court, that is, in effect, paid into the Court of Justice, the British subject should not, like an ordinary creditor, be compelled to sue the representatives of

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* Messrs. Bailey and Leatham, October 26, 1877; Lord A. Loftus, No. 22, Commercial, June 17, 1878.

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the defalcating and deceased official of a Russian Court of Justice, and that the Russian Government should indemnify the British subject from any loss which he may have sustained by the act of an official of Russia.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 56.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received August* 13.)

My Lord, *Temple, August* 12, 1878.

Messrs. Brook's trade marks. Fraudulent imitation at Warsaw.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us therewith the papers relative to certain legal proceedings, in which Messrs. Jonas Brook Brothers and Co., of Huddersfield, had been engaged at Warsaw with respect to a fraudulent imitation of their trade marks.

That we should observe from Lord Augustus Loftus' despatch No. 23, Commercial, of the 18th June, that it was contended, on the part of the Russian Government—

1. That the declaration of the 11th July, 1871, was inapplicable to that case, because the thread sold at Warsaw was not sold to the public as coming from Messrs. Brook's manufactory.

2. That the difference of price showed the commercial good faith of the vendor, Benkel, who had received the goods in the regular way from Tillman's factory in Silesia; and

3. That before Benkel could be blamed for selling the counterfeit marks, the counterfeiting must be brought home to Tillman.

That Her Majesty's Ambassador at St. Petersburgh moreover suggested that because Tillman had registered and advertised the marks as his own in Germany under the German Law, the decision, whether they were counterfeit or not, rested with the German Tribunal.

That it would be seen from Messrs. Brook's letter of the 13th ultimo that they controvert, for the reasons therein given, the opinions above expressed, and that Sir Julian Pauncefote was to request that we would take those papers into our consideration, and inform your Lordship whether we concurred in Messrs. Brook's refutation of the points urged by M. de Giers and Lord Augustus Loftus.

In obedience to your Lordship's commands we have the honour to report—

That we entirely concur in the Messrs. Brook's refutation of the points urged by M. de Giers.

Lord A. Loftus was, we presume, not altogether aware of the fact that Messrs. Brook had succeeded in their proceedings in Germany against Tillman.

Fraud proved. Violation of Trade Marks Declaration.

But in the view which we take of the proceedings in Russia what Tillman did is immaterial, since the imitation was proved; the price at which the thread was sold showed the fraud and knowledge of the fraud, and the declaration prohibits the offering goods for sale bearing fraudulent trade marks wherever manufactured.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 57.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received September* 10.)

My Lord, *Temple, September* 10, 1878.

Mr. Devereux's claim. Detention of "Industry" lighter in Danube in 1877-78.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th ultimo, forwarding to us therewith, by your Lordship's direction, a letter from Mr. Devereux* preferring a claim against the Russian Government for 1,027*l.* 14*s.* 8*d.* on account of the detention of the brig "Industry" in the

* Mr. Devereux, June 27, 1878.

Danube from the 28th April, 1877, to the 22nd March, 1878. The circumstances under which the vessel in question was detained are detailed in Mr. Devereux's letter, and in the despatches from Her Majesty's Consul at Galatz,* which were also inclosed. That two letters from the Board of Trade were also forwarded, the second of which contained observations as to the manner in which the case might be regarded from the point of view of international law.

Detained on account of danger of navigation.

That we would perceive from the inclosures in Mr. Consul Sanderson's despatch No. 41 of the 5th May, that the reason assigned for the detention of the vessel by the Russian Consul was the danger that she would incur from measures taken by the Russian military authorities to impede the navigation of the river between Ibraila and Reni. That, under those circumstances, if the observations contained in the letter from the Board of Trade were correct, it would appear that the detention of the "Industry" did not justify any claim as of right against the Russian Government unless it be held that the Russian authorities were bound to give longer notice, and to allow a reasonable time for neutral vessels to clear out.

Shortness of notice given to neutral vessels.

That Sir Julian Pauncefote was to request that we would take those papers into our consideration, and would favour your Lordship with our opinion as to whether any representation could properly be made to the Russian Government on behalf of Mr. Devereux.

That some further papers were inclosed to complete the correspondence, which we were requested to be so good as to return with our reply.

In obedience to your Lordship's commands we have the honour to report—

May represent case to Russian Government, but cannot make claim as of right.

That the circumstances connected with the detention of the "Industry" are such that a representation may, in our opinion, properly be made to the Russian Government on behalf of Mr. Devereux for a favourable consideration of his case.

The circumstances to which we particularly refer are the shortness of the notice given to the master to take his vessel away, the impossibility of his being able to remove the vessel in that short time without the aid of a tug, an impossibility which must have been known to the Russian authorities on the spot, and the willingness of the master to take his vessel away had he been able to do so.

But we think a claim as of right cannot properly be made against the Russian Government who exercised a right of war.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Spain.

### No. 58.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received May* 15.)

My Lord, *Temple, May* 14, 1878.

Gibraltar. Smuggling, &c. Order in Council to regulate trade.

WE were honoured with the commands of the Earl of Derby signified in Sir Julian Pauncefote's letter of the 27th March last, stating that he was directed to transmit to us a letter and its inclosures from the Colonial Office relative to the proposed issue of an Order in Council for regulating the trade of Gibraltar, and checking the smuggling trade carried on between that port and the Spanish coast, and also the draft of the answer which, if we should concur therein, it was proposed to return to the Colonial Office.

That Sir Julian Pauncefote was to request that we would take the papers into our consideration, and inform his Lordship whether we concurred in the terms of the proposed

* Consul Sanderson, Nos. 29, 31, 33, 38, 41, and 43 of 1877; Board of Trade, May 2 and 4; Lord A. Loftus, No. 33, 1877; to Lord A. Loftus, No. 405; Mr. Plunkett, No. 670, 1878.

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answer. That we should observe from the concluding paragraph of the Colonial Office letter that the object of the order was to exercise police jurisdiction over waters which, though claimed as British territorial waters, had hitherto been exempt from police control.

That the power intended to be given to the Governor to define the limits of the port was probably suggested by the provisions of section 11 of the Customs Consolidation Act of 1876 (39 and 40 Vict., cap. 36), whereby the Lords of the Treasury may by warrant enlarge the limits of ports in the United Kingdom. But that it might perhaps be considered that that power was vested in their Lordships for customs purposes only, and that Lord Derby wished to be informed whether it would, in our opinion, be desirable to defer the issue of the Order in Council until after the passing of the Territorial Waters Jurisdiction Bill then before Parliament.

In obedience to the commands of the Earl of Derby we have the honour to report—

**Limits of port. Object to Governor having power to fix.**

That, in our opinion, there are great objections to giving the Governor of Gibraltar power to declare what waters, round the rock of Gibraltar, shall be deemed to be within the limits of the port.

And we think the modification proposed in the draft answer to the letter of the Colonial Office, to the effect that a clause should be inserted in the Order in Council, requiring the sanction of Her Majesty's Secretary of State for the Colonies to any proclamation extending the limits of the port of Gibraltar, is also open to objection.

Nor do we think the objection to either or both of these measures would be removed by any act of the British Legislature.

**Difficulty as to 3-mile limit.**

The difficulty (apart from the meaning of the Treaty of Utrecht) in fixing the limit of British jurisdiction in the Bay of Gibraltar arises from the fact that the bay is less than 6 miles across. A 3-mile jurisdiction from the rock could not therefore be insisted upon in the greater part of the bay.

Any action which might be taken by the Governor, the Secretary of State, or Parliament in extending the limits of the port at all, and specially to bring those limits within the 3 miles of any Spanish ground, would therefore be at least a doubtful exercise of authority, and would certainly be offensive to the Spanish Government.

**Fixed line of demarcation should be settled with Spain.**

We suggest for consideration and with reference to the difficulty which is referred to in the draft answer, as existing between the Spanish and English Governments, that in the bay a defined and fixed line dividing the English and Spanish waters in the bay should be settled by the two Governments.

Outside the bay and beyond 3 miles from the Spanish shore no objection can be taken by Spain to British jurisdiction except on the Mediterranean side of the rock, within 3 miles of the Spanish lines.

In this last case the line dividing the Spanish and British waters should also be settled by the two Governments.

**Order in Council is objectionable.**

These observations go, we are aware, to the very point of the Order in Council; but, since the Order seems to us open to serious objections in principle, and, if made, may lead to grave remonstrance on the part of the Spanish Government, we have thought we were bound to lay them before your Lordship.

**Verbal alterations if persisted in.**

If, however, your Lordship should be of opinion that the principle of the proposed Order in Council should be adopted, we think the following verbal alterations may properly be made:

In the heading of the Order, after the words "other boats" should be added the words "of any description."

In paragraph 2, after the words "pulling or sailing," should be added the words "being towed, drifting, or moving in any manner or by any means."

In paragraph 3, the words "of any description" should be added after the word "boat."

In the same paragraph after "moved from" should be added the words "or in any manner with or without clearing left."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 59.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received July 4.)*

*Temple, July* 3, 1878.

My Lord,

**Case of the "Lindsay." Quarantine at Cadiz. Spain refuses compensation.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th ultimo, stating that with reference to our Report of the 9th December, 1874, he was directed to transmit to us a despatch, with its inclosures, from Her Majesty's Chargé d'Affaires at Madrid, from which it would be seen that the Spanish Government refused to entertain the claim of the owners of the vessel "Lindsay" for compensation on account of the quarantine imposed on that ship at Cadiz in 1873.

That Sir Julian Pauncefote also inclosed the previous papers relating to that case, and was to request that we would take the same into our consideration, and favour your Lordship with our opinion as to the further steps, if any, which Her Majesty's Government should adopt in regard to the matter.

In obedience to your Lordship's commands we have the honour to report—

**No further steps.**

That, in our opinion, no further steps can be taken in this matter.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 60.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received July 20.)*

*Temple, July* 19, 1878.

My Lord,

**Case of the "Octavia." Spanish reply to claim for indemnity.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 12th ultimo, stating that with reference to our Report of the 20th November last,* he was directed to transmit to us a copy of a despatch from Her Majesty's Chargé d'Affaires at Madrid, inclosing the reply of the Spanish Government to the application which he made to them by direction of the Earl of Derby for the payment of an indemnity in the case of the "Octavia," and that Sir J. Pauncefote was to request that we would take that despatch into our consideration, together with the previous papers, which were likewise inclosed, and favour your Lordship with our opinion as to the rejoinder which Sir John Walsham should be instructed to make to the arguments of the Spanish Government.

In obedience to your Lordship's commands we have the honour to report—

**Claim was on account of illegal seizure and detention.**

That the Spanish Minister may, in answer to his note of the 14th May last to Sir John Walsham, properly be reminded that the claim made by Her Majesty's Government for the restoration of the "Octavia" and her cargo, and for compensation to the owners and the master and crew, was not, as the Spanish Minister supposes, made on the ground that the seizure took place in waters where there was no power lawfully to effect the seizure, but on the ground that the ship was seized and detained, and her master and crew imprisoned for several days, when a careful examination of the ship's papers and her crew would have led to the immediate—as they did to the subsequent—release of both ship and crew.

Her Majesty's Government readily admits that circumstances connected with the "Octavia" may have justified the stopping and visiting that vessel; and Her Majesty's Government would probably have made no claim on behalf of the owners, for any compensation if the ship herself and the crew had been at once restored and released.

The case, however, assumes a different aspect when the detention and imprisonment have extended over so long a time as they were allowed by the Spanish authorities to do.

Her Majesty's Government do not question the good faith of the Spanish authorities, but cannot help observing upon what slight suspicions they may be disposed to act, when the Spanish Minister invites Sir John Walsham to form an idea of the sincerity of the assurances of innocence put forward by the present captain of the "Octavia," from the fact that some former captain of the "Octavia" has visited and is

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* See Confidential Paper No. 4216, p. 57.

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destined to command some other vessel suspected of preparing an expedition to the coast of Cuba.

The simple question is, whether the seizure and detention were legal or not.

**Seizure and detention were illegal. Claim for compensation cannot be withdrawn.**

The Spanish Government excuses, but admits the illegality of that seizure and detention. But whilst the illegal conduct of the Spanish authorities may be excusable in the eyes of their own Government, Her Majesty's Government is bound to protect Her Majesty's subjects from an illegal act, and procure compensation for the consequences of an illegal act.

Her Majesty's Government, still considering that the antecedents of the vessel and other circumstances stated by the Spanish Minister did not justify the lengthened detention of the ship, and imprisonment of the passengers and crew, regret that the claims for compensation cannot be now withdrawn.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 61.

*Memorandum by the Lord Chancellor as to the "Octavia."*

**Case of the "Octavia."**

**Ground of claim. Seizure on high seas.**

**Aggravated by detention of ship and crew.**

THE grounds upon which, as it seems to me, compensation ought to be claimed (so far as it ought to be claimed) against the Spanish Government, are the same as those upon which a release of the ship was demanded in the despatch of the 27th May, 1876, and care should be taken that those grounds are not now changed. I mention this in the first instance, because I observe that the Report of the Law Officers of the 19th July last proposes that the Spanish Minister should be told that the claim for compensation is not made on the ground that the seizure took place on the high seas, but on the ground that the ship was detained and the crew imprisoned, when a careful examination of the ship's papers ought to have led to their immediate release. I do not think this is correct, and by putting the case in this way we should be virtually admitting that the seizure on the high seas was legal. Our principal ground of complaint was that the ship was, at the time of the capture, a British ship sailing on the high seas. No doubt the wrongful act of her seizure was very much aggravated by the detention of the ship and crew long after the time when any possible doubt as to the place of capture and as to the nationality of the ship and the regularity of her papers must have been removed.

**Claims must be insisted on.**

2. As regards compensation, it seems to me that the claims, other than that of Cordova, ought to be insisted on, and that as to them there is nothing in the note of the Spanish Minister of the 14th May last which justifies a refusal by the Spanish Government to entertain those claims.

**As to owner's claim for ship.**

**Spain cannot refuse on ground of breach of British law by a British ship.**

3. As to the claim of Cordova in respect to the ship, I do not think that it lies in the mouth of the Spanish Government to object to that claim, modified and limited as it has been put before them. Even supposing that the ship broke her engagement to proceed direct to New York, and even supposing that she was fitted out or used in contravention of the English Foreign Enlistment Act, those are not matters with which the Spanish Government have anything to do. The ship had not actually committed any act of hostility against the Spanish Government, and she was not within their jurisdiction, but, as has been already said, on the high seas. I do not therefore think that we should admit that it is open to the Spanish Government to urge as a reason why they should not pay compensation for wrongfully seizing and detaining a British ship on the high seas that the ship had, when within British jurisdiction, committed some violation of British municipal law.

**But British Government should not claim in such a case.**

**Inquiry should be made as to breach of Foreign Enlistment Act, &c.**

4. But it is altogether a different thing whether, if the ship has violated our municipal law and rendered herself liable to forfeiture, we should put ourselves forward to obtain compensation to her owner for her seizure. If it is the case that the ship was released, when detained in Jamaica, under an engagement to proceed direct to New York, and if she did not in good faith so proceed, and still more if it is the fact that she is really owned by foreigners, Cordova being only their agent, and that she was fitted out or used, or intended to be used, contrary to the Foreign Enlistment Act, then I think we should decline to press Cordova's claim as to the ship. I think the Government should direct some investigation into this matter, to be made in whatever place the information is most likely to be obtained, and should call upon Cordova to give them such assistance and produce such evidence as they require. I think in the meantime that this part of the claim against the Spanish Government ought not to be relinquished, but that it should be kept in abeyance, and the Spanish Government should be told that we are making the investigation, not because we think them entitled to inquire whether there has been a violation of our law, but because we think that we ourselves are bound to see that our law is vindicated.

(Signed) CAIRNS.

*August* 8, 1878.

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## No. 62.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August 9.)*

*Temple, August* 8, 1878.

My Lord,

**Spanish encroachments in Sulu Archipelago.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th ultimo, stating that the rapid encroachments of the Spaniards in the Sulu Archipelago, and the molestation and annoyance occasioned thereby to foreign trade, compelled the Governments of Great Britain and Germany in 1876 to take measures for the protection of their subjects and others trading in those waters.

That their Representatives were accordingly instructed to address a remonstrance to the Spanish Government, and negotiations ensued which resulted in the signing of a Protocol, dated the 11th March, 1877, a copy of which was annexed thereto.

**Freedom of trade for Great Britain and Germany secured by Protocol, except in parts in actual possession of Spain.**

That the object of that Protocol was to secure to British and German vessels complete freedom of trade and fishery, and entire immunity from any duties, or impositions, or interference whatever from the Spanish authorities in the Sulu Archipelago, except at the particular points then in the possession of Spain; and it was further agreed that if Spain took effective possession of any other points, and gave the two Governments special notice thereof, and of the establishment there of a sufficient official staff for the necessities of trade, such new points, after such official publication as was prescribed, would be treated on the same footing as those in the actual possession of Spain at the date of the Protocol.

That since the signature of that document the Spanish authorities had compelled the Sultan of Sulu to cede to the Spanish Crown two-thirds of the territory which remained to His Highness at the time the Protocol was signed.

**New Treaty between Sulu and Spain.**

That Sir Julian Pauncefote inclosed a Report[*] from Mr. Treacher, the Acting Governor of Labuan, who was sent on a special mission to Sulu to ascertain the precise state of affairs.

**Compulsory cession of further territory to Spain.**

That Mr. Treacher reported that the Sultan had, against his will, signed the Treaty to the above effect, but that at the date of his visit the signatures of the Spanish authorities had not been affixed.

That your Lordship feared that that act of Spain created a new state of things which, if not objected to, *in limine*, might serve as a pretext hereafter for overriding or seriously weakening the effect of the Protocol.

That Sir Julian Pauncefote was therefore to request that we would have the goodness to report whether, in our opinion, the Governments of Great Britain and Germany were entitled to protest against that Treaty, or whether any action was necessary or expedient to protect their interests under the Protocol.

We were also honoured with Sir Julian Pauncefote's letter of the 20th ultimo, forwarding to us, by direction of your Lordship, a further despatch[†] from the Acting British Consul-General in Borneo.

In obedience to your Lordship's commands we have the honour to report—

**Cannot protest against Treaty.**

That, in our opinion, Her Majesty's Government cannot properly protest against this Treaty between Spain and the Sultan of Sulu.

**May make a Treaty giving Great Britain the right to object, &c.**

We are not sufficiently acquainted with the state of the different peoples and Governments in the Sulu Archipelago to say whether any and what action may be necessary or expedient to protect the English and German interests under the Protocol; but we suggest, for your Lordship's consideration, that possibly Treaties might now be made by the German and English Governments giving them the right to object to the

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[*] No. 3, Political, April 20, 1878.

[†] Mr. Treacher, No. 4, Political, May 31, 1878.

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occupation by the Spaniards of any "points" or places not already occupied effectively under the Protocol.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 63.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received August* 10.)

*Temple, August* 9, 1878.

My Lord,

Gibraltar water boundary.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th July last, stating that with reference to our Report of the 14th of that month, pointing out the objections to the proposed Order in Council giving the Governor of Gibraltar power to determine what waters round the rock should be deemed to be within the limits of the port, and suggesting that a defined and fixed line in the bay should be adopted as the boundary between British and Spanish waters, he was directed by your Lordship to transmit to us a further letter from the Colonial Office* accepting the proposal of a "medium filum aquæ," but recommending that, pending the settlement of that question, an Order in Council should be issued extending the limits of the port all round the rock, at a distance not greater than the existing anchorage and quarantine ground.

Proposed provisional Order in Council extending.

Sir Julian Pauncefote was further pleased to state that your Lordship would be glad if we would take this further suggestion into our consideration, and inform your Lordship whether we saw any objection to such an arrangement.

In obedience to your Lordship's commands we have the honour to report—

Unnecessary. Police have necessary powers.

That we gather from Lord Cadogan's letter that the police of the port have the required powers within the limits of the anchorage and quarantine ground in the bay.

Might be misconstrued.

It seems to us, therefore, that nothing would be gained by Order in Council confirming or recognizing these powers; and we entirely concur in the observation of Sir J. Pauncefote, that such an Order might be construed into an admission that our legislative power extends no further.

No interference with Spanish Mediterranean waters.

Different considerations apply to the waters round Europa Point and at the back of the rock. But even as to these waters we doubt whether it is expedient to make any Order in Council.

Should, however, such an order be deemed necessary, great care must be taken that Spanish waters on the Mediterranean side be not interfered with.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 64.

*The Lord Chancellor to the Marquis of Salisbury.*—(*Received December* 31.)

My dear Salisbury, *Lindisfarne, Bournemouth, December* 30, 1878.

"Octavia." Small compensation must be asked for owner (Cordova). He is recognized as British at Jamaica.

I AM sorry that I have kept the "Octavia" papers (which I return in separate cover) so long. The facts which appear in the legal proceedings at Jamaica show that the Colonial Government there have gone so far in recognizing Cordova as entitled to British protection and intervention that (scoundrel though he may be, and probably is) I do not think he can now be thrown overboard, or called on to disprove mere suspicion. I think the best way would be to settle with the Spanish Government for as small a sum as can fairly be asked, on the lines suggested in Mr. West's last despatch. There seems to have been no deterioration of the ship, and the claim is mainly the minor one for demurrage, &c.

Yours sincerely,
(Signed) CAIRNS.

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* Colonial Office, July 5, 1878.

## Tunis.

### No. 65.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received May* 14.)

*Temple, May* 13, 1878.

My Lord,

Consular Court cases at Tunis. Mode of procedure.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th ultimo, stating that he was to transmit to us a despatch from Her Majesty's Consul-General at Tunis,* in which he applied for the opinion of the Law Advisers of the Crown as to the manner in which he should proceed as Judge of Her Majesty's Provincial Consular Court at Tunis in two suits pending therein, the particulars of which were given in a memorandum inclosed.

That the difficulties felt by the Consul-General related mainly to matters of procedure.

That as regards the question raised in the first suit, Sir Julian Pauncefote was to observe that under section 122 of the Levant Order in Council, suits were commenced by a petition which was to be served on the defendant, and that by section 135 a suit might be set down for hearing by order of the Court after the expiration of the time allowed to the defendants for answering the petition.

That by section 170 provision was made for the determination of the suit *ex parte*, where the defendant was absent at the hearing, and service of the petition was proved.

Camilleri case.

That the Consul-General stated that in that case the plaint (by which he probably referred to the petition) was served on Camilleri and his wife, and on the widow Busultil, and that though the infant children of the testator were also out of the jurisdiction, the Court had appointed curators of their interests. As regards the second suit no petition had been served, and the Consul-General stated that all the defendants were out of the jurisdiction of the Court, though the property which was the subject-matter of the suit was within it. The infant children, as before stated, were represented by curators. That the provisions of the Order in Council as to the service of documents were contained in section 53, and seemed to meet the case of defendants out of the jurisdiction.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion on the questions raised by Sir Richard Wood.

In obedience to your Lordship's commands we have the honour to report—

Order may be made notwithstanding absence of defendants.

That in respect of the first suit we are of opinion that, assuming all the preliminary steps in the cause to have been properly taken, the Court may proceed, under section 170 of the Order in Council, to hear the suit, and make the order under section 171, notwithstanding the absence of the defendants, and, if necessary, decree the sale of the property mortgaged; but the Court in making this Decree, and notwithstanding the appointment of curators to the three minors, must take care that the Order in no way prejudices their interests.

In respect to the second suit, the deed of cession is valid, but nothing will pass under that deed except the interest of the widow, and no Decree can be made against the estate generally, since the minors have an interest in that estate subject to their mother's life.

The fourth share mortgaged by Rosa, and, we presume, her husband, must be dealt with by the Court having regard to the interest of the mortgagees in the first suit, and to the interests of the minors in the other three-fourths.

Petition must be served, &c.

But as the petition in this second suit has not been served, service must be effected in one of the ways pointed out in section 53 of the Order in Council.

In answering the questions of the Consul-General, we assume that the subject-matters are within the jurisdiction of his Court, and that the principles upon which he is to act are the same with those of English law.

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* Sir R. Wood, No. 13, Consular, March 12, 1878.

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And we submit, for your Lordship's consideration, that it is not desirable that this case should form a precedent, so that any Consular or Colonial Judge should apply for directions how to decide in cases which may be brought before him.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Turkey.

## No. 66.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received January 23.)*

*Temple*, *January* 22, 1878.

My Lord,

G. Camillieri sentenced to imprisonment by Tunis Consular Court.

Appeal on ground of illegality of sentence.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us a despatch which had been received from the Acting Judge at Constantinople (No. 117, 28th December), requesting to be furnished with instructions respecting an application which had been made to Her Majesty's Supreme Consular Court for the release of Guiseppe Vicenzo Muscat Camillieri, who was condemned by the Consular Court at Tunis to one year's imprisonment with hard labour in the gaol of Malta, on the ground that the proceedings at Tunis under the Act 24 and 25 Vict., cap 96, sec. 80, were void if taken without the previous sanction of Her Majesty's Attorney-General.

That Sir Julian Pauncefote was also to transmit to us a despatch from Her Majesty's Consul-General at Tunis (No. 15, 17th July), inclosing a copy of the sentence pronounced against Camillieri on the 7th July last.

That the Order in Council of the 12th December, 1873, for the regulations of Consular jurisdiction in the Levant, provided, by section 6, that Her Majesty's criminal jurisdiction should be exercised in conformity with the English Statute Law "as far as circumstances permit," and Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether, under those words, it was competent to the Judge of the Consular Court at Tunis to dispense with the consent of Her Majesty's Attorney-General in applying the provisions of section 80 of the Act 24 and 25 Vict., cap. 96, to the case before him.

In obedience to your Lordship's commands we have the honour to report—

Consular Judge not right in dispensing with consent of Attorney-General.

That, in our opinion, under the words "as far as circumstances permit," it was not competent to the Judge of the Consular Court at Tunis to dispense with the consent of Her Majesty's Attorney-General in applying the provisions of section 80 of the Act 24 and 25 Vict., cap. 96, to the case before him.

But person convicted cannot object on those grounds.

We may add, however, that it will not be open to the person who has been convicted to raise by writ of error any objection to the proceedings, on the ground that the consent of the Attorney-General was not obtained (see "Knowlden and others *v.* the Queen," in Error 33, L. I. M. C. 219).

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 67.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(Received January 26.)*

*Temple*, *January* 25, 1878.

My Lord,

British and Italian Consular Courts, Constantinople. Conflict of jurisdiction.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* in relation to a conflict of jurisdiction which had arisen between the British and Italian Consular Courts at Constantinople. That the facts of the case were fully stated in the Report of Mr. Burrell, the Acting Judge of Her Majesty's Consular Court, and in his letter to Her Majesty's Ambassador at Constantinople, which form Inclosures 1 and 2 in Mr. Layard's despatch No. 81 of the 3rd December last.

Case of Perdecari and Cangellari.

That Mr. Burrell, in his Report, referred to most of the documents which it was necessary to peruse in considering the question, and Sir Julian Pauncefote was to draw our attention more particularly to the Judgment of the Italian Consular Court (Translation No. 17), in which the Judge, while admitting that the rule, "Actor sequitur forum rei," should prevail in the administration of justice among the various foreign nationalities in the Levant, attempted to justify his proceedings in the present case on the ground that Perdecari, the plaintiff in the British Consular Court, became the *actor* in the Italian Consular Court from the date of the application made by the British Court (Translation No. 10), in pursuance of which the seals of both Courts were affixed on the premises containing the property in dispute, and that Perdecari, though not an Italian subject, was thereby brought under the jurisdiction of the Italian Court in the proceedings instituted therein by Spiridione Cangellari, and to which he was made a party, judgment being eventually passed against him by default; and to request that we would take the papers into our consideration, and favour your Lordship with our opinion on the two questions raised by Mr. Burrell at the close of his Report, and also with any observations which we might desire to make on the case, especially with reference to the course which should be followed with a view to the settlement of the difficulty which had arisen.

In obedience to your Lordship's commands we have the honour to report—

That the proceedings before the Italian Consular Court were either in aid of, and incidental to, the principal cause before the British Consular Court, or those proceedings were distinct from the case before the British Court.

If the first of these alternatives be right, then the intervention of Spiridione did not alter the relation of the parties to the original or principal cause, and the Italian Consular Court had no jurisdiction, and could not proceed in a cause in which a British subject was the defendant.

The British subject was defendant.

If the latter alternative be right, then the heading of the Judgment of the Italian Court and the title of the causes, "Nella causa vertente infra Spiridione Cangellari possidente e commerciante suddito Italiano residente in questa citta *contra* Costantino Cangellari, protetto Britannico, e Giovanni Perdicari, suddito Russo," shows that the *actor* was Spiridione and the *rei* as defendants were respectively British and Russian subjects, in which case also the Italian Consular Court would have no jurisdiction.

Italian Court has no jurisdiction.

In answer, therefore, to the two questions raised by Mr. Burrell, we are of opinion that the Italian Consular Court was mistaken in considering Perdecari as plaintiff and Spiridione as defendant in the proceedings before that Court.

Her Majesty's Government, we suggest, may properly endeavour to come to a settlement of the question with the Italian Government, and it would be only as a last resort that the matter should be referred for arbitration.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Consul-General Fawcett, No. 93, September 25; to Acting Consul-General Wrench, No. 52, October 27; Mr. Layard, No. 81, Consular, December 3, 1877.

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## No. 68.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received January* 28.)

My Lord,

*Temple, January* 25, 1878.

Danube Commission. Surplus funds.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 15th October last, stating that he was directed by your Lordship to transmit to us, for our consideration, the accompanying further papers relative to the affairs of the Danube Commission.

In obedience to your Lordship's commands we have the honour to report—

Nothing to add.

That we have nothing to add to the Report* which we have already made to your Lordship upon this question.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 69.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received February* 5.)

My Lord,

*Temple, February* 5, 1878.

Blockades. Suspension during armistice.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 4th instant, stating that he had the honour to transmit to us, by desire of your Lordship, a copy of the questions which Sir Charles Dilke proposed to put to the Under-Secretary of State for Foreign Affairs in the House of Commons, and that he was to request that we would be good enough to inform your Lordship with reference to the first question, whether, in the event of an armistice being concluded between Russia and Turkey, which should not provide for the raising of the blockade of the Russian ports in the Black Sea, the blockade must be deemed to continue in full force and vigour, although the armistice might extend to both the naval and military forces of the belligerents.

That Lord Tenterden was to inclose a memorandum prepared by Mr. Hertslet of instances in which blockades have been suspended during an armistice, by express declaration.

In obedience to your Lordship's commands we have the honour to report—

Use influence to prevent capture of vessels.

That, in our opinion, Her Majesty's Government may properly use their influence to prevent British or other ships laden with cargoes for England, and sailing from Odessa and other Black Sea ports, in the event of an armistice, from being seized at the Bosphorus.

Armistice generally suspends blockade. If exception is intended, it should be notified.

An armistice by sea and by land will, as a general rule, suspend the operation of a blockade; and if the general rule is not accepted, the intended exception should, for the information of neutrals, be stated in the terms of the armistice.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 70.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received February* 18.)

My Lord,

*Temple, February* 18, 1878.

Blockade of Albanian coast abandoned.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th January ultimo, stating that he was directed by your Lordship to transmit to us the inclosed despatch from Her Majesty's Ambassador at Constantinople (Mr. Layard No. 12, January 4, 1878), forwarding a copy of a note addressed to him by Server Pasha, from which we would observe that the Turkish

Coast interdicted to neutral vessels.

Government have abandoned the intention of establishing a blockade *inter gentes* of a portion of the Albanian coast, but have adopted the course of notifying that access to the part of the coast lying between Spizza and the mouth of the Boyana, though still (so far as Her Majesty's Government have been able to ascertain) in the possession and under the control of the Porte, was interdicted to neutral vessels, and that all such vessels approaching the coast within the limits above specified would be warned off by the Turkish cruisers, but would not be otherwise interfered with unless they should carry contraband of war, in which case the note stated that the contraband goods would be seized, and the vessel would be released "avec les mêmes formalités que s'il avait été rencontré en pleine mer."

Contraband of war to be seized; vessel released.

That the words above cited were somewhat obscure, inasmuch as a neutral vessel captured on the high seas for carrying contraband of war was not released, but taken to a Prize Court for adjudication.

That it would seem, however, that the whole course of action indicated in the note was of a municipal character, and not founded on the law of nations in relation to blockade and contraband of war; that a question therefore appeared to arise of a similar kind to that which was considered in 1861 with reference to the closing of the ports of New Grenada (Volume of Law Officers' Reports for that year No. 172, p. 152) and to the proposed closing of the Confederate ports by Act of Congress during the civil war in America (*ibid.*, No. 142, p. 132); and to request that we would take Mr. Layard's despatch and its inclosure into consideration, and favour your Lordship with our opinion as to whether the intended action of the Porte, as signified in the note of Server Pasha, was open to any objection on the part of Her Majesty's Government, or whether its substance might properly be published in the "Gazette."

In obedience to your Lordship's commands we have the honour to report—

Course open to objection.

That the intended action of the Porte, as signified in Server Pasha's note to Mr. Layard, is open to objection.

Closing of ports unfriendly.

The Sultan may, no doubt, unless prevented by the provisions of Treaties, close the ports and coasts in the possession and occupation of the Porte to the ships and commerce of other nations. The so closing of the ports and coasts would, however, be a most unfriendly act, and should not, we think, be submitted to without remonstrance.

Seizure of goods at will of Turkish commander is contrary to practice of nations.

The measures to be taken against ships carrying contraband of war are possibly meant to be a modification in favour of neutrals of the extreme penalties for carrying contraband of war, but amount in effect to authorizing the confiscation of goods said to be contraband of war by and at the mere will of the commander of the Turkish cruiser, and are contrary to the practice of nations.

Mr. Layard may, we are of opinion, properly be instructed to inform the Porte to this effect.

The substance of the note should not be published in the "Gazette."

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 71.

*The Attorney-General to the Earl of Derby.*—(*Received February* 28.)

My Lord,

*Temple, February* 25, 1878.

British subjects in service of Porte.

Breaches of Foreign Enlistment Act.

Liability to trial in British Consular Courts.

I WAS honoured with your Lordship's commands signified in Lord Tenterden's letter of the 2nd October last, stating that he was directed by your Lordship to transmit to me, in conjunction with Her Majesty's Solicitor-General and Dr. Deane, Q.C., a letter which had been addressed to your Lordship by the Turkish Ambassador (Musurus Pasha, August 22, 1877), in which his Excellency took exception to a statement made by Mr. Bourke in the House of Commons, on the 14th August last, in reply to a question addressed to him by Sir George Campbell, as to whether British subjects entering the naval or military service of the Porte during the present war, contrary to the provisions of the 4th section of the Foreign Enlistment Act, were liable to be tried and punished for that offence before Her Britannic Majesty's Consular Courts in the Levant, and whether instructions had been sent to Her Majesty's Consuls in Turkey to enforce the penalties of the Act in the case of British subjects offending against the provision above referred to.

That Lord Tenterden was also to transmit to us a printed memorandum* on the

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* Law Officers, November 5, 1877 (Confidential No. 4216, p. 85).

* Page 11 of the Papers relative to the jurisdiction of Her Majesty's Consuls in the Levant, 1845.

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jurisdiction of Her Britannic Majesty's Courts in the Levant, and on the question raised by the Turkish Ambassador, together with a copy of the Capitulations and of the Parliamentary papers therein referred to, and he was to request that we would favour your Lordship with our opinion as to the reply which should be sent to his Excellency's communication.

In obedience to your Lordship's commands I have the honour to report—

I am unable to concur in the opinion entertained by the Solicitor-General and Dr. Deane. In my opinion Musurus Pasha may be informed—

Consular Courts have jurisdiction, but cannot compel such persons to appear.

That the Consular Courts of Her Majesty in the Ottoman Empire have jurisdiction to try a British subject for an offence against section 4 of the Foreign Enlistment Act. The Court would not, however, be able to compel any person in the service of His Majesty the Sultan to appear before it for the purposes of trial; and this being so, the jurisdiction in question ought not to be exercised in such case.

I have, &c.
(Signed) JOHN HOLKER.

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## No. 72.

*The Solicitor-General and Dr. Deane to the Earl of Derby.—(Received February* 28.)

*Temple, February* 27, 1878.

My Lord,

British subjects in service of the Porte.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 2nd October last, stating that he was directed by your Lordship to transmit to us a letter which had been addressed to your Lordship by the Turkish Ambassador, in which his Excellency took exception to a statement made by Mr. Bourke in the House of Commons on the 14th August last in reply to a question addressed to him by Sir George Campbell, as to whether British subjects entering the naval or military service of the Porte during the present war contrary to the provisions of the 4th section of the Foreign Enlistment Act were liable to be tried and punished for that offence before Her Britannic Majesty's Consular Courts in the Levant, and whether instructions had been sent to Her Majesty's Consuls in Turkey to enforce the penalties of the Act in the case of British subjects offending against the provision above referred to.

Breaches of Foreign Enlistment Act.

Liability to trial in British Consular Courts.

That Lord Tenterden was also to transmit to us a printed memorandum on the jurisdiction of Her Britannic Majesty's Courts in the Levant and on the question raised by the Turkish Ambassador, together with a copy of the Capitulations and of the Parliamentary papers therein referred to, and that he (Lord Tenterden) was to request that we would favour your Lordship with our opinion as to the reply which should be sent to his Excellency's communication.

In obedience to your Lordship's commands we have the honour to report—

That the question upon which our opinion is in this case asked is, whether Her Majesty's Consuls in Turkey can there try a British subject who has entered into the military or naval service of the Porte, contrary to the provisions of the 4th section of the Foreign Enlistment Act, 1870.

The memorandum* for the guidance of Her Majesty's Consular servants in the Levant with reference to the exercise of jurisdiction under the Order in Council of the 19th June, 1844, contains two passages which, we think, are very material in considering this question—

"The right to exercise jurisdiction depends on the extent to which that right has been conceded by the Sultans of Turkey to the British Crown, and therefore the right is strictly limited to the terms in which the concession is made.

"And Christian Powers in taking advantage of this concession are bound to provide as far as possible against any injurious effect resulting from it to the territorial Sovereign."

Such persons are under protection of territorial Sovereign.

So long as the British subject is in Turkey and in the military or naval service of the Porte, he is under protection *vi et jure* of the territorial Sovereign. As a matter of fact, he cannot be in person brought before the Consular Court, for the power to enforce the process of the Court would not exist.

As a matter of right the jurisdiction of the Consular Court is barred by a condition which we think is implied in and underlies the Capitulations, and is well expressed by

* Page 11 of the Papers relative to the jurisdiction of Her Majesty's Consuls in the Levant, 1845.

the latter passage cited from the memorandum, that no injurious effect shall result to the territorial Sovereign in the exercise of a foreign jurisdiction.

Consular Courts have no jurisdiction, and should not exercise it if they had.

We are therefore of opinion that Her Majesty's Consular Courts in the Levant have no jurisdiction to there try a British subject who has entered the military or naval service of the Porte. And if we thought such jurisdiction might, under the strict letter of law applicable, be deemed to exist, we are clearly of opinion, considering the difficulty of exercising such jurisdiction, that no attempt should be made to exercise it.

We think all questions of neutrality and extradition are immaterial, and we submit, for your Lordship's consideration, that his Excellency the Turkish Ambassador may, in reply to his letter, be informed that Her Majesty's Consuls in the Levant will be instructed not to exercise any jurisdiction against British subjects who may have offended under the 4th section of the Foreign Enlistment Act, 1870.

We have, &c.
(Signed) HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 73.

Nil.

[See No. 29, under the heading of "Egypt."]

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## No. 74.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received May* 14.)

*Temple, May* 13, 1878.

My Lord,

British and Italian Consular Courts, Constantinople. Conflict of jurisdiction.

WE were honoured with your Lordship's commands signified in a letter from Mr. Lister of the 4th May instant, stating that the Earl of Derby communicated to Her Majesty's Ambassador at Rome the substance of our Report of the 25th January, on the case of a conflict of jurisdiction which had arisen between the British and Italian Consular Courts at Constantinople in the suit of "Perdicari *v.* Cangellari," with a request that his Excellency would move the Italian Government to cause the proceedings of the Italian Court to be annulled.

"Perdicari *v.* Cangellari." Italian Government cannot annul Consular Court decision, but suggest appeal to Court at Ancona.

That the accompanying despatch from Sir Augustus Paget would show us that the Italian Government replied that they could not annul administratively a sentence of the judicial authority, and that the proper remedy was by appeal to the Superior Court at Ancona.

That we should observe that they did not attempt to defend the Judgment impugned, and that they offered to instruct the Public Prosecutor to watch the appeal in the interests of justice; and Mr. Lister was directed by your Lordship to request that we would take the reply of the Italian Government into our consideration, and favour your Lordship with our opinion as to whether it should be accepted as conclusive under the circumstances, and whether the course therein indicated should be followed by the parties interested.

That the previous papers in the case were also sent therewith for facility of reference, if required.*

In obedience to your Lordship's commands we have the honour to report—

Agree. Italian advocate must be engaged by B Ambassador.

That the reply of the Italian Government may, in our opinion, be accepted, and the course indicated in that reply may be followed by the parties interested.

But as the case is upon the facts stated, one in which the Italian Consular Court has greatly mistaken its way, we respectfully suggest, for your Lordship's consideration, that Sir A. Paget might properly be instructed to obtain the services of some leading Italian advocate, so that the interests of the British-protected subject may be fully supported before the Tribunal at Ancona.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Mr. Layard, No. 81; Law Officers, January 25; to Sir A. Paget, No. 31.

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## No. 75.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received May* 30.)

*Temple, May* 30, 1878.

My Lord,

Draft Slave Trade Convention.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th instant, stating that he was directed by your Lordship to transmit to us the accompanying draft of a proposed Anti-Slave Trade Convention between Her Majesty and the Emperor of the Ottomans, and he was to request that we would take the same into our consideration, and favour your Lordship, at our earliest convenience, with our opinion as to its sufficiency to carry out the object in view.

We were also honoured with Sir Julian Pauncefote's further letter of the 29th instant.

In obedience to your Lordship's commands we have the honour to report—

Provision should be made for:—
Possession of slaves without certificates;

That we think some provision should be made in Article I for the punishment of persons who may be found in possession of slaves, and of masters of ships carrying slaves who are leaving the Ottoman territories without the certificates.

And that such uncertificated slaves should be set free.

Free blacks without passports;

We also think that provision should be made for the case of free blacks leaving Ottoman territories without passports.

Slaves without passports.

In Article VI the case of slaves who are not furnished with passports is not provided for, and this omission should, we think, be supplied.

In other respects the Convention is, in our opinion, sufficient to carry out the object in view.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex.

### *Draft Convention.*

Draft Convention.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of the Ottomans, being mutually animated by a sincere desire to co-operate for the extinction of the Traffic in African slaves, have resolved to conclude a Convention for the purpose of attaining this object, and with this view have named as their Plenipotentiaries, that is to say:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Henry Austen Layard,

And His Majesty the Emperor of the Ottomans,

Who, having communicated to each other their respective full powers found in good and due form, have agreed upon and concluded the following Articles:—

### ARTICLE I.

His Imperial Majesty the Emperor of the Ottomans engages to prohibit absolutely from henceforward the importation of African slaves into any part of the Ottoman dominions or its dependencies, or their transit through Ottoman territories, whether by land or sea; and to punish severely, in the manner provided by Ottoman law, or in such manner as may hereafter be determined, any person or persons amenable to Ottoman jurisdiction, who may be found engaged, directly or indirectly, in the Traffic in African slaves. His Majesty further engages to prohibit absolutely any African slaves already existing in the Ottoman dominions from leaving Ottoman territories, except when accompanying their masters or mistresses as domestic servants, in which case each slave shall be furnished with a certificate stating his or her age, and otherwise describing them, and stating the particular capacity in which they accompany their master or mistress; and all free blacks leaving the Ottoman territories shall be furnished with passports certifying that they are free and at liberty to dispose of themselves without restriction or reserve.

### ARTICLE II.

Any person or persons not being Ottoman subjects, who may be found engaged in the African Slave Traffic, either directly or indirectly, within the Ottoman

dominions, or on board Ottoman vessels, shall, together with their accomplices, if any, be handed over for trial according to the laws of his country to the competent Tribunal, with the depositions (*procès-verbaux*) drawn up by the Ottoman superior authority of the place where the traffic has been proved; and all other documents or evidence ("éléments de conviction") handed over by the said authority, and destined to serve as proofs at the trial of the offenders, so far as those laws may admit of such proof.

All African slaves found in the possession of a dealer in slaves shall be liberated and dealt with in conformity with the provisions of Article      of the present Convention.

### ARTICLE III.

Taking into consideration the impossibility of sending back to their homes African slaves who may be captured from slave-dealers and liberated, without exposing them to the risk of perishing from fatigue or want, or from falling again into slavery, the Ottoman Government engages to adopt adequate measures to insure the freedom of such captured Africans, and to see that they are properly cared for.

### ARTICLE IV.

His Imperial Majesty engages to pursue as murderers all persons who may be found engaged in the mutilation of, or traffic in, children. If such persons are amenable to Ottoman jurisdiction, they shall be punished according to Ottoman laws; if not, they shall be handed over to the competent Tribunals, to be dealt with according as the law of their country directs, together with the depositions (*procès-verbaux*) and other documents or evidence ("éléments de conviction"), as laid down in Article II.

### ARTICLE V.

With the view to the more effectual suppression of the Traffic in African slaves in the Red Sea, His Majesty the Emperor of the Ottomans agrees that British cruisers may visit, search, and, if necessary, detain, in order to hand over to the nearest or most convenient Ottoman authority for trial, any Ottoman vessel which may be found engaged in the Traffic in African slaves, as well as any Ottoman vessel which may fairly be suspected of being intended for that Traffic, or which may have been engaged in it on the voyage during which she has been met with.

This right of visit and detention may be exercised in the Red Sea, in the Gulf of Aden, on the coast of Arabia, in the Persian Gulf, and on the East Coast of Africa, and in Ottoman maritime waters where no constituted authorities exist; and any vessel which may be detained by a British cruiser under the provisions of this Convention shall, together with her cargo and crew, be handed over for trial to the nearest or most convenient Ottoman authority.

Should there be good reason for believing that Ottoman or Egyptian vessels which may be found in Ottoman harbours or waters have African slaves on board for purposes of traffic or have been employed in the African Slave Traffic during the voyage on which they have been last engaged, such vessels, on being denounced by the Commander or other commissioned officer of a British cruiser, or by a British Consular Officer, shall be immediately searched by the Ottoman authorities, and any slaves who may be found on board shall be released and manumitted, and the vessel, her master, and crew handed over to the proper authorities, to be dealt with in accordance with Ottoman laws for the suppression of Slave Traffic.

All African slaves captured by a British cruiser on board an Ottoman vessel shall be at the disposal of the British Government, who undertake to adopt efficient measures for securing to them their freedom; and the vessel and her cargo shall be handed over for trial to the nearest or most convenient Ottoman authority.

Nevertheless, in all cases where it may not be possible for the commander of the cruiser making the capture to forward the captured slaves to a British depôt, or where from any other circumstance it may appear desirable and, in the interest of the captured slaves that they should be handed over to the Ottoman authorities, His Imperial Majesty engages, on application being made to his authorities by the Commander of the British cruiser, or by an officer deputed by him for that purpose, that they shall take over charge of the captured slaves, and secure to them their freedom, with all the other privileges stipulated for on behalf of African slaves captured by the Ottoman authorities.

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Her Majesty the Queen of Great Britain and Ireland agrees, on her part, that all vessels navigating under the British flag in the Red Sea, in the Gulf of Aden, on the coast of Arabia, in the Persian Gulf, and on the East Coast of Africa, or in the inland waters of the Ottoman Empire and her dependencies, which may be found engaged in the Traffic in African slaves, may be visited, seized, and detained by the Ottoman authorities; but it is agreed that the vessel and its cargo shall, together with its crew, be handed over to the nearest British authority for trial.

The captured slaves shall be released by the Ottoman authorities, and shall remain at their disposal.

If the competent Tribunal should decide that the seizure, detention, or prosecution was unjustifiable, the Government of the cruiser making the capture will be liable to pay to the Government of the prize a compensation appropriate to the circumstances of the case.

## ARTICLE VI.

With the view to put a stop to the Traffic in African slaves which is notoriously carried on to a very large extent during the pilgrim season, and with the view also to occasion as little inconvenience as possible to persons who may be engaged in making the pilgrimage to Mecca or to the other holy cities in Arabia, it is hereby agreed that such persons may be accompanied on their pilgrimage by their slaves, being *bonâ fide* domestic servants, who shall be furnished with passports stating their sex, age, and containing such other description as may enable them to be identified; and it is further agreed that on returning from their pilgrimage they shall be accompanied only by those domestic slaves who landed with them in the first instances, and should any other African slaves be found in their company, such slaves shall be forfeited and manumitted, and the parties in whose possession they shall have been found shall be proceeded against as the law directs for engaging in Slave Traffic.

## ARTICLE VII.

With the view to avoid any undue interference on the part of British cruisers engaged in the suppression of the Slave Trade with Ottoman vessels whose crews may be composed in whole or in part of African slaves, it is hereby agreed that every Ottoman vessel manned wholly or partly by African slaves shall be furnished with papers stating the voyage or employment on which she is engaged, and the number and description of the slaves on board, and any larger number of African slaves found on board than is authorized by the ship's papers shall render the vessel liable to detention and to be sent for adjudication before a competent Tribunal.

## ARTICLE VIII.

His Majesty the Emperor of the Ottomans engages to publish such laws as may be necessary for giving effect to the present Convention, and for adequately punishing the parties who may be convicted of violating its provisions; and the two High Contracting Parties mutually agree to concert such further measures as experience may prove to be necessary for the complete attainment of the objects of the present Convention.

## ARTICLE IX.

The present Convention shall be ratified, and the ratifications shall be exchanged at Constantinople as soon as possible.

It shall come into operation                                        after the exchange of the ratifications.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Constantinople this              day of              , one thousand eight hundred and seventy-eight.

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## Annex to No. 76.

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*Extract from Porte's intended Circular to the Foreign Embassies at Constantinople.*

S'IL y a lieu de procéder à l'arrestation d'un étranger pour imputation de crime ou de délit ou de pénétrer dans son domicile pour y procéder à des perquisitions ou à l'arrestation des personnes qui s'y seraient réfugiées, l'autorité Consulaire compétente devra prêter immédiatement son assistance à l'autorité militaire Ottomane qui lui en ferait la demande motivée. S'il n'est pas immédiatement satisfait à sa demande, l'autorité militaire pourra passer outre. Toutefois, pour pénétrer dans le domicile de l'étranger le délégué de la dite autorité devra se faire assister par trois habitants notables du voisinage, qui devront signer le procès-verbal de l'opération. Les personnes de nationalité étrangère sont justiciables des Conseils de Guerre régulièrement institués pour les crimes et délits contre la sûreté de l'État, contre l'ordre et la paix publique. Elles pourront être assistées de leurs Drogmans.

L'autorité militaire peut exiger des personnes de nationalité étrangère la remise de toute arme et munitions que ces personnes auraient en leur possession.

À l'effet de constater l'existence de ces objets et d'en assurer la remise, la dite autorité peut faire toutes réquisitions en procédant comme il est dit ci-dessus. Dans le cas où le territoire placé sous le régime de l'état de siège, ou une localité de ce territoire, sera exposé à une invasion immédiate de l'ennemi ou aura été le théâtre de troubles graves, l'autorité militaire pourra inviter les personnes de natonalité étrangère y demeurant de se transporter ailleurs dans un délai déterminé. Passé ce délai les étrangers qui seront restés n'auront à compter que sur la protection que l'autorité locale sera en mesure de leur accorder eu égard aux circonstances.

## No. 76.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received June* 24.)

*Temple, June* 22, 1878.

My Lord,

Foreigners and martial law. Porte's Circular.

WE were honoured with the commands of the Earl of Derby signified in Lord Tenterden's letter of the 11th December last, stating that he was directed by his Lordship to transmit to us therewith the accompanying despatch from Her Majesty's Ambassador at Constantinople (No. 1296, November 4), forwarding copy of a Report of the Legal Advisers of the Porte as to the proceedings to be adopted towards foreigners in places under martial law, together with a letter from Mr. Burrell, the Acting Judge of the Supreme Court at Constantinople, to whom the Report was referred by Mr. Layard.

That the former papers bearing on the question were annexed for convenience of reference,* and Lord Tenterden was to transmit to us a copy of the Protocol of the 28th July, 1868, referred to in the Report of the Legal Advisers of the Turkish Government (as being dated 1867), and also the text of the Règlement of $\frac{12}{24}$th October, 1867, for drinking shops, referred to in the Report of Mr. Burrell, the Assistant Judge of Her Majesty's Consular Court.†

That an extract from the draft of the Circular which the Porte proposed to issue, with reference to the position of foreigners in districts where martial law was proclaimed, was inclosed in Mr. Layard's despatch No. 1087 of the 17th September last, and the only instructions which had been sent to Mr. Layard on the subject, were contained in Lord Derby's despatch to his Excellency No. 544A of the 21st of the same month.

No provision for Treaty privileges.

That with reference to the last paragraph of that despatch, Lord Tenterden was to refer us to Article 21 of the Règlement, relating to drinking shops, which secured to foreigners accused of offences against its provisions the same rights and privileges as they enjoyed in other cases under existing Treaties,—a provision which did not appear in the proposed Circular of the Porte relating to martial law.

That Lord Tenterden was to request that we would take all those papers into consideration, and favour the Secretary of State for Foreign Affairs with our opinion on the proposed Circular, and as to the instructions which should be given to Mr. Layard in reference thereto.

In obedience to the commands of the Earl of Derby we have the honour to report—

Circular justified by state of siege, &c.

That, in our opinion, the existence of a state of siege and of martial law will justify the measures indicated in the proposed Circular; and Mr. Layard should be instructed, in reference to that Circular, to direct British Consular authorities to comply, without delay, to any demand which may be made upon them for their presence by a competent Turkish official.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 77.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received June* 29.)

*Temple, June* 29, 1878.

My Lord,

Illegal sentence passed by British Consul at Jeddah on a British Indian subject.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th instant, stating that he was directed by the Secretary of State to transmit to us the accompanying despatch, and its inclosure, from Her Majesty's Consul-General and Judge at Constantinople (Mr. Fawcett, No. 84), regarding a judgment pronounced on a British Indian subject by Her Majesty's Consul at Jeddah.

And its illegal reversal at Constantinople without appeal.

That it appeared to the Secretary of State that both Her Majesty's Consul at Jeddah and Her Majesty's Consul-General at Constantinople have exceeded their legal powers in this matter; the former by the sentence which he passed, and the latter by attempting to reverse that sentence by a mere letter, without a regular appeal

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* Mr. Layard (Telegraphic), No. 398, September 16; to Mr. Layard, No. 544A, September 21; Mr. Layard, No. 1087, September 17.

† Législation Ottomane, 3e partie, p. 93.

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having been preferred, and judgment thereon having been pronounced in open Court as provided by section 307 of the Order in Council.

That it would seem, however, to be now too late to proceed regularly under that section, and having regard to the illegal infliction of corporal punishment on the prisoner, perhaps a preferable course might be to set him at once at liberty.

That Sir Julian Pauncefote was, however, to request that we would take that case into our consideration, and favour the Secretary of State at our earliest convenience with our opinion as to the course which should be pursued.

In obedience to your Lordship's commands we have the honour to report—

**Sentence was illegal. Remainder must be remitted.**

That inasmuch as the sentence was illegal; but the punishment has already been in a measure suffered, the only course open, we think, in the circumstances, is to remit the remainder of the punishment.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 78.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 13.)

*Temple, July* 12, 1878.

My Lord,

**Military bridge at Ibraila.**

**Damage done by Messrs. Carnegie's tug.**

**Claim of Russian authorities.**

**As to free navigation of Danube.**

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 9th instant, stating that he was directed by the Secretary of State to transmit to us a despatch from Her Majesty's Consul at Galatz, inclosing copies of correspondence relative to a claim preferred by the Russian authorities against Messrs. Carnegie for damage stated to have been caused by a tug and lighters to the Russian military bridge at Ibraila.*

That we would perceive that the question raised in that case was that the military bridge was alleged to be so constructed and situated as to form an impediment to the free navigation of the Danube, contrary to the Treaty rights of foreign States, and that it was scarcely possible to avoid collision in passing through.

That Lord Tenterden was to request us to favour the Secretary of State with our opinion on the case, and especially as to the instructions which should be sent to Her Majesty's Consul.

That since the receipt of Mr. Sanderson's above-named despatch, the telegram, of which a copy was inclosed therewith,† had been forwarded by him, which Lord Tenterden was to request might be taken into consideration with the rest of the correspondence on that subject.

We were also honoured with your Lordship's further commands signified in Lord Tenterden's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us a copy of a telegram received from Her Majesty's Consul at Galatz relative to the liability of vessels with respect to damages caused to the Danube bridge.

In obedience to your Lordship's commands we have the honour to report—

**No question of Treaty rights, but of position of bridge and proper navigation of tug, &c.**

That the questions in dispute between the Russian authorities and Messrs. Carnegie do not, in our opinion, depend upon any principle or Treaty rights, but are of fact—

1. Whether the military bridge is so placed and constructed that it interferes with the free navigation of the river;
2. Whether the tug and barges in tow were properly navigated.

Upon these facts the Russian authorities and Messrs. Carnegie differ, and we have no evidence beyond the assertions of each; and we are, therefore, unable to form any opinion upon the case.

It appears, however, from Mr. Consul Sanderson's telegram of the 5th July, that the Russian authorities will change the positions, opening the bridge. To some extent this would show that there was something wrong in the previous opening, and might relieve Messrs. Carnegie of all blame.

**Case should be placed before Danube Commission.**

We submit that Mr. Consul Sanderson may properly be instructed to follow the course suggested by himself, and place the whole correspondence before the European Commission of the Danube, informing the Russian authorities that he has done so, that the facts may be ascertained and the merits determined by that Commission.

In reference to Mr. Consul Sanderson's further telegram of the 10th July, 1878, we do not know what further regulations the Russian authorities may have issued; upon what grounds or in what circumstances these new regulations assume that vessels will be liable for damage done to the bridge.

**Subsequent regulations cannot affect previous cases.**

These regulations, however, cannot affect cases occurring before the new regulations, and in any event the new regulations should also, in our opinion, be submitted to the European Commission.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 79.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 20.)

*Temple, July* 19, 1878.

My Lord,

**Turkish dhow "Aloni," with slaves, captured by Her Majesty's ship "Wild Swan."**

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 3rd July instant, stating that he was directed by the Secretary of State to transmit to us a despatch from Her Majesty's Consul at Jeddah (No. 4 of the 15th May), reporting the capture by Her Majesty's ship "Wild Swan" of a Turkish dhow named "Aloni," near Souakim, with seventy-seven slaves on board. That those slaves having been handed over to the Egyptian authorities at Souakim, the dhow, with her crew, was taken to Jeddah and there handed over to Her Majesty's Consul, by whom they were given up to the Turkish authorities.

**No Slave Trade Treaty with Turkey.**

That we were doubtless aware that no Treaty existed between this country and Turkey for the suppression of the Slave Trade, and Mr. Lister was to request that we would take that case into our consideration and inform your Lordship whether, in our opinion, the Commander of the "Wild Swan" was justified in seizing that dhow under Turkish colours.

In obedience to your Lordship's commands we have the honour to report—

**Capture not justified.**

That, in our opinion, the Commander of the "Wild Swan" was not justified in seizing the dhow under Turkish colours. We assume that the dhow had the right to sail under these colours.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 80.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received August* 7.)

*Temple, August* 6, 1878.

My Lord,

**Military bridge at Ibraila. Damage done by Messrs. Carnegie's tug.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th ultimo, stating that with reference to his letter of the 10th ultimo relative to the proceedings of the Russian authorities in respect to the military bridge at Ibraila, he was directed to transmit to us, in connection with the previous papers forwarded for our consideration, the accompanying further despatch and telegram from Consul Sanderson,* which had been received subsequently to Lord Tenterden's previous communication on the above subject.

**Russian Regulations assuming responsibility of shipping for damages.**

We are also honoured with a further letter from Sir Julian Pauncefote, dated the 25th ultimo, stating that, with reference to our Report of the 12th ultimo, and to the letters from the Foreign Office of the 9th and 10th ultimo, respecting a claim preferred by the Russian authorities against Messrs. Carnegie for damage stated to have been caused by a tug and lighters to the Russian military bridge at Ibraila, he was directed by your Lordship to transmit to us therewith a further despatch which had been received from Her Majesty's Consul at Galatz,† forwarding copy of Regulations which had been drawn up by the Russian authorities, by which the responsibility of shipping for damage that might occur to the bridge was taken for granted, and the method of assessing the damage was determined, and that Sir Julian Pauncefote was to request

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* Consul Sanderson, No. 10, Commercial (6 Inclosures).

† Decypher, 5th July.

* Consul Sanderson, No. 11, Commercial; ditto, Telegraphic, July 9, 1878.

† Consul Sanderson, No. 12, Commercial, 1878.

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that we would take that despatch into our consideration, and favour your Lordship with our opinion as to the instructions which should now be addressed to Mr. Consul Sanderson on the subject.

That the former papers were therewith annexed for convenience of reference.*

In obedience to your Lordship's commands we have the honour to report—

Should not be enforced.

That Mr. Consul Sanderson may properly be instructed to state officially, and through the right officials, to the Administrator-General of the points of passage on the Danube that the Regulations, assuming the responsibility of the shipping, for any damage done to the bridge and establishing a Tribunal and manner of assessing the extent of the damage should not be enforced at present.

Mr. Consul Sanderson should also be instructed to obtain and send to your Lordship the opinions of his colleagues, whose nation's shipping may be affected by these Regulations.

Arbitrary assessment of damages. Call attention of Russian Government.

We suggest, for your Lordship's consideration, that the attention of the Russian Ambassador in London may fitly be called to the Regulations, with the view of their being modified as to the assumed responsibility and the arbitrary mode of finding the value of the damage.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 81.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August* 9.)

*Temple, August* 8, 1878.

My Lord,

Case of the "Harriet Agnes." Whether unseaworthy because loaded a trifle over the disc mark.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th June last, stating that he was directed to transmit to us papers on the subjects of two Judgments delivered in the case of the "Harriet Agnes" by the Judge of Her Majesty's Supreme Consular Court at Constantinople.

Master fined by Consul-General Fawcett.

That we should perceive that in one of them Mr. Fawcett had laid down that a vessel "which passed by ever so little the disc mark is unseaworthy:" (see inclosures to Board of Trade letters), and that in the other he fined the master of the vessel 10*l.* for taking her out to sea from Nicolaieff, laden a trifle deeper than the disc mark, and that he dealt with the case summarily as an offence against section 239 of "the Merchant Shipping Act, 1854."

That it appeared to your Lordship if the two Judgments given by Mr. Fawcett on the 9th and 22nd of April were correctly reported in the inclosures to the letters from the Board of Trade and the General Shipowners' Society, they were erroneous in point of law on the following grounds:—

1. A vessel is not unseaworthy "by reason of her being laden 'ever so little' above the disc line, as stated by Mr. Fawcett in his Judgment of the 22nd April (see inclosures to Board of Trade letters).

2. "The taking a vessel to sea laden above the disc line is not a wilful breach or neglect of duty tending to her immediate loss, &c., or danger to life, within the meaning of section 239 of 'the Merchant Shipping Act, 1854,' and that section therefore does not apply to the offence charged which is only cognizable under section 4 of 'the Merchant Shipping Act, 1876.'

Jurisdiction of Constantinople Consular Court, vessel having sailed from Nicolaieff.

3. "If the act of the Captain of the 'Harriet Agnes' constituted an offence against section 239 of 'the Merchant Shipping Act, 1854,' that offence was committed at Nicolaieff where the ship put to sea, and consequently it was not within the jurisdiction of Her Majesty's Consular Court at Constantinople. (See Order in Council 12th December, 1873.)"

That we should also observe that Mr. Fawcett directed a preliminary inquiry before the Assistant-Judge with a view to a prosecution of the agents of the vessel under section 4 of the Merchant Shipping Act of 1876, but as the vessel was sent to sea from Nicolaieff, it would appear that his Court had likewise no jurisdiction to try the case under that Act.

That Sir Julian Pauncefote was accordingly to request that we would take the inclosed papers into our consideration, and favour your Lordship with our opinion on the points above stated, and also with any remarks we might have to offer on the complaint made of Mr. Fawcett's language on the bench.

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* Consul Sanderson, No. 10, Commercial; ditto, Telegraphic, July 5, 1878.

That, if we should be of opinion that the master of the "Harriet Agnes" was not legally liable to the fine imposed upon him, Sir Julian Pauncefote was further to request that we would be good enough to advise your Lordship as to the action which should be taken in the matter.

In obedience to your Lordship's commands we have the honour to report—

Not necessarily unseaworthy, under Merchant Shipping Acts.

That, in our opinion, a vessel which passes by ever so little the disc mark is not necessarily unseaworthy within the provisions of 39 and 40 Vict., cap. 80. And the construction put by Mr. Fawcett on the 4th section of that Act is, in our opinion, erroneous.

The construction put by Mr. Fawcett on 17 and 18 Vict., cap. 104, sect. 239, is, in our opinion, wrong. That section applies to the discipline of masters, seamen, and apprentices; and not to taking to sea a ship laden below the load-line.

Fine to be returned.

The amount of the fine imposed upon and, we presume, paid, by the master, should be returned to him.

Within Constantinople jurisdiction, notwithstanding original offence at Nicolaieff.

At the time of the inquiries it would seem that the ship was within the jurisdiction of the Supreme Consular Court, and under the control of agents who were about to send her to sea, and we are of opinion that notwithstanding she may have sailed from Nicolaieff, the act of attempting to send her to sea from Constantinople in an unseaworthy condition was an offence cognizable by the Supreme Court.

We consider, therefore, that if the ship was unseaworthy when sent to sea, and remained unseaworthy when brought within the limits of the jurisdiction of the Supreme Consular Court, the fact that the original offence was committed at Nicolaieff would not have prevented the exercise of the jurisdiction of the Supreme Consular Court.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 82.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August* 14.)

*Temple, August* 14, 1878.

My Lord,

Case of the "Wave," arrested by warrant of Consul-General Fawcett.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd August instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence* regarding the action taken by Her Majesty's Consul-General and Judge at Constantinople in arresting and fining the British steam-ship "Wave," on the ground of an alleged offence against the Merchant Shipping Act of 1876; and to request that we would take these papers into our consideration, and favour your Lordship at our earliest convenience with our opinion as to whether Mr. Fawcett had power to issue a warrant to arrest and detain a British ship for an offence against the above-mentioned Act, or otherwise than in exercise of the Vice-Admiralty jurisdiction vested in the Supreme Consular Court by the Order in Council of 12th December, 1873.

Sir Julian Pauncefote was also to request that we would favour your Lordship with any observations which we might desire to offer on the case generally.

In obedience to your Lordship's commands we have taken these papers into our consideration and have the honour to report—

No power to arrest except in exercise of Vice-Admiralty jurisdiction.

That Mr. Fawcett had not the power, in our opinion, to issue a warrant to arrest and detain a British ship for any offence against "the Merchant Shipping Act, 1876," or otherwise than in exercise of the Vice-Admiralty jurisdiction vested in the Supreme Consular Court by the Order in Council of 12th December, 1873.

As to breaches of law referring to grain cargoes.

We may add that, in our judgment, bearing in mind the information given by Mr. Fawcett as to the frequent breaches of the law committed by grain-carrying vessels from the ports of the Black Sea, it would be advisable that the Board of Trade should be informed of the statements made by Mr. Fawcett with a view to some steps

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* Chamber of Shipping of United Kingdom, June 26; Consul-General Fawcett, No. 100, July 17, 1878.

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being taken if considered right by that Department to prevent the recurrence of such offences in the future.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 83.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received September* 10.)

My Lord, *Temple, September* 9, 1878.

Egyptian Mixed Tribunals.

Suit between two natives, one being a United States' protected subject.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 22nd ultimo, and transmitting to us a despatch from Her Majesty's Agent and Consul-General at Alexandria relative to a Judgment recently pronounced by the Court of Appeal of the Mixed Tribunals in Egypt, in a suit between two natives, one of whom (the plaintiff) was under United States' protection. The Court below had given judgment for the plaintiff, but the defendant raised on appeal the question of the competency of the Mixed Tribunals to entertain the suit, on the ground that though the plaintiff was under American protection both parties were nevertheless local subjects. That it would be seen that in the Court of Appeal the respondent (the protected subject) obtained judgment by default, but execution was stayed until it should be decided by the Governments of Egypt and of the United States whether the protected subject was to be considered an "étranger" within the meaning of Article 9 of the Règlement d'Organisation Judiciaire. That Mr. Cookson, the British Consul and Judge at Alexandria, took exception to the judgment, on the grounds stated in a memorandum which was forwarded by Mr. Vivian.

That Mr. Lister was to observe that in 1859 a question arose of extending British protection in Egypt to a Mr. Giro, a native of Lemnos. That it was decided that "bearing in mind the peculiar relations between Egypt and the Porte, he might properly receive British protection in Egypt unless the Egyptian authorities objected."

That the Judgment of the Court of Appeal apparently did not decide that local subjects protected by foreign Governments could not sue or be sued by other local subjects not enjoying such protection, but only that proof must be adduced by them of the assent of the Local Government to such protection and to the rights which flowed therefrom.

That Mr. Lister was to request that we would take the papers into our consideration, and would favour your Lordship with our opinion as to whether there was anything in the Judgment of the Court of Appeal which militated against the rights of foreign Powers in relation to protected native subjects.

In obedience to your Lordship's commands we have the honour to report—

Judgment does not militate against rights of foreign Powers relating to protection.

That, in our opinion, there is nothing in the Judgment of the Court of Appeal which militates against the rights of foreign Powers in relation to protected native subjects.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 84.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received October* 30.)

My Lord, *Temple, October* 29, 1878.

European Commission of the Danube.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th instant, stating that he had the honour to transmit to us, by direction of your Lordship, a despatch from Her Majesty's Commissioner for the navigation of the Danube,* requesting to be furnished with instructions in regard to the bearing of the Treaty of Berlin of the 13th of July last, on the Commission of which he was a member, and particularly as to the modifications which would be required in the Public Act for the navigation of the Danube of the 2nd November, 1865.

As to alterations in Public Act, &c., on Turkey being replaced by Roumania.

That a memorandum on the subject was inclosed therewith, together with copies of all papers therein referred to, and of other papers relating to the navigation of the Danube, but bearing less directly upon the point in question.

That the following appeared to be the principal points for consideration:—

Roumania was not a party to the Public Act, nor to the Treaty of Berlin.

Under that Treaty (Articles XLVI and LI) the Isle of Serpents, the Delta of the Danube, and the right bank of the river up to a certain point, and all the rights and obligations of the Porte, "in regard to undertakings of public works and others of a like nature," were transferred from the Porte to Roumania, and by Article LIII the European Commission on which Roumania was to be represented was henceforth to exercise its duties as far as Galatz in complete independence of the territorial authorities. As the Public Act then stood (Article VIII) the exercise of the navigation of the Lower Danube was placed under the authority of an Inspector-General and of the captain of the port of Sulina, both of whom were to be appointed by the Porte, and the sentences emanating from their authority were to be pronounced in the name of His Majesty the Sultan, and Her Majesty's Order in Council, empowering Her Majesty's Consuls to deal with offences by British subjects against the regulations made in pursuance of the Public Act, was confined in its terms to the dominions of the Ottoman Porte.

That Sir J. Pauncefote was to request our opinion as to whether any act of accession or other formality was necessary on the part of Roumania for the purpose of carrying out the changes effected by the Treaty of Berlin in the condition of affairs relating to the European Commission and the navigation of the Danube, and also whether any alterations or additions in the Public Act and in Her Majesty's Order in Council of the 9th April, 1866, or any other measures were required for the same purpose.

In obedience to your Lordship's commands we have the honour to report—

Roumania should accede to Danube Articles of Treaty of Berlin.

That, in our opinion, Roumania should accede to those Articles of the Treaty of Berlin which effect any changes in the matters relating to the European Commission and the navigation of the Danube.

Act and Order in Council should be altered to meet altered circumstances.

And since Article LI of the Treaty substitutes Roumania for the Porte, as regards the rights and obligations of the latter throughout the territory, ceded to the former with regard to public works and other enterprises of a like nature, the Public Act should be altered so that the Porte may no longer have these rights and obligations, and Roumania may have them transferred to her.

Furthermore, such of the provisions of this Act as are inconsistent with Article LIII of the Treaty of Berlin, which provides that the European Commission shall exercise its duties in complete independence of the territorial authorities, should be modified.

The Order in Council of the 9th April, 1866, should also, in our opinion, be so altered that, in the reciting part, the requisite Articles of the Treaty of Berlin relating to Roumania should be introduced, and in the enacting part the words "*Principality of Roumania*" should be, where necessary, substituted for the words "*Dominions of the Sublime Ottoman Porte.*"

With reference to other measures, the inclosure in No. 1 by Sir J. Stokes suggests modifications in the Public Act, in which we fully concur.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 85.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received October* 31.)

My Lord, *Temple, October* 30, 1878.

Forced Loans. Liability of British subjects, holders of real property, to.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 19th instant, stating that a question had been raised by Her Majesty's Ambassador at Constantinople as to the liability of British subjects in Turkey, and being holders of real property there to the payment of a forced loan levied under a recent law upon real property in the Ottoman dominions.

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* Colonel Siborne, No. 30, September 4, 1880.

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That Mr. Lister was to transmit to us the documents marked in the inclosed list,[*] together with a memorandum by Sir E. Hertslet, the Librarian of the Foreign Office, and to request that we would take the same into our consideration, and favour your Lordship with our opinion as to the instruction which should be sent to Sir H. Layard upon that subject.

In obedience to your Lordship's commands we have the honour to report—

They are liable:

That, in our opinion, owners of real property within the Ottoman Empire, being British subjects, are subject to all charges and contributions, including forced loans, which may be imposed on real property in Turkey. (See Imperial Rescript of the 18th June, 1867, and Protocol of the 28th June, 1868—Hertslet's Treaties, &c., Great Britain and Turkey, pp. 73–75 and p. 164.)

There is nothing in the Treaties and Capitulations which would enable British subjects to claim exemption from charges on real property in Turkey owned by them.

unless exemption is allowed to other Powers.

But if the subjects of any other foreign Power are allowed an exemption from such charges Sir H. Layard may, we think, properly be instructed to claim a similar exemption on behalf of Her Majesty's subjects under the 1st Article of the Convention of 1861 (Hertslet, p. 42).

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 86.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received November* 6.)

*Temple, November* 5, 1878.

My Lord,

European Commission of the Danube.

Alterations in Public Act.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th October ultimo, stating that, with reference to his letter of the 4th of that month requesting our opinion as to the measures which might be necessary to give effect to those provisions of the Treaty of Berlin which bear upon the Public Act for the Navigation of the Danube, he had the honour to transmit to us, by your Lordship's direction, the inclosed despatch from Sir John Stokes, formerly Her Majesty's Commissioner for the navigation of the Danube,[†] giving a very clear account of the manner in which the future position of the European Commission was affected by the Treaty, and to request that we would take that paper into our consideration with those which had already been forwarded in his letter above-mentioned.

In obedience to your Lordship's commands we have the honour to report—

Agree in Sir J. Stokes' suggestions.

That, in our opinion, the alterations in the Public Act of the European Commission of the Danube suggested by Sir J. Stokes are proper and consistent with the stipulations of the Treaty of Berlin.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 87.

*Mr. Lister to the Law Officers of the Crown and Dr. Deane.*[‡]

*Foreign Office, November* 8, 1878.

Gentlemen,

Danube and Black Sea Railway Company. As to submission of claim to arbitration.

I AM directed by the Marquis of Salisbury to transmit to you herewith a copy of a telegram from Sir H. Layard to the effect that the Porte, who, so far back as the

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[*] Sir A. H. Layard, No. 1150, September 18, 1878; Memorandum by Sir E. Hertslet, October 5, 1878 (Confidential No. 4103); Capitulations, 1675; Treaty, Great Britain and Turkey, January 5, 1878; Hatti Houmayoun, February 18, 1856; Treaty, Great Britain and Turkey, April 29, 1861; Turkish Law, June 18, 1867; Protocol: Great Britain and Turkey, July 28, 1868; Treaty, Greece and Turkey, May 27, 1855; Treaty, Brazil and Turkey, February 5, 1858.

[†] Sir J. Stokes, No. 60.

[‡] The Law Officers' Report upon this subject could not be found when this collection of Reports was made, and it was therefore necessary to obtain the original draft of the Report. The Law Officers, however, do not retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the Foreign Office letter to them is recapitulated. It has therefore been deemed advisable to print the Foreign Office letter in this instance, as the bare Report, without the usual preamble, would not be wholly intelligible.

year 1875, agreed to refer its differences with the Kustendji Railway Company to arbitration, now declines to proceed with it on the ground that by the LIst Article of the Treaty of Berlin all its rights and obligations with regard to public works and other enterprises of a like nature in the ceded territory are transferred to Roumania.

A copy of the Treaty of Berlin, together with the previous papers relative to the claims of the Kustendji Railway Company, are also inclosed;[*] and I am to request that you will take them into your consideration, and favour Lord Salisbury, at your earliest convenience, with your opinion as to the instructions which should be addressed to Sir H. Layard in regard to the matter.

I am, &c.
(Signed) T. V. LISTER.

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### *Report.*

Territory being now ceded to Roumania, Porte is relieved from submission to arbitration.

That although the differences, and the reference of those differences between the Porte and the Kustendji Railway Company to arbitration arose and was agreed to before the war between Turkey and Russia, we are of opinion that, no award having been made, the Porte is, in our opinion, relieved from submitting to arbitration now, when the territory connected with the Kustendji Railway has ceased to be Turkish, and Sir H. Layard may properly be instructed to the effect.

J. H.
H. S. G.
J. P. D.

*November* 19, 1878.

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# Venezuela.

## No. 88.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received June* 26.)

*Temple, June* 25, 1878.

My Lord,

Liability of Government for acts of its agents. "Jane Francis" case.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd May ultimo, stating that on the receipt of our Report of the 5th November last[†] the Earl of Derby addressed to Her Majesty's Minister at Carácas an instruction, draft of which was inclosed,[‡] relative to the question of the liability of a Government for losses caused to foreigners by the officers or agents of such Government in the discharge of their public duties.

Sir Julian Pauncefote was now to transmit to us a despatch from Mr. Middleton in reply,[§] inclosing copies of further correspondence on the subject between himself and the Venezuelan Minister for Foreign Affairs, and to request that we would be good enough to inform your Lordship whether we were of opinion that the precedents cited by General Saluzzo supported the contention of his Excellency, that the Venezuelan Government was relieved from liability to make compensation in the case which gave rise to the discussion.

That the previous papers were inclosed for convenience of reference, and Sir Julian Pauncefote was to state that the opinion of Mr. Cushing in the case of the "Serene," which turned upon the liability of the United States' Government to compensate the owner of that vessel, an American subject, for her sale under an illegal order of the United States' Consul at Acapulco, was contained in vol. vi, p. 617, of "Opinions of Attorneys-General of the United States," and was headed by a summary

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[*] See separate volume of manuscript correspondence, "Kustendji Harbour Dues," &c.

[†] Confidential Paper No. 4216, p. 100.

[‡] To Mr. Middleton, No. 53, November 12, 1877.

[§] Mr. Middleton, No. 25, April 4, 1878.

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to the effect that the United States were not responsible for any act of malfeasance of their Consuls in office, a proposition which was not warranted by Mr. Cushing's opinion.

In obedience to your Lordship's commands we have the honour to report—

Refuting Venezuelan arguments.

That, in our opinion, the precedents cited by General Saluzzo do not support the contention of his Excellency, that the Venezuelan Government was relieved from liability to make compensation in the case which has given rise to the discussion.

The precedent of the pilot is inapplicable, since as pointed out in the opinion cited neither the pilot nor the marshal came within the class of officials representing the interests of the Government.

And the case of the Consul differs from that which gave rise to the discussion, in that the Consul there ordered the sale of a ship, an act entirely beyond his authority and not within the scope of his agency.

That Government is liable for its Consul's wrongful acts.

But in the case under discussion the Consul's duty is, as appears from the papers, to grant clearances. In so doing the Consul is representing the interests of his Government; he comes within the class of officials for whose acts Mr. Cushing says Governments do judge themselves responsible because their actions are executed for the advantage of the Government.

The Venezuelan Government would not allow a foreign ship to enter a Venezuelan port without a Consular clearance.

The foreign master pays for this clearance so obtained from the agent of the Venezuelan Government, as an indispensible condition of entering the Venezuelan port.

In granting the clearance the Consul is acting within the scope of his authority, and discharging one of the duties imposed upon him by his own Government.

If the Consul from ignorance or other cause grants an imperfect or misleading clearance, in consequence of which the foreign owner suffers loss when he reaches a Venezuelan port, that Government may properly be called upon to indemnify the foreigner.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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## Wurtemberg.

### No. 89.

*The Law Officers of the Crown and Dr. Deane to the Earl of Derby.*—(*Received January* 12.)

My Lord, *Temple, January* 11, 1878.

Guardianship of infants. Law as to.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th December ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Würtemberg,[*] inquiring as to the law on a point affecting the guardianship of infants; and he was to request that we would inform your Lordship whether we approved the answer which it was proposed to return, as shown in the accompanying draft.

In obedience to your Lordship's commands we have the honour to report—

Approve answer.

That, in our opinion, the answer as drafted may properly be sent to Her Majesty's Chargé d'Affaires at Würtemberg.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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[*] Mr. Petre, No. 28, 1877.

### Annex.

*Draft of Despatch to Mr. Petre.*

Sir, *Foreign Office*, , 1877.

Mr. Ochs' infant children. Mrs. Ochs not made their guardian by will. Is not guardian of their property.

IN reply to your despatch No. 28 of the 10th, I have to state to you that, as Mr. Ochs did not by his will appoint his widow to be guardian of his infant children, she cannot, according to English law, be considered their guardian in respect of their property, nor has she any power to appoint a guardian.

The certified copy of Mr. Ochs' will, inclosed in your despatch, is returned herewith.

I have, &c.

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*Printed for the use of the Foreign Office. November* 1880.

CONFIDENTIAL.

(4328.)

# REPORTS

FROM

# LAW OFFICERS OF THE CROWN.

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| 10 | Law Officers .. | 19, | Bolivian privateers. Cannot object to, as Bolivia has not acceded to Declaration of Paris; but British property must be protected from them .. .. .. | 7 |

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| 17 | Law Officers | 29, | Chilean ships. Injury to British subjects. Her Majesty's Government may remonstrate with Chile | 11 |

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| 19 | Law Officers | Sept. 29, | Prosecution of the "Taiwan." Interpretation of Article XXXVII of Treaty of Tientsin. Meaning of word "cargo." No new rule requisite. Ship-master must exercise vigilance | 13 |
| 20 | Law Officers | Nov. 17, | British protection to Anglo-Chinese in China. Sir T. Wade's Circular. Cannot insist upon protecting them. They have no special claim. Circular should be withdrawn. No Convention necessary | 14 |

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| 21 | Law Officers | Mar. 21, 1879 | Ships owned by natives of Cyprus not to be registered as British ships. Must carry Turkish flag. Cannot pass Merchant Shipping Ordinance granting distinctive flag, &c., to operate out of Cyprus. Offences committed on board Cypriot ships in waters of Cyprus are justiciable in Courts of Cyprus, but not offences on high seas. British protection cannot be extended to Cyprus ships | 15 |
| 22 | Law Officers | Apr. 23, | Supreme Court, &c., for Cyprus. Judicial Reform. Objection to Ordinance. In conflict with the capitulations. Her Majesty takes over existing obligations | 16 |

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| 23 | Law Officers | June 11, 1879 | Pioneer regiment for Cyprus. Force would come under Mutiny Act. Ordinance cannot provide for service out of Cyprus. Corps would enlist as "soldiers in Her Majesty's Service." As to employment as civilians, &c. Should not be dressed, armed, or officered as soldiers. Scheme is unconstitutional. Dr. Deane doubts if force would come under Mutiny Act | 17 |
| 24 | Law Officers | 21, | Pioneer regiment for Cyprus. Draft Ordinance. Force to act as military and police. Illegal under 1 Vict., cap. 29, sec. 2. Cypriots not British subjects. Cape Mounted Rifles forms no precedent. No provision made in Ordinance for pay, discipline, &c. | 18 |
| 25 | Law Officers | Sept. 13, | Porte's request to prevent landing in Cyprus of a native of Lebanon, and to arrest military deserter from Rhodes. High Commissioner has no such power under Order in Council. Ordinance must be passed, if not already done | 19 |
| 26 | Law Officers | 25, | Forests Ordinance. Question of validity of. An Ordinance passed by one High Commissioner cannot be signed by his successor. A new Ordinance must be passed to give it validity | 19 |
| 27 | Law Officers | Nov. 17, | Domestic slavery in Cyprus. Ordinance to legalize freeing of slaves. Approving, with an amendment | 20 |
| 28 | Law Officers | 27, | Force of constabulary. Ordinance for raising. Vote taken for expenses. No objection | 21 |
| 29 | Law Officers | Dec. 29, | Trial for murder of alleged Greek subject, Sawas. Sentenced to death. Objection of Greek assessors. Sawas a natural-born Ottoman. Question of legality of trial. Improper transfer of case from Ottoman Court to High Court. If Sawas is a Turk, his trial is illegal. Ottoman Court must try him | 22 |

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| 30 | Law Officers | Mar. 26, 1879 | Suez Canal. Case of vessels where the ship-space deducted from tonnage has been employed for freight. Proposal to allow no deduction in future to such vessels cannot be adopted in present state of law. Must consult Maritime Powers as to prevention of fraud. Board of Trade and Suez Canal Company cannot deal with ship's register. Must take legal steps in each case | 24 |
| 31 | Lord Chancellor | Oct. 10, | Commission of Liquidation. Mixed Tribunals were established by Khedive's authority; Order in Council merely suspends Consular jurisdiction. Edict of Liquidation would equally issue from Khedive and be submitted to Powers. Judges must be bound by Edict, or the Executive would disregard their Judgments. Effect on non-assenting Powers. They can only revert to old Consular system. If Powers agree to the liquidation policy, they may face the danger of interference from Mixed Tribunals | 24 |
| 32 | Law Officers | Nov. 11, | Prisoners at Malta. Robbery in a church, &c. Condemned on three counts for one transaction. Part of sentence may be remitted | 26 |

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| 35 | Law Officers | 31, | "Certificats de Coutume." As to Registrar's certificate in cases of transfer of stocks on appointment of new trustees. As to Treasury Solicitor being authorized to issue certificates. Treasury Solicitor cannot issue them | 29 |
| 36 | Lord Chancellor | Aug. 12, | "Certificats de Coutume." Certificates required by French Government may be issued by Queen's Proctor. Government cannot guarantee accuracy of the certificates he gives | 30 |
| 37 | Law Officers | 26, | Arrest of Mr. Millar at Espezel. Her Majesty's Government does not disclaim right to demand redress for outrages, but would have to grant reciprocity. Principle of action should be defined. Quoting cases of outrages in Italy. As to responsibility of Governments for acts of their agents, and as to "adequate legal remedy." Report: Foreigners have no claim to greater protection than natives. Actions for assault, &c., may be brought in the country. Exceptions in uncivilized countries, and in cases of negligence, &c., on part of Government or its agents. "No adequate legal remedy" is when aggressor cannot compensate, and Government cannot be prosecuted (as in England). Case for diplomatic action. Legal proceedings should first be taken by injured parties | 30 |

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| 38 | Law Officers | Jan. 29, 1879 | Duke of Connaught's Marriage Treaty. Approving | 32 |
| 39 | Lord Chancellor | Apr. 9, | Collisions on high seas. British territorial claim not limited to three miles. Distance necessary for defence. Mixed administration of criminal law not admissible within three-mile limit. Jurisdiction not wantonly exercised. Secretary of State's certificate requisite in cases of foreigners in foreign vessels, &c. Understanding with foreign Powers as to uniform standard of criminality. Objections to mixed jurisdiction on high seas. As to composition of Mixed Court. Importation of foreign jurymen to form mixed jury, &c. | 33 |
| 40 | Law Officers | May 27, | Slave Trade Treaty of 1841. Accession of Germany in place of Prussia. As to assent of Austria and Russia by note. No objection | 34 |
| 41 | Law Officers | 30, | Destruction of property of M. Eggert, a German, at Besika by British marines. Compensation due | 34 |

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| 42 | Law Officers | July 31, 1879 | Violation of Consular privileges in Hayti. Danish request for support of Her Majesty's Government. Consuls are amenable to civil and criminal jurisdiction. Arrest of Danish Consul (Mr. Daguin) is no infraction of law of nations. If Hayti gives [? privileges] to Consuls, Her Majesty's Government may support claim of Denmark | 35 |
| 43 | Law Officers | Sept. 22, | Claim of Mrs. Maunder. "Acte de Naissance" for proving illegitimacy of Joseph Maunder. Cannot on present evidence treat it as a forgery. Insist on payment of 22,000*l.* on account, pending result of award, &c. Refusal of Hayti will justify coercive measures. | 35 |

## ITALY.

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| 44 | Law Officers | Apr. 4, 1879 | Difficulties as to Extradition Act in Malta, there being no *Habeas Corpus* law. As to making a General Ordinance similar to that relating to extradition between Malta and Italy. It would not effect the object in view | 37 |
| 45 | Law Officers | Aug. 8, | Ill-treatment of Rev. Mr. Pullen by carabinieri. Slight punishment of guilty parties. No further action necessary | 37 |

## JAPAN.

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| 46 | Law Officers | Jan. 17, 1879 | Opium smuggling. Case of J. Hartley. Japanese appeal against Mr. Wilkinson's Judgments. The Judgments were wrong. Treaty does not distinguish between smoking and medicinal opium | 38 |
| 47 | Law Officers | July 10, | Opium smuggling. Mr. Wilkinson's Judgments in Hartley case, and as to right of Japanese Government to issue Regulations for importation of opium. Mr. Wilkinson's Judgments wrong in law. Japan retains power to prevent importation of opium, to secure monopoly of trade, and make Regulations for its sale. Foreigners sacrifice no rights in submitting to them | 39 |
| 48 | Law Officers | 28, | Coasting trade. Money deposited as security by Messrs. Jardine, Matheson, and Co., and not reclaimed within six months. Japanese are within strict Treaty rights in refusing to refund | 41 |
| 49 | Law Officers | Sept. 22, | Importation and sale of medicinal opium by foreigners. Hartley case. Mr. Wilkinson's Judgments were wrong. Penalties to be recovered in Japanese Courts cannot be enforced against British subjects | 41 |
| 50 | Law Officers | 22, | Japanese Pilotage Regulations. Enforcement on British subjects by British Regulations under Order in Council. Employment of pilots. Licence to British pilots. Penalties, &c. Breach of Japanese law. British subjects can only be punished for: (1) If offence is punishable in England; (2) If made punishable by a British Regulation under Order in Council. Approving above view and Regulations | 43 |
| 51 | Law Officers | Oct. 3, | Japanese Quarantine Laws. No legal objection to. Convention. Article IV says British ships in Japanese ports must conform to Japanese laws. Governments have right to make Quarantine Regulations. Not necessary to have laws approved by British Minister and turned into British Regulations before enforcing them on British subjects. Consequences under Convention to breach of laws. View as to "non-enforcement by British Courts of Japanese laws, as such," is correct in one sense. Should not object to Japanese Regulations, but claim to enforce them through British Consuls | 44 |
| 52 | Law Officers | Nov. 5, | Quarantine Regulations. British ships in Japanese ports must conform to Japanese law. Sir H. Parkes does not give due weight to Article IV of Convention. Approve his Regulations for carrying out those of Japanese Government, but not his reply to Japanese protest | 47 |

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## LIBERIA.

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| 53 | Law Officers | Nov. 27, 1879 | Liberian Boundary Commission. Decision that country claimed does not exist. Liberian protest. Strange that Liberia should claim what does not exist. Think there must be some mistake as to names, &c. Her Majesty's Government cannot refuse to reopen question. Caution as to recognizing territory which may be claimed by some other Power | 48 |

## MISCELLANEOUS.

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| 54 | Law Officers | Jan. 21, 1879 | Proposed abolition of Consular shipping fees, and substitution of uniform tonnage fee. Act of Parliament necessary to carry out proposed change. (Preceded by Foreign Office letter to Law Officers) | 50 |
| 55 | Law Officers | Mar. 21, | Laughlan and Purdy Islands. Guano licences to Mr. Roberts. Islands unoccupied, but not claimed as part of British dominions. Caution necessary in granting licences. Islands must be occupied and ownership declared. Reference to Lacepede and Chesterfield Islands. Approve reply to Messrs. Pickford that licensees must hoist Union Jack. As to title of Crown by discovery. They must be declared to be British territory. As to identity of Mr. Roberts, &c. | 51 |

## MOSQUITO.

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| 56 | Lord Chancellor | Sept. 29, 1879 | Mosquito Arbitration. Treaty of 1860 is ambiguous. British Case must be founded on the spirit in which it was framed. As to interpretation of "free port." Duty on goods for consumption in Mosquito. Mines, timber, lands, &c. Mosquito may not alien them, &c. | 52 |

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| 57 | Law Officers | Apr. 29, 1879 | Extradition from Straits Settlements. Approving draft Order in Council, with additions respecting appeal of criminal on committal to prison, &c. | 53 |
| 58 | Law Officers | Oct. 29, | Cartridges at Curaçao; compulsory landing of, from British ship "Bolivar," bound for Panama. Refusal to allow them to be re-exported, on ground that export of arms, &c., was prohibited. No right to stop through carriage of cargo. Her Majesty's Government may remonstrate | 54 |

## PACIFIC ISLANDS.

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| 59 | Law Officers | Jan. 21, 1879 | Convention with Navigators' and Friendly Islands. Ex-territorial jurisdiction. Order in Council. As to Western Pacific Order being unsuited. A new Order in Council is necessary | 54 |

## PERU.

60 | [Nil. Reports on subjects arising out of the war between Peru and Chile will be found under the heading of Chile.]

## PORTUGAL.

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| 61 | Law Officers | Mar. 1, 1879 | Extradition between Hong Kong and Macao. Portugal requires promise that sentence of death shall not be carried out. As to Governor of Hong Kong having discretionary power to surrender criminals to Macao. Macao would then reciprocate, except in murder cases. No objection; but no promise to commute capital punishment must be given | 56 |
| 62 | Law Officers | May 28, | "City of Mecca" and "Insulano" collision. International Regulations for prevention of collisions at sea. Appeal to Supreme Court. If appeal fails, Her Majesty's Government might claim indemnity for losses arising out of misinterpretation of Rules | 56 |
| 63 | Law Officers | July 29, | "Decima Industrial" tax. Complaint of Messrs. Noble and Murat. Breach of Treaty engagement. Their case rejected by Courts on ground of informality. They must ask leave to amend before considering whether Her Majesty's Government can interfere to avert consequences of their own negligence | 57 |
| 64 | Law Officers | Oct. 6, | "City of Mecca" and "Insulano" collision. Her Majesty's Government cannot interfere. The Portuguese judgment is not founded on International Sailing Rules, but on fact that "City of Mecca" did not stop, &c. Decision seems wrong, but the mistake of a Law Court is not a subject for diplomatic interference; and the omission to protest will prevent such interference | 58 |
| 65 | Law Officers | Nov. 10, | Arrest of British vessel "Lucretia." Collision with Spanish vessel "Gongora" on high seas. As to Admiralty jurisdiction of Portuguese Courts. If claim to jurisdiction is founded on *quasi*-territorial rights, diplomatic intervention would be justified; but Portugal only claims three miles limit. Her Majesty's Government cannot protest at present against exercise of jurisdiction by Portuguese Courts | 59 |
| 66 | Law Officers | Dec. 4, | "City of Mecca" and "Insulano" collision. Court claims more jurisdiction than is admitted by international law. Decision of Court proceeds upon a misconception of the International Sailing Rules. Intervention of Her Majesty's Government necessary. As to manner of conducting it | 60 |

## RUSSIA.

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| 67 | Law Officers | Jan. 17, 1879 | Responsibility of Government for defalcations of its agents. As to general rule of irresponsibility of Crown. Where the agent is made by the Government the proper person to receive money, or where the law requires that private individuals shall deposit money with him, the Government is responsible in event of the agent making default. Reference to Report of the 10th August, 1878 | 61 |
| 68 | Law Officers | July 28, | Messrs. Watts and Milburne's claim. Lighters sunk in Danube during war. Award of Mixed Commission. Russian Government disclaims liability, on authority of Bluntschli. Case quoted does not apply to seizure of neutral ships. Bluntschli lays down rule for compensation in such cases. (Reference to sinking of vessels in the Seine.) Russia must compensate | 62 |

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## SPAIN.

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| 69 | Law Officers | Feb. 3, 1879 | New Treaty between Spain and Sulu, recognizing Spanish sovereignty over the Archipelago and its dependencies. Claim to territory on coast of Borneo. Dent and Overbeck Concession. Her Majesty's Government cannot protest against the Treaty as regards the Archipelago. Old British Treaties with Sulu not binding on Sultan. Treaty of 1849 not ratified. If territory in Borneo is a dependency of the Archipelago, it passes to Spain under new Treaty. Rights ceded by Mr. Dent should be confirmed by Spain; but if Great Britain asks this, she recognizes rights of Spain. Dent must take his own course | 63 |
| 70 | Law Officers | July 12, | Collision at Santander between British vessel "Eurydice" and Spanish vessel "Miguel Saenz." Spanish protest against competency of British Admiralty Court to try. Her Majesty's Government cannot stop proceedings in Admiralty Court | 65 |
| 71 | Law Officers | 31, | British vessel "Gunga" putting into Manila in distress. Fine for accidental omission to declare portion of cargo. Boarding of vessel without notice to British Consul. (Reference to case of the "Erl King.") Governments may impose what conditions they please on foreign vessels, &c.; foreign Governments can only protest. Reports on "Erl King" are applicable to present case. Her Majesty's Government cannot appeal to Treaties | 66 |
| 72 | Law Officers | Nov. 5, | Seizure of the "Sultana" in Sulu Archipelago. Claim of Victoria Trading Company of Labuan. If "Sultana" was condemned by proper Prize Court, Her Majesty's Government cannot press claim | 68 |

## TUNIS.

| No. | | Date. | Subject | Page |
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| 73 | Law Officers | Nov. 14, 1879 | Estate of Padre Agostino. Claim of Propaganda at Rome to it. Transfer of case to Supreme Court at Constantinople. Transfer of "contentious" case to Constantinople is proper by section 217 of Order in Council. Better be tried there instead of sending Assistant Judge to Tunis. Inform petitioners that estate will be administered at Tunis, and tell Supreme Court that there are claimants to the estate in Tunis, &c. | 68 |

## TURKEY.

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| 74 | Law Officers | Jan. 16, 1879 | Consular Court, Constantinople. Probate jurisdiction, &c. Deceased British subject not resident or dying in Turkey. Heirs must apply in England to revoke Letters of Administration. The property in Turkey may be protected under Order in Council | 70 |
| 75 | Law Officers | Mar. 4, | Tidjaret Court. Valmas *v.* the North British Mercantile Insurance Company. Competency of Court. Valmas, a Greek subject. His house burnt. Company refuse to pay. He lodges protest in British Consulate. Then becomes Turkish subject and sues Company in Tidjaret. Suit begun in Consulate cannot be afterwards instituted in Tidjaret. Refusal of British Consular Judge to allow defendant to appear. Her Majesty's Ambassador cannot object to jurisdiction of Tidjaret. Suit was not commenced in Consulate; only protest lodged. Case may proceed in Tidjaret | 71 |

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| 76 | Lord Chancellor | Apr. 1, 1879 | Kustendji Railway Arbitration. Treaty of Berlin substitutes Roumania for Porte, but the claimants were no parties to the Treaty. They claim from the Porte. Porte may recoup itself from Roumania. Kustendji Company cannot be turned over to seek redress from Roumania. Instancing a parallel case of an agreement between two Railway Companies. Kustendji Company may stand on its rights and claim Turkey as a debtor, if they prefer her to Roumania. Treaty of Berlin does not destroy those rights. Her Majesty's Government must not admit that Porte's liability has ceased | 72 |
| 77 | Law Officers | 12, | Inquests on British subjects dying in Turkey. Judge of Consular Court at Constantinople may perform functions of Coroner under Order in Council | 73 |
| 78 | Law Officers | 18, | Cases of the "Harriet Agnes," "Wave," and "Beaconsfield." Their detention by Consul-General Fawcett. Compensation claimed. Question of legality of Consul-General's Judgments respecting "unseaworthy ships." His protest against Law Officers declaring his Judgments illegal. Practice of Consular Judges applying to Foreign Office for advice, and of Foreign Office exercising proper vigilance over their judicial proceedings. Following are illegal:—Mr. Parry's appointment and fees; arrest of "Wave;" proceedings as to the "Beaconsfield;" arrest of master of "Wave" for contempt of Court. Further information wanted as to Mr. Pitts' case. Compensation due to owners of "Wave" and "Beaconsfield" | 73 |
| 79 | Law Officers | 30, | Danube navigation. Trading between new Russian frontier and Kilia branch. Russia may prohibit notwithstanding Treaties of Paris and Berlin | 76 |
| 80 | Law Officers | May 3, | Prohibition of foreign trade between Russian ports on Danube. Russian Government may prohibit it | 76 |
| 81 | Law Officers | 8, | Danube navigation. Alterations in Public Act to suit Treaty of Berlin. Russian opposition. Proposed Supplemental Act. Not necessary to recite Articles of Treaty of Berlin. Better have a declaration that the Act shall be read as modified by Treaty. Agree to provision as to permanent character of Regulations made by European Commission. Form of ratification of Act by Conference of the Powers | 77 |
| 82 | Law Officers | 30, | Possession of liquorice roots near Smyrna. MacAndrews, Forbes, and Co. *v.* Heracles Varipati, a Greek. Greek Minister maintains that local Turkish Court has no jurisdiction to try case between two foreigners. British Consul-General says Consular Court cannot decide questions of real property. No question of real property is involved. Police should give up roots to British firm on their giving security to answer any civil claim | 78 |
| 83 | Lord Chancellor | June 12, | Kustendji Railway Company. Effect of cession of territory on immovable property and nationality of inhabitants. Existing money claims do not pass with territory ceded, unless all parties agree. Roumania takes place of Porte from date of transfer. Roumania not bound by award, being no party to arbitration. If she declines to admit claim of the Company, she is justified by Treaty of Berlin, and the claim must be pressed against the Porte | 79 |
| 84 | Law Officers | July 12, | Danube. European Commission. Jurisdiction over Kilia branch questioned by Russia. Austrian "Avant-Projet." Rights of the Commission should be maintained, though not to full extent claimed by Austria | 79 |
| 85 | Law Officers | 21, | Bishop of Jerusalem. Licence for consecration of Rev. J. Barclay. Approving | 80 |
| 86 | Lord Chancellor | Aug. 5, | Rustchuk-Varna Railway Company. Whether claim lies against Porte or against Bulgaria. Xth Article of Treaty of Berlin. Porte was the Company's debtor before the Treaty, and remains so, unless other arrangement is made by the three parties concerned | 80 |

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| 87 | Law Officers | Aug. 8, 1879 | Nationality of Mrs. Saverden, widow of an alien who died since Naturalization Act was passed. Cannot accede to her request to be recognized as a British subject and registered in British Consulate at Smyrna. She might be placed under British protection | 81 |
| 88 | Law Officers | Dec. 2, | Piracy in the Persian Gulf. Maritime police and protectorate of trade undertaken by England. Establishment of Turkish authority on the Guttur Coast. Naval action against pirates within Turkish jurisdiction authorized by Government of India. Her Majesty's Government cannot, consistently with international law, pursue pirates in Turkish waters, or destroy strongholds on Turkish mainland | 82 |

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| 90 | Law Officers | 16, | Fortune Bay fishery disputes. Instructions to be given to British magistrate. They are consistent with Treaty of Washington, but it would be better to arrange first with United States' Government so as to avoid misunderstandings | 84 |
| 91 | Law Officers | 29, | United States' frigate "Constitution." Motion for arrest of for salvage services rendered by steam-tug "Admiral." Motion dismissed by Admiralty Court | 85 |
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| 95 | Law Officers | 18, | Insurrection in Venezuela. German proposals. *De facto* Government must be recognized and its laws respected by foreign nations. As to closing of Puerto Cabello. If open, insurgents might seize customs duties and otherwise involve *de facto* Government in future embarrassments. Cannot recognize one party as belligerent. Better put up with closing of port. Presume it is closed to all nations | 91 |

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*Printed for the use of the Foreign Office. November* 1880.

CONFIDENTIAL.

# REPORTS BY THE LAW OFFICERS OF THE CROWN: 1879.

## Belgium.

### No. 1.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received February* 5.)

My Lord, *Temple, February* 4, 1879.

Collision. "Parlement Belge" and "Daring."

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of yesterday's date, stating that he was directed by your Lordship to transmit to us the inclosed letters from the Belgian Minister at this Court, and from Messrs. Lowless and Co., Solicitors, representing the owners of the British steam-tug "Daring," notifying that an application was to be made this day, the 4th instant, to the Admiralty Division of the High Court of Justice, on behalf of the owners of the "Daring," for a warrant of arrest to issue against the Belgian mail-packet "Parlement Belge," in a suit for damage by collision.

Privileges of mail-packets.

That the Belgian Minister claimed for that vessel the privileges and immunities of a vessel of war under Article VI of the Postal Convention between Great Britain and Belgium, a copy of which was inclosed.

That Sir Julian Pauncefote was to request that, as in the recent case of the "Constitution," we would be good enough to take such steps as the urgency of the case might require, with a view to the application being opposed on behalf of the Crown, should we be of opinion that that course was desirable.

In obedience to your Lordship's commands we have the honour to report—

That we thought it proper that Her Majesty's Government should be represented on the motion for judgment, and for a warrant of arrest to issue against the Belgian mail-packet "Parlement Belge."

Convention of 1876.

The Judge of the Admiralty Division of the High Court of Justice this morning ordered the motion to stand over to this day fortnight, in order that the question of jurisdiction should be argued, and whether the privileges under Article VI of the Convention of 1876 were not forfeited by Article X.

As to carrying of merchandise.

The argument raised on Article X was that the carrying of merchandise took away the privileges under Article VI. Your Lordship, we respectfully suggest, should direct that full information should be obtained and furnished whether any and what Agreement has been come to between the post-offices of Great Britain and Belgium.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J PARKER DEANE.

1879

## No. 2.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received November* 19.)

*Temple, November* 17, 1879.

My Lord,

National Arms and Ammunition Company.

Annulment of their patent by Belgian Government.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 29th October ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, the correspondence noted in the margin,* relating to the complaint of the National Arms and Ammunition Company of the annulment by the Belgian Government of their rights in Belgium on patentees of the Martini rifle.

That the reason assigned for that action was, that the Company had not complied with the provisions of the Belgian law respecting the continuous working of the patent in that country.

That a precise statement of the grounds on which the justice of that Arrêté Royal was impugned was contained in the letter dated the 26th September from Messrs. Stibbard, Gibson, and Co., the legal advisers of the Company.

That as we would perceive from their letter of the 13th October, that by Belgian law the power of annulling a patent was vested in the Executive exclusively, and that the patentee had no power of appeal to a Court of Law.

That it appeared also from their letter of the 1st October that in the case of Rolbe's patent the German Ambassador interfered, and the patent, which had been threatened with annulment on the same grounds, was upheld.

Mr. Lister was pleased to request that we would take all these papers into consideration, and favour your Lordship with our opinion as to whether there were sufficient grounds to justify an official or unofficial representation to the Belgian Government for a reconsideration of their decision in the present case.

We were also honoured with a note from Sir Julian Pauncefote, dated the 7th instant, inclosing further papers.

In obedience to your Lordship's commands we have the honour to report—

That there is a material difference between the case of Rolbe's patent and the patent of the National Arms and Ammunition Company. In the former case the German Ambassador interfered before the patent was annulled; in the latter case the Decree of the Government annulling the patent has been signed by the King and published.

Unless, therefore, some fraud or surprise has been practised upon the Belgian Government, and of this we find no evidence, there are in our opinion no grounds which would justify an official representation to the Belgian Government.

Her Majesty's Government may support them unofficially.

An unofficial representation might, however, be made, if your Lordship considered that there was any prospect of the Belgian Government cancelling an act of State done after deliberation.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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* National Arms Company, July 14; to Messrs. Stibbard and Co., July 25; Sir H. Barron, No. 26, August 2; to Messrs. Stibbard and Co., August 5; Messrs. Stibbard and Co., September 26; to Messrs. Stibbard and Co., October 8; Messrs. Stibbard and Co., October 13; ditto, October 15, 1879.

# Brazil.

## No. 3.

*Mr. Lister to the Law Officers of the Crown and Dr. Deane.**

*Foreign Office, November* 28, 1878.

Gentlemen,

St. John del Rey Mining Company

Negroes detained in slavery by.

As to transfer of bonds to Messrs. Gordon, Buchanan, and Birchall.

WITH reference to your Report of the 13th May last in the case of the Directors of the St. John del Rey Mining Company, who have held in slavery a number of blacks who, by the terms of the Agreement under which they came into possession of the Company, should have been manumitted some years since, I am directed by the Marquis of Salisbury to transmit to you the accompanying despatch from the Acting British Consul at Rio de Janeiro, reporting the circumstances under which the agents in Brazil of the St. John del Rey Company applied to the Brazilian authorities for the transfer of certain bonds of the Public Debt now standing at the "Caixa de Amortização" in the names of Messrs. Gordon, Buchanan, and Birchall, the last-named gentleman being a lunatic, confined in an asylum, and not expected to live.

Bonds belong to blacks detained in slavery.

The accompanying letter from Mr. Lennon Hunt, late Her Majesty's Consul at Rio, who has recently retired from the service, contains a history of the bonds for the transfer of which Messrs. Gordon and Buchanan have applied to the Brazilian authorities; and I am to request that you will peruse these papers, and advise Lord Salisbury as to any instructions which it may be proper to give to Mr. Austin, the Acting Consul at Rio, in regard to the application which has been made to him to sanction the transfer of the bonds in question, which, it would seem, represent a trust fund, a considerable portion of which belongs to the blacks now detained in slavery by the St. John del Rey Company.

Acting Consul Austin's despatch will be found at No. 38 in the accompanying printed correspondence relating to the St. John del Rey case.

I have, &c.  
(Signed) T. V. LISTER.

P.S.—The previous correspondence (printed) in the case of the St. John del Rey Company is also sent for convenience of reference, if required.†

T. V. L.

### *Report.*

Consul must prevent transfer of the bonds.

That Mr. Austin may, in our opinion, be properly instructed to prevent, by all the means in his power, the transfer of these bonds to Messrs. Gordon and Buchanan, and to refuse his sanction to the transfer.

J. H.  
H. S. G.  
J. P. D.

*January* 20, 1879.

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## No. 4.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received November* 6.)

*Temple, November* 5, 1879.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th day of August last, stating that he was directed by your

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* The Law Officers' Report upon this subject could not be found when this collection of Reports was made, and it was therefore necessary to obtain the original draft of the Report. The Law Officers, however, do not retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the Foreign Office letter to them is recapitulated. It has, therefore, been deemed advisable to print the Foreign Office letter in this instance, as the bare Report, without the usual preamble, would not be wholly intelligible.

† Confidential Paper No. 4298.

1879

Lordship to transmit to us the accompanying correspondence, as marked in the margin,* relative to the case of the Recife Drainage Company.

Recife Drainage Company's lawsuit with A. G. Netto.

Sentence of Provincial Court against former carried out, although reversed by Supreme Court.

That we would see from those papers that the Company in question became involved in legal proceedings with a Brazilian named the Commendador Antonio Gomez Netto; that when the Provincial Court of Pernambuco gave a Judgment adverse to the Company, that Judgment was enforced immediately and with great rigour, although the Company had protested and appealed to the Supreme Tribunal; but that the decision of the Provincial Court having been reversed and annulled by a Judgment of the Supreme Court ("Tribunal do Relação") of Rio de Janeiro, the Company were unable to obtain execution of that Judgment, which was stated to be final and without appeal; and that in reply to the representations of Her Majesty's Chargé d'Affaires the Brazilian Government had declined to interfere in the matter, on the ground that it was subject to the judiciary power, and dependent on the decision of the same.

That Sir Julian Pauncefote was to request that we would take the accompanying papers into our consideration, and favour your Lordship with our opinion as to the action that should be taken by Her Majesty's Government in consequence of this denial of justice.

In obedience to your Lordship's commands we have the honour to report—

That the delay seems to have been caused—at least, in some measure—by Commendador Netto's availing himself of some technical means known to Brazilian law, and also perhaps to some extent by what seems to be the fact, that the sentence of the Court of Appeal was to be carried out by the Court appealed from.

May remonstrate with Brazilian Government.

But whatever may be the reason or pretext for the delay, Mr. St. John or Mr. Ford may properly be instructed to press upon the Brazilian Government the discredit which the administration of law in Brazil must suffer if the sentences of its highest Tribunals are not respected and executed.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 5.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received November* 15.)

My Lord,
*Temple, November* 14, 1879.

Recife Drainage Company.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 5th instant, stating that, with reference to Sir Julian Pauncefote's letter of the 11th August, he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Minister at Rio de Janeiro (Mr. Ford, No. 53, October 8, 1879), relative to the case of the Recife Drainage Company; and Lord Tenterden was to request that we would take the same into our consideration, together with the papers already before us.

In obedience to your Lordship's commands we have the honour to report—

Nothing to add.

That we have nothing further to add to the Report which we had the honour to submit to your Lordship on the 5th instant.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Mr. F. St. John, No. 39, July 2; No. 40, July 8, 1879; previous correspondence, see list.

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## Chile.

### No. 6.

*The Attorney- and Solicitor-General to the Marquis of Salisbury.—(Received April* 18.)

My Lord,
*Temple, April* 18, 1879.

War between Peru, Bolivia, and Chile.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the accompanying papers, as marked in the margin,* relative to the Declaration of War between the Republics of Bolivia and Peru on the one side, and of Chile on the other; and Mr. Lister was to request that we would favour your Lordship with our opinion as to the advisability of publishing a notification in the "London Gazette" upon the subject of this Declaration of War.

In obedience to your Lordship's commands we have the honour to report—

War and blockade should be notified in "Gazette."

That, under the circumstances stated, we think it would be proper for a notification of the fact of the war and of the blockade to be published in the "London Gazette."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.

P.S.—As Dr. Deane is on the Continent, the papers have not been submitted to him.

J. H.
H. S. G.

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### No. 7.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received May* 1.)

My Lord,
*Temple, April* 30, 1879.

Chilean fleet in Peruvian waters.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 25th instant, stating that he was directed by your Lordship to transmit to us the accompanying papers, as marked in the margin,† relative to the injury which was being caused to the interests of British subjects by the action of the Chilean fleet in Peruvian waters.

Interference with British Guano trade.

That we would see that the Chilean naval forces were said to have destroyed the platforms at the guano ports, and to have ordered vessels to leave those ports in two days; and as a great proportion of the guano was being shipped by British subjects under contract with the Peruvian Government (in connection with the claims of the holders of Peruvian bonds), it was clear that the Chilean proceedings would inflict great loss upon British subjects.

That, in these circumstances, he was to request that we would favour your Lordship with our opinion whether Her Majesty's Government would be justified in making any remonstrance against the proceedings of the Chilean naval forces.

In obedience to your Lordship's commands we have the honour to report—

Prevention of neutral trade by sufficient force is allowable.

That Her Majesty's Government would not, in our opinion, be justified in making any remonstrance against the proceedings of the Chilean naval forces, which seem to us to be confined to the destruction of jetties in Peruvian territory and the prohibition of neutral trade with Peru by a force on the spot sufficient to effect that purpose.

May ask for protection of British interests, &c.

Her Majesty's Government may, however, properly state to the Chilean Government the expectation that, in carrying on military or naval operations against Peru,

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* Señor Quintas, March 31; Mr. Pakenham (Telegraphic), April 7, 1879.

† Mr. Pakenham (Telegraphic), April 7; Sir C. Russell, April 7; to Sir C. Russell, April 18; to Admiralty, April 18; Sir C. Russell (Memorandum), April 18; Peruvian Guano Company, April 18; Mr. St. John (Telegraphic), April 17; to Sir C. Russell, Lloyd's, Board of Trade, and Admiralty, April 21, 1879.

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the Chilean officers should be strictly instructed to protect, and as little as possible interfere with, the property, trade, and interests of the subjects of Her Majesty.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 8.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received June* 14.)

My Lord, *Temple, June* 14, 1879.

Bombardment of Valparaiso, &c. German instructions in event of.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us a copy of the instructions sent by the German Government to their Minister at Santiago, in Chile, dated the 19th May, 1879, instructing him to take steps for the protection of German subjects in the event of a bombardment of Valparaiso by the Peruvian naval force.

That Sir Julian Pauncefote also inclosed, for our information, the correspondence laid before Parliament in 1866, in which we would find an account of the bombardment of that town in 1866 by the Spaniards, and the loss incurred by British and other merchants, which might, perhaps, have been averted had timely measures been taken to facilitate the removal of their property, and secure such consideration on the part of the belligerents for the interests of neutrals as the circumstances would permit.

That your Lordship was anxious to have our opinion as to the instructions which should be sent to Her Majesty's Representatives in Chile and Peru in the present instance, as well as to Her Majesty's naval commanders on those stations, with reference to the protection of British life and property during the existing conflict.

In obedience to your Lordship's commands we have the honour to report—

British merchants in Chile and Peru must be warned to remove goods to place of safety.

That Her Majesty's Ministers in Chile and Peru should, in our opinion, be instructed to inform British merchants and residents in any place exposed to hostile operations, that they must be ready to remove themselves and their property out of the reach of bombardment to some place of comparative safety.

And that they should lose no time in removing their property and goods from the Custom-houses and other public buildings.

They will receive no protection from British naval forces.

British merchants and residents should further be informed that they must not expect any active intervention for their protection from Her Majesty's naval forces.

Facilities for removal of goods may be asked of Chile and Peru.

Her Majesty's Ministers may properly be instructed to obtain from the Chilean and Peruvian Governments, in the event of any threatened bombardment, the permission to remove British property without payment of duty to some place of safety, on security being given for the payment of duty as in the German Minister's instructions, "that all may be so arranged as to facilitate any transfer of goods with the least difficulty, and at the least expense to the merchants concerned.

Assignment of a neutral place for goods.

"Should it be possible to assign a neutral place for the goods in the town or harbour threatened, Her Majesty's Ministers and naval commanders should give energetic support to all negotiations for that purpose between the belligerents, as well as take the initiative themselves in a proposition of that kind."

British naval forces to protect British life and property, and ask delay of bombardments till goods are removed.

Her Majesty's naval commanders may be instructed to take every measure, short of actual intervention by force, for the protection of British life and property, and particularly to use every endeavour to bring about the delay of any threatened bombardment until a sufficient time has been allowed for the removal of British property.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 9.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 19.)

My Lord, *Temple, July* 19, 1879.

Cases and boiler belonging to a torpedo-boat for Chile.

As to detention under Foreign Enlistment Act.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th instant, stating that he was directed by your Lordship to transmit the inclosed letter from Her Majesty's Customs reporting that an application had been made to their Collector at Hull by the Peruvian Consul at that port for the detention of certain cases and a boiler belonging to a torpedo-boat, destined for the Government of Chile.

That we should perceive that, in pursuance of the opinion contained in the Report of the Solicitor to the Customs, they had given orders for the detention of the articles in question pending a reference of the case to the decision of Her Majesty's Secretary of State.

That Sir J. Pauncefote was accordingly to request that we would take that matter into our consideration, and favour your Lordship with our opinion as to whether that shipment could lawfully be detained under the provisions of the Foreign Enlistment Act of 1870, referred to by the Solicitor to the Board of Customs, or under any other provisions of the law.

We are also honoured with a further letter from Sir Julian Pauncefote, dated the 15th instant, forwarding a letter from the Treasury on the above subject, and requesting that that letter might be taken into consideration in conjunction with the other papers then before us relative to the same.

In obedience to your Lordship's commands we have the honour to report—

Responsibility rests with Government. Cases should be searched, and detained or not according to result of search.

That, as it is uncertain whether the cases contain parts which would form a torpedo boat, the responsibility of detaining the cases for the purpose of examining their contents must rest with the Government.

The detention will be justifiable or not, according to the result of the examination.

But, in the circumstances, we think the cases should be detained and at once examined.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 10.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 19.)

My Lord, *Temple, July* 19, 1879.

Bolivian privateers. (Chilean property in neutral vessels.)

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th instant, stating that information had reached Her Majesty's Government that Bolivia had decreed the issue of Letters of Marque and authorized privateers to seize Chilean property of any description on board neutral vessels, and that agents had been sent to the United States to further that project.

That Sir J. Pauncefote was to inclose a despatch from Her Majesty's Minister at Lima reporting his conversation with the Peruvian Government and his Bolivian colleague on the subject, from which we should perceive that the latter denied all knowledge of any such Decree.

That Sir J. Pauncefote was also to inform us that the attention of the United States' Government had been called to that matter.

That Bolivia had no facilities for fitting out privateers from her own sea-board, which comprised but one insignificant port; and, having regard to the legislation of the United States on the subject, Her Majesty's Government did not apprehend that Bolivian privateers could easily be fitted out in that country; but that it was possible that they might be fitted out in some other States, and even in Peruvian ports, though Peru had acceded to the Declaration attached to the Treaty of Paris of 1856, whereby privateering was declared to be abolished.

Bolivia has not acceded to Declaration of Paris.

That Bolivia had not acceded to that Declaration, and that Sir J. Pauncefote was to request that we would favour your Lordship with our opinion whether special instructions should be sent to Her Majesty's Naval Commander-in-chief on the Pacific Station with reference to Bolivian privateers, and, if so, what those instructions should be.

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In obedience to your Lordship's commands we have the honour to report—

Cannot object.

That, apart from the Treaty of Paris, the issue of Letters of Marque and privateering were admissible; Bolivia was no party to, and has not, we believe, since come within, that Treaty, and is, therefore, not bound to observe its conditions.

We are therefore of opinion that no instructions need be sent to Her Majesty's Naval Commander-in-chief on the Pacific Station with reference to Bolivian privateers.

British property must be protected against.

The Commander-in-chief may, however, properly be instructed to exercise great watchfulness for the protection of British subjects and property against the attacks of vessels which are furnished with regular Letters of Marque.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 11.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received July 28.)*

My Lord, *Temple, July* 28, 1879.

Bolivian Decree. Privateers and seizure of Chilean property in neutral vessels.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th instant, stating that, with reference to his letter of the 12th instant, he was directed by your Lordship to transmit to us, for our consideration, the accompanying despatch from Her Majesty's Chargé d'Affaires at Santiago,* inclosing copy and translation of the Decree lately issued by the Bolivian Government authorizing the issue of Letters of Marque and the seizure by Bolivian privateers of Chilean property in neutral vessels.

That Sir Julian Pauncefote was to request that we would favour your Lordship, at our earliest convenience, with our opinion on the question referred to us in Sir Julian Pauncefote's above-mentioned letter, especially as a telegram had been received from Her Majesty's Ambassador at Paris stating that the French Government were desirous to be informed what course Her Majesty's Government intended to follow with regard to Bolivian privateers, and desired to give their cruizers the same instructions on the subject as might be issued to Her Majesty's ships.

In obedience to your Lordship's commands we have the honour to report—

That we had reported to your Lordship, in answer to Sir Julian Pauncefote's letter of the 12th instant, before receiving Sir Julian's letter of the 19th instant, inclosing the Decree issued by the Bolivian Government and a despatch from Her Majesty's Minister at Santiago.

Warn Bolivia to respect British flag, &c.

There is nothing in these inclosures which leads us to alter the opinion which we had the honour of submitting to your Lordship upon the right of the Bolivian Government to issue Letters of Marque. But in reference to the Articles in the Decree (the 5th Article authorizing the seizure of Chilean property on board neutral ships) and the suggestion of Her Majesty's Minister, that agents have been sent to the United States for the purpose of carrying out this intention of fitting out privateers, we suggest that the French and English Governments might properly warn the Bolivian authorities that the two Governments expect their flags to be respected on board their merchant-vessels.

Call attention of United States' Government to fitting out of privateers.

And that the French and English Ministers in the United States might be instructed officiously to call the attention of the United States' Government to the alleged intended proceedings of Bolivian agents in the United States.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Mr. D. Clay, No. 28, June 2.

## No. 12*.

*Memorandum by the Lord Chancellor respecting Bolivian Privateers.*

I PREFER the policy of the draft B to that of draft A.

Bolivian privateers

2. If draft A is adopted, Her Majesty's Government recognize the right of the Bolivian Government to issue "letters of marque" to privateers. If this right is conceded the privateer must be entitled to exercise whatever right of visit, search, &c., a national ship of the same Government could exercise. This would then narrow the whole case to the question whether Chilean goods, not being contraband of war, could be seized in a neutral ship. Whatever arguments might be adduced to show that they ought not to be seized, the practice of this country has, I think, always been, in a similar case, to insist on their liability to seizure, and it would hardly be safe to make this now our *sole* ground of objection.

Violation of Declaration of Paris through a non-acceding Power, &c.

3. Draft B would proceed on a refusal to recognize the validity of the Bolivian Decree under all the circumstances of the case. These circumstances are (1) that Bolivia and Peru are making war in partnership, and Peru has acceded to the Declaration of Paris, and ought not indirectly to violate it through Bolivia; (2) that the Decree is not *bonâ fide*, as coming from a Power which has no navy, and an insignificant seaboard, no part of which is now in her own possession; (3) the extravagant claims of the Decree as to seizing neutral goods may be added as an *additional* ground for objecting to the whole.

4. I would suggest that, if B is adopted, the second paragraph should run thus: "Under the peculiar circumstances of the case, Her Majesty's Government are not prepared to recognize the validity of this Decree, and in view of the losses and damages to which neutral commerce may be exposed from some of its provisions, as well, &c."

(Signed) CAIRNS.

*August* 13, 1879.

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### Annexes.

### (A.)

*Draft of a Letter from the Marquis of Salisbury to the Lords Commissioners of the Admiralty.*

My Lords, *Foreign Office, August* , 1879.

I HAVE the honour to transmit to you herewith copy of a despatch from Her Majesty's Chargé d'Affaires at Valparaiso, inclosing a Decree issued by the President of Bolivia, announcing the intention of the Government of that Republic to issue letters of marque to privateers under the Bolivian flag, and laying down rules for the guidance of vessels furnished with such letters of marque during the war now being carried on between Bolivia and Peru on the one hand and Chile on the other.

Her Majesty's Government have carefully considered this Decree, and although, in view of the fact that Bolivia has never acceded to the Declaration of Paris respecting privateering, they are not disposed to question the right of that State to issue letters of marque, they nevertheless feel it to be their duty to take measures to protect British commerce from the injury that would be inflicted upon it by the carrying out of Article 5 of the Decree, which authorizes the privateers of the Republic to seize any cargo, being Chilean property, which they may find on board of any neutral vessel, whether or not the same may be contraband of war.

I have therefore the honour to request that your Lordships will send directions, with as little delay as possible, to the Commander-in-chief of Her Majesty's naval forces in the Pacific, directing him to issue orders to the officers under his command to do all in their power to prevent the seizure, by Bolivian privateers, of Chilean property, not being contraband of war, which may be found on board British vessels, and to resist by force, if necessary, any attempt that may be made to effect such seizure in the presence of one of Her Majesty's ships.

Her Majesty's Government are informed by the French Government that instructions in this sense have already been given to the commanding officers of French ships

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of war in the Pacific; and it is the wish of Her Majesty's Government that Her Majesty's naval forces should act in this matter, as far as possible, in concert with those of France.

I am, &c.

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## (B.)

### *Draft of a Letter from the Marquis of Salisbury to the Lords Commissioners of the Admiralty.*

My Lords,

*Foreign Office, August , 1879.*

I HAVE the honour to transmit to you herewith copy of a despatch from Her Majesty's Chargé d'Affaires at Valparaiso, inclosing a Decree issued by the President of Bolivia, announcing the intention of the Government of that Republic to issue letters of marque to privateers under the Bolivian flag, and laying down rules for the guidance of vessels furnished with such letters of marque during the war now being carried on between Bolivia and Peru on the one hand and Chile on the other.

Under the peculiar circumstances of the case, Her Majesty's Government are not prepared to recognize the validity of this Decree; and in view of the losses and damages to which neutral commerce may be exposed from some of its provisions, as well as from lawless acts on the part of Bolivian privateers, Her Majesty's Government have determined, in concert with the Government of France, to resist the execution of the Decree, so far as concerns British and French vessels respectively. I have, therefore, to request that your Lordships will send instructions, with as little delay as possible, to the Commander-in-chief of the naval forces in the Pacific, directing him to issue orders to the officers under his command to do all in their power to prevent the visitation, search, or capture of British vessels by Bolivian privateers, and to resist by force, if necessary, any such acts, or any interference whatever by Bolivian privateers, with vessels under the British flag.

Her Majesty's Government are informed that instructions in this sense as regards the action of Bolivian privateers against French vessels have already been sent to the commanding officers of the French ships of war in the Pacific, and it is the desire of Her Majesty's Government that Her Majesty's naval forces shall act in this matter, as far as possible, in concert with those of France.

I am, &c.

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## No. 12.

### *The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August 9.)*

My Lord,

*Temple, August* 8, 1879.

Suspected torpedo-boat for Chile.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that with reference to our letter of the 19th instant, he was directed by your Lordship to transmit a communication from the Board of Customs, reporting the result of an examination which had been made of the cases detained at Hull, containing portions of a steam-launch believed to be a torpedo-boat, intended for shipment to Chile, and that he was to request that we would favour your Lordship with our opinion as to whether that Report contained sufficient evidence to justify Her Majesty's Government in further detaining the cases in question, or whether the Secretary of State should order their release, as provided by section 24 of the Foreign Enlistment Act, 1870.

We are also honoured with a further letter from Sir Julian Pauncefote, bearing date the 2nd instant, inclosing a further letter from the Treasury on the same question.

In obedience to your Lordship's commands we have the honour to report—

Detention of cases containing, not justified.

That we are of opinion that the Report referred to in Sir Julian Pauncefote's letter does not contain sufficient evidence to justify Her Majesty's Government in further detaining the cases in question, and that the Secretary of State should order the release of the cases, under section 24 of the Foreign Enlistment Act.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 13.

### *The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received September 25.)*

My Lord,

*Temple, September* 25, 1879.

Chilean war. Injury to British property by Chilean ships of war.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatches, as marked in the margin,* from Her Majesty's Minister at Lima, relative to the injury caused to British subjects by the proceedings of Chilean naval officers during the war now being carried on between Chile on the one side and Peru and Bolivia on the other.

That Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether the information contained therein was sufficient to warrant Her Majesty's Government in preferring a formal demand for indemnity in any of the cases reported by Mr. St. John.

In obedience to your Lordship's commands we have the honour to report—

That the cases particularly referred to in Mr. St. John's despatch are:

Shelling of Mollendo;

1. The damage done at Mollendo, an unfortified town, by firing shot and shell upon the town in return for some rifle shots fired upon Chilean man-of-war boats.

Destruction of Pisagua;

2. The destruction of a very considerable part of the town of Pisagua by the fire from the ship in return also for some rifle shots fired upon Chilean man-of-war boats.

In both these cases some excuse may be urged for the conduct of the Chilean officers, in the fact that their boats were first fired on, and that provocation was given by the townspeople, or persons on shore, who should have remonstrated in a peaceable and not in a hostile way against the proceedings of the Chilean officers in sending their boats to seize property in or near the shore.

In excess of legitimate warfare.

But, in our opinion, the extremities to which the Chilean officers resorted in both these cases were carried far beyond the calls of legitimate warfare between civilized nations.

Seizure of "Alice Kitson" unjustifiable.

3. The seizure of the "Alice Kitson" was, in our opinion, unjustifiable. Mr. St. John does not say what has become of the ship, or whether she has been restored.

Firing upon train.

4. The firing upon the train at Iquique was, in our opinion, without any justification.

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* Mr. St. John, No. 54, April 30; ditto, No. 62, May 20; ditto, No. 72, June 9; ditto, No. 94, July 7, 1879.

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Support Mr. Fry's claim.

5. Mr. Fry's claim may, in our opinion, properly be supported by Her Majesty's Government.

Demand indemnity in all above cases.

We are therefore of opinion that in all the cases referred to by Mr. St. John, and in which a British subject or British property has been injured, a formal demand for indemnity may properly be preferred.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 14.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received October* 17.)

*Temple, October* 17, 1879.

My Lord,

Chilean war. Destruction of British launches by Peruvian ships of war.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Chargé d'Affaires at Valparaiso, relative to the destruction, by Peruvian ships-of-war in Chilean ports, of launches belonging to British subjects.

Forcible use of British launches by Chileans to land stores, &c.

That in the case reported in despatch No. 43 (Inclosure 1) the owners of the launches destroyed by the "Pilcornayo" at Tocopilla stated that the Chilean authorities on several occasions had taken their launches by force to land stores, &c., for their army, and they seemed to attribute to that circumstance the action of the Peruvian Commander.

Launches owned by Mr. Sheriff, an English Company, and Messrs. Odgers.

That in the cases reported in despatch No. 44 (Inclosure 1) four of the launches destroyed by the "Huascar" in the Bay of Chânâral were the property of a Mr. Sheriff, and of the four launches destroyed by the same vessel of war at Pan de Agucar one was the property of Mr. Sheriff, and three were the property of a company "composed of British subjects residing in England," and known as the "Carizzalillo Mining Company," but it was not stated whether the national status of the company was Chilean or British. That as regarded the launches belonging to Messrs. Odgers and Co., and the launches of Mr. Sheriff destroyed in the Bay of Chânâral, the Peruvian Commanders had been previously warned that they were British property. That the commander of the "Huascar" said that his instructions were imperative, and he referred to the destruction of foreign launches and other property by the Chilean Fleet in Peruvian ports.

That in the present cases no actual hostilities were going on at the time of the destruction of the British launches.

That Sir Julian Pauncefote was to request that we would take those papers into our consideration, and that we would favour your Lordship with our opinion as to whether the facts stated therein would justify Her Majesty's Government in preferring a claim of indemnity against the Peruvian Government.

In obedience to your Lordship's commands we have the honour to report—

May claim indemnity from Peru.

That, in our opinion, the facts stated in the despatches and inclosures from Her Majesty's Chargé d'Affaires at Valparaiso would justify Her Majesty's Government in preferring a claim to indemnity against the Peruvian Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 15.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received October* 30.)

*Temple, October* 29, 1879.

My Lord,

Chilean war. Capture by "Huascar" of "Adriana Lucia," property of Mr. Peede, a British subject, sailing under Nicaraguan flag.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th October instant, stating that he had the honour to transmit to us, by direction of your Lordship, a despatch (No. 120) from Her Majesty's Minister at Lima, reporting the capture by the Peruvian iron-clad "Huascar" of the "Adriana Lucia," a vessel belonging to a British subject, but sailing under the Nicaraguan flag.

That it appeared that in consequence of the difficulties experienced in South America of sending vessels to any English Colony to obtain a British certificate of registry, British subjects purchasing foreign vessels place them under the Nicaraguan flag.

Nicaraguan Government repudiate such granting of registers.

That, accordingly, some years ago a British subject in Chile, named Peede, purchased a vessel called the "Adriana Lucia," and placed her under the Nicaraguan flag. That Mr. St. John reported that, without previous notice, the Nicaraguan Government had repudiated the action of their Diplomatic and Consular officers, and declared registers granted by them to be of no value.

Seized for having no lawful papers.

That before information of that measure had reached Chile, Mr. Peede had despatched the "Adriana Lucia" to the Bay of Chânâral (on the coast of Chile) to load ores, and she was then seized by the Peruvian iron-clad "Huascar," and sent to Callao as a prize, on the ground that she carried no lawful papers.

That the case was now before a Peruvian Prize Court, and that your Lordship would be glad to be favoured with our opinion as to whether any action should be taken by Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government cannot interfere.

That, in our opinion, no action can be taken by Her Majesty's Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 16.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received November* 6.)

*Temple, November* 5, 1879.

My Lord,

Withdrawal of permission to foreign vessels to use Nicaraguan flag.

WE were honoured with your Lordship's commands signified in a note from Sir Julian Pauncefote, dated the 16th October last, stating that he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Minister at Lima upon the subject of the withdrawal of the permission granted to foreign vessels of making use of the Nicaraguan flag; and to request that that despatch might be taken into consideration with that inclosed in his letter of the 8th October.

In obedience to your Lordship's commands we have the honour to report—

Nothing to add. (See No. 15.)

That there is nothing in these papers affecting the previous Report.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 17.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received November* 29.)

*Temple, November* 29, 1879.

My Lord,

Chilean ships. Injury to British subjects.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd September, stating that, with reference to his letter of the 19th August, he was directed by your Lordship to transmit further despatches relative to the injury caused to British subjects by the proceedings of Chilean naval officers in the war in the Pacific.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government may remonstrate with Chile.

That the acts of the Peruvian* men-of-war, described in the papers forwarded by Sir Julian Pauncefote with his letter of the 2nd September last, will, in our opinion, justify Her Majesty's Government in remonstrating strongly with the Peruvian* Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* *Qy.* Chilean.

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# China.

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## No. 18.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received June* 23.)

My Lord,
*Temple, June* 21, 1879.

Prosecution of British vessel "Taiwan" by Chinese Customs. Article XXXVII of Treaty.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Chinese Minister at this Court, together with a copy of the Treaty of Tientsin and a correspondence as marked in the margin,* relative to the prosecution of the master of the British steam-ship "Taiwan" on behalf of the Chinese Imperial Maritime Customs for an alleged offence against Article XXXVII of that Treaty.

That the facts of the case were stated in the Chinese Minister's letter and also at p. 5 of the Printed Chinese Customs Correspondence transmitted by him; and at p. 60 of the same volume we would find the Articles of the Treaty which bore upon the point under discussion.

That the question turned on the interpretation of the XXXVIIth Article of the Treaty, and the Chinese Government took exception to the Judgment pronounced by Her Majesty's Consul at Foochow who heard the case against the British shipmaster under the Rules agreed on between the two Governments for the prosecution of offences against the Customs. That a copy of those Rules appeared at p. 61 of the same volume.

That the British Consul held that the master had committed no offence under Article XXXVII, and that view was concurred in by Her Majesty's Chargé d'Affaires at Peking, by the Chief Justice of Her Majesty's Supreme Court at Shanghae, and by the Foreign Office.

Liability of master for articles smuggled on board.

That the Chinese Government, however, had been advised by the Counsel whom they had consulted in this country (see printed case submitted to Counsel), that the Judgment was wrong, and that on the proper construction of Article XXXVII the master of a British vessel must be held to have committed the offence of omitting to give "a full and true account of the particulars of the cargo on board," if it should be discovered that any person had, without the knowledge of the master, and notwithstanding all reasonable precautions on his part to prevent smuggling, surreptitiously taken on board and concealed in his clothing or bedding any article liable to duty, with a view to defraud the Chinese Customs.

That Sir Julian Pauncefote was to state that, for an offence against Article XXXVII of the Treaty, the master was liable to a fine of 500 taels, and (Article XLVIII) the vessel might be prohibited from trading in China.

Terms "cargo" and "manifest."

That we would observe that, in the opinions of the legal advisers of the Chinese Government, reference was made to the liability of the owners and master of a British vessel, under the Customs Laws Consolidation Act, in the case of goods concealed on board, and stress was laid on the legal interpretation of the words "cargo" and "manifest" in that statute.

That it was submitted, however, that the two cases were not analogous, and that in considering the real intention and meaning of the XXXVIIth Article of the Treaty of Tientsin, the conditions of trade in China and the surrounding circumstances at the time when the Treaty was made must be taken into account.

That the British steamers of the class of the "Taiwan," which run between Hong-Kong and the Treaty ports of China, were manned by Chinese sailors, and carried a large number of Chinese passengers (who usually smoke opium during the greater part of the voyage), and in spite of the greatest vigilance on the part of the master, they sometimes contrive amongst them to secrete small parcels of opium in their clothing, bedding, or boxes.

That it could hardly be supposed that Lord Elgin, who negotiated the Treaty, could have intended to impose on the owners and master of a British vessel the duty of searching the persons and luggage of their Chinese passengers, or to make them responsible in heavy penalties for an offence committed on board by a Chinese subject without the knowledge of the master and in spite of all reasonable precautions on his part to prevent it.

Intention of framers of Treaty.

That it would seem more consonant to reason and justice and to the probabilities of the case that the XXXVIIth Article of the Treaty was only intended by the Contracting Parties to secure the honest declaration by the British shipmaster of all merchandise taken by him on board the vessel, or with his knowledge, or the existence of which on board his vessel he must have discovered by the exercise of reasonable vigilance.

That the words, "full and true account of the cargo," in their ordinary acceptation, were consistent with that construction, which was that placed upon them by the British authorities in China, and with great deference to the eminent Counsel who had expressed a different view, Sir Julian Pauncefote was to submit that the words of a Chinese Treaty should not be strained beyond their natural meaning, on the ground that similar words in a British statute applicable to the conditions of trade in this country might have received a more extended and technical interpretation.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether, having regard to the considerations above expressed, Her Majesty's Government, in the interest of British shipping in China, might properly decline to accept the interpretation placed by the Chinese Government on the XXXVIIth Article of the Treaty.

That, in conclusion, Sir Julian Pauncefote was to observe that, though the decision of the British authorities in the "Taiwan" case had been approved, the Rules under which an appeal was carried to Peking were at variance with Her Majesty's Order in Council for China and Japan, which, by section 84, provided for the trial thereunder of offences against Treaties, and did not sanction any other appeal in such cases than that prescribed by the Order.

That copies of the proceedings in the case and of the Judgment would be found in Mr. Fraser's despatch No. 170 of the 21st September, 1878.

In obedience to your Lordship's commands we have the honour to report—

Such articles do not form part of cargo. Dissent from Chinese view.

That in our view goods concealed, as were the goods in question, and not carried upon the vessel by the authority of the owners, or their authorized agent, do not form part of the cargo, we are therefore of opinion Her Majesty's Government, in the interest of British shipping in China, may properly decline to accept the interpretation placed by the Chinese Government on the XXXVIIth Article of the Treaty.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 19.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received September* 29.)

My Lord,
*Temple, September* 29, 1879.

Prosecution of the "Taiwan."

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th instant, stating that, with reference to our Report of the 21st June, in regard to the prosecution of the master of the British steam-ship "Taiwan," for an alleged offence against the XXXVIIth Article of the Treaty of Tientsin, he was directed by your Lordship to transmit to us therewith the further correspondence noted in the margin.*

Interpretation of Article XXXVII of Treaty of Tientsin.

That the Chinese Minister at this Court, in reply to your Lordship's letter to him of the 13th July, transmitted a copy of an opinion of Sir Henry James and Mr. Alexander Young commenting on that letter, and expressed a hope that Her Majesty's Government and that of China might arrive at an understanding relative to the interpretation of the Article in question.

That the legal advisers of the Chinese Legation appeared to have so far modified their former opinion as to relieve the owners and master of a ship of responsibility where the Article attempted to be smuggled by a passenger or seaman "was under his sole control and in his immediate possession," a fact clearly established in the case

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* Marquis Tsêng, May 8, 1879; Treaty.

* To Marquis Tsêng, July 15; Marquis Tsêng, August 22, 1879.

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which gave rise to the present discussion, the opium having been concealed in the passenger's luggage, and not being "at large" in the ship.

That the position taken up by the British authorities in China was that the liability of the owner or master depended on the fact whether reasonable vigilance had been exercised on their part, and that your Lordship was disposed to think that if any new rule should be agreed to between the two Governments to settle the question in dispute, it might be equitable to concede that the master should be held liable to a fine under Article XXXVII, in cases where the absence of reasonable vigilance had been clearly proved against him. Your Lordship, however, would be glad to be favoured with our opinion on that point and, generally, with our observations on the reply of the Chinese Minister.

That Sir Julian Pauncefote was to inclose the papers previously submitted to us in the case, for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

That we are unable to see any difficulty in the XXXVIIth Article of the Treaty, or in its application to the facts of the case on board the "Taiwan."

Meaning of word "cargo."

The word "cargo" in the Treaty represents, as said in the opinion of Counsel forwarded by the Chinese Minister to your Lordship, all articles of commerce placed on board the ship for the purpose of being carried, and which were intended, or ought, to be within the general custody of the ship and its officers.

But the opinion admits that an individual may have some article in his immediate possession which would not be cargo, and we suggest, as an instance, opium carried by a passenger in his private luggage.

No new rule requisite. Exercise of vigilance by ship-master.

In our opinion the Treaty requires the exercise of all due vigilance on the part of the master of the ship, and we see no reason for any new rule; but some rule may be suggested by the Chinese Minister which your Lordship might properly accept.

The Chinese Minister may, we think, properly be answered to this effect.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 20.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received November 18.)*

My Lord,
*Temple, November* 17, 1879.

British protection to Anglo-Chinese in China.

Sir T. Wade's Circular.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 7th August last, stating that he was directed by your Lordship to transmit to us therewith the correspondence, together with a printed memorandum,* respecting British protection to Anglo-Chinese in China. That since that memorandum was prepared, despatch No. 19 of the 9th June, 1879, had been received from Her Majesty's Minister at Peking, who transmitted therein a copy of a Circular which he had addressed to Her Majesty's Consuls in China on that subject. That Sir Thomas Wade urged that if persons of Chinese parentage who had been born within the British dominions, and were therefore British subjects, could not claim the status and privileges of British subjects while in China, no time should be lost in declaring this to be law.

That we should observe that in his minute, a copy of which was appended to the above printed memorandum, Sir Thomas Wade proceeded on the assumption that such persons "are as much under the protection and control of the British authorities in China as any other British subjects." That, on the other hand, he stated in his despatch above referred to that the Chinese Government emphatically deny the right of any person of Chinese descent to any other national status than that of his progenitors.

That the question of the right of Her Majesty's Government to protect such persons as British subjects while they were within Chinese territory, as against the Chinese authorities who claim their allegiance, was discussed in the printed memorandum inclosed, and that Sir Julian Pauncefote was directed by your Lordship to request that we would favour your Lordship with our opinion thereon, and as to the necessity of a Convention with China to settle the controversy, and of the sanction of the Chinese Government to any modifications in the existing arrangements as published in Sir Rutherford Alcock's notification of the 6th October, 1868.

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* Confidential Paper, No. 3865.

In obedience to your Lordship's commands we have the honour to report—

Cannot insist upon protecting them.

That, in our opinion, Her Majesty's Government ought not to insist upon extending British protection to persons of Chinese descent whilst they are within Chinese territory.

They have no special claim.

That, as a matter of policy, we take the liberty of suggesting, for your Lordship's consideration, that, as the parents of these persons came for their own purposes within British territory, and the persons themselves go into China for objects of their own, they have no special claim for British protection, and the assertion of the right to protect them will lead to great complications and difficulties.

Circular should be withdrawn. No Convention necessary.

We are therefore of opinion that the Circular of Sir Rutherford Alcock may with advantage be withdrawn, and that the Chinese Government, with whom no Convention seems to us necessary, should be informed that the Circular has been withdrawn.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Cyprus.

## No. 21.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received March 22.)*

My Lord,
*Temple, March* 21, 1879.

Ships owned by natives of Cyprus.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th February ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's High Commissioner in Cyprus, touching the position of ships owned by natives of that island, and requesting instructions on the subject.

That your Lordship proposed, with our concurrence, to inform Sir Garnet Wolseley that natives of Cyprus, not being British subjects, they are not entitled to have their ships registered as British ships under the Merchant Shipping Act of 1854, 17 and 18 Vic., cap. 104, sec. 18, and consequently that their ships remain Turkish ships, and (subject to our reply to a subsequent question) as such must carry the Turkish flag.

That your Lordship would be glad to be informed whether we concur in the above reply to Sir Garnet Wolseley's inquiry, and also to be favoured with our opinion as to how far the Legislature of Cyprus was competent to deal with ships owned by natives of Cyprus; for instance, whether a local Ordinance could properly be passed in the nature of a Cypriot Merchant Shipping Act, which should regulate the registration of Cypriot vessels, and assign to them a distinctive flag, and contain suitable provisions as to the transfer of ownership, discipline, and other matters usually dealt with in Acts and Ordinances for the regulation of merchant shipping; whether such legislation would require the assent of the Porte; whether the Ordinance could render justiciable by the Courts of Cyprus offences committed on board Cypriot ships on the high seas or beyond the limits of Cyprus, irrespectively of the nationality of the offender; and whether British protection could be extended to Cypriot ships with the consent of the Porte, in Turkish waters, and with or without the consent of the Porte in all other parts of the world.

Sir Julian Pauncefote in a postscript stated that he was to transmit to us a copy of the Convention of the 4th June last, assigning Cyprus to be administered by Great Britain, and of an Agreement giving Her Majesty the Queen legislative and other

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powers, and a copy of Her Majesty's Order in Council of the 14th September, 1878, establishing the Legislature of Cyprus.

In obedience to your Lordship's commands we have the honour to report—

Not to be registered as British ships. Must carry Turkish flag.

That we concur in your Lordship's opinion that natives of Cyprus are not entitled to have their ships registered as British ships, and that they remain Turkish ships, and must carry the Turkish flag.

Cannot pass Merchant Shipping Ordinance to operate outside the island. Distinctive flag, &c.

Referring to Conventions of the 4th June and the 14th August, 1878, and the Order in Council of the 14th September, 1878, we are of opinion that an Ordinance purporting to operate outside the island cannot properly be passed in the nature of a Cypriot Merchant Shipping Act regulating the registration of Cypriot vessels, assigning them a distinctive flag, or containing any provisions as to the transfer of ownership, discipline, and other matters.

Cypriot ships, in our opinion, remain Turkish ships, and any change in reference to them which the British occupation and administration of Cyprus may make desirable should be made by the Porte.

Offences in Cypriot waters on board Cypriot ships are justiciable by Court of Cyprus.

Offences committed by any person on board Cypriot vessels within the waters of Cyprus may be rendered justiciable by the Court of Cyprus, since those offences concern the peace, order, and good government of the island, and the island could not be administered unless offences so committed were justiciable by the constituted courts of the island.

Not offences on high seas, &c.

But offences committed on board Cypriot vessels on the high seas, or outside of Cypriot waters, will not be justiciable by the Courts in Cyprus.

British protection cannot be extended to ships

And British protection cannot, we think, in any case be extended to Cypriot ships.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 22.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 24.)

My Lord,

*Temple, April* 23, 1879.

Supreme Court, &c., for Cyprus.

Judicial reform.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th February last, stating that the question of judicial reform and reorganization for the Island of Cyprus had for some time past occupied the attention of Her Majesty's Government, and that he was directed by your Lordship to transmit to us the inclosed printed memorandum* which had been drawn up for the purpose of submitting in a more convenient form, for our consideration and advice, a project of legislation, to make provision for the establishment of a Supreme Court in Cyprus, and of district Courts in the several divisions of the island, and for regulating the law to be administered therein, and the procedure to be followed. That a list of the papers accompanying that letter was inclosed, and Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion on the various proposals referred to in the memorandum.

In obedience to your Lordship's commands we have the honour to report—

That, as unfortunately, whilst the papers relating to the Ordinance for the "Establishment of a High Court of Justice in Cyprus" were under our consideration, a statement was made in the House of Commons that the Ordinance was issued, and copies of it were laid before both Houses of Parliament, it will be now of no avail to suggest that any alterations should be made in the provisions which such Ordinance contains.

Objection to Ordinance.

We may, however, observe, that the only serious objection, founded on principle which can, in our opinion, be made to the Ordinance, arises upon the 10th paragraph.

Conflict with Capitulations.

Upon the subject of that paragraph and the alteration involved in it, it is impossible not to observe that two very different views may be entertained. In favour of it, it would probably be urged that the Capitulations are not to be regarded so much as actual Treaties between nation and nation as licences granted by the sovereign power of the Porte, and necessarily determinable when that Government parted with legislative and judicial authority. On the other hand, it would be contended that Her Majesty has no right to subject to the jurisdiction of the Courts in Cyprus the subjects of States having Capitulations or Treaties with the Sultan.

* See Confidential Paper No. 3841.

Her Majesty takes over existing obligations.

It will be urged that the Sultan himself could not, in breach of his obligations, have assumed the jurisdiction now sought to be imposed upon the natives of foreign States, and that by transferring the administration to Her Majesty he gives no new power, and that Her Majesty must take the administration of the island, subject to existing obligations.

We do not think it can be said that either view can be laid down with absolute certainty, though the former view alone is that upon which the 10th paragraph could be justified.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 23.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury —(Received June* 11.)

My Lord,

*Temple, June* 11, 1879.

Pioneer regiment for Cyprus.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th ultimo, stating that he had the honour to lay before us, by direction of your Lordship, papers with reference to a project for the formation of a regiment of Turkish infantry for service in Cyprus.

That we should observe that Sir G. Wolseley in his despatch No. 122 of the 7th November, 1878, which contained all the details of the scheme, proposed that that force should be called "The Cyprus Regiment of Pioneers," that the men should be commanded by English officers, and should take the oath of allegiance to the Queen; and further, that they should be enlisted to serve Her Majesty in Cyprus or elsewhere for a term of six years.

That the cost of this force, should the scheme be carried out, was to be defrayed out of Imperial funds, but the charge would not be included in the Army Estimates.

That assuming that no objection existed on the part of the Porte to the recruiting in its dominions of Ottoman subjects with a view to their serving as British soldiers, and taking the oath of allegiance to Her Majesty, it became important to consider whether the scheme, as explained in Sir G. Wolseley's despatch, could be carried out consistently with British law, and, if not, what modifications were required therein for that purpose.

That the first question which arose was whether, having regard to the terms of section 4 of the Mutiny Act (41 Vic., cap. 10), the force in question would come under the provisions of that Statute.

That Sir Julian Pauncefote was to inclose a copy of the Act of the Legislature of the Cape Colony (No. 9 of 1878), establishing the force of "Cape Mounted Riflemen."

That it would be observed that, by sections 4 and 5 of that Act, that Colonial force was under the command of officers holding warrants of appointment from the Governor, and did not therefore, it was presumed, come within the terms of section 4 of the Mutiny Act, which referred to troops "under the command of any officer having any commission immediately from Her Majesty."

That the next question which arose was whether, assuming the proposed corps of Cyprus Pioneers to be established on the same footing as the Cape Mounted Riflemen, by an Ordinance of the Legislature of Cyprus, such an Ordinance could legally provide for the enlistment of men thereunder to serve anywhere but in Cyprus, the power of the Local Legislature being confined by Her Majesty's Order in Council of the 14th September, 1878, to the making of Laws and Ordinances for the peace and good order of the island.

That, assuming that the proposed force—constituted by local ordinance, as before mentioned—would not come within the terms of section 4 of the Mutiny Act, the next question which arose was whether a Turkish subject enlisting therein would "enlist as a soldier in Her Majesty's service" within the meaning of section 2 of the Act 1 Vic., c. 29, or, in other words, whether the disability of aliens "to enlist or serve as a soldier in Her Majesty's service," which that Act partially relieved, had reference only to enlistment and service in the British army under the provisions of the Mutiny Act, or whether it was such a disability as would affect the legality of the proposed Ordinance.

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That Sir Julian Pauncefote was to request that we would be good enough to take the accompanying papers into our consideration, and to favour your Lordship with our opinion on the particular questions above submitted, and generally as to whether the scheme of Sir G. Wolseley for the raising of the proposed force of Cyprus Pioneers could be legally carried out with or without modification.

That it was specially desirable that such a force should be raised and maintained in Cyprus, without the necessity of applying to Parliament for any legislation beyond the vote in supply.

That in considering the questions submitted to us, your Lordship would be much obliged if, in case the present project seemed to us to involve the necessity of such legislation, we would point out to your Lordship by what modifications in the plan that necessity might be avoided.

In obedience to your Lordship's commands we have the honour to report—

Force would come under Mutiny Act. Ordinance cannot provide for service out of Cyprus.

That the proposed force would come under the provisions of the 41 Vic., c. 10.

An Ordinance of the Legislature of Cyprus could not, in our opinion, legally provide for the enlistment of men to serve anywhere but in Cyprus.

"Soldiers in Her Majesty's service."

Any Turkish subject enlisting in the proposed corps would enlist "as a soldier in Her Majesty's service" within the meaning of section 2 of 1 Vic., c. 29, since the number of foreigners proposed to be enlisted would be in excess of the proportion allowed to serve in any regiment, battalion, or corps under 1 Vic., c. 29, sec. 2.

As to employment as civilians, &c.

The only modification, if it can be called a modification, is that the requisite number of men should be hired and employed as civilians in the making of roads, and other labour necessary for the public service, such as preservation of peace and good order in Cyprus.

Arms and uniform, &c.

These men should not be dressed, armed, or officered as soldiers.

The scheme is unconstitutional.

Our opinion, as your Lordship will gather from the above report, is against the proposed scheme, which we consider could not be carried out consistently with constitutional law.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.

Doubt if force comes under Mutiny Act.

I agree with this Report, with the exception that I strongly doubt whether the force in question would come within the terms of section 4 of the Mutiny Act, or within the Mutiny Act at all.

(Signed) J. PARKER DEANE.

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## No. 24.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received June 21.)*

My Lord,
*Temple, June* 21, 1879.

Pioneer regiment for Cyprus.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th instant, stating that he was directed by your Lordship to acknowledge the receipt of our letter of the 11th instant on the subject of a proposed regiment of Cyprus pioneers, and Sir Julian Pauncefote was to state to us in reply that, in view of the opinion expressed therein, it was proposed to modify extensively the proposal which was originally sent home by Sir G. Wolseley.

Draft Ordinance.

That Sir Julian Pauncefote inclosed therewith a draft of an Ordinance which it was proposed that the High Commissioner of Cyprus should lay before his Legislative Council.

That we would observe that in the framing of that Ordinance the precedent of Ordinance V 1872 of the Parliament of the Colony of the Cape of Good Hope, establishing a "force for the better protection of life and property in the Colony, to be called the Cape Mounted Rifles," had been closely followed.

That Sir Julian Pauncefote was to request us to take the inclosed papers into our consideration and to inform your Lordship whether, in our opinion, there was any illegality in the proposed Ordinance.

That the papers sent with Sir Julian Pauncefote's previous letter were returned for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

That we observe the men proposed to be embodied to serve as an armed force are to act "as a military force for the defence of the island" and "discharge military duties in connection therewith when called upon so to do." They are, in fact, to be soldiers, armed, trained, clothed, equipped, and commanded by officers as soldiers, and not merely to act as civilians in a police force.

Force to act as military and police.

Illegal. Cypriots not British subjects. Cape Mounted Rifles no precedent.

In our opinion the proposed Ordinance would be illegal under the 1 Vict., cap. 29, sec. 2. The Cypriots are not British subjects as the men enlisted at the Cape were, and in other respects the case of the Cape Colony is so different that it affords no precedent for the creation of the proposed force in Cyprus.

The Cape Colony force was established by the Act of the Legislature of the Colony, and the pay of the men and officers was provided for out of the Colonial revenue. In the case of Cyprus the pay is, we presume, to come out of the estimates, and the force is created by the Ordinance.

No provisions for pay, discipline, &c.

The Ordinance contains no provisions for the pay, enforcing discipline, or anything beyond the formation of a military corps.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 25.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received September 13.)*

My Lord,
*Temple, September* 13, 1879.

Porte's request to prevent native of Lebanon landing in Cyprus; and to arrest military deserter from Rhodes.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he had the honour to transmit to us, by direction of your Lordship, the inclosed copy of a telegram from Major-General Biddulph, Her Majesty's High Commissioner for Cyprus, and he was to request that we would favour your Lordship with our opinion as to whether the High Commissioner could properly comply with the wishes of the Porte as regarded preventing the landing in Cyprus of the native of Lebanon mentioned in the telegram, and with the request of the Governor of Rhodes in regard to the apprehension of a military deserter from that island.

That the documents noted in the margin* were transmitted therewith in case we should have occasion to refer to them.

In obedience to your Lordship's commands we have the honour to report—

No power to comply under Order in Council.

That the High Commissioner has not under the Order in Council the power to comply with the wishes of the Porte as regards preventing the landing in Cyprus of the native of Lebanon or with the request of the Governor of Rhodes in regard to the apprehension of the military deserter from that island.

The High Commissioner may, however, have such power under some Ordinance with which we are not acquainted.

Ordinance must be passed, if not already done.

If no such Ordinance exists we submit, for your Lordship's consideration, whether it would not be expedient that an Ordinance should be passed enabling the High Commissioner to prevent the landing of persons against whom reasonable suspicion may exist.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 26.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received September 26.)*

My Lord,
*Temple, September* 25, 1879.

Forests Ordinance. Question of validity of.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th August last, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Colonel Greaves, lately administering the Government of Cyprus, forwarding copies of "The Forests Ordinance" No. 25 of 1879 which passed the Legislative Council of that island on

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* Convention, June 4; Annex to ditto, July 1; Article, August 14; Order in Council, September 14, 1878.

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the 21st day of April, 1879, while Sir Garnet Wolseley was still Her Majesty's High Commissioner.

That as the terms of Colonel Greaves' despatch did not appear quite clear on the subject, your Lordship caused inquiry to be made of General Biddulph—the present High Commissioner—whether there existed in the island a copy of the Ordinance, as passed by the Legislative Council signed by Sir Garnet Wolseley in token of his assent thereto in the name of Her Majesty and on her behalf, as provided by section 17 of the Cyprus Order in Council of the 14th September, 1878.

That Sir Julian Pauncefote was to inclose his answer, from which we would see that no such copy of the Ordinance existed. That "The Forests' Ordinance" was put in force in Cyprus, notwithstanding, Colonel Greaves having apparently been under the impression that the affixing of his own signature to the copies which he transmitted in his despatch above referred to was a sufficient compliance with Article 17 of the Order in Council.

That the copies of the Ordinances which were transmitted to the Secretary of State under Article 17 of the Royal Instructions were duly authenticated transcripts of the original; but in the present case the original had not been assented to and signed by Sir Garnet Wolseley.

That your Lordship would be glad to be favoured with our opinion—

Can Ordinance passed by a High Commissioner be signed by his successor.

1. As to whether, before an Ordinance of the Legislature of Cyprus could take legal effect, it must have been assented to in the name of Her Majesty and on her behalf, and signed in token of such assent by the High Commissioner or officer administering the Government of the island by whom the Ordinance was passed under the power contained in Article 5 of the Order in Council, or whether the formalities prescribed by Article 17 might be legally performed and fulfilled by any succeeding High Commissioner or officer administering the Government of the island.

2. Whether in the case of the Forests Ordinance it was necessary that a new Ordinance should be passed to give it validity from the date when it was passed or first put in force.

That Sir Julian Pauncefote was to inclose copies of the Cyprus Order in Council and Royal Instructions and of the Forest Ordinance in question, and he was to request that we would favour your Lordship with our Report at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

No. A new Ordinance must be passed to give it validity.

That the Article 17 of the Order in Council is so worded that, in our opinion, the signature of the High Commissioner assenting must be on the Ordinance, and the formalities required cannot be fulfilled by any succeeding High Commissioner or officer administering the Government of the island.

And a new Ordinance should be passed to give effect to the validity of the Forests' Ordinance from the time when it was passed or first put in force.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 27.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received November* 18.)

My Lord, *Temple, November* 17, 1879.

Domestic slavery in Cyprus.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us despatches from Her Majesty's High Commissioner in Cyprus respecting the alleged existence of domestic servitude in that island. That from those despatches it appeared that it was the practice of the Courts of Justice, when any person alleged to be a slave applied to them to decree his freedom, and this, as of course and without condition; but that it was not clear on what legal basis that practice rested, and it further appeared that a Vizirial Circular Order addressed to the Governor of Cyprus which might be taken as having the force of law in Turkey and which prohibited slavery could not now be found, either in original or in copy.

Ordinance to legalize freeing of slaves.

That under those circumstances your Lordship, in a despatch which was also inclosed, suggested to the High Commissioner that it would be well to remove all doubt as to the illegality of slavery, by passing an Ordinance on the subject.

That General Biddulph accordingly submitted a draft of an Ordinance for that purpose which would be found in the accompanying despatch, but which appeared to your Lordship to be open to objection. That another draft Ordinance had therefore been prepared, by your Lordship's directions, which was therewith transmitted to us, and that Sir Julian Pauncefote was to request that we would favour your Lordship at our earliest convenience with our opinion as to whether it would meet the circumstances of the case, and whether it was such that it could properly be laid before the Legislative Council in Cyprus.

That Sir Julian Pauncefote was to point out that the 1st section of the draft in question was taken from the Act of the United States' Congress abolishing slavery in the district of Columbia which would be found at p. 376 of the accompanying volume, and that the remaining sections were from the Indian Act respecting slavery, No. 5 of the 7th April, 1843, copy of which was inclosed. That the 1st section of the latter Act had been omitted as being unsuitable.

In obedience to your Lordship's commands we have the honour to report—

That we beg to suggest the substitution for clause 4 of the draft Ordinance the following:—

Approving, with amendment.

"No one shall be excused from the consequences of doing any act amounting to a penal offence on the ground that the person to, upon, or against whom the act was done, was, or was believed to be, in a state of slavery."

Subject to this alteration, we are of opinion that the draft Ordinance will meet the circumstance of the case, and may properly be laid before the Legislative Council in Cyprus.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 28.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received November* 27.)

My Lord, *Temple, November* 27, 1879.

Force of constabulary. Ordinance for raising.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th instant, stating that with reference to our Report of the 21st June last he was directed by your Lordship to transmit to us the accompanying copy of a draft Ordinance for enabling Her Majesty's High Commissioner in Cyprus to raise a force of constabulary which was needed owing to the reduction of the military garrison in that island, and for meeting the expenses of which a vote was taken during the last Session of Parliament. A copy of the vote in question was inclosed for our information.

Vote taken for expenses.

That Sir Julian Pauncefote was to request that we would take that draft into our consideration, and favour your Lordship with our opinion whether it was sufficient to carry out the object in view, and in other respects could properly be transmitted to the High Commissioner for submission to the Legislative Council of the island.

That as it was desirable that that force should be raised as soon as possible, Sir Julian Pauncefote was to request that our opinion might be given at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

No objection.

That, in our opinion, the draft Ordinance is sufficient to carry out the object in view, and we see no legal objection to its being transmitted to the High Commissioner for submission to the Legislative Council of Cyprus.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 29.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received December* 29.)

*Temple, December* 29, 1879.

My Lord,

Trial for murder. Alleged Greek subject, Sawas.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th December instant, stating that he had the honour to transmit to us, by direction of your Lordship, the papers noted in the margin,* relating to the trial and conviction before Her Majesty's High Court of Justice in Cyprus of a man named Sawas Christodoulos (commonly called Sawas), who was alleged to be a Greek subject.

That that man was charged with the murder of a Turkish zaptieh or officer of police. That the trial took place before the Judicial Commissioner with assessors, as provided by section 16 of the High Court of Justice Ordinance, and the accused, having been found guilty, was sentenced to death.

Sentenced to death.

Objection of Greek assessors.

That the two assessors, who were Greek subjects, objected to the finding and sentence of the Court, and their objection was recorded in the Minutes of the Proceedings, as provided by section 7 of the Ordinance.

That the Greek Vice-Consul at Larnaka raised various objections to the regularity of the trial, and urgent representations having been addressed by the Greek Minister in London to your Lordship to obtain a respite of the sentence pending further inquiry, your Lordship instructed the High Commissioner to suspend its execution, and to transmit forthwith a Report on the case for the consideration of Her Majesty's Government, in the manner prescribed by section 33 of the Ordinance.

That at that time it was assumed that Sawas was a Greek subject. That the High Commissioner's Report had now been received, and though the Minutes of Proceedings at the trial and the Notes of Evidence were not yet transmitted, the covering despatch of the High Commissioner (No. 188 of the 26th November), and a previous despatch from Colonel Edridge, the acting High Commissioner (No. 173 of the 15th November), gave rise to grave doubts as to whether, apart from the merits of the case and the representations of the Greek Government, the trial was not altogether illegal, having regard to the provisions of the Ordinance defining the limits of the jurisdiction to be exercised by the High Court of Justice.

Sawas a natural-born Ottoman.

That it appeared from the High Commissioner's despatch No. 188 that Sawas was a natural-born Ottoman subject, and that he was claimed as a Greek subject on the ground that he obtained Greek naturalization; but by Turkish law such naturalization was inoperative without the sanction of the Turkish authorities, and no proof had been adduced of such sanction having been obtained by Sawas. That it was presumed, therefore, that he must be treated as a Turkish subject for all purposes while within Turkish territory. That on that point he was to refer us to Colonel Edridge's despatch No. 171 of the 12th November.

Question of legality of trial.

Improper transfer of case from Ottoman Court to High Court.

That it appeared also from the High Commissioner's despatch No. 188 that the proceedings against Sawas were originally instituted in the proper Ottoman Court, but the Greek Vice-Consul having claimed him as a Greek subject by reason of his alleged Greek naturalization, the trial was transferred to the High Court by the Judicial Commissioner, *proprio motu*, and not by the High Commissioner, on the petition of the accused, as provided by section 108 (*b*) of the Ordinance.

That the reason of that proceeding appeared from Colonel Edridge's despatch No. 173, in which we would find a minute on the jurisdiction of the High Court by Mr. Phillips, the legal adviser of the Government of Cyprus, who also discharged the functions of Judicial Commissioner, and who, in that capacity, presided at the trial of Sawas.

That in that minute the legal adviser stated that he had adopted a construction of section 10 of the High Court of Justice Ordinance at variance with the views expressed in the Foreign Office despatch No. 45 of the 14th July, 1879.

That in the case of Sawas Mr. Phillips, acting upon his own interpretation of the Ordinance, concluded that the accused, having been claimed as a Greek subject, must be tried before the High Court of Justice, and he therefore transferred the trial to that Court.

That the jurisdiction of the High Court of Justice was defined by section 10 of the Ordinance as follows:—

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* High Court of Justice Ordinance; to Colonel Greaves, No. 45, July 14; Colonel Edridge, No. 171, November 12; ditto, No. 173, November 15; Major-General Biddulph, No. 188, November 26, 1879; Ferand-Giraud, vols. i and ii.

"All jurisdiction, criminal and civil, over all persons, and in all cases other than such as would have been under the sole jurisdiction and authority of the Ottoman Courts if the said Convention had not been made, shall, subject and according to the provisions of this Ordinance, be vested in and exercised by the High Court."

Transfer of cases from Ottoman Courts to High Court.

That by section 108 provision was made for the transfer of cases from the Ottoman Courts to the High Court, and *vice versâ*, in the manner therein prescribed, but the same section contained an express saving of the jurisdiction of the Ottoman Courts, and enacted (sub-section *c*) that, subject to the provisions therein contained as to the transfer of cases, the jurisdiction of the Ottoman Courts should continue over all persons and in all cases that would have been subject to their jurisdiction if the Convention between Great Britain and the Porte of the 4th June, 1878, had not been made.

That before the British occupation of Cyprus, crimes committed by foreigners against Turkish subjects were within the sole jurisdiction and authority of the Ottoman Courts in the sense that they were not justiciable as of right by any other Court (see Ferand-Giraud, vol. ii, p. 350).

That the exercise of that jurisdiction as regarded British subjects was regulated by Article 42 of the British Capitulations (see Sir E. Hertslet's Treaties on Trade, Turkey, p. 20).

That Mr. Phillips contended (paragraphs 8 to 11 of his minute) that, as the Ottoman Courts could not proceed in such a case without the presence of the Consular Representative of the National concerned, the case was not "under their sole jurisdiction and authority" within the meaning of section 10 of the High Court of Justice Ordinance, and therefore that crimes committed by foreigners against Turkish subjects were *primâ facie* justiciable by the High Court, notwithstanding the saving clause contained in section 108.

That the first question which presented itself was whether, under the circumstances above stated, the legal status of Sawas in Cyprus was that of an Ottoman subject. That, if so, his trial before the High Court without a formal transfer of the case under section 108 of the Ordinance would seem to have been unwarranted by law.

That the next question was whether, assuming Sawas to have been properly treated as a Greek subject, the case was one which, previously to the British occupation of Cyprus, would have been "under the sole jurisdiction and authority of an Ottoman Court" within the meaning of section 10 of the Ordinance taken in conjunction with section 108. That, if so, the trial would likewise seem to have been unwarranted by law.

That he was to request that we would take all the accompanying papers into our consideration, and favour your Lordship with our opinion on the above questions, and, if we should be of opinion that the trial of Sawas before the High Court of Justice was not warranted by law, that we would advise your Lordship as to the steps that should be taken in reference thereto.

In obedience to your Lordship's commands we have the honour to report—

If Sawas is a Turk, his trial is illegal.

That, assuming the facts to be correctly stated in the High Commissioner's despatch No. 188 of the 26th November, Sawas is an Ottoman subject, and, in our opinion, his trial before the High Court of Justice was not warranted by law.

Ottoman Court must try.

Under sections 10 and 108 of this Ordinance the Ottoman Courts had the sole jurisdiction over the case, and, since the High Court of Justice had no jurisdiction over Sawas, he must be left for the Ottoman Courts to deal with.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Egypt.

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## No. 30.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received March 27.)*

My Lord,

*Temple, March* 26, 1879.

Suez Canal. Vessels where ship-spaces deducted from tonnage have been employed for freight.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us therewith papers relative to the course of action which had been recommended by the British directors of the Suez Canal Company in the case of vessels passing through the Canal where the ships' spaces specified in the certificates as being deducted from tonnage were employed for freight-earning purposes.

Proposal to allow no deduction to such vessels in future.

That we should observe that the British directors refer to the recommendation contained in the Report of the International Tonnage Commission of the 18th December, 1873; that in cases of the above nature the space employed in the manner above indicated should be added to the net tonnage, and be never more allowed as a deduction; and that the directors suggested that the Canal Company should make a Report to the Government of the offending vessel, requesting the alteration of the certificate in accordance with paragraph 17 of the Report.

That Sir J. Pauncefote was to state that it appeared to your Lordship, that whatever legal powers (if any) must be conferred on the Suez Canal directors to carry out the proposed arrangement, the Board of Trade could not make any endorsement on the certificate of a British ship, resulting in a disqualification to enjoy any privileges abroad, common to other British ships, without the authority of an Act of Parliament; but, that, before returning an answer to the directors, your Lordship would be glad to be favoured with any observations we might have to offer on that point, and that Sir J. Pauncefote was accordingly to request that we would, with that view, take the accompanying papers into our consideration.

In obedience to your Lordship's commands we have the honour to report—

Course cannot be adopted in present state of law.

That, in our opinion, the course of action recommended by the British directors of the Suez Canal Company in the case of vessels passing through the Canal, where the ships' spaces specified in the certificate as being deducted from tonnage are employed for freight-earning purposes, cannot be adopted as the law now stands in this country.

Consult Maritime Powers as to prevention of fraud.

We think that the maritime Powers may properly be communicated with, with the view of arriving at some means of preventing, and of punishing a fraud which may have been committed, or attempted, on board ships under their respective flags.

But at present, and so far as English ships are concerned, we are of opinion that neither the Board of Trade, nor the officers of the Suez Canal Company, can deal with the ship's register.

Suez Canal Company must take legal steps in each case.

And that the officers of the Company must take whatever legal means may be open to them for preventing the success of the fraud in each case.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 31.

*Memorandum by Lord Cairns.*

(Confidential.)

### EGYPTIAN COMMISSION OF LIQUIDATION.

Commission of Liquidation.

I SHOULD have been glad if, before expressing any opinion on this difficult and intricate question, I had had the advantage of conferring with Mr. Reilly and Major Baring, who are so well acquainted with its minute details. As time, however, will not admit of this, it will be desirable that my Memorandum should be submitted to them for consideration, and I shall be ready, if it should be necessary, to attend to any observation they may make upon it.

Mixed Tribunals constituted by Khedive's authority.

Order in Council only suspends Consular jurisdiction.

2. I assume that the Règlement under which the Mixed Tribunals were constituted was made by the Khedive, like any other law, edict, or statute of Egypt, by virtue of his legislative and sovereign power, and that its force and vigour, and the authority of the Judges, are derived from this power. What was done by England in 1876 seems to make this clear. The Order in Council did not profess to *confer* any jurisdiction on the Mixed Tribunals. It *suspended* the Consular jurisdiction so long as the Mixed Tribunals existed, or until further order. It treated them as existing by virtue of Egyptian law. It is true that both before and after the Règlement was passed there were diplomatic arrangements and engagements between the Khedive and the other Powers binding him, diplomatically, as to the character and jurisdiction of the Courts. But whatever might be his obligations to other Powers, the source and limit of the territorial power of the Courts and Judges was the sovereign authority of the Khedive.

As to Edict for creating Commission of Liquidation, and its submission to the Powers.

3. I assume also that there will now be made, in apt and carefully considered words, a new edict, creating the Commission of Liquidation, and declaring that its enactments are to have the force of law, and are to be noticed and obeyed by all Courts and Judges, and are to have effect given to them in all suits between foreigners and others and the State, notwithstanding any provisions of the Règlement or the Codes, and, especially, that if Articles 10 and 11 of the Règlement, or Articles 6, 7, and 12 of the Code Civil would interfere with the enactments of the Commission, those Articles are to be held, *pro tanto*, as repealed or modified.

4. I assume, further, that this new edict will be submitted to the Great Powers, and will have, diplomatically, their assent or approval, and will also be communicated, diplomatically, to the United States and the other Powers, so that it may have, either at once or in process of time, the adherence of some or all of them.

5. I may add with regard to the preceding paragraph, that, bearing in mind the form of authorization conferred by the Senate on the Executive of the United States, it seems possible that to such an edict as I have supposed, the Executive of the United States might give its adherence without any recurrence to the Senate. But on this point I am, of course, unable to speak with any confidence.

6. The edict and the diplomatic adherence to it of the consenting Power would be communicated to the Judges.

Judges should be bound by Edict of Liquidation.

7. If, after this was done, a process should come before the Tribunals in which a claim was made against the Government for the full nominal amount of some item of the public debt, it would, in my opinion, be the duty of the Judges to conform themselves to and obey the edict of liquidation. It is, of course, impossible to say with certainty what view may be adopted by Judges who are enabled to decide without appeal. But I cannot see how they, *as Judges*, can trace their authority to any higher source than the sovereign power of the Khedive expressed in the Règlement, a source no higher than that of the edict of liquidation which will control the Règlement.

8. But suppose the Judges to disregard the edict, and to award a Judgment as if no edict of liquidation had been made, what would be the result?

Otherwise the Executive might disregard their Judgments.

9. The Egyptian Executive would decline to enforce, and would practically disregard, the Judgment. If the Judgment was in favour of a subject of one of the Great Powers, he would apply to his own Government for diplomatic intervention. But he would be told that his Government had concurred in, or had approved of, the policy of the edict, and could not intervene. The plaintiff might, indeed, be a subject of a Power which had not assented to the Commission of Liquidation. And there is, of course, the possibility that subjects of the assenting Powers might assign their securities to subjects of non-assenting Powers for greater facility of litigation, although I observe that Major Baring does not look on this as likely to happen in practice. But even if a non-assenting Power took the view that the edict of liquidation was not within the competence of the Khedive, and was a breach of his diplomatic engagements, it is not likely that such a Power would make the matter a *casus belli*. The most it would do would be to protest, and possibly repudiate and withdraw its adherence to the scheme of Mixed Tribunals, and return to the old Consular jurisdiction, which return, however, would not interfere with the liquidation.

Effect on non-assenting Powers.

Never mind opposition of Mixed Tribunals.

10. On the whole, assuming that the Great Powers are agreed on the policy of a

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Commission for liquidation, I think the danger of any interference by the Mixed Tribunals may be faced.

(Signed) CAIRNS.

*Balmoral, October* 10, 1879.

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## No. 32.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received November* 11.)

*Temple, November* 11, 1879.

My Lord,

Prisoners at Malta.

Stealing from a church, &c.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 27th October last, stating that he was directed by your Lordship to transmit to us the papers, as marked in the margin,* containing a petition by two prisoners in the Corradino prison at Malta for mitigation of the sentence passed upon them by the Consular Court in Egypt, and the Report of the acting Judge of that Court upon the case.

Condemned on three counts for one transaction.

That, from that Report it would appear that the two prisoners were jointly indicted on three counts :—(1st) for breaking into a church and stealing, &c. ; (2nd) for breaking out of a church and stealing, &c. ; (3rd) receiving stolen goods. That the evidence related to one and the same transaction, yet a verdict was recorded of "Guilty on three counts."

That Mr. Lister was to request that we would take those papers into our consideration, and favour your Lordship with our opinion whether, in view of the evidence, and in the absence of previous convictions against the prisoners, the sentence of ten years' penal servitude was too severe, and if so, what portion of it can properly be remitted.

In obedience to your Lordship's commands we have the honour to report—

Part of sentence may be remitted.

That, in our opinion, the sentence in this case was too severe, and seven years may properly be remitted.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# France.

## No. 33.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January* 21.)

*Temple, January* 20, 1879.

My Lord,

"Certificats de Coutume" for transfer of stocks, estates of deceased British subjects.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us therewith a note which your Lordship had received from the French Chargé d'Affaires at this Court,† raising a question as to the validity of the "Certificats de Coutume" now in use for the purpose of obtaining the transfer of French stocks and shares belonging to the estate of deceased British subjects.

That we would gather from the despatch No. 1 of the 20th January, 1870, to Her Majesty's Consul in Paris, which, together with the correspondence therein alluded to, was to be found in the accompanying volume, what was the nature of the arrangement come to in 1870 with regard to that matter. That, in pursuance of that arrangement, it had been usual for an English solicitor to certify that the personal representative claiming the transfer of the stock or shares was legally entitled thereto according to English law. That that certificate constituted the "Certificat de Coutume," and before it could be acted upon the British Consul was called upon to attach to it a further certificate in the terms cited in M. de Kergolay's letter. That it appeared, however, that according to the requirements of French law or practice, the "Certificat de Coutume" must issue from a person who was officially authorized ("qui a qualité") to perform that act, and not merely from a person who might be professionally qualified for that purpose. That the French Government accordingly pointed out that an English solicitor, though he might be professionally qualified to issue such a certificate, was not "officially authorized" to do so. That your Lordship would be glad to be favoured, at our early convenience, with our opinion as to whether the Registrar, or other officer of the Court of Probate, or the Conveyancing Counsel of the Chancery Division of the Supreme Court of Judicature, or any other persons, could, without any legislative provision in that behalf, be officially appointed and authorized by the Lord Chancellor or any of the Judges to grant these "Certificats de Coutume," so as to obviate the objection raised by the French Government, and if not, your Lordship would be glad to learn what course you would suggest to meet the difficulty.

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* Colonial Office, August 11; Dr. Arpa, No. 15, Judicial.

† June 14, 1878.

French law requires issue of certificate by person "officially authorized."

In obedience to your Lordship's commands we have the honour to report—

Ask French Government to accept certificate of Registrar of Court of Probate.

That we submit for your Lordship's consideration that, since all grants of Probate and Administration are made under the authority of the Court of Probate in England, and that of similar Courts in Ireland, Scotland, and elsewhere in Her Majesty's dominions, the French Government should be asked to accept as a "Certificat de Coutume," the certificate of the Registrar of the Court out of which the Probate or Administration may issue, stating that by law the person or persons named in the Probate or Letters of Administration is or are the person or persons entitled to receive the property of the deceased.

And as to identification of person named therein.

There may be a difficulty in identifying the person or persons who produces or produce this certificate as the person or persons named in the certificate. We think the French Government may properly be asked to say what means the French law has which may obviate this difficulty, or what evidence from this country will satisfy the French authorities.

The matter, however, is one which is entirely in the hands of the French Government; and we think that whatever course may be proposed by your Lordship, that course should be communicated to the French Government before any steps are taken in this country to follow it out. For the French authorities may raise and maintain objections which may either modify the suggested plan, or show that, from the French point of view, it is entirely inadmissible.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 34.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received July* 12.)

*Temple, July* 12, 1879.

My Lord,

Mr. R. Millar's arrest and ill-treatment at Espezel for having no passport.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Ambassador at Paris, inclosing copies of a correspondence which his Excellency had had with Mr. Robert Millar, a British subject, and with the French Government respecting the arrest of Mr. Millar by French gendarmes at Espezel, in the south of France, in the month of September last, in consequence of his not having a passport about him, a condition which the French Government have not for some time past required of persons visiting that country, and notwithstanding that Mr. Millar did produce papers sufficient to establish his identity.

As to compensation in addition to punishment of gendarme, &c.

That it was apparent, therefore, that the hardships and indignities to which Mr. Millar was subjected, which were fully described in the accompanying correspondence, were altogether illegal and unjustifiable, whilst the representations of the British Embassy on that gentleman's behalf, though they had elicited an expression of regret from the French Government, the punishment of the offending gendarme, and

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an engagement on the part of the Government to take measures to prevent the repetition of such an occurrence, had failed to obtain for Mr. Millar the personal compensation for which he had applied.

Cannot formally claim indemnity.

That whilst, on the one hand, Her Majesty's Government felt that they could not, with a conviction that such a course would result in failure, recommend Mr. Millar to seek his remedy in the Courts of the country, they also felt that they were unable, consistently with the principle which they themselves maintained in corresponding cases, to press Mr. Millar's claim for indemnity in any formal manner upon the French Government.

That they were, however, of opinion that the very exceptional circumstances of the case warranted them in making a renewed effort to induce the French Government to take a favourable view of Mr. Millar's claim, and that, under those circumstances, your Lordship had caused the accompanying draft of an instruction to Her Majesty's Ambassador to be prepared.

That before sending it forward, however, your Lordship would be glad if we would take the case into our consideration, and favour your Lordship, at our earliest convenience, with our opinion whether the proposed Instruction to Lord Lyons was right and proper, and such as fairly met the exigences of that particular case.

In obedience to your Lordship's commands we have the honour to report—

Approving instruction to Lord Lyons.

That, assuming as Sir Julian Pauncefote states, that the claim of Mr. Millar to compensation cannot be put forward as a right, the proposed Instruction to Lord Lyons is right and proper.

But should not wind up with a threat when asking a favour.

However, we respectfully submit, for your Lordship's consideration, whether, in the view of the case as assumed, and looking to the Instruction as a means of obtaining as a favour some compensation for Mr. Millar, it would not be better to conclude the Instruction with an appeal to the high sense of liberality and justice of a great nation whose subordinate officials may have inflicted a gross outrage upon, and caused personal suffering to, the innocent subject of a friendly country, rather than with a threat of the feeling of irritation which may be produced in this country if those sufferings and humiliation are left unredressed.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex.

*The Marquis of Salisbury to Lord Lyons.*

(No. 914.)

My Lord, *Foreign Office, July* 15, 1879.

Instruction.

I have had under my consideration, and have referred to the Law Officers of the Crown, your Excellency's despatch No. 606 of the 5th ultimo, inclosing copies of a correspondence which you have had with Mr. Robert Millar and with the French Government respecting the arrest of that gentleman by French authorities at Espezel, in the Department of the Aude, in the month of September last, in consequence of his being unable to produce a passport at the moment, and notwithstanding that he did produce papers sufficient to establish his identity.

I have to express to your Excellency my entire approval of the steps which you have taken in bringing Mr. Millar's representation before the French Government, and in endeavouring to obtain for him a reasonable indemnity for the hardships and indignities to which he has been subjected in consequence of the misconduct of the French gendarmerie.

These steps, it appears, have resulted in an expression of the personal regret of the French Government to yourself and to Mr. Millar at the occurrences in question; in the punishment of the gendarme; and in an undertaking to adopt such measures as shall prevent a recurrence of such an incident in future; but the French Government appear to treat altogether in silence the claim for compensation which Mr. Millar has advanced.

Her Majesty's Government glad of reparation made;

Under these circumstances, I have to request that your Excellency will state to M. Waddington that Her Majesty's Government have received with satisfaction the expression of regret conveyed by his Excellency to yourself and to Mr. Millar personally at the misconduct of the French gendarmerie on the occasion in question, as well as the assurance that the offender has been punished; and that stringent

instructions have been issued to obviate the recurrence of such an outrage upon a peaceful traveller, whose actions, language, manner, or appearance afforded no ground whatever for suspicion.

Your Excellency will state that Her Majesty's Government must, nevertheless, express their regret that the appeal made by your Excellency on behalf of Mr. Millar has been throughout the correspondence so completely ignored.

But hope Mr. Millar will be compensated.

It would be futile in such a case to refer the victim of such an outrage to the Civil Tribunals for compensation, and the case is one which commends itself so strongly to the favourable consideration of the French Government, and is fortunately so exceptional in its character, that Her Majesty's Government confidently appeal to the high sense of liberality and justice of a great nation whose subordinate officials have inflicted a gross outrage upon, and caused personal suffering to, the innocent subject of a friendly country; and they trust that, on further consideration, the French Government will do justice to Mr. Millar's complaint in all respects, by awarding to him such compensation as they may deem reasonable under the circumstances.

I am, &c.
(Signed) SALISBURY.

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## No. 35.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 31.)

My Lord, *Temple, July* 31, 1879.

"Certificats de Coutume."

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 1st instant, stating that, on the receipt of our Report of the 20th January last, your Lordship addressed to the French Ambassador at this Court a note, inclosed therewith, suggesting, with a view to meet the objections which had been raised by the French Government, that "Certificats de Coutume" for the transfer of French stocks and shares belonging to the estates of deceased British subjects should in future be issued by the Registrar of the British Court, out of which the probate or administration might issue.

As to Registrar's certificate in cases of transfer of stocks on appointment of new trustees.

That Her Majesty's Government had not then been informed whether the French Government were prepared to adopt that suggestion, but that, in the meanwhile, it had been brought to the notice of your Lordship, in the correspondence which Lord Tenterden was to inclose, that although the course proposed might meet the requirements of French law with regard to the proof of the validity of the title of executors and administrators under probates and letters of administration, the certificate of the Registrar would hardly be applicable in cases where the transfer of French stocks and shares was necessary on the appointment of new trustees under the usual powers contained in wills and settlements.

As to Treasury Solicitor being authorized to issue certificates.

That your Lordship would be glad to be favoured with our opinion whether, in order to meet such cases, there would be any objection to the Treasury Solicitor being authorized, as a public functionary, to issue such certificates on payment of a fee. That the Treasury Solicitor, being invested with such authority by the Lords Commissioners, would probably come within the meaning of the expression "a qualité" used by the French Government when they objected that a private solicitor had no official authority to issue such certificates, though otherwise competent to do so.

That, if we should see no objection to the course proposed, your Lordship would be glad to be further informed whether, in our opinion, the certificates required might properly be issued, in all cases, by the Treasury Solicitor without recourse to the Registrar even in matters of probate and administration.

That Lord Tenterden was to inclose, for convenience of reference, the papers which accompanied his letters to us on the 8th January last.

In obedience to your Lordship's commands we have the honour to report—

That the question now raised by the French Government is a much larger one than that originally stated by the Count de Kergolay in his letter of the 14th June, in which reference was made only to the cases of "héritiers et légataires."

Now, the whole matter of transmission of property has to be dealt with.

No doubt it is desirable that the evidence which the French authorities require for the purpose of a transfer, whether *inter vivos* or otherwise, should, if possible, be produced by the same official in this country.

Treasury Solicitor cannot issue them.

We are of opinion, however, that the Solicitor for the Treasury cannot, in

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strictness, be invested by the Lords Commissioners with authority to supply the certificates which the French Government requires.

We have, &c.
(Signed) JOHN HOLKER.
(For the Solicitor-General),
J. PARKER DEANE.
J. PARKER DEANE.

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## No. 36.

*Memorandum by Lord Cairns as to "Certificats de Coutume."*

"Certificats de Coutume."
May be issued by Queen's Proctor."

THE only suggestion that I am able to make on the subject of these papers is that the certificate which the French authorities desire to be supplied with should be given by the Queen's Proctor, he being of course allowed to charge a proper fee.

2. The Queen's Proctor is an officer of the Testamentary Court, and so far as regards certificates relating to testacy or intestacy, no person can more properly be selected to give them. It appears that he will be further required to certify as to the transmission of property from old to new trustees, and in other similar cases; but his duty in this respect will be analagous to that which he will discharge in giving certificates as to testacy or intestacy.

3. At present the office of Queen's Proctor is filled by the gentleman who is Solicitor to the Treasury; but the two offices are quite distinct, and may come to be held by different persons.

Government cannot guarantee the accuracy of the certificate he gives.

4. I observe that the Law Officers state that in their opinion the Solicitor for the Treasury cannot in strictness be invested by the Lords Commissioners with authority to supply the certificates which the French Government requires. This form of expression suggests to me to point out that the Government ought not, in selecting the Queen's Proctor as the person who may give these certificates, to make itself responsible, or, in other words, to guarantee the accuracy of the certificates which he gives. In practice I have no doubt that his certificates may be implicitly relied on; but the Government ought not to be called on to give any guarantee of their accuracy.

(Signed) CAIRNS.

5, *Cromwell Houses, S.W., August* 12, 1879.

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## No. 37.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August* 26.)

*Temple, August* 26, 1879.

My Lord,

Arrest of Mr. Millar at Espezel for having no passport.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the          July last, stating that on the 12th of that month we were good enough to favour your Lordship with our opinion upon a draft instruction with which it was proposed to furnish Her Majesty's Ambassador at Paris in regard to the case of Mr. Robert Millar, who had been arrested by French gendarmes at Espezel in France, in consequence of his not having a passport about him.

Her Majesty's Government does not disclaim right to demand redress for outrages, but would have to grant reciprocity.

That that instruction, Lord Tenterden was to inform us, had been forwarded to Lord Lyons, amended in the sense suggested in our Report. That with reference, however, to the passage in his letter of the 1st July, in which it was stated that Her Majesty's Government felt that "they were unable, consistently with the principle which they themselves maintained in corresponding cases, to press Mr. Millar's claim for indemnity in any formal manner upon the French Government," he was directed by your Lordship to explain that it was not intended to disclaim the right of Her Majesty's Government to demand indemnity in this or similar cases, but that it appeared to your Lordship desirable to avoid asserting this right, having regard to the persistent refusal of Her Majesty's Government to accept any reciprocal obligation in respect of such claims, as shown in the inclosed memorandum, drawn up by the Librarian of the Foreign Office.*

That your Lordship, however, considered that in future Her Majesty's Government should observe reciprocity in the class of cases under consideration, and should be prepared to grant to foreigners in this country the same measure of relief which they claim and obtain for British subjects abroad. That it was important, therefore, that the principles which should guide the Foreign Office in dealing with outrages committed on British subjects abroad by police officers should be as clearly defined as the nature of the question permits, and Lord Tenterden was to request that we would favour your Lordship with our opinion on the points to which he would presently refer.

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* Confidential, No. 3279.

Principle of action should be defined.

Quoting cases of outrages in Italy.

That in the correspondence relating to police outrages committed on British subjects in Italy, of which he was to transmit a copy, the Italian Government maintained the doctrine that where a British subject in Italy had been injured by an Agent of the Government, such subject ought to sue the individual inflicting the wrong in the Italian Courts, and ought not to seek any compensation from the Government (see Chevalier Cadorna to Earl Granville, pp. 3-4; Count Menabrea's memorandum, p. 93, especially "conclusion;" Sir A. Paget to the Earl of Derby, No. 126 of the 10th April, 1877, p. 153).

That our predecessors in their Report of the 13th April, 1874 (Correspondence, p. 5), which had reference to Mr. Mercer's case, and to the Chevalier Cadorna's letter above cited, advised that as the Italian Minister maintained that the law of Italy had been properly administered by the Italian Tribunals, a claim for compensation for the suffering and injury caused to Mr. Mercer could not be pressed against the Italian Government. That that Report would seem to admit the doctrine contended for by the Italian Government, and accordingly Mr. Mercer's claim to compensation was abandoned. But that in the subsequent cases of Messrs. Tourrier and O'Neill, the Rev. Mr. Kay, and the Rev. Mr. Allies, the same question again arose, and the same doctrine was again urged by the Italian Government (see Count Menabrea's memorandum above cited).

Responsibility of Governments for acts of their Agents.

That in our Report of the 12th September, 1876, on the above cases (Correspondence, p. 100), we expressed our dissent from that doctrine, and we advised that if a British subject whilst he was in a foreign State received an injury from the Government of such a State, or from an Agent for whose acts the Government was responsible, and no adequate remedy was provided by the municipal law of such foreign State, it was not only the right, but it might be, according to circumstances, the duty of Her Majesty's Government to obtain by diplomatic intervention the payment of compensation to the British subject for the injury inflicted upon him.

As to "adequate legal remedy."

Lord Tenterden was to request that we would favour your Lordship with an explanation of the precise meaning of the qualification expressed in the words "and no adequate remedy is provided by the municipal law of such foreign State," as it appeared doubtful whether they apply to the absence of any legal remedy against the offender or against the Government, or to the inability of the offender, even if proceeded against in the Local Tribunals, to make adequate compensation for the injury sustained.

That, whichever may be the correct inference to be drawn from the words of our Report above referred to, it was presumed that before any indemnity could be claimed from the foreign Government it was necessary that legal proceedings should have been instituted by the complainant, so as to establish judicially the commission of the offence, if this should be a requirement of the local law. Lord Tenterden was further pleased to state that another instance had recently occurred in Sicily of outrageous conduct on the part of Italian carabinieri towards an English clergyman, the Rev. Mr. Pullen. That this case would be the subject of a separate reference to us, and would necessitate the consideration of the points which Lord Tenterden had had the honour to lay before us in connection with the treatment of such cases in general.

In obedience to your Lordship's commands we have the honour to report—

Foreigners have no claim to greater protection than natives.

That, as a general rule, foreigners have no right to greater protection from, or compensation for, injuries received than the subjects or citizens of the country in which the foreigner may happen to be.

Actions for assault, &c., in this country.

In this country actions for assault, false imprisonment, malicious prosecution, and so forth, are the remedies open to the foreigner, and he or his Government, on his behalf, cannot insist upon any exceptional favour being shown to him because he is an alien.

Exceptions in uncivilized countries.

To this general rule there are exceptions, for instance, in barbarous and uncivilized countries, where the future safety and good treatment of strangers may properly require that the rulers of the country should be made responsible and suffer for the misconduct of the inhabitants.

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Exception in cases of negligence, &c., of Government or its Agents.

Another exception to the general rule also arises in cases where in civilized countries the injury has been occasioned by the acts and directions or the negligence of the Government or of Agents for whose conduct the Government is responsible.

"No adequate legal remedy" when aggressor cannot compensate, and Government cannot be prosecuted. Case for diplomatic action.

By the qualification expressed in the words of our Report (12th September, 1876, p. 100 of Correspondence), "and no adequate remedy is provided by the municipal law of such foreign State," we desired to intimate that in our view, if owing to the circumstances of the persons inflicting injury upon the foreigner or other causes no sufficient compensation could be obtained from such persons by resort to the Tribunals and by the law of the country where the outrage occurred, no claim (as is the case in England) could be enforced against the Government, a case for diplomatic interference would arise.

Legal proceedings should first be taken by injured parties in certain cases.

With reference to the question, whether before any indemnity can be claimed from the foreign Government it is necessary that legal proceedings should have been instituted by the complainant so as to establish judicially the commission of the offence complained of, we certainly think that where the facts are in dispute such proceedings ought to be taken, for it is obvious that no claim for compensation can be fairly made against a Government for the wrongful acts of its Agents unless it has been established that such wrongful acts have been committed.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Germany.

### No. 38.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received January* 29.)

*Temple, January* 29, 1879.

My Lord,

Duke of Connaught. Marriage Treaty.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th instant, stating that he was directed by your Lordship to transmit to us the draft of a Treaty of Marriage between His Royal Highness the Duke of Connaught and Her Royal Highness the Princess Louise of Prussia, and that he was to request that we would take the same into our immediate consideration, and report to your Lordship, with as little delay as possible, whether the terms of that draft were such as may properly be agreed to by Her Majesty.

In obedience to your Lordship's commands we have the honour to report—

Approving.

That, in our opinion, the terms of this draft are such as may properly be agreed to by Her Majesty.*

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J PARKER DEANE.

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* See Treaty signed at Berlin on the 26th February, 1879; Parliamentary Paper (Germany, No. 1, 1879), Foreign Office, No. 630.

### No. 39.

*Memorandum by the Lord Chancellor on Count Münster's Proposal as to Collisions on the High Seas.*

Collisions on high seas.

Territorial claim not limited to three miles.

Distance necessary for defence.

IT may be desirable, in order to prevent mistake, to observe that the Memorandum supplied by the German Government appears somewhat to misapprehend the right claimed by this country, to which effect was given by the Territorial Waters Act, 1878. We have never limited our claim to three miles from the coast. The argument of the German Memorandum is quite sound, that the improvement in modern artillery and other circumstances may entitle a country to protect, and exercise rights over, a larger margin of the high seas. The Act of 1878 affirmed that this right existed "to such a distance as is necessary for the defence and security of the Queen's dominions." So far as concerned the procedure introduced by the Act, the power taken was limited to the three-mile line, but this in no way abandoned the larger claim.

2. The suggestions now thrown out by the German Government are somewhat vague, and it is difficult, unless they were formulated with more precision, to reply to them.

Mixed administration of criminal law not admissible within three-mile limit.

3. As regards the three-mile limit within which we have taken powers to administer our criminal law (a limit which is blended with and includes bays, harbours, estuaries of rivers, &c., where the jurisdiction never was doubted), I do not think it would be possible to consent to any mixed administration of the criminal law, or any interference with our own mode of administering the criminal law. It would be an entire abandonment of the principle we have contended for if, on the one hand, we claimed the right to exercise jurisdiction within a certain area seaward, and, on the other hand, were to concede, by a sort of capitulation, a right to a foreign Power to interfere or join in the exercise of that jurisdiction.

Jurisdiction not wantonly exercised. Secretary of State's certificates in cases of foreigners, &c.

4. We have taken care that in any extreme case where it would be a violent act to put in force our jurisdiction; for example, to punish one foreign sailor for an act done to another foreign sailor in a foreign ship passing along our coast, to place a check upon our officials by requiring, before prosecution, the certificate of the Secretary of State, and this ought to satisfy foreign Governments that our jurisdiction will never be wantonly exercised.

Understanding with foreign Powers as to uniform standard of criminality.

5. Nothing in what I have said would be inconsistent with friendly communications with foreign Powers for the purpose of arriving, as far as possible, at a uniform standard of criminality and punishment as to offences arising out of collisions between ships of different nations within the territorial limit.

Objections to mixed jurisdiction on high seas.

As to composition of Mixed Court, importation of foreign jurymen, &c.

6. As to the high seas beyond the territorial limit, to which the German Memorandum also refers, I see still greater difficulty in the proposal. At present this country can punish its own subjects for any criminal offence committed on the high seas in English ships against fellow subjects or foreigners, and other countries have similar rights on the high seas as to their own subjects. But I do not think the English Legislature would be likely to assent to a measure by which an Englishman, for an offence on the high seas, would become liable to be tried not by a Court of the Queen, but by a Mixed Tribunal composed of Judges deriving authority partly from the Queen and partly from foreign Sovereigns. Moreover, the difficulty of detail would be very serious. Where is the Court to sit? Is it to be a perpetual Court, and are there to be constant judges, or is it only to be set up now and then when an offence on the high seas requires it? Then is there to be trial by jury, and if so, is it to be a mixed jury, and are the jurymen, when the trial takes place in country A., to be imported in part from country B., to make the proper admixture?

7. In truth, the proposal, at all events in its present form, appears to me to be a visionary one, and not to have been thoroughly thought out by its originators.

(Signed) CAIRNS.

*April* 9, 1879.

### No. 40.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received May* 29.)

My Lord, *Temple, May* 27, 1879.

Slave Trade Treaty of of 1841.

Accession of Germany in place of Prussia.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th May instant, stating that with reference to our Reports of the 26th October, 1877, and the 26th February, 1878, on the subject of the accession of the German Empire instead of Prussia into the Treaty of the 20th December, 1841, for the suppression of the Slave Trade, he was directed by your Lordship to transmit to us a translation of a note from the German Ambassador in London,* stating that the German Government had made arrangements for submitting for the assent of the Reichstag the Convention on that subject concluded with this country on the 29th March, 1879.

Assent of Austria and Russia by note.

That his Excellency stated that with regard to the fulfilment of the reservation made in Article III, it would, in the opinion of his Government, be sufficient if the Governments of Austria and Russia declare their consent to the Convention by note, and that it might not in that case be necessary to conclude separate analogous agreements with those two States so long as they do not fit out cruizers against the Slave Trade, and he requested to be informed of the views of Her Majesty's Government in regard to that point.

That a copy of the Convention of the 29th March, 1879, was also inclosed, and he was to request that we would take Count Münster's note into our consideration, and favour your Lordship with our opinion at our early convenience as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

No objection.

That, in our opinion, Count Münster may properly be answered that Her Majesty's Government has no objection to the course proposed.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 41.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received June* 2.)

My Lord, *Temple, May* 30, 1879.

Destruction of goods of M. Eggert, a German, at Besika, by British marines.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 5th instant, stating that he was directed by your Lordship to request that we would be good enough to favour you with our opinion upon the claim preferred by the German Ambassador in the inclosed note for compensation for the destruction at Besika in September 1877, by a force of marines belonging to the British fleet, of goods belonging to a German subject named Eggert.

That all the information relating to the matter in the possession of the Foreign Office would be found in the Ambassador's note and the memorandum accompanying it, and in the despatch from Vice-Admiral Hornby, which was also inclosed with its covering letter from the Admiralty.

In obedience to your Lordship's commands we have the honour to report—

Compensation due.

That, in our opinion, the claim preferred by the German Ambassador is well founded and cannot properly be resisted.

The amount of the claim seems very large, but the conduct of the British party employed, first, in breaking open the doors, and then in destroying the spirits and the beer, was so illegal that we doubt whether any discussion on the amount of the claim would be advisable.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER. DEANE.

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[*] Count Münster, May 3, 1879.

## Hayti.

### No. 42.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 31.)

My Lord, *Temple, July* 31, 1879.

Violation of Consular privileges in Hayti.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th instant, stating that he had the honour to transmit to us, by desire of your Lordship, the papers noted in the margin,* and to submit for our consideration and advice the case stated in the inclosed memorandum, and relating to an alleged violation by the local authorities in Hayti of the privileges claimed by foreign Consuls in that Republic.

Request of Denmark for support of Her Majesty's Government.

That the protest and reclamations which the Danish Government had addressed to the Haytian Government, and which Her Majesty's Government were invited to support, purported to be based, in a great measure, on the law of nations, and that Sir Julian Pauncefote was to request that we would take all the papers into our consideration, and favour your Lordship with our opinion as to the reply which should be returned to the request of the Danish Government. That as the mail for Hayti would leave on the 1st proximo, your Lordship would be glad to receive our Report, if possible, in time to transmit instructions to Her Majesty's Representative by that opportunity.

In obedience to your Lordship's commands we have the honour to report—

Consuls are amenable to civil and criminal jurisdiction.

That, as a general rule, Consuls are amenable to the civil and criminal jurisdiction of the country in which they reside, and their property and effects are subject to the recourse of execution and process of the local Courts.

Arrest of Danish Consul not breach of law of nations.

We are not therefore prepared to agree with the view of the Danish Government, that the proceedings against and the arrest of Mr. Daguin are infractions of the law of nations.

The official notification published in the "Moniteur Haytian" on the 7th February, 1852, is not very clearly expressed, and the meaning of paragraphs 2 and 3 may be doubtful.

If Hayti gives [? privileges] to Consuls, Her Majesty's Government may support Denmark.

If, however, the Haytian Government have, by that notification, agreed to give to Consuls in matters relating exclusively to Consular functions, as, for instance, the boarding and lodging of shipwrecked seamen, as in Mr. Daguin's case, then we think the Danish Government may be informed that Her Majesty's Government will be prepared to support the claim made against the Haytian Government.

We have, &c.
(Signed) JOHN HOLKER.
(For the Solicitor-General),
J. PARKER DEANE.
J. PARKER DEANE.

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### No. 43.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received September* 23.)

My Lord, *Temple, September* 22, 1879.

Claim of Mrs. Maunder.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st July, 1879, stating that he had the honour to transmit to us, by directions of your Lordship, the printed correspondence and papers noted in the margin† relating to the claim of Mrs. Maunder against the Haytian Government, which on several occasions had been referred to us for our consideration and advice.

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[*] Count Münster, July 4; Jan de Büler, July 21 and 23, 1879; Foreign Office Memorandum, 1870; draft to the Marquis d'Harcourt, November 14, 1877; draft to Baron von den Brincken, July 21.

[†] Printed Correspondence, No. 3581; ditto, in continuation of No. 3581; ditto, in continuation of No. 3813; Memorandum by Sir J. Pauncefote; Mr. Byron, No. 14, June 26, 1879.

That he was to inclose a memorandum explaining the present position of the case, and submitting the following three questions:—

1. Are Her Majesty's Government justified in disregarding the "Acte de Naissance," now produced by the Haytian Government as proof of the illegitimacy of Joseph Maunder?

2. Are they justified in insisting on the payment on account to Mrs. Maunder of 22,000*l.* as a condition of arbitration?

3. Would the refusal of the Haytian Government to comply with the demands of Her Majesty's Government justify coercive measures, such as a blockade?

That your Lordship would be glad to be favoured with our opinion on the above questions, and with any suggestions we might be able to offer as to the best mode of bringing the case to a satisfactory conclusion.

That the Haytian Government do not seem to understand that the payment of 22,000*l.* which had been demanded as a preliminary to arbitration was not in satisfaction of any particular item, but on account generally, and was based on the fact that Mrs. Maunder had admittedly sustained a loss to that amount, which was about one-sixth of her total claim.

That your Lordship, however, would be disposed to reduce the demand to 10,000*l.*, or even to agree to the amount agreed upon being paid into the Bank of England to await the result of the award; but your Lordship much doubted whether any concession whatever would induce the Haytian Government to take any serious measures for the satisfaction of Mrs. Maunder's long pending claim.

That since the inclosed memorandum was printed the further despatch (Mr. Byron, No. 14, June 28, 1879) had been received from Her Majesty's Representative in Hayti, and was transmitted therewith for our information.

In obedience to your Lordship's commands we have the honour to report—

"Acte de Naissance." Illegitimacy of J. Maunder. Cannot treat it as a forgery on present evidence.

That the immediate question seems to be the credit which should be given to the "Acte de Naissance" now produced by the Haytian Government.

1. Suspicious as are all the circumstances connected with this document, we are not prepared to advise your Lordship that upon the present evidence it can be treated as a forgery, or altogether passed over and disregarded.

Insist on payment of 22,000*l.* on account, pending result of award, &c.

2. In our opinion, Her Majesty's Government will be justified in insisting on the immediate payment of the 22,000*l.* into the Bank of England to await the result of the award, and as a preliminary to arbitration.

The Haytian Government should at the same time be informed that this sum of 22,000*l.* is not in satisfaction of any particular item, but on account generally, and that the 22,000*l.* will be returned by Her Majesty's Government if the illegitimacy of J. Maunder be established.

We see no reason for reducing the payment from 22,000*l.* to 10,000*l.*

Refusal of Hayti will justify coercive measures.

3. This claim has been so long pending, and the conduct of the Haytian Government in the whole business has been so unsatisfactory, that the refusal of the Haytian Government to comply with the demands of Her Majesty's Government will, in our opinion, justify coercive measures such as a blockade.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Italy.

## No. 44.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 7.)

My Lord,
*Temple, April* 4, 1879.

Difficulties as to Extradition Act in Malta. No *Habeas Corpus.* As to making an Ordinance similar to that relating to extradition between Malta and Italy.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 18th February last, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office (21st January), inclosing a memorandum by Sir Adrian Dingle, the Crown Advocate of Malta, calling attention to the difficulty which arose in carrying out the provisions of section 2 of the Extradition Act, 1870, in that Colony, by reason of the absence of any provision in the laws of Malta, corresponding to the writ of *Habeas Corpus.* That, in order to remedy that inconvenience, it was proposed to bring into operation as a General Ordinance sections 7 to 15 of the Malta Ordinance No. 3 of 1874, therewith inclosed, which had reference only to extradition between Malta and Italy, and which had not yet been brought into operation owing to some difficulties having arisen which were still under discussion.

That it was stated in the Colonial Office letter that that General Ordinance would be confirmed by Order in Council, and Sir M. Hicks Beach desired to be informed whether your Lordship saw any objection to the course above indicated.

That Lord Tenterden was to observe that, while your Lordship presumed that there was no legal objection to the passing of a local Ordinance to remedy the inconvenience complained of, and that such Ordinance should be dealt with under section 18 of the Imperial Act, it appeared to your Lordship that sections 7 to 15 of the Malta Ordinance No. 3 of 1874 were too restricted in their terms to carry out the object in view, inasmuch as the right of appeal was limited to the case of the fugitive taking exception to his surrender, on the ground that the offence was not one of those for which he could, by law, be surrendered.

That Lord Tenterden was to request that we would take the inclosed papers into consideration, and favour your Lordship with our opinion as to the reply which should be sent to the Colonial Office.

In obedience to your Lordship's commands we have the honour to report—

It would not effect the object in view.

That, in our opinion, the sections 7 to 15 of the Malta Ordinance No. 3, 1874, are not sufficient to carry out the object in view.

The Colonial Office may be answered to the above effect.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 45.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August* 9.)

My Lord,
*Temple, August* 8, 1879.

Ill-treatment of Rev. Mr. Pullen by carabinieri.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the correspondence marked in the margin* relative to the case of the Reverend Mr. Pullen, who was subjected to serious ill-treatment at the hands of Italian Carabinieri at Regalbuto, in Sicily.

Slight punishment of guilty parties.

That we would perceive, from the latest despatch from Her Majesty's Ambassador at Rome (No. 339 of the 22nd ultimo), that the representations made by Her Majesty's Government to that of Italy in that matter had resulted in the infliction of a slight punishment on the parties who were guilty of the outrage; and your Lordship would now be glad to be favoured with our opinion whether, under the circumstances of the

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* Consul Dennis, No. 1, Political, March 4; Sir A. Paget, No. 91, March 8; ditto, No. 324, July 8; ditto, No. 339, July 22; ditto, No. 346, July 25, 1879.

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case, Her Majesty's Government ought properly to take any further steps in the matter.

In obedience to your Lordship's commands we have the honour to report—

No further action necessary.

That, in the circumstances, Her Majesty's Goverement ought not to take any further steps in the matter.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Japan.

### No. 46.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received January* 18.)

*Temple, January* 17, 1879.

My Lord,

Opium smuggling. Case of J. Hartley.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th December last, stating that, with reference to his letter of the 12th June relative to a case in which one John Hartley was charged with attempting to smuggle opium into Japan, he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister in Japan (Sir H. Parkes, No. 167), together with its inclosures, relative to a second charge of a similar nature brought against the same individual, and to request that we would take these papers into our consideration, and favour your Lordship with our opinion whether the Judgment in the case, delivered in Her Britannic Majesty's Court at Kanagawa, a copy of which formed Inclosure 5 in Sir H. Parkes' despatch, could be upheld.

Sir Julian Pauncefote was further pleased to state that the grounds on which the soundness of the Judgment was disputed by the Japanese Government were stated in the letter of the Japanese Minister to your Lordship of the 12th July last, and to request that we would inform your Lordship whether the full report of the Judgment given by Mr. Wilkinson, in the first case brought against John Hartley, and which we would find at p. 53 of Inclosure 4 in Sir H. Parkes' despatch, modified in any way the opinion expressed in our Report of the 2nd July last, that in the construction of the Import Tariff attached to the Convention between Great Britain and Japan, of the 25th June, 1866, "medicinal opium, unless expressly named in Class 4, amongst drugs and medicines, is a prohibited article under Class 3, and cannot be distinguished from smoking opium."

Japanese appeal against Mr. Wilkinson's Judgments.

That, as we were aware, from the correspondence inclosed in his letter of the 12th June relating to that case, Mr. Wilkinson arrived at a contrary conclusion, and it appeared that the Japanese Government have taken steps with a view to appealing to the Judicial Committee of the Privy Council against both the Judgments above referred to.

That they were disposed, however, to proceed no further with the appeals if Her Majesty's Government should concur in their view, that the conclusions at which Mr. Wilkinson arrived in both cases were erroneous in point of law, having regard to the terms of the Convention and Tariff.

Sir Julian Pauncefote was to observe that since the date of the Judgments a new British Court had been established in Japan, under Her Majesty's Order in Council of the 14th day of August, 1878, and that the exercise of jurisdiction by Mr. Wilkinson as acting Law Secretary in the cases in question was not warranted by the terms of Her Majesty's Order in Council for China and Japan of the 9th March, 1865, by reason of the absence of any special delegation from the Chief Judge to try them. That, on this point, he was to refer us to our Report of the 10th May, 1878, on the judicial powers of the Law Secretary to the Supreme Court of China and Japan.

The documents, as noted in the margin, were inclosed.*

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the Judgment delivered at Kanagawa, and a copy of which is Inclosure No. 5 in Sir H. Parkes' despatch, cannot be upheld.

Mr. Wilkinson's Judgments were wrong. Treaty does not distinguish between smoking and medicinal opium.

The full report of Mr. Wilkinson's Judgment in the first case brought against Mr. Hartley does not induce us to modify the opinion expressed in our Report of the 2nd July last. There may, however, be some ambiguity in that Report, which states that medicinal opium cannot be distinguished from smoking opium. In thus stating our opinion, we did not refer to the qualities of the two kinds of opium as not distinguishable the one from the other, but to the terms of the Convention applicable to opium generally.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 47.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 10.)

*Temple, July* 10, 1879.

My Lord,

Opium smuggling. Mr. Wilkinson's Judgments in Hartley case.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th May last, stating that he was directed by your Lordship to lay before us the inclosed despatch from Her Majesty's Minister in Japan (Sir H. Parkes, No. 56, March 20, 1879), and to request that we would advise your Lordship on the following questions raised therein:—

That, in the first place, Sir Julian Pauncefote was to refer us to our Reports of the 10th May and the 2nd July, 1878, and of the 17th January, 1879, in relation to the judicial powers of Mr. Wilkinson, Her Majesty's Acting Consul at Yokohama, in his capacity of Acting Law Secretary of the Supreme Court for China and Japan, and to certain Judgments delivered by him which had caused dissatisfaction to the Japanese Government, and against which they had intimated their intention to apply to the Judicial Committee of the Privy Council for leave to appeal, on the ground that the ruling of the Acting Law Secretary was at variance with their Treaty rights as regarded the importation of opium.

That those Judgments were pronounced in two prosecutions instituted by the Japanese Customs against a British subject named Hartley.

That in our Report of the 10th May we advised that the arrangement made on the departure of the Acting Chief Judge from Japan, under which Mr. Wilkinson was left as Acting Law Secretary in charge of the Supreme Court at Kanagawa, was not warranted by the Order in Council.

That in our Report of the 2nd July, on the subject of Mr. Wilkinson's Judgment in the first prosecution against Hartley, we advised that medicinal opium was a prohibited article under Class III of the Japanese Tariff, and could not be distinguished from smoking opium.

That in our Report of the 17th January, 1879, we confirmed that opinion, and we further advised that Mr. Wilkinson's Judgment in the second prosecution against Hartley could not be upheld.

That Sir H. Parkes was informed that, in our opinion, neither of those Judgments could be upheld, and he now desired to be informed whether that opinion was based only on the ground that Mr. Wilkinson's judicial proceedings were not warranted by the Order in Council. That on that point your Lordship proposed, with our concurrence, to state to Sir H. Parkes that, as regarded the first Judgment, our opinion was founded on the correct interpretation of the Treaty, but your Lordship would be glad to know what reply should be returned to the same inquiry regarding the second Judgment.

Power of Japanese Government to issue Regulations for importation of opium.

That the most important question, however, on which Sir H. Parkes applied for information and for instructions, had relation to the claim asserted by the Japanese Government to issue their own Regulations respecting the importation of medicinal

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* Orders in Council of March 9, 1865, and August 14, 1878; Convention with Japan of the 25th June, 1866, and Tariff annexed; Wooyeno Kagenori, June 4; ditto, July 12; to ditto, December 7; ditto, December 12 to ditto, December 20, 1878.

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opium by foreigners as well as natives, and to enforce the same by certain provisions, which appeared to Sir H. Parkes to trench upon the exterritorial jurisdiction which Her Majesty enjoyed over British subjects in Japan.

That it having been conceded that the importation of medicinal opium was prohibited by the Treaty, the Japanese Government were invited by Her Majesty's Government to agree to some arrangement for the importation of that indispensable drug under proper conditions, the observance of which by British subjects would be enforced by rules to be issued by Her Majesty's Minister under sections 85 and 90 of Her Majesty's Order in Council for China and Japan. The Japanese Government, however, declined to enter into any Convention or Agreement, but insisted on the right to issue their own Regulations on the subject.

That your Lordship apprehended that in that respect they were acting within their strict rights, as we could not compel them to supplement the existing Treaty by a further agreement; but Sir H. Parkes conceived that they could not pass a law affecting foreigners without the assent of the foreign Governments, and he disputed accordingly the validity of the Regulations issued by the Japanese Government, copies of which formed Inclosures 4 and 5 in his despatch.

That it would be observed that those Regulations were in the nature of a Japanese municipal law of general application, subjecting all persons who might avail themselves of their provisions to strict control, supervision, and interference by the Japanese authorities, and also to severe penalties.

That Sir Harry Parkes, in his despatch, stated the grounds on which he conceived that foreigners could not avail themselves of those Regulations without sacrificing their Treaty rights; and he pointed out that the attitude of the Japanese Government on that question was prompted by the strong desire which animated all Japanese officials to break down the barrier of exterritorial jurisdiction.

That it appeared, therefore, to your Lordship, that foreign Governments might reasonably point out to the Japanese Government that those municipal Regulations, however suitable they might be in their application to Japanese subjects, afforded no relief to foreigners, as the latter could not avail themselves of their provisions without sacrificing the immunities from interference by the local authorities secured to them by Treaty, and, therefore, that if the Japanese Government were indisposed to enter into an Agreement as to the importation and sale of medicinal opium by foreigners, they should at least issue special Regulations framed strictly in harmony with their Treaty rights, which, as regarded British subjects, Her Majesty's Government could not consent to waive in any degree.

That Sir Julian Pauncefote was to request that we would be good enough to take that important question into our consideration, and favour your Lordship with our opinion as to the instructions which should be given to Sir H. Parkes on the points raised in his despatch.

In obedience to your Lordship's commands we have the honour to report—

**Mr. Wilkinson's Judgments wrong in law.**

That, in our opinion, both Judgments given by Mr. Wilkinson were erroneous in point of law, having regard to the terms of the Convention and Tariff.

The third Regulation in the Annex to the Treaty of 1858 in the last paragraph is as follows:—

"The importation of opium being prohibited, any British vessel coming to Japan for the purposes of trade and having more than three catties' weight of opium on board, the surplus quantity may be seized and destroyed by the Japanese authorities, and any person smuggling, or attempting to smuggle, opium shall be liable to pay a fine of 15 dollars for each catty so smuggled, or attempted to be smuggled."

The importation of opium is also expressly prohibited in the Tariff to the Convention of 1866.

**Japan retains power to prevent importation of opium;**

Therefore, notwithstanding the general exterritorial jurisdiction which Her Majesty has over British subjects in Japan, the Japanese authorities retain the power to prevent the importation, and punish the attempted importation of opium.

**And to secure monopoly of trade and make Regulations for its sale.**

With regard to the Japanese Regulations. In our opinion the Japanese Government had power to secure a monopoly of the trade in opium, and having done so, it was competent for them to make Regulations respecting the sale of opium even by foreigners, and enforce those Regulations by such provisions as those in question.

**Foreigners sacrifice no rights in submitting to them.**

We do not agree with Sir H. Parkes, that the opium Regulations are invalid, on the ground that the Japanese Government cannot make a law affecting foreigners without the assent of the foreign Governments, or that foreigners could not avail themselves of the Regulations without sacrificing their Treaty rights; for we consider that the trade in opium is one over which the Japanese Government has expressly reserved its control, and that, in submitting themselves to that control, foreigners are sacrificing no rights which they may otherwise have in Japan.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 48.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 28.)

My Lord, *Temple, July* 28, 1879.

**Coasting trade: Money deposited as security by Messrs. Jardine and Matheson, and not reclaimed within six months.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister at Tokio,* together with its inclosures, relative to the claim of Messrs. Jardine, Matheson, and Co., to be reimbursed certain moneys deposited by them at the Japanese Custom-house, in accordance with the provisions of the XIth Article of the Austro-Hungarian Treaty with Japan of 1869, to the benefits of which British subjects were admitted under the XXIIIrd Article of the British Treaty of 1858.

That under the Austro-Hungarian Treaty the coasting trade in Japanese goods might be carried on, provided the amount of duty which would be payable on such goods if exported to a foreign country be deposited as a security that the goods would be landed at a Japanese coast port, and the deposit was to be returned if a certificate of such landing of the goods was produced within six months.

That in the present case the amount of duty deposited by Messrs. Jardine, Matheson, and Co. not having been claimed within that period, the Japanese authorities declined to refund it.

That Sir Julian Pauncefote was, therefore, to request that we would take the accompanying papers into our consideration, and favour your Lordship with our opinion as to whether, under the circumstances, the Japanese Government were within their strict Treaty rights in refusing to refund the deposit.

That a copy of the Austro-Hungarian Treaty referred to would be found in "State Papers," vol. lix, p. 529.

In obedience to your Lordship's commands we have the honour to report—

**Japanese are within Treaty rights in refusing to refund.**

That the words of the Treaty clearly, in our opinion, give the Japanese authorities the right to keep the amount deposited, unless the certificate be produced within six months.

The Japanese Government are therefore within their strict rights in refusing to refund the deposit.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 49.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received September* 22.)

My Lord, *Temple, September* 22, 1879.

**Importation and sale of medicinal opium by foreigners.**

**Hartley's case.**

**Mr. Wilkinson's Judgments.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th ultimo, stating that, with reference to our Report of the 10th ultimo on the questions raised by Sir Harry Parkes in his despatch No. 56 of the 20th March, 1879, respecting the importation and sale of medicinal opium by foreigners in Japan and the enforcement of Japanese municipal laws on British subjects, Sir Julian Pauncefote was directed by your Lordship to inform us that since the date of his letter of the 26th May, upon which that Report was founded, Sir Harry Parkes' despatches Nos. 48 and 55, relating to the same subject (and which had been accidentally delayed in transmission), had been received. That those two despatches, containing voluminous inclosures, had been printed, and your Lordship thought it right, for the satisfaction of Sir Harry Parkes and of Mr. Wilkinson, the Acting

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* Sir H. Parkes, No. 104, May 9, 1879.

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Consul at Kanagawa, that they should be laid before us. That Sir Julian Pauncefote, accordingly, had the honour to transmit therewith copies of those despatches for our perusal, and to submit the following observations thereon:

That in No. 48, Inclosure 2 (p. 2), Sir Harry Parkes forwarded a Report by Mr. Wilkinson on the two Judgments pronounced by him in the proceedings instituted by the Japanese Customs against Mr. Hartley for opium smuggling. That your Lordship would be glad to be informed whether that Report modified in any way the opinion we had expressed as to the two Judgments in question. That in the same despatch Sir Harry Parkes forwarded a separate Report by Mr. Wilkinson (Inclosure 3, p. 5) on the objection that the jurisdiction exercised by him as Acting Law Secretary in those cases was not warranted by the "China and Japan Order in Council, 1865."

That in that Report Mr. Wilkinson stated that he acted as Judge of the Provincial Court at Kanagawa (before which Mr. Hartley's cases were tried) in the capacity of Acting Law Secretary of the Supreme Court, and in pursuance of section 38 of the Order in Council for China and Japan. That Sir Julian Pauncefote was to observe, however, that he was at the time Acting Consul at Kanagawa, and *ex officio* Judge of the Court under section 25 of the Order, and there is no trace of any authority having been given to him to visit that Court judicially under section 38 of the Order. Moreover, he could hardly have been authorized to visit judicially under that section a Provincial Court over which he himself presided *ex officio* as Acting Consul. That further explanations would, therefore, be called for in view of any application being made to the Judicial Committee of the Privy Council on behalf of the Japanese Government.

That, as regarded the more important question of the Japanese Regulations for the importation of medicinal opium, Sir Julian Pauncefote was to state (in case it should have escaped our observation) that the reference in his letter of the 26th May to Inclosures 4 and 5 of Sir Harry Parkes' despatch No. 56 was incorrect. That those inclosures contained the Japanese laws applicable to natives. The Japanese Regulations applicable to foreigners, to which we should have been referred, and to which Sir Harry Parkes took exception, were contained in Inclosures 1 and 2.

That that error has given rise to the following doubt. The important question of principle involved in the discussion respecting the enforcement of the Japanese Regulations on British subjects was originally raised some years ago in connection with certain proposed Japanese Regulations respecting shooting. On that occasion Her Majesty's Government arrived at the conclusion that the views stated in Mr. Fish's despatch to Mr. Bingham of the 7th January, 1874 (correspondence as to Shooting Regulations, p. 12) were correct; and in our Report of the                    on certain questions submitted by Sir Harry Parkes, and involving the same question of principle, we expressed our concurrence in the views of Mr. Fish, as stated in his despatch above referred to. But in our present Report of the 10th July, on the opium Regulations, we stated that it was competent to the Japanese Government to make Regulations respecting the sale of opium even by foreigners, and "to enforce these Regulations by such provisions as those in question." Your Lordship would be glad to be informed whether, by the "provisions in question," we intended to designate those contained in Inclosures 4 and 5 of Sir Harry Parkes' despatch No. 56, to which we were erroneously referred. For those provisions impose penalties to be recovered in Japanese Courts, and could not, therefore, be applicable to foreigners consistently with the doctrine laid down by Mr. Fish, which your Lordship understood was adopted by France, Germany, and other Treaty Powers.

That Sir Julian Pauncefote was to add that the whole question had been reopened by the claim of the Japanese Government to make and enforce on foreigners certain quarantine Regulations. That claim was the subject of a voluminous printed correspondence, which, by direction of your Lordship, Sir Julian Pauncefote should have the honour to lay before us in a separate reference, marked No. 2.

That Sir Harry Parkes' despatch No. 56 of the 20th March, 1879, and a copy of Sir E. Hertslet's "Treaties with Japan," were transmitted therewith for convenience of reference; also a copy of the China and Japan Order in Council, and the correspondence relating to the Japanese Shooting Regulations.

In obedience to your Lordship's commands we have the honour to report—

Mr. Wilkinson's Judgments wrong.

That, having carefully considered Mr. Wilkinson's Report of the 20th February, 1879, to Sir H. Parkes, we are unable to see anything therein which modifies our opinion as to the two Judgments in question. We still think both Judgments are wrong.

With respect to Mr. Wilkinson's competency to deal with the cases at all, we

forbear at present from expressing any opinion until the facts shall have been ascertained.

Japanese Regulations.

Penalties to be recovered in Japanese Courts cannot be enforced against British subjects.

With respect to the more important question of the Japanese Regulations for the importation of medicinal opium, and reserving for the separate reference, noted No. 2 of the date of the 12th August, 1879, our Report upon the specific questions answered therein, we wish to explain that we did not intend to express any opinion that penalties to be recovered by Japanese law in Japanese Courts were capable of being enforced against British subjects.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 50.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received September 22.)*

My Lord,

*Temple, September* 22, 1879.

Japanese Pilotage Regulations.

Enforcement on British subjects by British Regulations under Order in Council.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th August last (No. 3), stating that, with reference to his two preceding letters, Nos. 1 and 2 of that date, on the subject of the Regulations issued by the Japanese Government respecting the importation and sale of medicinal opium, and respecting quarantine, Sir Julian Pauncefote transmitted to us, by your Lordship's direction, the inclosed despatch from Her Majesty's Minister in Japan (Sir H. Parkes, No. 123), submitting for approval the draft of a British Regulation which you proposed to issue under sections 85, 86, and 90 of "the China and Japan Order in Council, 1865," for the purpose of enforcing on British subjects the observance of one of the Articles of certain Pilotage Regulations which had recently been made and published by the Japanese Government. That the Japanese Pilotage Regulations would be found in Inclosure 1 of Sir Harry Parkes' despatch, and the Regulation which he proposes to issue in Inclosure 10.

Employment of pilots.

Licence to British pilots.

Penalty for breach of British enactment.

That we would observe that, although the Japanese Regulations did not compel a British vessel to employ a pilot, still, if she should employ an unlicensed pilot, the latter was bound to give up charge of the vessel to any licensed pilot offering his services (section 14); and, further, that under those Regulations a British subject could only obtain a licence to pilot British vessels from the Japanese authorities, who might cancel such licence (section 23). That the pilotage of British vessels, and the licensing of British subjects as pilots, was thus placed entirely under the control of the Japanese authorities, and those Regulations therefore raised the same question as that which formed the subject of Sir Julian Pauncefote's preceding letters, Nos. 1 and 2 of that date, to which he referred us, as regarded the right of the Japanese Government to issue such Regulations. But, assuming that no objection could be raised against them, your Lordship would be glad to be favoured with our opinion as to the best mode of framing British Regulations in general for the enforcement of Japanese laws on British subjects. That one course which suggested itself was simply to issue a Regulation under the sections of the Order in Council above referred to, publishing a translation of the text of the Japanese law, enjoining its observance, and prescribing a penalty (within the limits ordained by section 86) for any breach therof. That the other course was that which Sir Harry Parkes appeared to have adopted in the present case, namely, to single out any clause of the Japanese law which might impose a penalty, and turn such clause into a British enactment, imposing a similar penalty for its violation.

Breach of Japanese law. British subjects can only be punished for (1) If offence is punishable in England; (2) If made punishable by a British Regulation under Order in Council.

That Sir Julian Pauncefote was to observe that the letter of the Japanese Foreign Minister to Sir Harry Parkes of the 4th March (Inclosure 4) appeared to admit that the intervention of the British authorities was necessary to enforce on British subjects any penalties imposed by Japanese laws; and Sir Harry Parkes desired to be informed whether he was right in his view that, unless the infraction or non-observance of any Japanese municipal law by a British subject should also constitute a crime or offence which would render the person guilty of it liable to be punished in England, or unless it be made and declared a punishable offence by a Regulation or Rule duly issued by Her Majesty's Minister under "The China and Japan Order in Council, 1865," no penalty could be levied upon a British subject for non-observance or infraction of it in any of Her Majesty's Courts in Japan

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or otherwise. That, in reply to that inquiry, your Lordship proposed, with our concurrence, to inform Sir Harry Parkes that he had correctly interpreted the meaning and effect of section 6 of the Order in Council.

That Sir Julian Pauncefote was to request, in conclusion, that we would be good enough to inform your Lordship whether Sir Harry Parkes' draft Regulation might be approved, or whether we considered that the alternative mode above suggested of framing the Regulation was preferable.

In obedience to your Lordship's commands we have the honour to report—

Approve above view, and Regulations.

That, in our opinion, Sir Harry Parkes has correctly interpreted the meaning and effect of section 6 of the Order in Council, and that the draft Regulation recommended for adoption by Sir Harry Parkes may be approved.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 51.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received October* 3.)

*Temple, October* 3, 1879.

My Lord,

Japanese Quarantine laws.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th August last (No. 2), in continuation of his letter No. 1 of that date, respecting the application of Japanese municipal laws to foreigners, and the enforcement upon them of the Regulations issued by the Japanese Government respecting the importation of medicinal opium into Japan, and stating that he now had the honour to transmit to us, by direction of your Lordship, the accompanying printed correspondence respecting quarantine laws in Japan, and to request that we would favour your Lordship with our opinion on the important question raised therein.

As to right of Japanese Government to enforce on foreigners and foreign ships.

That, in the first place, Sir Julian was to invite our attention to Sir Harry Parkes' despatch No. 61 of the 29th March, 1879, at p. 1 of the correspondence. It appeared from that despatch that in 1873 certain quarantine Regulations were agreed to between the Japanese Government and the foreign Representatives; and at that time the Japanese Government willingly conceded that these Regulations could not be enforced in the case of foreign ships without the concurrence of the foreign authorities concerned. That Sir Harry Parkes (p. 1) cited the instructions which he received on the subject from Her Majesty's Government in Lord Granville's despatch No. 3 of the 30th January, 1874. That the alarm of cholera which called for those Regulations having subsided, the necessity for applying them did not arise, and the question was not revived until June 1878, when the Japanese Foreign Minister communicated to the foreign Representatives the draft of some new quarantine Regulations which he desired to substitute for those of 1873.

New draft Regulations.

That while that draft was under consideration the Japanese Minister transmitted to Sir Harry Parkes a "revised" draft, containing certain innovations (in Articles 2 and 16), which were commented upon by Sir Harry Parkes at p. 3. That that revised draft, which was printed at p. 18, was submitted to a meeting of the Consular body, whose views thereon were given in Mr. Wilkinson's Report at p. 21.

That Sir Harry Parkes then convened a meeting of the foreign Representatives to consider the draft, and the views expressed on that occasion as to the rights of the Japanese Government were stated at pp. 3 and 4.

Views of foreign Representatives.

That it would be observed that Mr. Bingham, the United States' Minister, maintained that the Japanese Government had the right to make whatever quarantine Regulations they liked, and to enforce them on foreign ships and foreigners of all nationalities, without the intervention of any foreign authorities.

That all the foreign Representatives present, except the Russian Chargé d'Affaires (who would give no opinion), dissented from that view. They maintained that the Japanese Government could not enforce quarantine Regulations on their nationals without their concurrence; that they could only sanction the enforcement of such Regulations as were reasonable and practicable, and that the proposed Regulations were defective and required amendment.

That Sir Harry Parkes explained to his colleagues that, in order to make the Regulations applicable to British ships and subjects, "he should have to convert them into British Regulations under the Order in Council."

"British Courts cannot enforce Japanese laws as such."

That Sir Harry Parkes stated that he repeatedly impressed on the Japanese Foreign Minister that "British Courts could not enforce Japanese laws as such," and that in order to make the proposed quarantine Regulations binding on British subjects "it was necessary that he should receive them from him, officially approve their provisions, and then publish them as British Regulations under the Order in Council" (p. 6).

That Sir Julian Pauncefote was then to refer us to Sir Harry Parkes' despatch No. 67 of the 7th April, 1879 (p. 39), in which he transmitted a further correspondence with the Japanese Minister on the same question of jurisdiction, and he was to draw our attention particularly to the letter of the Japanese Minister of the 15th October, 1878 (p. 42), and to Sir Harry Parkes' reply of the 31st October (*ibid.*), as they contained a résumé of the contention and arguments on either side.

That Sir Harry Parkes submitted to his colleagues a memorandum of "Suggestions as to the measures which appear necessary to enable the quarantine Regulations of the Japanese Government to be made applicable to foreign ships, with their crews, passengers, and cargoes." Those suggestions were printed at p. 22, and Sir Harry Parkes, in his despatch No. 68, Confidential, of the 7th April, 1879 (p. 44), after referring to those suggestions, stated the substance of the communications made by the foreign Representatives to the Japanese Government, and inclosed copies of letters addressed to the Japanese Minister by the Representatives of France and Spain. That Sir Julian Pauncefote was to refer us particularly to the two letters of M. Geofroy at pp. 45 and 47.

That we would perceive from Sir Harry Parkes' despatch No. 83 of the 17th April, 1879 (p. 76), that the Japanese Government were not satisfied with any of the schemes of quarantine Regulations as yet proposed; but whatever system might prevail, it could not be applied to foreign vessels and foreigners until the question of jurisdiction was settled. In the meanwhile, in consequence of an alarm of cholera at Nagasaki, Sir Harry Parkes applied by telegram on the 4th July for the sanction of your Lordship to the issue by him, under the Order in Council, of the quarantine Regulations for British vessels which were printed at p. 30.

That that proceeding was sanctioned by telegraph in the emergency, and pending the settlement of the question; and Sir Julian Pauncefote was to request that we would be good enough to inform your Lordship whether, in our opinion, there was any objection in point of law to any of those Regulations.

Query as to above dictum.

That a memorandum thereon, transmitted by Sir Harry Parkes, would be found at p. 35. The principal question, however, on which your Lordship desired to be favoured with our opinion, was whether Her Majesty's Government could properly support the contention of Sir Harry Parkes, that "British Courts cannot enforce Japanese laws as such," and that before any Japanese quarantine Regulations could be applied to British subjects, it was necessary that they should be officially communicated to and approved by him, and turned into British Regulations under the Order in Council.

That that contention would appear to go further than that of the other foreign Representatives whose views were expressed in Sir Harry Parkes' despatch No. 68, Confidential (p. 44). The latter do not seem to object to Japanese quarantine Regulations being enforced as such on their nationals, but they claim the right of enforcing them through the foreign Consuls acting in concurrence with the Japanese quarantine officials.

Imposition of penalties.

That as regarded the imposition of penalties, the Japanese Minister, in his letter of the 15th October, 1878 (p. 42), stated that whenever a foreigner committed a breach of the Regulations, they intend "to accuse him before his Consul, and to leave him to be dealt with by the laws of his country." That that was in accordance with the doctrine laid down in the despatch of Mr. Fish to Mr. Bingham of the 7th January, 1874, referred to in Sir Julian Pauncefote's letter No. 1 of the 12th ultimo, and which had been assented to by Her Majesty's Government. But the difficulty was not so much as to the imposition and recovery of penalties for the breach of the Japanese Regulations as in regard to the exercise by Japanese officials of direct control over foreign ships and foreigners; and it could hardly be doubted that if such direct control should be vested in Japanese officials, otherwise than in concurrence with the foreign Consular authorities, as proposed by Sir Harry Parkes in his "Suggestions," at p. 22, and by the French Minister in his letter of the 29th October, 1878 (p. 47), the system must result in constant recriminations and disputes, and not improbably in acts of violence on the one side or the other.

Japanese direct control, &c.

That your Lordship would therefore be glad to be informed whether, in our

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opinion, the Japanese Government could claim the right to exercise through their own officials, and without the intervention or concurrence of the foreign authorities, that direct control over foreign ships and foreigners which was necessary to carry out any quarantine Regulations which they might ultimately promulgate.

In obedience to your Lordship's commands we have the honour to report—

No legal objection to Regulations.

That, in our opinion, there is no objection in point of law to the Regulations set out in page 18.

The principal questions submitted to us, "whether Her Majesty's Government can properly support the contention of Sir Harry Parkes, that British Courts cannot enforce Japanese laws as such," and "that before any Japanese quarantine Regulations can be applied to British subjects it is necessary that they should be officially communicated to and approved by him, and turned into British Regulations under the Order in Council," must be considered separately, and it is convenient to examine and answer the second question before dealing with the first.

Convention, Article IV. British ships in Japanese ports to conform to laws of Japan.

The IVth Article of the Convention (14th October, 1854, 9th October, 1855) provides that "British ships in Japanese ports shall conform to the laws of Japan."

Apart from the Convention British ships in Japanese ports would, as a general rule, for instance, in taking up a berth, communicating with the shore, and so forth, be bound to conform to Japanese law; the IVth Article, therefore, is not restrictive, but confirmatory of the general rule, that the laws of a country are to be obeyed and conformed to in the ports of that country.

Governments have right to make quarantine Regulations.

There can be no doubt of the right of a Government to make quarantine Regulations or Laws. These may be necessary for the public safety. There is nothing in any Convention or Treaty with Japan, that we are aware of, which applies especially to quarantine, or limits the rights and powers of the Japanese Government to enact laws in the matter of quarantine.

Not necessary to have laws approved by British Minister, and turned into British Regulations, before applying them to British subjects.

But is it necessary that before these laws, which the Japanese Government has the right to enact, can be applied to British subjects, they should be officially communicated to and approved by the British Minister in Japan? In other words, is the Japanese Government in matters of quarantine under the control of Her Majesty's Minister? Are British subjects in Japanese ports entirely independent of Japanese law, unless that law be turned into a British Regulation? We think not.

Consequences, under Convention, of breach of laws.

The IVth Article of the Convention already referred to provides for the case, and in a manner which, if disregarded, may be most prejudicial to British interest. That Article says, "That if high officers or commanders of ships shall break any such laws, it will lead to the ports being closed. Should inferior persons break them, they are to be delivered over to the commanders of their ships for punishment."

In our opinion, therefore, Her Majesty's Government cannot properly support the contention, that before any Japanese quarantine Regulations can be applied to British subjects it is necessary that they should be officially communicated to and approved by Sir Harry Parkes, and turned into British Regulations under the Order in Council.

The Japanese Foreign Minister was, we consider, right in holding that in communicating the Regulations officiously he did all that in any sense could be required of him.

View as to enforcement of Japanese laws, as such, is correct in one sense.

With reference to the first question, the contention of Sir Harry Parkes, "that British Courts cannot enforce Japanese laws as such," is, in one sense, correct. The matter for consideration by Sir Harry Parkes and by Her Majesty's Government, looking to the IVth Article of the Convention, which gives, in our opinion, the principle for guidance in the enforcing the quarantine Regulations, is the best way of reconciling the rights of the Japanese with British rights.

Should not object to Japanese Regulations, but claim to enforce them through British Consuls.

The true solution is, in our opinion, the course approved by other foreign Representatives in Japan, viz., not to object to the Japanese Regulations, and to claim the right of enforcing them through British Consuls, and for this purpose that Regulations should be made by Sir Harry Parkes for enforcing the observance of the quarantine Rules in the case of British subjects.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 52.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received November 5.)*

My Lord,

*Temple, November 5*, 1879.

Quarantine Regulations.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th ultimo, stating that, with reference to his letter No. 2 of the 12th August and to our Report of the 3rd ultimo, on the subject of quarantine in Japan, he had the honour to transmit to us, by direction of your Lordship, the inclosed print of five further despatches which had been received from Her Majesty's Minister in Japan in relation to the same question.

That it appeared from despatch No. 138, p. 83, that, in consequence of the prevalence of cholera at Kiobe and Osaka, the Japanese Government, on the 3rd July last, issued certain provisional Regulations (despatch No. 138, Inclosure 2, p. 83), which were communicated to Her Majesty's Minister, who, in a letter to the Japanese Foreign Minister (*ibid.*, Inclosure 5, p. 85), stated his objections to those Regulations, and in a further letter (*ibid.*, Inclosure 6, p. 87) transmitted to him a copy (*ibid.*, Inclosure 7, p. 87) of a Rule respecting quarantine which he had himself issued under the China and Japan Order in Council.

That subsequently the Japanese Foreign Minister communicated to Sir H. Parkes (*ibid.*, Inclosure 8, p. 88) a set of revised quarantine Regulations issued by his Government in lieu of the provisional Regulations above referred to (see copy of revised Regulations, *ibid.*, Inclosure 16, p. 92).

That Sir H. Parkes thereupon addressed a letter to the Japanese Foreign Minister (*ibid.*, Inclosure 18, p. 95), conveying his adhesion to the revised Regulations under certain reservations, and in a further letter (*ibid.*, Inclosure 19, p. 96) he transmitted to him a copy of a new Rule which he had issued under the China and Japan Order in Council, to enable Her Majesty's Consuls in Japan to co-operate effectively with the Japanese authorities (see copy of new Rule under Order in Council, *ibid.*, Inclosure 20, p. 97).

That Sir H. Parkes also issued a Circular to Her Majesty's Consuls in Japan (*ibid.*, Inclosure 25, p. 101), containing instructions for their guidance in the matter.

That the revised Regulations became the subject of a correspondence between the Japanese Foreign Minister and some of the foreign Representatives, which was contained in Inclosures 29 to 33 of the same despatch (pp. 103 to 108).

That Sir H. Parkes' despatch No. 139 and its twenty inclosures (pp. 108 to 123) contained the Reports of Her Majesty's Consuls at Kanagawa and Hiogo and Osaka, on the measures taken by the Japanese authorities in relation to quarantine at those ports, and his despatch No. 143, p. 123, contained his remarks on those Reports.

That Sir Julian Pauncefote was to refer us to Sir H. Parkes' despatch No. 144, p. 127, containing a full Report of the proceedings of the Japanese Government in the matter of quarantine, of his own action, and of the present position of the question.

That Sir H. Parkes was in hopes that the course he had pursued would have satisfied the Japanese Foreign Minister, but on the 29th July he received a letter from him (Inclosure 1, p. 130), protesting against the terms of the new Rule issued by him under the China and Japan Order in Council, p. 97. That, in reply to that protest, Sir H. Parkes addressed to the Japanese Foreign Minister the letter of the 2nd August, which formed Inclosure 2 of his despatch No. 144, p. 131.

That the series of despatches concluded with No. 145, p. 132, which related solely to a dispute between the Japanese Foreign Minister and the German Representative in relation to the case of the German steamer "Hesperia."

That the question on which your Lordship desired to be favoured with our opinion was whether the Rule issued by Sir H. Parkes under the China and Japan Order in Council, p. 97, and his Circular to Her Majesty's Consuls, p. 101, and his reply to the protest of the Japanese Foreign Minister, p. 131, might properly receive the approval of Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

British ships in Japanese ports to conform to Japanese law.

That, in our Report of the 3rd October, we had occasion to refer to the IVth Article of the Convention, which provides that British ships in Japanese ports shall conform to Japanese law.

We then submitted to your Lordship our opinion, that the Japanese Government might, without reference to the British Minister, make quarantine Regulations, and that the breach of such Regulations might, under the provisions of the same IVth Article of the Convention, lead to serious inconvenience; although penalties, in

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a strict and limited sense, would not be inflicted upon British offenders without the intervention of the British authorities.

Sir H. Parkes does not give due weight to Article IV of Convention.

Sir H. Parkes has, in our opinion, not given due weight to this Article of the Convention, and to the consequences which would follow if the "High Commander of a British ship or other inferior person" should break a quarantine Regulation, even though Sir H. Parkes had not turned that Regulation into a British Regulation.

We are therefore of opinion that his reply to the protest of the Japanese Foreign Minister cannot properly receive the full approval of Her Majesty's Government.

Approve his Regulations for carrying out those of Japan, but not his reply to Japanese protest.

The Rule issued by Sir H. Parkes and his Circular to Her Majesty's Consuls may, however, properly receive the approval of Her Majesty's Government, since substantially they carry out the Japanese Regulations, and remove any doubt as to the obligation on British ships to observe those Regulations.

We have, &c.  
(Signed) JOHN HOLKER.  
HARDINGE S. GIFFARD.  
J. PARKER DEANE.

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# Liberia.

## No. 53.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received November 27.)*

My Lord,

*Temple, November* 27, 1879.

Claim of Liberia to territory ceded by native Chiefs.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th September last, stating that he was directed by your Lordship to transmit to us a printed correspondence relating to the claims put forward by the Republic of Liberia to certain territories alleged to have been ceded to them by the native Chiefs to whom they belonged, and the steps which had been taken to verify those claims.

Liberian Boundary Commission.

That the claims in question were recognized by Her Majesty's Government, but in 1863 a Committee was appointed to investigate them, which, however, was unable to arrive at any conclusion except as regards the claim to what was called the "Sugaree" territory. But that that inquiry did not take place on the spot.

That a memorandum dated the 15th October, 1863, setting forth the history of the Liberian claims, and the Report of the Commission of 1863, would be found in Part A, No. 45, and Inclosure 2 in No. 43, pp. 80 and 70.

That in 1870 it was agreed to appoint a Mixed Commission to inquire on the spot into the Liberian claims, and, in case of disagreement, the points in dispute were to be referred to an arbitrator to be appointed by the United States' Government.

That the terms on which Her Majesty's Government agreed to that Commission would be found in Lord Granville's letter to President Roye of the 31st October, 1870, and its inclosure, and that those terms were accepted by the Liberian Government in Mr. Chinnery's letter of the 19th April, 1871 (Correspondence A, Nos. 118 and 121, pp. 190 and 194).

That the instructions to the British Commissioners in 1871 would be found in Correspondence B, No. 23, p. 9.

That a revolution having taken place in Liberia, the Commission fell through, and nothing further was done in the matter till 1873, when Mr. Roberts, the Liberian Minister in London, in his letter of the 5th August, urged a settlement of the question, if possible, without the intervention of a Commission.

That that was declined by Lord Derby in his letter of the 22nd of the following month, but that his Lordship agreed to proceed with the inquiry on the same terms as were agreed to in 1871 (Correspondence B, Nos. 66, 73, and 74, pp. 38, 42, and 43).

That a Commission was accordingly appointed, and the United States' Government nominated Admiral Schufeldt to act as arbitrator. That the instructions to the British Commissioners, dated the 21st January, 1879, would be found in Part C, No. 69, p. 85.

That the Commission met in the first instance at Sierra Leone, and afterwards at Sulymah, and that the records of its proceedings would be found in the British Commissioner's Reports of the 19th February, the 18th, 21st, 26th April, and the 1st May. (Correspondence C, Nos. 86, 101, 102, 103, and 104, pp. 111, 137, 151, 153, and 165.)

Decision. Country claimed does not exist.

That we should see from the last of those Reports that the British Commissioners came to the conclusion that the countries mentioned in the Deeds of Cession produced by the Liberian Government had no existence; consequently, that there were no boundaries to deliminate, and no question to be referred to the arbitrator.

That they, moreover, stated that even the "Sugaree" country, which in 1863 was admitted to belong to Liberia, had no existence.

That the proceedings accordingly terminated abruptly, but that the Liberian Commissioners protested against the refusal of the British Commissioners to refer the matter to the arbitrator, and that Mr. Gibson, the Liberian Secretary of State, in a letter to your Lordship dated the 15th May (Correspondence C, No. 107, p. 216), had also protested against the action of the British Commissioners. That in that letter, as we should observe, he stated that the inquiry had been adjourned, whereas the British and Liberian Commissioners, in their joint letter to the arbitrator of the 24th April (Correspondence C, Inclosure 2 in No. 100, p. 164) informed him that the Commission had "concluded their inquiry," and that the Commodore in reply treated the inquiry as concluded.

That Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion whether the British Commissioners were warranted in refusing to refer the whole matter to the arbitrator, and whether Her Majesty's Government could refuse to reopen it on the ground that the Commissions of 1861, 1871, and 1879 were appointed under the erroneous belief that the countries named in the Deeds of Cession were really in existence, whereas the recent inquiry instituted for the first time on the spot showed conclusively that no such countries existed; or on the ground that the inquiry, though productive of no award, was closed and concluded by the Commissioners on both sides with the assent of the Umpire, as shown in the correspondence above referred to. (Commissioners to Commodore Schufeldt, and Commodore Schufeldt's reply, Correspondence C, p. 164.)

In obedience to your Lordship's commands we have the honour to report—

Strange that Liberia should claim what does not exist, &c.

That it is strange that a Government like that of Liberia, not wanting in ability and political knowledge, should lay claim to territory which does not exist, and submit to a Commission and Arbitrator the question of the boundaries of that non-existent territory.

The conduct of the Liberian Commissioners in keeping back original documents and producing only the copy is remarkable and suspicious as to the good faith of their Government in claiming territory as ceded to them, and the evidence taken before the Commissioners is against their claims.

May be some mistake in the names.

Yet we cannot but think that there is some confusion and mistake in the names, and that the places, whether towns or districts, to which they lay claim, really do exist under some name or description.

In our opinion, the British Commissioners took too narrow a view of their instructions (C, p. 85), and they should have referred the question of "the exact limits of the north-western boundary of the Liberian Republic" to the arbitrator, and not considered themselves bound by the names of certain districts.

Her Majesty's Government cannot refuse to reopen question.

Her Majesty's Government cannot, in our opinion, refuse to reopen the question on either of the grounds stated in Sir Julian Pauncefote's letter.

We think it right, however, to submit to your Lordship's consideration whether all the necessary persons have been made parties to the reference, and whether the Commission should be reopened in their absence.

Caution as to recognizing territory which may be claimed by some other Power.

The inquiry would embrace the right of Liberia to territory by admission not British, and should adverse claimants, not party to the arbitration, hereafter come in, serious complications might arise if Her Majesty's Government were called upon

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by Liberia to recognize as belonging to her some territory awarded to Liberia under the arbitration, but of which some independent or even civilized Power might claim to be the owner.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Miscellaneous.

### No. 54.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*[*]

*Foreign Office, January* 3, 1879.

Gentlemen,

Proposed abolition of Consular shipping fees, and substitution of uniform tonnage fee.

FOR some time past the attention of Her Majesty's Government has been given to the question of the advisability of abolishing the shipping fees now leviable by Her Majesty's Consuls abroad, under Act 6 Geo. IV, cap. 87, and of substituting a uniform fee founded on the tonnage of the ship.

A memorandum in print on the subject is inclosed.

The fees prescribed by the Tables annexed to the Act were modified by the Orders in Council noted in the margin,[†] under the power in that behalf contained in section 4, and the shipping fees which it is now proposed to abolish are those contained in Part I of the Schedule attached to the Order of the 1st May, 1855.

By section 4 of the Act 6 Geo. IV, cap. 87, it is provided that it shall be lawful for Her Majesty's Consular officers abroad to accept, take, and receive certain fees in respect of certain official acts respectively mentioned in the Tables therein referred to, and that Her Majesty may, by Order in Council, increase or diminish or wholly abolish the said fees, and may substitute new fees for the same or for other official acts, matters, or things.

This provision seems to contemplate that there must be certain specified fees for certain specified acts, and that such fees should be received by the Consular officer at the place where, and at the time when, those acts are respectively performed by him. The proposal under consideration, as explained at p. 9 of the memorandum, is to abolish all the shipping fees now collected by Consular officers, and to substitute in lieu thereof a tonnage fee of 1*d*. a-ton for three months, or 4*d*. a-ton for a year, to be paid either at home or at any British Consulate, which payment being acknowledged on the articles of the ship, will relieve her from all liability in respect of any Consular shipping fees, at any foreign port during the period covered by the tonnage fee.

I am directed by the Marquis of Salisbury to request that you will take the accompanying papers into your consideration, and favour his Lordship with your opinion as to whether the above proposal can be carried out by an Order in Council under section 4 of the Act, or whether a new Act of Parliament would be required for that purpose.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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[*] The Law Officers' Report upon this subject could not be found when this collection of Reports was made, and it was therefore necessary to obtain the original draft of the Report. The Law Officers, however, do not retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the Foreign Office letter to them is recapitulated. It has, therefore, been deemed advisable to print the Foreign Office letter in this instance, as the bare Report, without the usual preamble, would not be wholly intelligible.

[†] April 14, 1851, Hertslet's Treaties, vol. ix, p. 313; May 1, 1855, ibid., vol. x, p. 306; July 27, 1863, ibid., vol xi, p. 1092.

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*Report.*

Act of Parliament necessary to carry out change of system.

That, in our opinion, an Act of Parliament will be required in order to effect the desired change of system in Consular fees paid for the discharge of a Consul's services rendered to ships.

J. H.
H. S. G.
*January* 21, 1879. J. P. D.

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### No. 55.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received March* 22.)

*Temple, March* 21, 1879.

My Lord,

Laughlan and Purdy Islands.

Guano licence to Mr. Roberts.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 21st February last, stating that in the month of February of last year an application was made to the Earl of Derby by a Mr. Roberts for special permission to place certain islands off the coast of New Guinea under the protection of Her Majesty's Government, and also for a licence to work the guano deposits upon them.

That the matter was referred by his Lordship to the Secretary of State for the Colonies for his opinion as to the answer which should be returned to that application.

That, after consultation with the Board of Admiralty, the Colonial Office informed your Lordship that, as none of these islands appeared to have been claimed by a foreign Power, Sir Michael Hicks Beach would be prepared, with your Lordship's approval, to instruct the Governor of New South Wales to grant to Mr. Roberts a lease of such of the islands as were not inhabited.

That your Lordshp replied that, as then informed, he had no objection to the course proposed, and it appeared that licences to work the guano deposits on the Laughlan and Purdy groups were granted by the Government of New South Wales.

Licensees must hoist Union Jack.

That Messrs. Pickford and Winkfield, the agents of Mr. Roberts in England, subsequently applied to the Colonial Office for information as to his position in the event of any foreign Power setting up a claim to these islands, and Sir Michael Hicks Beach suggested that they should be informed "that all licensees of islands should publicly notify that such islands are in British occupation by hoisting the Union Jack, and that when this public notification of British sovereignty has been given Her Majesty's Government would feel no difficulty in upholding the claims of British subjects against those of any foreigners subsequently attempting to lay claim to such islands."

Title of Crown by discovery.

That your Lordship concurred in that reply, with the qualification that it should be premised that the title of the Crown by discovery was incontestable, and had not been permitted to lapse by non-occupation previously to the grant of the licence, and that it was presumed that no guano leases were granted except for islands which had been formally declared to be British territory.

Islands unoccupied, but not claimed as British dominions.

That, by a subsequent communication from the Colonial Office, it appeared that though, as in the case of the Laughlan and Purdy groups, licences were granted only in respect of islands which were unoccupied, and belong to no recognized foreign State, the islands in question were not claimed by Her Majesty's Government as part of the British dominions.

That, under these circumstances, your Lordship would be glad to be favoured with our opinion as to whether the reply which the Colonial Office propose to return to Messrs. Pickford and Winkfield's inquiry might be approved.

The correspondence on the subject was inclosed for our information.

In obedience to your Lordship's commands we have the honour to report—

Caution necessary in granting licences.

That, considering the great competition which now exists between several Governments, as Great Britain, France, and the United States of America, for the occupation and working of any place in which a guano deposit may be found, Her Majesty's Government should, in our opinion, exercise great caution in granting licences or leases.

Occupation and declaration of ownership.

We think that, in all cases, occupation on behalf of Great Britain shown by clear and positive evidence, and a formal declaration that the islands are British territory, should precede the granting of any lease or licence.

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Reference to Lacepede and Chesterfield Islands.

We beg to refer your Lordship to a Report on the Lacepede Islands, which we had the honour of making to Lord Derby on the 21st February, 1877, and in which we submitted our opinion on the general principles applicable to the issue of leases or licences of guano deposits.

We beg also to refer your Lordship to a Report of the 11th November, 1878, on the occupation of the Chesterfield Islands by the French.

As to identity of Mr. Roberts.

A Mr. Roberts, acting as the agent of an American citizen named Lord, endeavoured to oust a British subject from the Lacepede Islands. If the present applicant be the same Mr. Roberts, Sir Michael Hicks Beach may possibly consider that this gentleman has little claim on Her Majesty's Government in the present instance, and that his conduct may require some careful watching and great caution.

Should declare islands British territory.

We think the islands in question should, without delay, be formally declared to be British territory, and, subject to that, we concur in the proposed answer to Messrs. Pickford and Winkfield by Sir Michael Hicks Beach, as modified by your Lordship.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Mosquito.

### No. 56.

*Memorandum by the Lord Chancellor.—(Received October* 1.)

Mosquito Arbitration.

I HAVE read these papers. There is no doubt that the Treaty of 1860 is framed in vague and ambiguous terms; that it will be difficult to place a judicial interpretation on many of its terms, and that it would be, in many points of view, desirable to have defects in the Treaty arising from obscurity or omission remedied by some supplemental Convention.

But, on the other hand, looking to the character of those concerned (Mosquito and Nicaragua), it is clear that now that each side knows the tender and weak points of the case, and has taken up a position in reference to them, any negotiations for a new agreement would be interminable, while the interest of Great Britain is not so much to have a Treaty which is complete and perfect in the abstract as to hold on by what has been already arrived at, and to make it work by means of some interpretation to be put upon it.

Must found case on spirit of the Treaty.

I therefore incline to Sir Julian Pauncefote's view, that we should confine ourselves to putting forward our views of the meaning of the Treaty according to what we know to have been the spirit in which it was framed, and pressing these views on the arbitrator.

As to "free port."

The first point, and the point of most general interest, is the position of the port of Greytown. I think we should press for the construction (as to this) of the Treaty indicated by Mr. Reilly (p. 61). The words of the Treaty are not happy; but unless "free port" means what Mr. Reilly contends for, it has little or no meaning whatever.

Beyond this there are two questions as to which I think we should back up Mosquito:—

Duty on articles for Mosquito.

1. That Nicaragua should have no right to tax or to levy duties on articles to be consumed in Mosquito. I think this is the spirit of the Treaty and of the whole arrangement, though here, again, the expressions used are unsatisfactory.

Mines, timber, lands, &c.

Mosquito must not alien them.

2. That Mosquito has the full right of property in mines, timber, waste lands, &c., subject only to this, that she is not to alien to foreigners; and by the term "alien" I mean not only a sale, but also any lease or permanent holding. The reserved district was, I think, intended for personal enjoyment and occupation. All products may be sold, but I think they must be put into the market by the natives.

I think these are the main points in the case.

(Signed) CAIRNS.

*September* 29, 1879.

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## Netherlands.

### No. 57.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received May* 1.)

My Lord, *Temple, April* 29, 1879.

Extradition from Straits Settlements.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 12th ultimo, stating that, in our report of the 28th March, 1878, in relation to extradition from the Straits Settlements, we advised that Her Majesty should issue an Order in Council under the Act 29 and 30 Vict., c. 115, sec. 2, providing for the surrender of fugitive criminals in the Straits Settlements, and we suggested that such an Order might be conveniently framed upon the Indian Act No. 7 of 1854.

That the inclosed draft of an Order in Council had accordingly been prepared at the Colonial Office. That in their letter to that Department of the 28th January last, it was stated that the draft was based principally upon the Indian Act of 1854, with certain modifications taken from the Imperial Extradition Act of 1870, and that it was so framed as to extend to all foreign States to which the Extradition Act of 1870 did not, for the time being, apply, so that its operation would be at once excluded from any State by an Order in Council applying the Article [? Act] to that State. That it was further stated that the provisions in the 11th section had been imported from the Imperial Act, and the list of extradition crimes had been adopted from the Extradition Acts of 1870 and 1873; also that specific provisions of the Indian Act for admitting to bail persons apprehended as fugitive criminals had been omitted, the words "deal with" in the 6th clause being, it was thought, sufficient to give the magistrate power to accept bail on remand.

That Lord Tenterden was directed by your Lordship to request that we would favour your Lordship with our opinion as to whether the draft might be approved, or whether any alterations therein were required before the proposed Order was submitted to Her Majesty.

That Lord Tenterden was to transmit therewith the papers for reference in connection with that question.

In obedience to your Lordship's commands we have the honour to report—

Draft Order in Council.

That, in our opinion, the draft Order in Council may, with the following additions, be approved:

We respectfully suggest that the words "last mentioned" should be inserted before the word "magistrate" at the end of clause 7 of the draft Order in Council.

And we also submit, for your Lordship's consideration, that words corresponding with those employed in section 11 of the Extradition Act, 1870, should be added, either at the end of clause 10 of the draft Order, or as a separate clause, but omitting all reference to writ of *habeas corpus*, as follows:—

Appeal of criminal on committal to prison.

"If the magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that during such fifteen days the said criminal may appeal to any Judge of the Supreme Court of the Straits Settlements."

And in clause 11, after the words "fifteen days from the date of committal," should be added the words, "or after the decision of the Judge before whom the

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appeal of the fugitive criminal is brought, as the case may be, or after such further period as may be allowed, in either case, by the Governor."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 58.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received October 31.)*

*Temple, October 29, 1879.*

My Lord,

Cartridges at Curaçao. Compulsory landing from British ship "Bolivar." Refusal to allow their re-export to Panama.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us therewith the papers noted in the margin* relative to the circumstances under which the West India and Pacific Steam-ship Company's steamer "Bolivar" having been compelled to land at Curaçao a consignment of cartridges destined for Panama was refused permission to re-export the same, on the ground that the exportation of arms and ammunition from Curaçao was prohibited.

Export of arms, &c., prohibited.

That Mr. Lister was to observe that, whereas there seemed to be no objection to the law prohibiting the export of munitions of war from Curaçao, it appeared to your Lordship that there was ground for complaint in that a British vessel touching at Curaçao, and being merely *in transitu* for another country, should be forced to land a part of her cargo, consisting of munitions of war destined for that other country, and then should be prohibited from reshipping it, on the ground that the local law did not permit the export of munitions of war.

That, under those circumstances, Mr. Lister was to request that we would take the inclosed papers into our consideration, and favour your Lordship with our opinion whether the authorities at Curaçao had any right to interfere with the cargo of a ship *in transitu*, and if not, whether their doing so would constitute a breach of international usage which would justify Her Majesty's Government in demanding reparation from the Government of the Netherlands.

In obedience to your Lordship's commands we have the honour to report—

No right to stop through carriage of cargo.
Her Majesty's Government may remonstrate.

That, in our opinion, the authorities at Curaçao had no right to stop the through carriage of the cargo in question by first insisting upon its being landed, and then refusing permission to replace it on board, and Her Majesty's Government will be justified in demanding reparation from the Government of the Netherlands.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Pacific Islands.

### No. 59.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January 22.)*

*Temple, January 21, 1879.*

My Lord,

Convention with Navigators' and Friendly Islands.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us a letter, with inclosures, from the Colonial Office, on the subject of proposed negotiations for the signature of a Convention between Her Majesty's Government and the Navigators' Islands and the Friendly Islands, conferring upon the Queen exterritorial jurisdiction in those islands, and that Sir J. Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion on the question raised by the Colonial Office as to the necessity of a new Order in Council under the Foreign Jurisdiction Act, to enable Her Majesty to exercise the power conferred by the proposed Convention.

Ex-territorial jurisdiction.

Order in Council.

As to Western Pacific Order being unsuited.

That the Western Pacific Order in Council of the 13th August, 1877, was founded both on the Pacific Islanders' Protection Act, 1875, section 6, and on the Foreign Jurisdiction Act. It recited in the preamble, that at the date of the Order the Queen had power and jurisdiction within the islands in question, but those islands were described as "not being within the jurisdiction of any civilized Government." The Colonial Office suggested that Conventions having been made between the Chiefs of those islands and foreign Powers, and a system of Local Government having been established, they had ceased to come under the above designation, and that the Western Pacific Order in Council might no longer be applicable to them.

That, on the other hand, it might be urged that, as the Order in Council was founded on the Foreign Jurisdiction Act as well as on the Pacific Islanders' Act, 1875, and as the Queen had power and jurisdiction in those islands at the date of the Order, the effect of the proposed Convention would only be to define the extent of such jurisdiction, and that the legal powers conferred by the Order in Council for the exercise of the Queen's jurisdiction were not affected by the circumstance, that the grounds on which such jurisdiction rested might be changed. That copies of the Foreign Jurisdiction Act, the Pacific Islanders' Protection Act, 1875, and the Western Pacific Order in Council were transmitted therewith for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

A new Order in Council is necessary.

That, in our opinion, a new Order in Council, under the Foreign Jurisdiction Act, is necessary to enable Her Majesty to exercise the powers conferred by the proposed Conventions.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Peru.

### No. 60.

[Nil.]

[Reports on subjects arising out of war between Peru and Chile will be found under the heading of Chile.]

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* West India and Pacific Steam-ship Company, August 1; to ditto, August 8, 1879; to Mr. Stuart, No. 24; ditto, No. 45; to ditto, No. 28; ditto, No. 52.

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# Portugal.

## No. 61.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received March* 1.)

*Temple, March* 1, 1879.

My Lord,

Extradition between Hong Kong and Macao.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 17th ultimo, stating that with reference to our Report of the 31st December last, and to the difficulties which existed in the way of carrying out the extradition of fugitive criminals between the Governments of Hong Kong and Macao, he was directed by your Lordship to request that we would take into our consideration the following further suggestion, and favour your Lordship with our opinion whether the course proposed was, in our opinion, open to any legal objection.

Portugal requires condition that sentence of death be not carried out.

That the refusal of the Portuguese Government to surrender a fugitive accused of a capital offence, except on the condition that sentence of death should not be carried out in the event of his conviction, was the obstacle, as we were aware, to the conclusion of any extradition arrangement between Great Britain and Portugal, and that the extreme inconvenience which was felt in Hong Kong from that state of things was explained in Sir Julian Pauncefote's letter of the 16th December last.

As to Governor of Hong Kong having discretionary power to surrender criminals to Macao.

That with a view to surmounting that difficulty, if possible, it was now suggested that the Hong Kong Extradition Ordinance, referred to in that letter, should be amended so as to vest in the Governor in Council the discretionary power of surrendering to the Macao Government persons accused or convicted of the crimes specified in the schedule, without reference to any Treaty or reciprocal law.

That the Macao Government had passed no such law, but that their practice had been to surrender fugitives at their own discretion or under instructions from the Portuguese Government.

Macao would reciprocate, except in murder cases.

That if the Hong Kong Ordinance were amended as proposed, with a view to the surrender of fugitives to the Macao Government without regard to reciprocity, your Lordship apprehended that the Portuguese Government would be willing to surrender, either with or without legislation, for that purpose, fugitives from Hong Kong accused or convicted of any of the crimes specified in the schedule to the Hong Kong Ordinance, except that of murder, and the object in view would then be practically attained.

In obedience to your Lordship's commands we have the honour to report—

No objection. But no promise of commutation must be given.

That we see no objection to vesting in the Governor in Council the discretionary power of surrendering to the Macao Government persons accused or convicted of the crimes specified in the schedule, without reference to any Treaty or Reciprocal Law.

Strict instructions should, however, in our opinion, be given to the Governor, that he make no condition for commuting capital punishment in any case where a person accused or convicted of murder is surrendered by the Macao Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 62.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received May* 29.)

*Temple, May* 28, 1879.

My Lord,

"City of Mecca" and "Insulano" collision.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st instant, stating that he was directed by your Lordship to transmit to us papers relative to the legal proceedings at Lisbon arising out of the collision between the British steamer "City of Mecca" and the Portuguese steamer "Insulano."

International Regulations for prevention of collisions.

That from the statement of facts contained in Messrs. G. Smith and Sons' letter of the 19th April, we should perceive that that question mainly turned upon the interpretation placed by the Portuguese legal authorities upon Article 14 (in the Portuguese version, 15) of the International Regulations for the prevention of collisions at sea, and that Her Majesty's Chargé d'Affaires at Lisbon (*vide* Mr. Saurin's No. 16, Commercial, 3rd May, 1879) had pressed the Portuguese Government to lay before the Supreme Court, to which the case had been carried on appeal, an authoritative statement of the interpretation placed upon that Article by the Royal Decree of the 3rd July, 1877, copy and translation of which were inclosed in Mr. Morier's despatch No. 38, Commercial, of the 9th July of the same year.

Appeal to Supreme Court.

That, under those circumstances, Sir Julian Pauncefote was to request that we would take the accompanying papers into our consideration, and favour your Lordship with our opinion as to whether any further steps could properly be taken by Her Majesty's Government in the matter.

In obedience to your Lordship's commands we have the honour to report—

That no further steps can, for the present, be properly taken by Her Majesty's Government in the matter.

If appeal fails, Her Majesty's Government might claim indemnity.

Judgment based on misinterpretation of rules.

If, however, the Supreme Court should decide the case against the appellants, and on the same grounds with the decision of the Court below, it may be a matter for consideration whether Her Majesty's Government may not claim full indemnity for the losses consequent upon a judgment, which is based upon a misinterpretation of a rule of navigation agreed upon by the two Governments.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 63.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received July* 30.)

*Temple, July* 29, 1879.

My Lord,

"Decima industrial" tax.

Complaint of Messrs. Noble and Murat.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Minister at Lisbon (Mr. Morier, No. 46, Commercial) relative to a complaint on the part of Messrs. Noble and Murat, British subjects at Viena, that they had been assessed by the Portuguese authorities, in regard to the industrial tax known as the "decima industrial," in excess of the maximum stipulated for in the Anglo-Portuguese Treaty of Commerce of 1842.

That the case was carried by Messrs. Noble and Murat to the Supreme Court of Administration, but their appeal was rejected, not on the merits, but on grounds of informality stated in Senhor Braamcamp's letter of the 17th June (Inclosure 5).

Breach of Treaty engagement.

That Mr. Morier came to the conclusion that, if that decision were maintained, it would be equivalent to an evasion of the Treaty engagement by which Portugal was bound, and in his letter to the Portuguese Minister of the 24th June (Inclosure 6), he called upon him to take the necessary measures to insure that the case should be examined on its merits.

Case dismissed on grounds of informality.

That the note from the Duke de Palmella to Lord Howard de Walden, which he cited expressly, referred to an appeal where the amount of taxation was in excess of Treaty rights, and the question raised appeared to be whether, in case the appellant neglected to observe the procedure and his appeal was dismissed on grounds of informality, the Executive could be called on to interfere; or whether application should not first be made to the Court by the appellant for leave to amend the defect of form.

That Sir Julian Pauncefote was accordingly to request that we would take those papers into our consideration, and favour your Lordship with our opinion on the above point, and further on the question raised by Mr. Morier, whether, in the event of the Tribunal declining to grant leave to amend, so as to decide the case on the merits, Her Majesty's Government would be entitled to deal with such refusal as an evasion of the obligations of the Treaty for which the Portuguese Government could be held responsible.

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In obedience to your Lordship's commands we have the honour to report—

Must ask leave of Tribunal to amend, before considering as to interference of Her Majesty's Government.

That, in our opinion, Messrs. Noble have missed their way, either from not taking the trouble to ascertain the proper form of appealing, or from being misinformed. In either case application should have been made to the Tribunal for leave to amend, and the Executive should not have been asked to interfere until leave had been refused.

Whether, in the event of the Tribunal refusing leave to amend so as to decide the case on the merits, Her Majesty's Government will be entitled to deal with such refusal as an evasion of the obligations of the Treaty, must, to some extent, depend upon the reasons given for the refusal; these reasons we do not at present know.

But we think Messrs. Noble should show a very strong case for the interference of Her Majesty's Government to protect them against the consequences of their own negligence.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 64.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received October* 6.)

My Lord,
*Temple, October* 6, 1879.

"City of Mecca" and "Insulano" collision.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th September ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, the accompanying printed correspondence relating to the case of the "City of Mecca," which had been the subject of a previous reference to us, and a memorandum* containing a brief statement of the facts and a reference to those parts of the correspondence which bear more particularly on the important question on which he was to request that we would favour your Lordship with our opinion and advice.

That that question was whether the case of the "City of Mecca" called for diplomatic intervention on the part of Her Majesty's Government, on the ground that the suit of the English Underwriters against the owners and master of the "City of Mecca" was beyond the competence of the Portuguese Tribunals, or on the ground that the decision of the Supreme Court of Justice at Lisbon (the Ultimate Court of Appeal) proceeded on a wrongful interpretation of the International Rules of the Road at Sea, or was inconsistent with their proper construction and with their proper application to the admitted facts of the case.

That our former report was printed at page 47 of the correspondence.

That Sir Julian Pauncefote was also to suggest, for our consideration, whether, in the event of diplomatic intervention being, in our opinion, called for, such action could be taken, although the Supreme Court of Justice might not have been moved for a new trial in accordance with the provisions of Portuguese law referred to in the last paragraph of Mr. Morier's despatch No. 47, printed at page 55 of the correspondence.

We were also honoured with a note from Sir Julian Pauncefote, dated the 10th September, and stating that, with reference to his letter of the 5th, he was directed by your Lordship to transmit to us, for our consideration in connection with the previous papers on the subject already before us, two further letters with their inclosures from Messrs. George Smith and Sons relative to the case of the "City of Mecca" collision.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government cannot interfere.

That Her Majesty's Government cannot, in our opinion, properly intervene diplomatically in the case of the "City of Mecca."

Judgment not founded on sailing rules, but on "City of Mecca" not having stopped, &c.

The decision of the Portuguese Court does not proceed entirely upon the English 14th Portuguese 15th sailing rule. If that had been the case, we should have been of opinion that there was ground for intervention. But (pp. 14 and 15) the judgment in great measure is founded upon the persistence of those on board the "City of Mecca" in not giving way or easing or stopping when the collision was rendered probable by the course taken by the "Insulano."

* See Confidential Papers Nos. 4068 and 4243.

In our view of the facts, this reasoning and the conclusion drawn from the reasoning are wrong, but the mistakes of Courts of Law such as the Portuguese Courts have made in this case are not subjects for diplomatic interference.

But mistake of Law Court is not a subject for diplomatic interference.

Omission to protest will prevent diplomatic intervention.

In reference to the last paragraph of Mr. Morier's despatch (No. 47, p. 55), we are not sufficiently acquainted with the rules and practices of the Portuguese Courts to say whether or not any misdirection of the Judge is a legal flaw, which the Court of Cassation would deem a ground for a new trial; but, if so, the omission of the counsel for the "City of Mecca" to enter his protest would be an answer to any diplomatic intervention which your Lordship might be disposed to make.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 65.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received November* 11.)

My Lord,
*Temple, November* 10, 1879.

Arrest of British vessel "Lucretia." Collision with Spanish vessel "Gongora" on high seas.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th October ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, the papers noted in the margin,* relating to the arrest, under the warrant or order of one of the Lisbon Courts, of the British steamer "Lucretia," to answer the claim of the owners of the Spanish steamer "Gongora," arising out of a collision between the two vessels on the high seas, which resulted in the total loss by sinking of the "Gongora." That immediately upon the arrest of the "Lucretia". Her Majesty's Minister at Lisbon telegraphed to your Lordship (see telegram of the 25th August), asking whether that proceeding was according to international law. That Mr. Morier was informed in reply (see telegram of the 28th September) that, *primâ facie*, it must be assumed that the Portuguese Courts exercise Admiralty jurisdiction, and were competent to try cases of collision happening on the high seas between Portuguese and British vessels; but if the owners of the "Lucretia" were advised to the contrary, they could appear under protest, and apply to the Court to set aside the arrest.

As to Admiralty jurisdiction of Portuguese Courts.

That subsequently the owners of the "Lucretia," through their solicitors, Messrs. Cooper and Co., addressed a letter to your Lordship (see letter of the 4th September), requesting the good offices of Her Majesty's Government on the ground that exorbitant bail was demanded, that the Portuguese Law Courts were closed for the vacation, and that no remedy could be obtained at law.

That thereupon your Lordship instructed Mr. Morier (see telegram of the 8th September) to represent the case to the Portuguese Government, and ask whether they could intervene for the relief of the ship-owners; and Mr. Morier was requested by despatch No. 31 of the 12th September to report whether the proceedings instituted were civil or criminal. That he was also informed of the grounds on which your Lordship considered that the case was not one calling for diplomatic intervention.

Sir Julian Pauncefote was to refer us to Mr. Morier's despatch No. 66, Commercial, of the 30th August, containing his explanations of the grounds on which he addressed to your Lordship his telegram of the 25th August, and to request that we would favour your Lordship with our opinion as to whether the case was one which at the present stage called for any further diplomatic action, and whether Her Majesty's Government were entitled to protest against the exercise by the Portuguese Courts of the jurisdiction in question, having regard to the fact that such jurisdiction was not based on the ground *juris communis maritime*, as explained in the case of the "Johann Friederick" (1 Wm. Robinson, 36), but on the territorial fiction referred to by Mr. Morier in his despatch, and more fully discussed in the papers relating to the case of the "City of Mecca," which was at the present time under our consideration.

We were also honoured with a note from Sir Julian Pauncefote, dated the 11th October, inclosing further papers upon the subject.

* Mr. Morier (Telegraphic), August 25; to ditto, No. 28, Commercial, August 28; ditto, No. 62, Commercial, August 25; Messrs. Cooner and Co., September 4; to Mr. Morier, No. 30, Commercial, September 8; to Messrs. Ccoper and Co., September 11; to Mr. Morier, No. 31, Commercial, September 12; Mr. Morier, No. 66, Commercial, August 30; ditto, No. 72, Commercial, September 12; to ditto, No. 35, Commercial, October 2, 1879.

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If claim to jurisdiction is founded on territorial rights, diplomatic intervention justified.

In obedience to your Lordship's commands we have the honour to report—

That if the claim of the Portuguese Courts to jurisdiction is founded on *quasi*-territorial rights, the case would justify strong diplomatic intervention.

But Portugal only claims three miles.

We doubt, however, if such is the fact. The opinion of the jury referred to by Mr. Morier, if good for any legal purpose, tends to show that three miles is the limit of territorial jurisdiction claimed by Portugal.

We have not the opinion of the Law Officers of Portugal asked for by Mr. Morier.

Cannot protest at present.

In our opinion Her Majesty's Government are not at present entitled to protest against the exercise of the jurisdiction exercised by the Portuguese Courts.

The further papers do not lead us to alter the above opinion, that the case is not one for the interference of Her Majesty's Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 66.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received December* 5.)

My Lord, *Temple, December* 4, 1879.

"City of Mecca" and "Insulano" collision.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 17th ultimo, stating that, with reference to our Report of the 6th October, he was directed by your Lordship to transmit to us therewith printed copies of further despatches, with their inclosures, which had been received since the above date from Mr. Morier, relative to the case of the "City of Mecca."*

That the accompanying memorandum would place us in possession of the points on which your Lordship desired to obtain our opinion in connection with these further papers.

That he was especially to draw our attention to the suggestion at the close of Mr. Morier's despatch No. 89, Commercial (p. 99), respecting the communication which should be addressed by him on this matter to the Portuguese Minister for Foreign Affairs; and also to the inclosed further despatch from Mr. Morier (No. 93 of the 10th November), which was not included in the print.

That the previous papers in the case were annexed for convenience of reference, and Sir Julian Pauncefote was to request that we would favour your Lordship with our observations on the additional papers submitted to us at our earliest possible convenience.

In obedience to your Lordship's commands we have the honour to report—

That two principal questions are raised in these papers: first, the jurisdiction of the Portuguese Tribunals; secondly, the decision upon the merits.

The collision between the Portuguese and British ships took place ten miles from the Portuguese coast, upon the high seas. The British ship after the collision went into a Portuguese port, was there arrested and released, the arrest being held by a Portuguese Court to have been illegal. An action *in personam* was then instituted against certain British subjects resident in Portugal, and as agents of the owners of the British ship.

The Portuguese Tribunals held (see Judgment of the Supreme Court of Justice, p. 58) that the jurisdiction of their Tribunals extended "to such a space of the sea as may be reasonably considered as a dominion appertaining in the adjacent waters to each maritime nation."

And further, that the British captain "was bound to answer for his act in the Courts of Justice of the territory to which the waters in which the damage was caused appertained."

Court claims more jurisdiction than admitted by international law.

In fact, the Portuguese Court claims the right of jurisdiction over waters more distant from the coast of Portugal than is admitted by international law.

Decision founded on misconception of International Sailing Rules.

The decision upon the merits seems to us to have proceeded upon an entire misconception and misapplication of the Sailing Rules agreed to by Great Britain and Portugal.

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* See Confidential Paper No. 4243.

Intervention of Her Majesty's Government is necessary.

In our opinion, the case on both points, first, of jurisdiction, secondly, of the meaning and application of the Sailing Rules, justifies, if not requires, the intervention of your Lordship.

As to manner of conducting it.

Whether this intervention should be carried out in the manner suggested by Mr. Morier (p. 99), or in a more formal and decided manner, your Lordship will best judge.

There is one objection or risk in adopting Mr. Morier's suggestion, which occurs to us, and which we submit to your Lordship, that if the Portuguese Attorney-General should support the ruling of the Judges, a difficulty would be raised in the way of further proceedings.

Possibly Mr. Morier has good reasons for believing that the opinion of the Attorney-General would be against the ruling of the Judges, and in that case your Lordship would have still firmer ground for moving the Portuguese Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Russia.

## No. 67.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received January* 18.)

My Lord, *Temple, January* 17, 1879.

Responsibility of Government for defalcations of its agents.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 3rd December last, stating that he had the honour to forward to us therewith, by your Lordship's direction, a memorandum which had been received from the Russian Chargé d'Affaires at this Court, requesting information as to the consequences resulting to the Government and its agents in this country from any defalcation on the part of one of the latter.

That it would appear from M. Bartholomei's memorandum, that in the case of embezzlement by a Government official in Russia of money deposited with him by private parties as security required by law, the official was liable to criminal prosecution, and further, that in case of his death the prosecution was suspended, and the plaintiff's remedy lay in a civil action against the heirs of the deceased, the Government not holding itself responsible to make good the defaults of its agent.

That M. Bartholomei inquired whether, under similar circumstances, the law of England would be the same as regards the legal irresponsibility of the Crown.

Reference to case of money deposited in Consulates.

That we would find in the printed collection of Law Officers' Reports for the year 1862 (p. 162) an opinion by the Attorney- and Solicitor-General of that time, that "Her Majesty's Government were bound in honour and justice (all mere technical liability being, by the nature of the case, out of the question) to make good to depositors in the various Consulates in the Levant all moneys deposited in the ordinary course of public and formal deposit, and which afterwards became the subject of private appropriation or other defalcation of Consular officers."

As to general rule of irresponsibility of Crown.

That this opinion, however, was based on the special grounds therein mentioned, and did not appear to affect the general rule, that the Crown could not be prejudiced by the misconduct or negligence of any of its officers, and was not responsible, therefore, to private parties for the losses they might sustain by reason thereof. That your Lordship would be glad to be favoured with our opinion as to the answer which should be returned to the inquiry of the Russian Government.

In obedience to your Lordship's commands we have the honour to report—

Where agent is the proper person to receive money, or where law requires it to be deposited with him, the Government is responsible.

That, in our opinion, the inquiry of the Russian Government may properly be answered to the effect that in cases where the agent is made by his Government, the proper person to receive money from private individuals, the British Government would consider itself responsible for the defalcation of its own agent. Still more on

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principle would the Government be responsible in the case put by M. Bartholomei, where the defendant was obliged by law to pay money to the agent who afterwards made default.

This case, so put by M. Bartholomei for the sake of legal inquiries in Russia, is the very case in which, on the 10th August last, we had the honour of reporting that, in our opinion, the Russian Government was responsible to a British subject for the defalcation of its own official.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 68.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 28.)

*Temple, July* 28, 1879.

My Lord,

Messrs. Watts and Milburne's claim. Lighters sunk in Danube during war.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 3rd instant, stating that, with reference to our letter of the 10th July, 1877, upon the subject of a claim made against the Russian Government by Messrs. Watts and Milburne, on account of a tug and certain lighters belonging to them which were sunk in the Danube by the Russian forces at the commencement of the war with Turkey, he had then the honour to transmit to us, by direction of your Lordship, the further correspondence which had passed in regard to that matter.

Award of Mixed Commission.

That we should perceive from those papers that Messrs. Watts and Milburne's losses were examined by a Mixed Commission appointed by the Russian Government to examine claims of that nature, and that the amount of compensation was assessed at a sum considerably lower than that at which the firm had estimated it, but that Messrs. Watts and Milburne, though ready to accept the award, had hitherto been unable to obtain payment.

Russian claim to exemption from liability.

Bluntschli's general principle.

That, in the letter from M. de Giers, inclosed in Mr. Plunkett's despatch No. 234 of the 2nd instant, the Russian Government, without announcing any definite decision on the subject of the claim, referred to the general principle laid down in Bluntschli, p. 365, that "Les atteintes portées à la propriété privée pendant la guerre sont excusables, lorsque les opérations militaires l'exigent."

That Lord Tenterden was to request that we would take those papers into our consideration, and would favour your Lordship with our opinion whether the doctrine put forward by the Russian Government could be held to exempt them from liability in respect of the destruction of Messrs. Watts and Milburne's vessels under the circumstances stated in the previous references submitted to us in relation to that case.

That Lord Tenterden was to inclose the printed correspondence respecting the sinking of British vessels in the Seine by Prussian troops during the Franco-German war.

In obedience to your Lordship's commands we have the honour to report—

Not correctly quoted.

That we are unable to find in the French translation of Bluntschli the passage referred to by M. de Giers in the terms used in his letter.

The passage most resembling that cited by M. de Giers is in paragraph 652: "Le vainqueur doit également respecter la propriété privée, et ne peut y porter atteinte que lorsque les opérations militaires l'exigent;" and "les atteintes à la propriété privée ne sont excusables que lorsque les opérations militaires l'exigent."

The mode of expression thus used in the only French translation (that of 1870) to which we have had access is obviously far less positive than that referred to by M. de Giers.

In the original German (edition of 1872) the words are: "Das Privateigenthum ist auch im Kriege von Seite der siegenden Kriegsgewalt zu respectiren und darf nur in Folge der militärischen Nothwendigkeit angegriffen werden;" and "Nur die Rücksicht auf die militärische Nothwendigkeit entschuldigt und rechtfertigt eine Verletzung des Privateigenthums."

In whatever sense, however, these passages may be taken, whether as the assertion of a positive right, or in the modified sense of a right to be exercised and excusable only under strict necessity, they have no bearing upon the case now in question. These passages occur in that part of his book where Bluntschli is discussing the rights and duties of the belligerents.

Does not apply to seizure of neutral ships.

They have no application to the case of neutral ships seized by either of the belligerents.

Bluntschli lays down rule for compensation in such cases.

This matter is treated and disposed of by Bluntschli (M. de Giers' own authority) in paragraph 795 *a*, in these words: "Die neutralen Schiffe können sich innerhalb des Kriegsfeldes den Massregeln aus militärischer Nothwendigkeit nicht entziehen; aber die Kriegspartei, welche dieselben aus solchem Grunde angreift, ist zu voller Entschädigung der verletzten Privateigenthümer verpflichtet."

For this proposition, directly applicable to the case of the steamer and lighters sunk, then apparently raised and employed by the Russian military authorities, Bluntschli cites the case of the British ships sunk by the Prussians in the Seine, and whose owners were compensated by the Prussian Government.

Russia must compensate.

For these reasons we do not agree with M. de Giers, that the claims of Messrs. Watts and Milburne are inadmissible, and we are of opinion that the Russian Government may properly be urged to make compensation to Messrs. Watts and Milburne according to the rule referred to in Bluntschli, paragraph 795 *a*.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Spain.

## No. 69.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received February* 4.)

*Temple, February* 3, 1879.

My Lord,

New Treaty between Spain and Sulu.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us documents with reference to a new Treaty concluded between Spain and the Sultan of Sulu, which raised the following important question:

Spanish sovereignty over the Archipelago.

Protocol between Great Britain, Germany, and Spain.

That we were aware that the claim of Spain to sovereignty over the Sulu Archipelago had been for many years the subject of grave discussions between the British and Spanish Governments. Owing to the united action of Great Britain and Germany the practical exercise of such sovereignty on the part of Spain had hitherto been successfully opposed, and a *modus vivendi* was ultimately arrived at between the three Powers, which was embodied in the Protocol of the 11th March, 1877 (document No. 2).

That, in the Foreign Office Memorandum of the 10th December, 1878* (document No. 6), we should find an account of the negotiations which resulted in the signing of that Protocol, with references to the most important despatches bearing thereon, and for more detailed information on the subject Sir Julian Pauncefote was to refer us to the printed Sulu correspondence (document No. 1).

That we should observe that the first condition of the negotiations insisted on by Her Majesty's Government was that "the Protocol should contain no recognition of Spanish sovereignty over any part of the Sulu Archipelago."

That the Protocol was signed on the 11th March, 1877, and that, notwithstanding the settlement then arrived at, rumours reached Her Majesty's Government in the course of last year (1878) that the Governor of the Philippines had compelled the Sultan of Sulu to sign a new Treaty recognizing the sovereignty of Spain all over the Archipelago of Sulu and her dependencies.

That Her Majesty's Minister at Madrid was instructed to ask the Spanish Government for a copy of that Treaty, and a copy was furnished to Mr. West in strict confidence by the Spanish Foreign Secretary, with assurances of the care which had

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* Confidential Paper No. 4035.

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been taken to avoid anything which would conflict with the Protocol of the 11th March, 1877 (document No. 9).

That in October 1878 the Treaty was officially communicated to Her Majesty's Government (document No. 10). A printed copy of it would be found in Annex II of the Foreign Office Memorandum of the 5th October, 1878 (document No. 4), and it would be seen that it declared the sovereignty of Spain "to be unquestionable over all the Archipelago of Sulu and her dependencies."

That the grounds on which Her Majesty's Government, on the signing of the previous Spanish Treaty of 1851, opposed the recognition of Spanish sovereignty by the Sultan of Sulu, or the cession of any of his territory to Spain, was stated in the case laid before the Law Officers of the Crown on the 3rd March, 1874, and in their Report thereon of the 26th May following (Sulu Correspondence, Part I, p. 37, document No. 1).

That Her Majesty's Government relied on Article VII of the Treaty between Great Britain and Sulu of the 29th May, 1849, the text of which, as well as that of the Spanish Treaty of 1851, we would find in the Annexes to the Foreign Office Memoranda of the 5th July, 1873, and the 18th February, 1874 (document No. 3), as well as in the Sulu Correspondence, Part I, pp. 12 and 34 (document No. 1).

That, with reference to the objection taken to the non-ratification of the British Treaty of 1849, Sir Julian Pauncefote was to refer us to the Foreign Office Memorandum of the 21st December, 1878 (document No. 7).

Spanish claim to territory on coast of Borneo.

That the differences with Spain in regard to Sulu had hitherto been confined to the Sulu Archipelago. But that a further complication had arisen by reason of the claim, now asserted by Spain under their new Treaty, to sovereignty over the possessions of the Sultan of Sulu on the north-east coast of Borneo. That on that part of the question Sir Julian Pauncefote was to refer us to the Foreign Office Memorandum of the 5th July, 1873 (document No. 3), p. 1, the Foreign Office Memorandum of the 5th October (document No. 5), and the Foreign Office Memorandum of the 10th December (document No. 6), p. 6.

Dent and Overbeck Concession.

That several months before the date of the new Spanish Treaty the Sultan of Sulu had formally granted those territories, and his rights of sovereignty thereover, to Mr. Alfred Dent (a British subject) and Baron Overbeck (an Austrian subject, and agent to Mr. Dent) for valuable consideration, with a view to the formation of a British Company for the development of the resources of that country.

That Sir Julian Pauncefote was to refer us for the exact particulars and objects of that cession to the printed statement addressed by those gentlemen to your Lordship (document No. 8).

That the establishment of Spanish dominion in Borneo was strongly opposed by the Colonial Office (document No. 6, p. 6), and that we should observe that the Spanish Foreign Minister, shortly before the signing of the Protocol of the 11th March, 1877, distinctly assured Her Majesty's Minister at Madrid "that his Ministry had no designs whatever on Borneo, and limited the claims of Spanish sovereignty to Sulu and the adjacent islands." (*Ibid.*)

That accordingly, in framing the Protocol, all expressions which might be held to include Borneo were carefully expunged or altered by the Representatives of England and Germany.

That the German Government had expressed their desire to be informed of the views of Her Majesty's Government in regard to the new Spanish Treaty, and that Sir Julian was to request that we would take all the documents transmitted herewith into our early consideration, and favour your Lordship with our opinion on the question whether Her Majesty's Government would be justified in protesting against the new Spanish Treaty, as regards its application to the Sulu Archipelago, or to the north-east coast of Borneo, or to the whole of the Sultan's dominions.

That your Lordship would be glad to be favoured also with any observations we might have to offer on the particular question raised as to the validity of the British Treaties of 1761, 1764, 1769, and 1849, as to which see Foreign Office Memorandum (document No. 3, p. 1), and on the case generally.

That a map of Borneo and the Sulu Archipelago was attached to document No. 8.

In obedience to your Lordship's commands we have the honour to report—

Cannot protest against Treaty as regards Sulu Archipelago.

That, in our opinion, Her Majesty's Government would not be justified in protesting against the new Spanish Treaty as regards its application to the Sulu Archipelago.

The Protocol of the 11th March, 1877, is indeed silent as regards the pretensions of Spain, but those pretensions were well known at the time, and were, to some extent, a cause of the Protocol. The Spanish Government would, we think, successfully answer any protest against the right to make the Treaty in question with the Sultan based upon the terms of this Protocol, as the Spanish Minister did in his conversation with Mr. West (despatch No. 174).

The Sultan of Sulu, on his part, had the right to make the Treaty in question, unless he was prevented so doing by some existing Treaty with another Power, in this case with Great Britain.

Old British Treaties with Sulu not binding on Sultan.

The Treaties of 1761, 1764, and 1769, particularly when considered with the proposed Convention of 1849, cannot be relied upon as binding the Sultan; they were observed or not observed, as it suited the purpose of the English in those seas, and without any consideration of the interests of the other Contracting Party.

The Convention of 1849, Article VIII, requires that "this Treaty shall be ratified, and the ratifications thereof shall be exchanged at Sulu within two years after this date."

Non-ratification of British Treaty of 1849.

The Treaty was for some reason never ratified, and in our opinion cannot be resorted to as binding the Sultan by the provisions of Article VII "not to acknowledge the Suzerainté of any other State, without the consent of Her Britannic Majesty."

In reference to the north-east coast of Borneo, or to the whole of the Sultan's dominions, the Ist Article of the Treaty between Spain and the Sultan applies to the Archipelago of Sulu and its dependencies.

If territory in Borneo is dependency of Archipelago, it passes to Spain under the new Treaty.

If, therefore, the north-east part of Borneo, or any other part of the Sultan's dominions, can properly be described as a dependency of the Archipelago, the Treaty will include them as passing under the sovereignty of Spain.

Rights ceded to Mr. Dent should be confirmed by Spain.

As to recognition of Spanish rights.

Dent must take his own course.

The rights ceded to Mr. Dent and Baron Overbeck by the Sultan of Borneo should, if included in the territory put under Spain by the Treaty, be confirmed by Spain, but your Lordship may perhaps have some hesitation in putting the case of Mr. Dent forward for the favourable consideration of the Spanish Government, since that act would be an admission of the rights of Spain. Mr. Dent and Baron Overbeck may therefore take their own course, as they may be advised, in their interest in a private undertaking out of Her Majesty's dominions.

In concluding this Report we beg to refer your Lordship to a former Report of the Law Officers of the 26th May, 1874. (Print, Part I, pp. 37 and 38.) That Report refers to the several Treaties between Spain and Sulu, and Great Britain and Sulu, and to the course of action or inaction followed by the British Government from time to time in reference to the sovereignty of the Sulu Archipelago claimed by Spain.

We entirely agree with the opinions given in that Report.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 70.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 12.)

*Temple, July* 12, 1879.

My Lord,

Collision at Santander between British vessel "Eurydice" and Spanish vessel "Miguel Saenz."

Spanish protest against competency of British Admiralty Court to try.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th ultimo, in which he stated that he was directed by your Lordship to transmit to us therewith the papers noted in the margin,* from which it would be seen that the Spanish Government had protested, through their Minister at this Court, against the competency of the Admiralty Court of this country to adjudicate in [a] case wherein the owners of the British steamer "Eurydice" claim damages from the Spanish vessel "Miguel Saenz" on account of the injury sustained through a collision between the two vessel in the port of Santander; the case having been also investigated by the Marine Commandant at that port, who decided against the English steamer.

That Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether there was

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* Marquis de Casa Laiglesia, February 7; to ditto, February 21; ditto, June 18.

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anything in the statements advanced on the part of the Spanish Government to alter the conclusion arrived at, as expressed in the letter to the Marquis de Casa Laiglesia of the 21st February last, *i.e.*, that Her Majesty's Government could not interfere to stop the proceedings in the Admiralty Court, and that the circumstance that the claim then preferred against the "Miguel Saenz" had already been adjudicated on by a Court of competent jurisdiction in Spain would constitute a matter of defence which the owners of the Spanish vessel should set up as a bar to the suit in the British Court.

In obedience to your Lordship's commands we have the honour to report—

**Her Majesty's Government cannot stop proceedings in Admiralty Court.**

That, in our opinion, there is nothing in the statements advanced, on the part of the Spanish Government, to induce Her Majesty's Government to alter the conclusion arrived at, that Her Majesty's Government cannot interfere to stop the proceedings in the Admiralty Court.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 71.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received July* 31.)

My Lord,

*Temple, July* 31, 1879.

British vessel "Gunga" putting into Manila in distress.

Fine for omitting to declare portion of cargo.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd May last, stating that he was directed by your Lordship to transmit to us therewith the papers noted in the inclosed List relative to a case in which the British steamer "Gunga," having put into the port of Manila in distress, was subjected to a fine by the Spanish Custom-house officers, and to the confiscation of a portion of her cargo, owing to the captain having omitted to include that portion of the cargo consisting of opium in the manifest which he drew up from memory on arrival at Manila, the original ship's manifest having been mislaid in the confusion consequent on the disaster, and no record having been kept of a portion of the cargo which had been jettisoned.

Boarding of vessel without notice to British Consul.

That the circumstances of the case were fully set forth in the despatch from the Acting British Consul at Manila, dated the 12th June, 1878 (No. 15, Consular); and in a recent despatch (No. 4, Commercial, of the 5th February, 1879), Mr. Mackenzie pointed out that the boarding and examination of the vessel by the Customs officials, without notice to the British Consul, was in violation of the instructions contained in the Circular of the Spanish Government relative to the search of foreign vessels in Spanish ports, dated the 17th May, 1871 (*vide* Hertslet's Treaties, vol. xiii, p. 799).

That we would observe that, in your Lordship's despatch to Mr. West, Her Majesty's Minister at Madrid, No. 50, Commercial, of the 21st August last, it was contended, on the part of Her Majesty's Government, that the "Gunga," having been compelled by stress of weather to put into Manila, and not having touched there for the purposes of trade, was not liable to the fiscal regulations of that port, and that the proceedings of the Customs authorities were consequently not only opposed to the practice of civilized nations, but contrary to the most obvious principles of justice.

Reference to case of "Erl King."

(That reference was also made in the above-mentioned despatch to a similar case which occurred in the year 1871 with regard to the British ship "Erl King," and papers respecting that case were also inclosed for our information.)

That it would be seen from Mr. West's despatch No. 42, Commercial, of the 11th April, that the Spanish Government, on the other hand, contended, as they contended in the case of the "Erl King," that a foreign ship entering a Spanish port, whether for commercial transactions, or on account of stress of weather, or under any circumstances whatsoever, was liable to the fiscal regulations of such port, and must therefore conform to the prescribed Customs Ordinances, or submit to the consequences of their infringement.

That Mr. West went on to express his opinion that the Spanish Government would scarcely yield their contention in this case as regarded their right to impose the fine, seeing that a fault was committed in omitting the opium from the manifest of the "Gunga;" and he suggested, if Her Majesty's Government coincided in that view of the case, that a solution of the difficulty might perhaps be found in an agreement as to the amount of the fine which, under the circumstances, ought to be imposed.

That, as regarded the question of the restitution of the opium and other effects, or of their value, Mr. West suggested that action might be taken by Her Majesty's Legation at Madrid in the interest of the owners, by setting forth the extenuating circumstances pleaded for the suspicious concealment of the opium, and for the confusion found at the time in the ship's papers.

That this case, in your Lordship's opinion, raised an important question of international law; and Sir Julian Pauncefote was accordingly to request that we would take the same into our consideration, and favour your Lordship with our opinion as to the course which should be pursued by Her Majesty's Government in regard thereto.

That, for convenience of reference, a statement was annexed, which had been prepared at the Foreign Office, comparing the allegations contained in the Report on this subject by the Customs authorities at the Philippines (a translation of which was inclosed in Mr. West's despatch No. 62, Commercial, of the 7th instant), with the various passages in the correspondence which tended towards an opposite conclusion.

That your Lordship had instructed Mr. West by telegram to request the Spanish Government to suspend their decision on this case pending further representations which Her Majesty's Government desired to make in relation thereto, and Sir Julian Pauncefote was therefore to request that we would favour your Lordship with our report thereon at our early convenience.

In obedience to your Lordship's commands we have the honour to report—

That the question raised in these papers is of a political and commercial rather than of a legal character.

**Governments may impose what conditions they please on foreign vessels, &c.**

By the Law of Nations every independent Government is the sole judge of the measures which may best suit, promote, or insure its own people their interests and safety; may open or close its territory, waters, and harbours; and altogether refuse to admit, or impose what conditions it may deem fit, upon the admission of foreigners and foreign vessels.

**Foreign Governments can only protest.**

These conditions may be absurd, vexatious, inconsistent with and contrary to the usage of all other civilized nations; still the Government has the right to impose them, and a foreign Government can only protest against their being imposed or put in force.

The same customs and port Regulations, and the same penalties for any breach of those Regulations, are, by the law of Spain, applicable to and inflicted upon all vessels alike. No allowance is made for an innocent failure to comply with the law, as in the case of the "Erl King," and no excuse is admitted for an omission to furnish a complete manifest, though, as in the case of the "Gunga," no smuggling could have been intended, since the ship was on the point of sailing when the seizure was made.

Reference to Reports on "Erl King" case.

It appears to us that the suggestions made by the Law Officers in their several reports upon the case of the "Erl King" are applicable to the present case; but it must be for the consideration of your Lordship whether any, and if any what, course Her Majesty's Government can, with proper dignity and self-respect, take after the positive determination expressed by the Spanish Government in the case of the "Erl King," and in the present case, to give effect to their law.

Her Majesty's Government cannot appeal to Treaties.

In forming our opinion upon this case, we have considered the Treaty of 1667 and the subsequent Treaties between Great Britain and Spain; and we are of opinion that the XIIIth Article of that Treaty of 1667 cannot be relied upon against the right of Spain to make the regulations in question.

The arguments used by Señor Carvajal in his note to Sir H. Layard, 27th December, 1873, on this Treaty, seem to us unanswerable. Her Majesty's Government in 1874 accepted those arguments, and the conclusion formed upon them.

We have, &c.
(Signed) JOHN HOLKER.
(For the Solicitor-General),
J. PARKER DEANE.
J. PARKER DEANE.

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## No. 72.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received November* 6.)

My Lord, *Temple, November* 5, 1879.

Seizure of "Sultana" in Sulu Archipelago.

Claim of Victoria Trading Company of Labuan.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th August last, stating that on the receipt of our Report of the 13th November, 1877, the Earl of Derby addressed to Her Majesty's Chargé d'Affaires at Madrid a despatch (No. 217, to Sir J. Walsham), draft of which was inclosed, instructing him to apply to the Spanish Government for payment to the Victoria Trading Company of Labuan of the sum of 22,652 dollars, as compensation for the seizure in the Sulu Archipelago in 1875 of the steamer "Sultana," which vessel had been chartered by the Company from the Sultan of Brunei.

That Sir Julian Pauncefote was to inclose a despatch from Her Majesty's Chargé d'Affaires (Mr. Wyndham, No. 125, July 28), transmitting a note of the Spanish Minister for Foreign Affairs, in which his Excellency sets forth the grounds on which his Government disputed the claim of the Victoria Trading Company, and Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether Her Majesty's Government should continue to press the claim.

That the previous papers relating to the Case were inclosed for convenience of reference.*

In obedience to your Lordship's commands we have the honour to report—

If "Sultana" was condemned by proper Prize Court, Her Majesty's Government cannot press claim.

That we assume from the note of the Spanish Minister of Foreign Affairs that the Tribunal which condemned the "Sultana" was a duly constituted Prize Court, and on that assumption we are of opinion that Her Majesty's Government should not continue to press the claim.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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# Tunis.

## No. 73.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received November* 15.)

My Lord, *Temple, November* 14, 1879.

Estate of Padre Agostino.

Claim of Propaganda t Rome.

Transfer of case to Supreme Court at Constantinople.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us the papers relating to a question which had arisen with respect to the administration of the estate of a Maltese Capuchin friar, named Padre Agostino, who died at Tunis, leaving considerable property. That the Propaganda at Rome laid claim to the succession, on the grounds stated in their letter to Cardinal Manning of the 3rd July last. That that claim was disputed by the relatives of the deceased; and, as under section 91 of the Levant Order in Council, Provincial Courts could only grant administration where there was no contention respecting the right to the grant, the Acting British Consul at Tunis, Mr. Stevens, reported the case to the Supreme Court at Constantinople, under section 39, with a view to its transfer to that Court. That, before any action was taken on that Report, information was received that the Propaganda had withdrawn their claim.

That, in the meantime, Consul-General Reade arrived at Tunis, and entered upon the functions of his post as Consular Judge of the Provincial Court there.

That the claim of the Propaganda having been withdrawn, Mr. Reade was prepared to proceed with the case at Tunis, under section 91 of the Order in Council; but it appeared from Mr. Reade's No. 3 of the 15th ultimo that the Propaganda, upon further consideration, renewed their claim to the succession, and that Mr. Fawcett, the Judge of the Supreme Court at Constantinople, on the *ex parte* application of their representative, and of the representative of one Carnana, a nephew of the deceased, granted a motion for the transfer of the case to that Court (Inclosure 2 in Mr. Reade's No. 3 of the 15th October).

That Consul-General Reade, who seemed to be under the impression that he had authority to grant administration, although the case was a contentious one, appealed to your Lordship, describing the hardship which the proposed transfer of the case would entail on the relatives and creditors of the deceased at Tunis, and their irritation at Mr. Fawcett's having granted the motion above mentioned *ex parte*.

That, in view of the representations contained in Mr. Reade's despatches Nos. 2 and 3, your Lordship instructed Sir Henry Layard to inform Mr. Fawcett that your Lordship was of opinion that it would be desirable to send the Assistant Judge of the Supreme Court to try the case at Tunis under section 34 of the Order in Council, and Mr. Fawcett was requested to report under that section of the Order in Council the motion of the Propaganda and of Carnana, for the transfer of the case was granted.

That Mr. Lister was to draw our attention to the telegram received from Mr. Fawcett in reply.

That it did not appear clearly from that telegram whether the order for the transfer of the case was made on Mr. Stevens' original Report under section 39, or on the application of the Propaganda and Carnana. That the order, however, had been made, and Mr. Fawcett, in his telegram, stated that the legal question of succession only "will be tried at Constantinople, but that the estate will be realized and divided at Tunis."

That Mr. Lister was to observe, with reference to that proposed apportionment between the Supreme Court and a Provincial Court, that the latter Courts were, by section 42, made auxiliary to the Supreme Court, "in all particulars relating to the administration of justice."

That, on the other hand, Mr. Lister was to refer us to sections 39, 216, and 217 of the Order in Council, as to the transfer of cases from a Provincial Court to the Supreme Court, on the Report of the Judge of the Provincial Court, and to section 34 as to the power of the Judge or Assistant Judge of the Supreme Court to exercise its jurisdiction locally in any part of the Ottoman dominions.

That, having regard to the peculiar character of the claim then reasserted by the Propaganda, your Lordship considered it important that any doubt should be removed as to the regularity of the proceedings, and also that, if possible, the general body of relatives and creditors should not be placed at a disadvantage by the removal of the proceedings from the district where they resided, and which the deceased inhabited.

That Mr. Lister was, therefore, to request that we would take all the papers into our consideration, and favour your Lordship with our opinion as to any instructions which we might consider it expedient that your Lordship should send to Constantinople in relation to that suit.

We are also honoured with a further letter from Mr. Lister, bearing date the 6th instant, stating that, with reference to his letter of the 28th ultimo, he was directed by your Lordship to transmit to us papers having further reference to the case of Padre Agostino's estate.

That Mr. Fawcett stated (despatch No. 91) that he did not make the *ex parte* order for the transfer of the suit to Constantinople, which was complained of by the relatives and creditors of the deceased at Tunis.

That as the Supreme Court was actually seized of the case at Constantinople, and the suit had commenced, your Lordship presumed that the case should now proceed there, and your Lordship would be glad to be informed, at our earliest convenience, whether we concurred in that view.

That it was requested that the inclosed despatches might be returned to the Foreign Office.

We have also to acknowledge the receipt of a further letter from Lord Tenterden, dated the 11th instant, stating that with reference to the letter from the Foreign Office and previous letter relating to case of Padre Agostino's property, he was directed by your Lordship to transmit to us a petition from persons professing to be claimants to

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* Confidential Print, 1875-77; Law Officers, November 13, 1877; Mr. Treacher, No. 2, March 31; to Mr. West, No. 56, May 15, 1879.

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the estate, and that he was to request that we would take that petition into our consideration in connection with the papers which had been already forwarded to us, and favour your Lordship with our opinion on the whole case at our earliest convenience.

In obedience to your Lordship's commands we have taken the whole of these papers into our consideration, and have the honour to report—

"Contentious" case. Transfer to Constantinople proper.

That, in this "contentious" case the Court at Tunis could not proceed by force of section 91, but was under section 217 bound to communicate with the Supreme Court; and this Court of its own mere motion under section 217 may by order remove the matter to the Supreme Court.

In our opinion, therefore, Mr. Fawcett had the power, without any motion at all made before him, certainly on even an *ex parte* motion, to order the case to be tried before him, and in Constantinople under section 39.

Your Lordship may consequently, as we think, properly instruct Mr. Fawcett to hear and determine the case as he proposed.

Not send Assistant Judge to Tunis.

Since this case has been removed to Constantinople it may be best, in our opinion, to keep it before the Court there, and not send the Assistant Judge to Tunis.

Estate will be administered at Tunis.

The Petitioners may, in our opinion, be answered that the Supreme Consular Court will decide, at Constantinople, merely the question of law, but that the estate will be administered at Tunis.*

Inform Supreme Court of claimants to estate.

The petition may, we think, properly be sent to the Supreme Consular Court, for the purpose of informing the Judge of that Court that there are several persons at Tunis claiming an interest in the estate of Agostino.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

## Turkey.

### No. 74.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received January* 17.)

My Lord,
*Temple, January* 16, 1879.

Consular Court at Constantinople. Probate jurisdiction, &c.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us a telegram, from Her Majesty's Consul-General and Judge at Constantinople, respecting the jurisdiction of Her Majesty's Consular Court at that place, with reference to probate and administration under sections 5-91, and Part VIII (sections 206-239) of Her Majesty's Order in Council of the 12th December, 1873, for the regulation of Consular jurisdiction in the Levant.

Deceased British subject not resident in Turkey.

That it was presumed that, having regard to the restrictive terms of those provisions in the Order in Council, the Consular Court had no jurisdiction in cases where the deceased British subject was not resident in the Ottoman dominions, or did not die there, but that in such cases any assests belonging to the estate in the Ottoman dominions should be collected by the executors or administrator appointed by the proper Court at the place of his domicile, as provided by Article 26 of the Capitulations between Great Britain and Turkey.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion, at our earliest convenience, as to whether a reply could properly be sent in the above sense to Mr. Fawcett's inquiry.

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* See postscript to Mr. Fawcett's despatch No. 91 of October 27, 1879.

That copies of the Order in Council and of the Capitulations were sent therewith for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Heirs must apply in England to revoke Letters of Administration.

That Mr. Fawcett may, in our opinion, properly be instructed that Letters of Administration having been granted in England to the widow, the (heirs) next-of-kin should apply to the Court in England to have those letters revoked.

Protection of property in Turkey under Order in Council.

In the meanwhile, the property in the Ottoman dominions may be protected by an administration under section 239 of the Order in Council of December 1873.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

### No. 75.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received March* 4.)

My Lord,
*Temple, March* 4, 1879.

Tidjaret Court. Valmas *v.* North British Mercantile Insurance Company.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 16th December last, stating that he had to forward to us, by your Lordship's direction, the accompanying two despatches, and their inclosures,* from Her Majesty's Ambassador at Constantinople relative to an action which had been brought against the North British Mercantile Insurance Company in the Tidjaret Court at that capital.

That the Court in question was a Turkish Tribunal for the decision of civil commercial suits. That the competency of those Courts was defined in Articles 27 *et sequentes* of an Appendix to the Turkish Commercial Code, dated the 30th April, 1860, which would be found at page 357 of the accompanying volume. Article 27 runs as follows:—

"Les Tribunaux de Commerce connaîtront—

Competency of the Court.

"1. De toutes contestations relatives aux engagements et transactions entre commerçants, marchands, et banquiers, à moins qu'il ne résulte de l'acte même que l'opération n'a pas eu le commerce pour objet, auquel cas le Tribunal de Commerce renverra la contestation au Tribunal compétent.

"2. Des contestations relatives aux actes de commerce faits par toutes personnes."

That the following were the facts of the case now in question:—

Valmas, Greek subject. House burnt. Company refuse to pay. Lodges protest in British Consulate. Becomes Turkish subject and sues Company in Tidjaret.

A Greek subject, named Valmas, was insured in the British Company above mentioned. His warehouse was burnt, with grave suspicion that the man himself had set it on fire. Valmas, in his quality of Greek subject, lodged his protest in the British Consular Court, through the Greek Consulate, against the Company for non-payment. For a time nothing more was heard of the claim. Then it was found that Valmas had instituted a suit against the Company in the Tidjaret as a Turkish subject, and that, in the interval between the lodging of the protest in the British Consulate and the presentation of the petition to the Tidjaret, he had changed his nationality.

Suit begun in Consulate cannot be afterwards instituted in Tidjaret.

That it seemed to be admitted that a rule existed that, where a foreigner had commenced a suit in a Consular Court, he could not afterwards abandon it and institute a suit on the same subject-matter in the Tidjaret on becoming naturalized as an Ottoman subject. But it did not appear that, if only the cause of action arose before he was naturalized, he was prejudiced by any rule from suing the foreign defendants in the Tidjaret.

Refusal of Consular Judge to allow defendant to appear.

That no suit was instituted by the plaintiff in the British Consular Court, but, as already stated, a protest was there lodged by him, before his change of nationality, against the British Insurance Company, for non-payment of his claim. That it appeared that the suit was first instituted in the Tidjaret several years ago, and that the late Sir Philip Francis (then Her Majesty's Consul-General and Chief Judge at Constantinople) sent Mr. Dragoman Stavrides and the agent of the Insurance Company before the Court. That, on that occasion, the plaintiff's advocate admitted that his client had changed his nationality in order to take the case into the Turkish Court. Thereupon Sir Philip Francis would not allow the defendant to appear in the case; that refusal had been constantly maintained, and the proceedings have ever since been in abeyance.

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* Sir A. H. Layard, No. 1308; "Législation Ottomane," vol. ii.

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That Lord Tenterden was to request that we would take the papers into our consideration, and would favour your Lordship with our opinion whether, under all the circumstances, Her Majesty's Ambassador can properly object to the exercise of jurisdiction by the Tidjaret in this suit.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Ambassador cannot object to jurisdiction of Tidjaret.

That we are not aware of any ground of law upon which Her Majesty's Ambassador at Constantinople can properly object to the exercise of jurisdiction by the Tidjaret in this case.

Suit was not commenced in Consulate. Only protest lodged.

The rule referred to in Lord Tenterden's letter does not, as he suggests, apply to the facts of this case, nor is the mere lodging of a protest the commencement of a suit.

Case may proceed.

In the absence, therefore, of any information in reference to the reasons which guided the late Sir Philip Francis, we are of opinion that no further hindrance should be offered to the prosecution of the suit.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 76.

Kustendji Railway Arbitration.

*Memorandum by the Lord Chancellor as to Claim of the Kustendji Railway against the Porte under Arbitration.*

Treaty of Berlin substitutes Roumania for Porte.

ARTICLE LI of the Treaty of Berlin provides that, with regard to public works and other enterprises of a like nature, Roumania shall be substituted for the Porte as regards its rights and obligations throughout the ceded territory.

Claimants are no parties to Treaty.

2. Whatever may be the meaning and extent of this stipulation, it is one which concerns Roumania and the Porte only. None of the persons who have any contracts with or claims against the Porte are parties to the stipulation. They may agree to accept it, but until they do accept it they stand in their original position as persons having dealings with the Porte, and the Porte only. Whatever obligations come within the meaning of the Article, the Porte, when she discharges them, will have a right to be recouped by Roumania; but that is quite a different matter, with which those who have contracted with the Porte have no concern.

They claim from Porte. Porte may recoup itself from Roumania.

3. It may well be doubted how far the Article extends to claims already existing against the Porte for damages in regard to public works; but this is a question to be settled between Roumania and the Porte.

4. The Kustendji Railway Company had, prior to the Treaty of Berlin, certain claims against the Porte in respect of land and damages; and these claims were submitted to arbitration. The arbitration has gone on since the Treaty, and matured into an award against the Porte. It seems to me to be clear that this was originally, has always continued to be, and is now, so far as the Railway Company is concerned, an affair between it and the Porte only, and that the Railway Company cannot properly be turned over to seek redress from Roumania. Whether, if the Porte satisfies the award, she can ask Roumania to indemnify her for what she loses, depends upon the question how far, on the construction of the LIst Article, a pre-existing claim of this kind is one of the obligations mentioned in the Article; but with this question it seems to me that the Railway Company have nothing to do.

Kustendji Company cannot be turned over to seek redress from Roumania.

Instancing a parallel case.

5. If the Great Northern Railway Company were to cede by agreement a portion of its system to the Midland Company, and a clause were introduced into the instrument of cession that the Midland should be substituted, as regards the works of that part of the system, for the Great Northern in its rights and obligations throughout the ceded portion, it would scarcely be imagined that this was sufficient to hand over any contractor or other person having claims against the Great Northern to the Midland without his consent. And it is not to be supposed that the Signatories to the Treaty of Berlin meant to do anything so violent as to interfere with private rights. It is, perhaps, difficult to say whether the Porte or Roumania would be the more unsatisfactory for the Railway Company to have as its debtor; but the Company must be the judge of this, and if it prefers to stand on its rights against the Porte, I do not think we should lend any countenance to the idea that the Treaty of Berlin has destroyed these rights.

Company may stand on its rights, which are not destroyed by Treaty of Berlin.

6. I think that, so far as it is proper for Her Majesty's Government to press on the Porte the claims of the Railway Company under the award, the Government should not admit any defence of the Porte on the ground that the liability has ceased to be the liability of the Porte, as between the Porte and the Railway Company.

Her Majesty's Government must not admit that Porte's liability has ceased.

(Signed) CAIRNS.

*April* 1, 1879.

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## No. 77.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 14.)

My Lord, *Temple, April* 12, 1879.

Inquests on British subjects dying in Turkey.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 17th ultimo, stating that he was directed by your Lordship to transmit to us the correspondence which had taken place between Her Majesty's Consul-General and Judge at Constantinople and the Foreign Office, in regard to the holding of inquests on the bodies of British subjects dying within the Ottoman dominions.

That, by Her Majesty's Order in Council for the regulation of Consular jurisdiction in those dominions, it was provided (section 5) that Her Majesty's criminal jurisdiction should be exercised under and according to the provisions of the Order and not otherwise, and the Civil and Criminal authorities of the superior Consular Court were defined in Parts IX and XI respectively.

As to functions of Coroner being conferred by Order in Council.

That the power to exercise the functions of Coroner was not expressly included among the authorities vested in that Court, but it was contended by Mr. Fawcett that that power was conferred on the Court by the general words of section 6 of the Order.

That Sir J. Pauncefote was to observe, however, that in the China and Japan Order in Council of the 9th March, 1865 (of which sections 4 and 5 were identical in their terms with sections 5 and 6 of the Levant Order), it was thought necessary to insert a special clause (viz., section 53) giving power to the Supreme Courts and to the Provincial Courts to discharge the duties appertaining to the office of Coroner in England.

That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion as to whether, in the absence of such a provision in the Levant Order in Council, it was competent to the Judge of the Consular Court at Constantinople to discharge the duties in question. That copies of both Orders in Council above referred to were inclosed therewith.

In obedience to your Lordship's commands we have the honour to report—

They are so conferred.

That the words in section 34 of Her Majesty's Order in Council, taken with the general provisions respecting Her Majesty's jurisdiction, notwithstanding the omission of a special clause similar to section 53 in the China and Japan Order in Council are, in our opinion, sufficient to enable the Judge of the Consular Court at Constantinople to discharge the duties of Coroner.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 78.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 18.)

My Lord, *Temple, April* 18, 1879.

Cases of the "Harriet Agnes," "Wave," and "Beaconsfield."

Detention by Consul-General Fawcett.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 17th ultimo, stating that, with reference to our Reports of the 8th and 14th August last, in relation to the detention of the steam-ships "Harriet Agnes" and "Wave" at Constantinople by order of Consul-General Fawcett, Judge of Her Majesty's Supreme Consular Court there, for a violation of the "Merchant Shipping Act, 1876," he was to transmit to us the further correspondence on that subject, which was noted in the margin.

Compensation claimed.

That we should observe that the owners of the steam-ships "Wave" and

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(As to legality of Consul-General's judgments: "Unseaworthy ships," &c.)

"Beaconsfield" had claimed compensation from the Board of Trade for the detention of those vessels (Mr. H. Adamson, 24th December, 1878), and that they had been referred to the Foreign Office by the Board of Trade, who, in their letter to the Foreign Office of the 20th December last, pointed out that in the case of the "Harriet Agnes" they authorized a prosecution, and consequently felt bound to pay and did pay the owners' expenses, but that in the case of the steam-ships "Wave" and "Beaconsfield" they gave no authority, and therefore could not hold themselves responsible either for the expenses which Mr. Fawcett had incurred or for the damages claimed by the owners.

They added that if the owners had any claim at law or in equity to compensation, it was to the Foreign Office and not to the Board of Trade that their claim should be addressed.

That your Lordship had caused the owners of those two steamers to be informed that the proceedings complained of were not instituted by direction of the Board of Trade or of the Foreign Office; that the proper redress against judicial proceedings of the Consular Court which might be considered irregular was by appeal, but that your Lordship proposed to consider the particulars of those cases in communication with the Law Officers of the Crown, with a view to removing, so far as it might be in your Lordship's power to do so, any just ground of complaint to which the proceedings of the Consular Court might be open in reference to the enforcement of the laws relating to the lading of ships.

Mr. Fawcett's protest against Law Officers declaring his judgments illegal.

That before inviting our attention to the particulars of those cases, Sir Julian Pauncefote was to observe that Mr. Fawcett, in his despatch No. 121 of the 28th October, 1878, demurred to any decision he may have pronounced being declared illegal "because any advocate, however eminent, has given an opinion upon it." He protested against his decisions being called illegal until they had been pronounced to be so by the Judicial Committee of the Privy Council; and he appealed to the independence of the Bench.

That on that point Sir J. Pauncefote was to state that there is no desire, nor has there ever been any attempt on the part of the Foreign Office, to interfere with the judicial independence of Consular Judges; but in the Levant, and other places out of Her Majesty's dominions which come under the operation of the Foreign Jurisdiction Acts, the administration of justice over British subjects is not surrounded by those safeguards which exist in this country and in Her Majesty's possessions abroad.

Practice of Foreign Office looking after judicial acts of Consular Judges.

That it had, therefore, been the practice of the Secretary of State for Foreign Affairs, who was responsible for the selection of Consular Judges, to exercise proper vigilance over their judicial proceedings, and whenever those proceedings were, in the opinion of the Law Officers of the Crown, clearly irregular, to bring the fact to their knowledge.

Practice of Consular Judges applying to Foreign Office for advice.

That it had been usual also for the Consular Judges at Constantinople to apply to the Foreign Office for legal advice, and Mr. Fawcett himself not unfrequently availed himself of that privilege, a circumstance which showed that, in his own opinion, the relations between Consular Judges and the Foreign Office might admit of legal advice and assistance being given to them by the Secretary of State, in the discharge of their judicial functions, without compromising their dignity or independence.

That Sir J. Pauncefote was to observe that there were numerous cases decided in the Consular Court at Constantinople from which an appeal to the Judicial Committee of the Privy Council did not lie as a right, and in other cases the heavy cost of such an appeal practically debarred the suitor from resorting to that remedy.

That it appeared, therefore, to your Lordship that Mr. Fawcett's protest was not well founded, and that complaints of illegal proceedings on the part of Consular Judges, especially where they affected the personal liberty of British subjects and the interests of British trade and shipping, should receive immediate attention by the Foreign Office in communication with the Law Officers of the Crown.

That if we should concur in the views above expressed, Sir J. Pauncefote was to request that we would be so good as to examine the particulars of the proceedings detailed in the accompanying memorandum, and favour your Lordship with our opinion as to whether they disclosed any irregularities in the administration of justice which called for observation on the part of the Secretary of State.

That it might be that some of the persons aggrieved by those proceedings were not entitled to sympathy or consideration by reason of their misconduct: nevertheless, the action of Mr. Fawcett in those cases appeared to raise questions of some gravity in relation to the administration of justice generally in his Court.

That your Lordship would be glad, therefore, to be informed, first, with reference to Mr. Parry's appointment—

1. Whether that appointment, and the instructions of the Court to that officer, were warranted by law.

2. Whether the allowance of fees to Mr. Parry by the Court is warranted by law?

Secondly, as regards the "Wave"—

1. Whether the warrant to detain the "Wave" was lawfully issued by the Court?

2. Whether the subsequent arrest of that vessel by Admiral Commerell, at the request of Mr. Fawcett, was warranted by law?

Third, as regards the "Beaconsfield"—

Whether the proceedings of Mr. Parry and of Thomson, the Officer of the Court in that case, as detailed in the Report furnished by Mr. Fawcett to the Board of Trade (inclosure in Board of Trade letter of the 3rd January, 1879), were warranted by law?

Fourth, as to Contempt of Court—

1. Whether the arrest of the master of the "Wave" for Contempt of Court, when the steamer was forcibly brought back to Constantinople, under the circumstances stated by Mr. Fawcett, was warranted by law?

2. Whether the offence of "Contempt of Court" was committed at all in that case?

3. Whether, in the case of Mr. Pitts, a further Report from Mr. Fawcett should be called for, having regard to the fact that, in his letter of the 8th January, 1879, reporting the case, he has omitted to state the nature and effect of the "Orders of Court" to which he refers on the subject of the possession of the mill?

Fifth, as regards compensation—

Whether the owners of the "Wave" or "Beaconsfield" have any just claim for compensation from Her Majesty's Government?

That Sir J. Pauncefote was to inclose the previous correspondence on the cases of those steamers for convenience of reference, and also a copy of Her Majesty's Order in Council of the 12th December, 1873, for the Regulation of Consular Jurisdiction in the Levant.

In obedience to your Lordship's commands we have the honour to report—

Following are illegal:—

That, in our opinion—

Mr. Parry's appointment and fees;

1. The appointment of Mr. Parry, and the instructions of the Court given to him, were not warranted by law.

2. The allowance of fees to Mr. Parry is not warranted by law.

Second, as regards the "Wave"—

Arrest of "Wave;"

1. The warrant to detain the "Wave" was not lawfully issued by the Court.

2. The subsequent arrest of that vessel by Admiral Commerell, at the request of Mr. Fawcett, was not warranted by law.

Third, as regards the "Beaconsfield"—

Proceedings as to "Beaconsfield;"

The proceedings of Mr. Parry and Thomson, the Officer of the Court, were not warranted by law.

As to Contempt of Court—

Master of "Wave," arrest for contempt of Court.

1. The arrest of the master of the "Wave" for "Contempt of Court," when that steamer was forcibly brought back to Constantinople, was not warranted by law.

2. The offence of "Contempt of Court" was not committed at all in that case.

Mr. Pitts' case: Further information.

In the case of Mr. Pitts, we consider that Mr. Fawcett may properly be instructed to furnish a further Report, setting out the "Orders of Court" to which he has referred.

As to compensation—

Compensation due to owners of "Wave" and "Beaconsfield."

The arrest and detention of the "Wave" and "Beaconsfield" were, in our opinion, not warranted by law, and the owners of those vessels have, therefore, a just claim for compensation from Her Majesty's Government.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 79.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received May* 1.)

My Lord, *Temple, April* 30, 1879.

Danube navigation.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th March last, stating that he was directed by your Lordship to transmit to us therewith a note from the Austro-Hungarian Ambassador at this Court, together with a despatch from the British Delegate on the European Commission for the Navigation of the Danube,* relative to the question whether certain impediments alleged to be offered by the Russian authorities to the trading of vessels between their new frontier line of the Danube and the Kilia branch was contrary to Articles XV and XVI of the Treaty of Paris, which were maintained in force by Article LXIII of the Treaty of Berlin.

Trading between new Russian frontier and Kilia branch. Russian impediments to.

That copies of those Treaties were also inclosed,† and he was to request that we would take this matter into our consideration, and favour your Lordship at our earliest convenience with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

Russia may prohibit, notwithstanding Treaties of Paris and Berlin.

That, in our opinion, the carriage of goods in steamers between the Russian ports of Reni Ismail and Kilia, and the carriage of goods from Odessa to these ports, may be prohibited by the Russian Government, notwithstanding the provisions in Articles XV and XVI of the Treaty of Paris 1856, and Articles LIII and LXIII of the Treaty of Berlin 1878.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 80.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received May* 5.)

My Lord, *Temple, May* 3, 1879.

Prohibition of foreign trade between Russian ports on Danube.

WE were favoured with Sir Julian Pauncefote's communication of the 4th April last, stating that, with reference to his letter of the 14th March, he was directed by your Lordship to transmit to us a further despatch from Colonel Siborne relative to the obstacles alleged to be offered by the Russian authorities to the trading of foreign vessels between their ports on the Danube.

That the documents referred to in Colonel Siborne's despatch were also inclosed, and Sir Julian Pauncefote requested that we would take those papers into our consideration, together with those on the same subject then before us, and favour your Lordship with such observations as we might have to offer thereupon.

In compliance with Sir Julian Pauncefote's request we have the honour to report—

Russian Government may prohibit it.

That since our Report of the 28th was sent in we have had the opportunity of considering the further papers transmitted with Sir Julian Pauncefote's letter of the 4th April. We are still of opinion that the Russian Government may prohibit the carriage of goods in steamers between the different ports named in that Report.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Count Károlyi, February 13, 1879; Colonel Siborne, No. 11, Confidential.

† Treaty of Paris, *vide* State Papers, vol. xlvi, p. 8. Treaty of Berlin, *vide* Parliamentary Paper, "Turkey No. 44 (1878)."

## No. 81.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received May* 8.)

My Lord, *Temple, May* 8, 1879.

Navigation of Danube. Alterations in Public Act to suit Treaty of Berlin.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th instant, stating that with reference to our letter of the 5th November last on the subject of the alterations required in the Public Act of the 2nd November, 1865, for the navigation of the mouths of the Danube in order to bring it into conformity with the stipulations of the Treaty of Berlin of the 13th July last, he was to transmit to us two despatches which had recently been received from Colonel Siborne, Her Majesty's Commissioner for the Danube.

Proposed Supplemental Act.

That from those despatches it would be seen that, in consequence of difficulties which had been made by the Russian Commissioner, the plan of an amended Public Act had been abandoned, and that it was proposed to draw up a Supplemental Act specifying the modifications made in the Act of the 2nd November, 1865.

That a draft of additional Articles for that purpose had accordingly been prepared by the French Commissioner, and was forwarded by Colonel Siborne for consideration.

That your Lordship had, as at present advised, no objection to proceeding in the manner proposed, if it would obviate unnecessary differences and discussions, and if the Supplemental Act was sufficient for the purpose in view.

That with that latter object your Lordship was inclined to believe that it would be better that the draft should commence with a recital of the Articles of the Treaty of Berlin which affected the Public Act (Articles XLV, XLVI, XLVII, LII, LIII, LIV, LV, and LVI), and that the Supplemental Act should contain a general declaration that the Public Act should henceforth be read as modified by those Articles of the Treaty, and that Roumania acceded to the said Articles and to the Public Act as modified thereby.

That, for the better comprehension of the questions involved, Sir J. Pauncefote was to inclose a printed collection of the correspondence which had passed on the subject, together with a collection of the Treaties and other public Instruments having regard to the navigation of the Danube. That Sir J. Pauncefote was further to forward a despatch received from Sir John Stokes, formerly Her Majesty's Commissioner at Galatz, containing his observations on the draft Supplemental Act. That the insertion, as suggested by Sir J. Stokes, of a provision to modify Article 12 of the Act of the 2nd November, 1865, and to assert thereby the permanent character of the Regulations made by the European Commission, would undoubtedly be advantageous, but unless it could be done without raising opposition in the Commission your Lordship would not be inclined to insist upon it, the recital of the Articles of the Treaty of Berlin being sufficient, in your Lordship's opinion, to show that the formation of a Riverain Commission to draw up fresh Regulations was no longer contemplated.

That Sir J. Pauncefote was to request that we would take those papers into our consideration, and would favour your Lordship, at our earliest convenience, with our opinion as to the sufficiency of the proposed Supplemental Act, and as to the expediency of the additions suggested above, or any others which might occur to us. That your Lordship also would be glad to receive our opinion as to the form of ratification of the Act, in regard to which there were some remarks in Colonel Siborne's despatch No. 19 of the 18th ultimo.

That as the discussion of the draft would come on at Galatz on the 9th instant, your Lordship proposed to instruct Colonel Siborne, by telegraph, that he might accept the principles of a Supplemental Act, subject to possible modifications of detail in M. Herbette's draft which Her Majesty's Government might have to suggest.

In obedience to your Lordship's commands we have the honour to report—

Not necessary to recite Articles of Treaty of Berlin. Declaration for Act to be read as modified by Treaty sufficient.

That, in our opinion, the recital of the Articles of the Treaty of Berlin which may affect the Public Act is unnecessary, and may lead to discussion and consequent delay; and we think a general declaration that the Public Act shall be read as modified by the Treaty of Berlin, without setting out the particular Articles, will be more convenient.

Provision as to permanent character of Regulations.

Colonel Siborne may properly be instructed to suggest the insertion of the provision suggested by Sir J. Stokes if he has reason to believe that provision can be made a part of the Supplemental Act. If serious opposition is raised to this provision, Colonel Siborne can withdraw the proposal.

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Form of ratification of Act by Conference.

The form of ratification pointed out in Lord Tenterden's letter of the 14th November, 1878, namely, that the Commission should propose the amendments or modifications, and that these should be sanctioned by the Powers and subsequently ratified by a Conference of Plenipotentiaries, seems to us to be the best method of obtaining a ratification.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 82.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received May 30.)*

*Temple, May* 30, 1879.

My Lord,

Possession of liquorice roots near Smyrna. MacAndrews, Forbes, and Co. *v.* Heracles Varipati, a Greek.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd February last, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, as marked in the margin,* relating to a dispute between an English firm named MacAndrews, Forbes, and Co., and Heracles Varipati, a Greek subject, regarding the possession of some liquorice roots in the neighbourhood of Smyrna. The facts of the case are stated in Consul Reade's letter to the Governor-General of Aidin (Consul Reade's No. 58, Inclosure 3).

Greek Minister maintains local Turkish Court has no jurisdiction between two foreigners.

That it would be seen that the British firm proceeded in the Local Turkish Court against the Greek subject to recover possession of the roots, and the position taken up by the Greek Minister in his *note verbale* to the Porte is that such proceedings were invalid, the Local Court having no jurisdiction to entertain such a suit when both parties were foreigners.

British Consul-General says Consular Court cannot decide questions of real property.

That, on the other hand, it was maintained by Her Majesty's Consul-General at Constantinople that the main point to be decided being the question whether the English firm were in legal possession of the land from which the roots were taken, the local Turkish Court was the proper authority to decide the case, as the capitulations did not give a jurisdiction to the Consular Court to decide questions regarding real property.

That it would seem, however, from Consul Reade's despatch, that, although the English firm had had to prove that they were owners of certain lands, the case really involved no question of title to land, but only the issue whether the roots had been taken from land not denied to be the property of the British firm, or from other land.

That the suit having been brought to recover the possession of the roots, and not in respect of any interest in land, it appeared to your Lordship difficult to contend that the case came within the provisions of the Turkish Law of 1867 and the Protocol of the 28th July, 1868 (see Hertslet's Treaties with Turkey, sent herewith, pp. 73-76), and Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion on that point, and as to the instructions which should be sent to Sir Henry Layard on the case.

In obedience to your Lordship's commands we have the honour to report—

No question of landed property.

That, in our opinion, there is no question relative to landed property in this case.

Police should restore roots to British firm on their giving security to answer any civil claim.

There is considerable difficulty in getting at the facts which led to the police taking the roots into their custody; but on the assumption that the police took possession of the roots as stolen property, we concur in the course suggested by Sir Julian Pauncefote, that the police should restore the roots to the British firm on security being given by the firm to answer any civil claim, and that this course should be vigorously supported, and instructions to that effect be given to Sir Henry Layard.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Consul Reade, No. 58, November 9; to Sir A. H. Layard, No. 67, December 12, 1878; Sir A. H. Layard, No. 3, Consular, January 19, 1879.

## No. 83.

*Memorandum by the Lord Chancellor as to Despatch of the 26th May from Carathéodory Pasha to Sir A. H. Layard.*

Kustendji Railway Company.

Effect of cession of territory on immovable property and nationality of inhabitants.

THE argument as to the effect of a cession of territory by Treaty on the rights of inhabitants does not appear to me to apply. There can be no doubt that if territory is ceded as an act of state by one nation to another the nationality of those in the ceded territory is changed without their consent, and there is no doubt also that if in a similar case immovable property of someone in the ceded territory had got into the hands of his own Government, he would have to pursue his remedy for it against the new Government. This is from the necessity of the case, and because the immovable property passed into the hands of the new Government.

Existing money claims do not pass with the territory ceded.

Unless all parties agree.

Roumania takes place of Porte from time of transfer.

2. But it is quite different as to the case of a money claim or demand. If such a claim or demand existed against the old government, and was in process of litigation, or was actually constituted against them, their liability would continue unless it was handed over in express words, and unless the person having the claim assented. There would have to be a "novation" of the debt, and in the novation all the three parties concerned must concur. In the present case none of these things occurred. There was no assent by the Kustendji Railway to the transfer of the claim, and I think it clear that the 51st section puts Roumania in the place of the Porte merely from the time of transfer.

Roumania not bound by award, being no party to the arbitration.

3. It does not appear that the Roumanian Government have indicated any intention of accepting the liability. If they were willing to accept the liability the railway company possibly might be satisfied. The Porte says it gave notice to the arbitrators not to go on with the arbitration from the time of the Treaty, and it contends that the proceedings from that time were *coram non judice*. On the other hand, the Roumanian Government will probably say that it never became a party to the arbitration, and that the award is worth nothing because made behind its back.

If Roumania declines to admit claim of the Company, she is justified by Treaty, and it must be pressed against Porte.

4. I think, under the circumstances, the best thing would be to ascertain from the Roumanian Government whether it admits that the claim of the Kustendji Company must be satisfied by Roumania. If it does the Kustendji Company will probably be satisfied with the liability of Roumania; but if it does not, I think its refusal to admit the claim will be justified by the language of the 51st Article, and that in that event the claim should be pressed against the Porte.

(Signed) CAIRNS.

*June* 12, 1879.

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## No. 84.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received July 12.)*

*Temple, July* 12, 1879.

My Lord,

Danube. European Commission. Jurisdiction over Kilia branch.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 29th May last, stating that he had the honour to transmit to us therewith, by direction of your Lordship, correspondence relative to a declaration made by the Russian Delegate in the European Commission of the Danube, tending to call in question the jurisdiction of the Commission over the Kilia branch of that river.

That the exact terms of the statement would be found in the *procès-verbal* inclosed in the despatch from Colonel Siborne, the British Commissioner, No. 23, Confidential, of the 3rd instant.

That it would be seen that the Austrian Government had requested to be informed of the view of Her Majesty's Government on the subject, and that it seemed probable that some decision by the Powers signatory of the Treaty of Berlin might eventually be required.

That your Lordship requested, therefore, that we would take those papers into our consideration, and favour your Lordship, at our earliest convenience, with our opinion upon the question which had thus been raised.

That the papers referred to in Sir J. Stokes' and Colonel Siborne's despatches were forwarded therewith, and that Lord Tenterden was also to inclose a collection of

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the Treaties and public documents relating to the navigation of the Danube, in case we should wish to consult the wording of any particular stipulation.

In obedience to your Lordship's commands we have the honour to report—

That we entirely agree with the observations of Sir John Stokes on the Austro-Hungarian "Avant-Projet," and the *procès-verbal.* (See Sir J. Stokes' despatch, the 18th May, 1879.)

Rights of the Commission should be maintained.

The rights of the Commission over the Kilia mouth of the river should, in our opinion, be strictly, as they may probably be under the Treaties of Paris and Berlin, maintained, and especially the right of veto against works which would affect the general régime of the river, or the navigation of other branches of the Danube.

Austrian "Avant-Projet."

It may be sufficient to inform the Austrian Government that, whilst Her Majesty's Government cannot support the rights of the Commission to the full extent claimed in the "Avant-Projet," Her Majesty's Government was prepared to maintain, within proper limits, the rights of the Commission over the Kilia branch.

And Colonel Siborne may, if necessary, be instructed to the same effect.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 85.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received July 21.)*

*Temple, July 21, 1879.*

My Lord,

Bishop of Jerusalem. Licence for consecration of Reverend J. Barclay.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us the draft of a licence to enable the Archbishop of Canterbury to consecrate the Rev. Joseph Barclay as Bishop of the Church of England in Jerusalem, and assigning the provinces of Syria, Chaldæa, Egypt, and Abyssinia as the limits within which the said Rev. Joseph Barclay might exercise spiritual jurisdiction over the Ministers of British congregations of the Church of England, and over such other Protestant congregations as might be desirous of placing themselves under his authority, subject to such alterations in respect to the limits of the jurisdiction so to be exercised as might hereafter be made by Her Majesty's authority, and Sir Julian Pauncefote was to request that we would take the same into our consideration, and favour your Lordship with our opinion thereon.

That Sir Julian Pauncefote inclosed, for our information, the communications which passed between the Foreign Office and the Law Officers of the Crown in the months of November and December 1841, on the occasion of the consecration of the first Bishop of Jerusalem under Act 5 Vict., cap. 6.

That Sir Julian Pauncefote was also directed to acquaint us that the draft licence submitted for our consideration was drawn up in terms similar to the licence which was granted to the Archbishop of Canterbury when the late Samuel Gobat was consecrated Bishop of Jerusalem in June 1846, with the exception that the words "Church of England" had been substituted for "United Church of England and Ireland."

In obedience to your Lordship's commands we have the honour to report—

Approving.

That we see no objection to the draft licence.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 86.

*Memorandum by the Lord Chancellor as to Claim of the Rustchuk-Varna Railway against the Porte.*

Rustchuk-Varna Railway Company. Whether claim lies against Porte or against Bulgaria.

THIS claim is governed by the Xth Article of the Berlin Treaty, which is specially directed to the Rustchuk-Varna Railway, and differs materially from the LIst Article.

Xth Article of Treaty of Berlin.

2. With regard to the future, the Xth Article provides that Bulgaria takes the place of the Imperial Ottoman Government in its undertakings and obligations towards the Rustchuk-Varna Railway Company, dating from the exchange of the ratifications of the Treaty. The present claim does not arise under this clause, and it is therefore unnecessary to consider whether this clause would substitute, from the date of the Treaty, Bulgaria for the Porte, whether the Railway Company assented or not. In practice it probably would have the effect of substituting Bulgaria, on the principle that the sovereignty of the "solum" on which the railway was constructed was thenceforward to belong to Bulgaria, and all rights and obligations connected with immovable property would follow.

Porte was the Company's debtor before the Treaty, and continues so, unless other arrangement is made by the three parties concerned.

3. But it is the second part of the paragraph which is material to the present claim. It provides that the settlement of previous accounts is reserved for an understanding between the Porte, the Bulgarian Government, and the railway. I understand this to mean that if the Porte, the Bulgarian Government, and the railway, all three, agree that the claims of the Railway Company before the Treaty shall be adjusted on some principle different from the strict principle which ought to be applied to them, they shall be so adjusted; but if no agreement is come to, the strict principle of adjustment will continue. The Porte was the debtor of the Company before the Treaty, and continues that debtor unless the three parties concerned agree that the debt shall be undertaken in whole or in part by some one else.

4. It does not, therefore, appear to me to be any answer for the Porte to say that it will not entertain the claims of the Company because no agreement has been come to between the parties mentioned in the Treaty. That would be tantamount to saying that the claims might never be entertained at all, because the Porte, being one of the three parties concerned, might refuse to enter into any agreement such as is contemplated by the Treaty. If the Porte desires to get rid of any part of its liability for antecedent claims of the Company, it must put itself in motion, and bring about an agreement between the three parties for a substitution of liability. If the Porte does not do this it will, in my opinion, continue liable.

(Signed) CAIRNS.

*August 5, 1879.*

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## No. 87.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August 9.)*

*Temple, August 8, 1879.*

My Lord,

Nationality of Mrs. Saverden. Widow of alien who died since Naturalization Act was passed.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 31st ultimo, stating that he had the honour to transmit to us the accompanying petition from Mrs. Saverden, the widow of an alien who died after the passing of the Naturalization Act of 1870, praying that she might now be recognized as a British subject and registered as such at Her Majesty's Consulate at Smyrna, and that he was to request that we would take the same into our consideration, and favour your Lordship with our opinion as to what answer should be returned to Mrs. Saverden.

That the accompanying copy of a correspondence respecting the status of British-born subjects married to foreigners and left widows was inclosed for convenience of reference.*

In obedience to your Lordship's commands we have the honour to report—

Cannot be recognized as British subject or registered at Smyrna.

That, in our opinion, the petition of Mrs. Saverden cannot be acceded to.

May be placed under British protection.

We are not aware of any reasons which should prevent her coming under British protection, and if this protection can be properly extended to her the object of Mrs. Saverden will be attained.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* See Confidential Paper No. 2304.

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## No. 88.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received December 3.)*

My Lord, *Temple, December* 2, 1879.

Piracy in the Persian Gulf.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th October last, stating that he had the honour to transmit to us therewith, by direction of your Lordship, a correspondence which had taken place between the Foreign Office and Her Majesty's Embassy at Constantinople, with regard to the recent increase of piracy in the Persian Gulf, and the measures to be taken for its repression.

That it would be seen that the piratical acts complained of had originated chiefly, if not entirely, from the coast of a promontory called El Katr (or Guttur), which had, within recent years, fallen under the jurisdiction of the Porte, and that, notwithstanding repeated representations by Her Majesty's Government, the measures taken by the Turkish authorities to restrain and punish the offenders had been inadequate and ineffectual.

That the history of the question and of the establishment of Turkish jurisdiction on the territory referred to would be found in a printed memorandum in two parts, inclosed in a letter from the India Office of the 17th September, which contained also the proposals of the Government of India and of the Secretary of State for India for dealing with the matter.

That the following brief outline of the case would serve to indicate the point on which your Lordship desired to be favoured with our opinion :—

Maritime police and protectorate of Trade in Persian Gulf undertaken by England.

That, during the last half-century, England had undertaken the maritime police of the Persian Gulf and the protectorate of its trade, which had, in consequence, enormously increased.

That British steamers plied weekly from one end of the Gulf to the other, and on the faith of the British protectorate, great numbers of Her Majesty's subjects had embarked large capital in that trade and in the pearl fishery. (Memorandum, Part II, pp. 10–14.)

Establishment of Turkish authority on Guttur Coast.

That Treaties had been entered into at various times and still existed with the Ruler of the Island of Bahrein, off the Guttur Coast, and with several of the Arab Chiefs and tribes inhabiting the coast, by which they bound themselves to abstain from acts of aggression by sea upon each other, and the British Government undertook to watch over the peace and to enforce the observance of the Agreements. (See, as to Bahrein, Memorandum, Part I, p. 3, and as to Trucial Chiefs, *ibid.*, p. 6.) But that those Treaties did not concern the mainland. That in 1871 the Turkish Government occupied El Bidaa, on the Guttur Coast, whereby they established their influence and a certain authority and jurisdiction all over that coast, which had, on various occasions, been recognized by Her Majesty's Government. (Memorandum, Part II, p. 36.) That the Government of India were more immediately interested and concerned in the questions under consideration, and that their policy had been to keep clear of any complications which might arise on the mainland (pp. 32 and 36), while maintaining, as far as possible, the exclusive maritime protectorate of the Gulf by Great Britain, (pp. 21, 22, and 27). That the authority of the Turkish Government over the Guttur Coast was of a most shadowy character. That the only spot in their actual occupation was the port of El Bidaa, and that during the summer of 1876 there was a marked increase of piratical acts along the promontory. (Memorandum, Part II, p. 37.) That on the 23rd April, 1876, Sir H. Elliot addressed a formal note to the Porte calling for a full explanation, and asking for compensation in the case of an outrage committed on some Indian subjects of Her Majesty by the Governor of Lahsa, but that to that day neither the one nor the other had been received. (*Ibid.*, p. 37.) That in July 1877 Sir H. Layard called the serious attention of the Turkish Government to the increase of piracy along the Guttur Coast, which had resulted from the extension of its authority in that quarter. (*Ibid.*, p. 41.) But that no redress was obtained, and that in 1878 a succession of piratical outrages occurred which called for a serious consideration of the Turkish position in those parts. (See Particulars, *Ibid.*, p. 43.) That those outrages had continued ever since, as might be seen by the Tabular Statement of Piratical Acts, compiled by Colonel Ross, which formed one of the inclosures in the letter of the Government of India No. 77 of the 23rd June, 1879.

That feeble efforts had been from time to time made by the Turkish authorities to repress those raids and to punish the offenders, but that their measures had been altogether inadequate and had totally failed.

Naval action against pirates within Turkish jurisdiction authorized by Government of India.

That, under those circumstances, instructions were given to Colonel Ross by the Government of India (*ibid.*, p. 48) in February 1879, authorizing naval action against the pirates within Turkish jurisdiction, provided that no expedition should be undertaken on the mainland "beyond reach of the guns of the British vessels."

That the correspondence which took place between the Foreign Office, the Admiralty, and the India Office on the subject of those instructions was briefly recorded at p. 48 of the Memorandum, Part II.

That in May 1879 Sir H. Layard warned the Porte that Her Majesty's Government could not permit a state of things which was a danger to British interests and British commerce, and would be compelled to interpose to put an end to it unless the Turkish Government took measures to do so. (*Ibid.*, p. 49.)

That he again held the same language to the Porte in July 1879. (*Ibid.*, p. 50.) But that all those representations had failed to produce any satisfactory result.

That Sir Julian Pauncefote was then to refer us to the proposals of the Government of India for the repression of those outrages, contained at pp. 58–61 of Memorandum, Part II; to the reply of the Foreign Office to those proposals, p. 61; and to the proposals of the Secretary of State for India contained in the inclosed letter from the India Office of the 17th September, 1879.

That the precise point on which, at the present stage of the question, your Lordship desired to be favoured with our opinion was whether, under the circumstances detailed in the inclosed correspondence, and in view of the unwillingness or inability of the Turkish Government to prevent outrages on British subjects and British commerce in the Persian Gulf by piratical bands organized in, and emanating from, territories under their authority and jurisdiction, the case was one in which Her Majesty's Government would be justified in holding that the right of self-preservation was paramount to that of territorial inviolability, and might, consistently with the doctrines of international law on the subject, authorize the Commanders of Her Majesty's ships to pursue the pirates and marauders in question in Turkish waters, and to destroy their strongholds on the Turkish mainland.

We are also honoured with a further letter from Sir Julian Pauncefote, bearing date the 9th October, stating, with reference to his letter of the 4th October, he was directed by your Lordship to transmit to us a further letter from the India Office, relative to piracy in the Persian Gulf.

We have also to acknowledge the receipt of a further letter from Lord Tenterden, dated the 25th ultimo, stating that, with reference to Sir Julian Pauncefote's letter of the 4th October last, relative to the means to be resorted to for the suppression of piracy in the Persian Gulf, he had the honour to forward to us, by direction of your Lordship, copies of two further despatches bearing upon that matter, which had recently been received from the Government of India.

That Lord Tenterden was at the same time to request that we would favour your Lordship, at our earliest convenience, with our opinion upon the question submitted to us in Sir Julian Pauncefote's letter above referred to.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government cannot pursue pirates in Turkish waters or destroy their strongholds on Turkish mainland.

That, in our opinion, the circumstances stated in these several papers will not justify Her Majesty's Government, consistently with the doctrines of international law, and on the ground of self-preservation, or the inability and unwillingness of the Turkish Government to prevent outrages on British subjects and British commerce in the Persian Gulf, in authorizing the Commanders of Her Majesty's ships, against the wishes of the Turkish Government, to pursue the pirates and marauders in question in Turkish waters, and to destroy their strongholds on the Turkish mainland.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## United States.

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### No. 89.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January* 15.)

My Lord,

*Temple, January* 14, 1879.

Forgery of United States' papercurrency.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th ultimo, stating that, an inquiry having been addressed to your Lordship by the United States' Minister as to whether, under the laws of Great Britain, it was a criminal offence to counterfeit the paper currency of the United States of America, Sir Julian Pauncefote was to request us to be so good as to favour your Lordship with our opinion as to whether the forgery of the paper currency of a foreign State was an offence punishable by the statute or common law of England.

In obedience to your Lordship's commands we have the honour to report—

Is punishable by British law.

That to counterfeit the paper currency of the United States of America, or of any foreign State, is an offence punishable by Statute 24th and 25th Vict., cap. 98, sec. 19.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 90.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January* 17.)

My Lord,

*Temple, January* 16, 1879.

Fortune Bay fishery disputes.

Instructions for British magistrate.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office,* inclosing copy of a despatch from the Governor of Newfoundland, relative to the instructions to be given to the magistrate whom it was proposed to appoint at Fortune Bay, in consequence of the recent disputes which occurred between British and United States' fishermen at that place; and that Sir Julian Pauncefote was to request that we would take Sir G. Glover's despatch into our consideration, and favour your Lordship with our opinion as to whether the instructions contained therein were such as might properly be given.

That Sir Julian Pauncefote was at the same time to transmit, for convenience of reference, a memorandum, which had been drawn up by Mr. Bergne,† of the Foreign Office, upon the rights of fishing on the coast of Newfoundland acquired by the United States under the Treaty of Washington, together with a copy of a Circular issued by the State Department at Washington on the 28th March, 1856, relative to the observance by United States' fishermen of colonial laws upon the subject.

In obedience to your Lordship's commands we have the honour to report—

Instructions are consistent with Treaty; but better arrange with United States before issuing, to avoid disagreements.

That we are of opinion that the proposed instructions are, in a strict interpretation of the words of the Treaty of Washington, consistent with that Treaty, and so may properly be issued.

But we submit, for your Lordship's and Sir M. H. Beach's consideration, that the questions on the right and extent of the right of fishery, both under the Treaty of Washington, so long as that Treaty has now to run, and also in regard to the fishery after the expiration of the Treaty, may seriously affect the relations between this country and the United States of America.

And we therefore respectfully submit that it would be expedient not to issue the proposed instructions until some communication and agreement on the subject has been come to with the United States' Government.

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* December 20, 1878 (see Confidential Paper No. 3851).

† Confidential Paper No. 3788.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 91.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January* 29.)

My Lord,

*Temple, January* 29, 1879.

United States' frigate "Constitution." Application for arrest of, for salvage services.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th instant, stating that he was directed by your Lordship to transmit to us the inclosed letter, which had been that day received from the Solicitors who represented the owners, master, and crew of the steam-tug "Admiral," of Cowes.

That it appeared from that letter that a motion was made on the 27th instant in the Admiralty Division of the High Court of Justice for leave to arrest the United States' frigate "Constitution" and her cargo, in a suit for salvage services rendered to her by the steam-tug "Admiral"; that the Judge ordered the motion to be adjourned until Wednesday, the 29th, and that notice of the motion should in the meanwhile be served on the vessel and on the American Consul.

That it further appeared from that letter that notice had been given to the Foreign Office of those proceedings at the request of the Judge.

That Sir Julian Pauncefote was to inclose a letter from the United States' Minister at this Court, conveying his thanks to the Marine Department of the Board of Trade for their action on learning that the "Constitution" had got ashore, and describing the vessel as the "United States' frigate 'Constitution.'"

That under those circumstances your Lordship entertained no doubt that the "Constitution" was a public vessel of the United States, and that Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether any action should be taken on behalf of Her Majesty's Government in relation to the pending proceedings, and that he was further to request, as the motion would come on this day, that we should take such steps as we might think advisable in case we deemed it necessary that Her Majesty's Government should be represented in Court.

That Sir Julian Pauncefote was to add that no application had been received from the United States' Minister in relation to those proceedings, and that, pending the receipt of our reply, your Lordship did not propose to make any communication to him on the subject.

That, since the above had been written, the accompanying letter from Mr. Welsh had been received.

In obedience to your Lordship's commands we have the honour to report—

Motion dismissed by Admiralty Court.

That we thought it proper that Her Majesty's Government should be represented by Counsel on the motion for a warrant to arrest the American United States' frigate "Constitution," and the cargo on board her; and we have also to report that the Judge of the Admiralty Division of the High Court of Justice dismissed the motion this morning.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 92.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received May* 31.)

My Lord, *Temple, May* 30, 1879.

Boarding of United States' vessel "Laconia," at Zanzibar, by Her Majesty's ship "London." Suspicion of slave-trading. Removal of three negroes.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us papers relating to a case in which the United States' barque "Laconia" was boarded in the harbour of Zanzibar by directions of Captain Earle, of Her Majesty's ship "London," and three negroes were removed from the American ship on suspicion that they were slaves.

Propose to disavow act and apologize.

That the correspondence relating to that case was referred for the consideration of the Legal Adviser of the Treasury on Slave Trade matters, whose Report was inclosed, from which it would be seen that Mr. Rothery was of opinion that the conduct of Captain Earle in the matter could not be justified; and that it was proposed, therefore, on the part of Her Majesty's Government, to disavow his conduct and to express regret at his proceedings.

That before doing so, however, your Lordship would wish to know whether we concurred in the view taken of that matter by the Legal Adviser of the Treasury, and Sir Julian Pauncefote was accordingly to request that we would be good enough to take the case into our consideration, and favour your Lordship at our early convenience with our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

Agree with Mr. Rothery's Report.

That we entirely agree with the conclusion arrived at in this matter by the Legal Adviser of the Treasury.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex.

### *Report.*

To the Right Honourable the Lords Commissioners of Her Majesty's Treasury.

May it please your Lordships,

Report by Mr. Rothery.

IN obedience to your Lordship's commands I have perused and considered the documents herewith returned, consisting of—

Letter from Sir Julian Pauncefote, the Assistant Under-Secretary of State for Foreign Affairs, dated the 22nd February last, forwarding two despatches from Dr. Kirk, Her Britannic Majesty's Agent and Consul-General at Zanzibar, dated the 28th December and 2nd January last respectively, with their inclosures, reporting the circumstances under which the United States' barque "Laconia" had been boarded in the harbour of Zanzibar by a boat from Her Majesty's ship "London," on suspicion of her having slaves on board.

Further letter from Sir Julian Pauncefote, dated the 27th of the same month, forwarding a letter from the Admiralty, with inclosures, from Rear-Admiral Corbet, the Commander-in-chief on the East Coast of Africa, on the same subject.

These papers have been forwarded to your Lordships, with a request that they might be submitted to me, as your Lordship's Legal Adviser on Slave Trade matters, for my opinion as to the action taken by the Commander of the "London" in this matter, and generally for any observations that I may have to offer thereon.

The circumstances of the case appear to have been as follows:—On the evening of the 26th December last Captain Hamilton Earle, of Her Majesty's ship "London," having received information, derived it would seem in the first instance from one of the crew, that the United States' barque "Laconia," a whaler belonging to New Bedford, Massachusetts, had slaves on board, dispatched Lieutenant Johnson in one of the boats to search her. On going on board, and finding that Captain Gifford, the master, was on shore, Lieutenant Johnson went to his hotel, leaving Sub-Lieutenant Cornwell Legh in charge of the vessel. At Lieutenant Johnson's request the Master returned with him to the "Laconia," and the crew having been mustered three negroes

were picked out as having been shipped at Johanna. On examining them, with the assistance of an Interpreter, Lieutenant Johnson seems to have come to the conclusion that one of them had been purchased by the master, and that the other two had been kidnapped from the shore; and finding that they were not entered on the ship's articles, he told the master that he should take them to the "London." Whether or not the master of the "Laconia" gave his assent to their removal appears to be open to some doubt; according to Lieutenant Johnson, the master said that he had no objection, provided that Lieutenant Johnson would be responsible for their safe custody; on the other hand, the master says that he told Lieutenant Johnson that, if he took them away, he did it on his own responsibility. It is easy to see how the mistake arose. On the following morning the negroes were examined by Captain Earle, and repeated, so we are told, the statements which they had made to Lieutenant Johnson, namely, that one of them had been purchased by the master, and that the two others had been kidnapped from the shore whilst fishing there.

In the meantime, however, the master of the "Laconia" had communicated with Mr. Hathorne, the United States' Consul, and the latter thereupon addressed an official letter to Dr. Kirk, requesting that the three negroes might be at once given up. Some communications then passed between Dr. Kirk and Captain Earle on the subject, and very soon afterwards Captain Earle returned the negroes to the "Laconia," taking at the same time a receipt for them from one of the officers of the ship. On their return they appear to have been taken by the master before the United States' Consul, by whom they were examined, and a copy of the statements which were then made, both by the negroes and by the master and officers of the "Laconia," was forwarded by the United States' Consul to Dr. Kirk, and will be found amongst the papers.

According to the statements made before the United States' Consul, it appears that in the month of July last Captain Gifford was staying with a Dr. Wilson, an American planter in Johanna, when he remarked a slave in irons, and on Dr. Wilson offering him the slave, saying that he could do nothing with him, Captain Gifford, who was at the time short of hands, at once accepted the offer. The slave was accordingly sent down to the beach in charge of one of Dr. Wilson's slaves, and his irons having been struck off by the blacksmith, he waded off voluntarily to the "Laconia's" boat, and was taken on board. As to the two other negroes, it was said that they were fishing on the beach, when the master of the "Laconia" spoke to them, and told them that if they would go off with him he would give them clothes and tobacco; that they thereupon got into the boat, and were covered up with sails, to prevent their being seen by any people on the shore, and were then carried on board the ship. They had all, we were told, come on board the vessel voluntarily, and without any force being employed for the purpose, and had remained in her ever since, working as sailors, and being treated in every respect like the rest of the crew, the captain stating that their wages, or share of the venture (for in whalers the seamen take a share of the captures), would date from the 10th July, when they first came on board. He accounted for their names not being on the Articles by saying that there was no United States' Consul at Johanna, and that it had been his intention to put them on the Articles as soon as he got to a port where there was a United States' Consul. The master's statement in this respect was confirmed by Mr. Hathorne, who said that the day after the arrival of the "Laconia" the master had told him that he had three negroes on board, and had requested him to ship them, and that he (the Consul) had intended to do so.

It seems to have been thought that the statement made by the negroes to the United States' Consul differs essentially from that originally made by them to the officers of the "London;" but after making all due allowance for the different light in which these transactions would be regarded by them, I confess that it appears to me that there is not very much difference between the two accounts. It is admitted that one of the negroes was a slave down to the moment that he was transferred to Captain Gifford. The slave, no doubt, had his shackles struck off before going on board; but it is clear, from the statement which he made to the United States' Consul, that he considered that he had been sold to the master, and that he was his slave. The fact that he voluntarily waded through the water and got into the boat in my opinion proves nothing; the negro probably thought that he had no option in the matter but to do what he was told. Moreover, he was leaving a master from whom he does not seem to have received much kindness, and it is not likely that he would have shown any unwillingness to go on board. As to the other two negroes, according to the master of the "Laconia," he offered them clothes and tobacco to go, and they went voluntarily on board; according to the statement said to have been made by the negroes to the officer of the "London," they were forcibly taken on board. Whether

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there was more force or more persuasion used to get them to go in the boat it would probably not be very easy to say; the master being short-handed was anxious to get them, and the negroes, too, were probably not very unwilling to go, with the prospect before them of receiving clothes and tobacco. It must also not be forgotten that the master appears not to have understood the language which these negroes spoke, nor did they understand his. On the other hand, we are told by the United States' Consul that he found that all these negroes knew very little of the language in which their statements to the officers of the "London" had apparently been made. It may therefore readily be understood that there might be some little confusion as to the circumstances under which they had gone on board the vessel.

But however this may be, it does not appear that the negroes at any time expressed any wish to leave the "Laconia." According to the statements made before the United States' Consul, they were ready to go in the ship and to be discharged either in St. Helena, or at New Bedford, Massachusetts, and, indeed, anywhere except at Johanna. There is no suggestion that they had not been fairly treated on board the "Laconia," or that they wished to go on board the "London" or be landed at Zanzibar, and I confess that I think that there is much force in the remark made by Mr. Hathorne, that it is strange, if Captain Earle believed them to be slaves, that he should have returned them to the "Laconia." I should have thought that, if he had believed them to be slaves, or that they were desirous of leaving the "Laconia," he would either have handed them over to Dr. Kirk, or, at all events, to the United States' Consul, for him to deal with them as he thought best, and it is greatly to be regretted that this was not done.

Such, then, being the facts, questions of considerable importance have been raised, and to which it is necessary that I should call your Lordship's attention. I pass over the minor objections which were taken by the United States' Consul, namely, that an armed officer of the "London" was left in charge of the "Laconia" whilst Lieutenant Johnson went on shore to see the master, and that the negroes were taken out of the ship without the master's consent, for if Captain Earle was justified in detaining the vessel these acts would not have been illegal or improper. As to the omission of the boarding officer to go to the American Consulate for the purpose of inspecting the ship's papers, and making the required entry in the log-book, Admiral Corbet has already called Captain Earle's attention to it; but this, also, is a matter of comparatively minor importance. The great question to be considered is, whether Captain Earle had any right whatever to interfere with the "Laconia" whilst she was lying in the harbour of Zanzibar. The United States' Consul thinks that he had no such right, grounding his objection, first, upon the words of the Treaty between the United States and Great Britain for the suppression of the Slave Trade; and secondly, on the fact that as the ship's papers had been deposited at the United States' Consulate, the jurisdiction over the ship rested with himself alone.

As to meaning of Slave Trade Treaty. Right of search within limits of a port, &c.

And first, as regards the Treaty. By Article I of the Treaty of 1862 it is provided that "the right of search shall not be exercised by a vessel of war of either Contracting Party within the limits of a settlement or port, or within the territorial waters of the other party." The United States' Consul contends that the object of this clause was to forbid the exercise of the right of search within the limits of any settlement or port, whereas our officers seem to think that it forbade the exercise of the right only within the limits of a settlement or port of the other party. The question is, perhaps, not quite free from difficulty, but on the whole I am disposed to agree with the United States' Consul. If we accept the construction put upon the sentence by our own officers, it appears to me that the words "within the limits of a settlement or port" are mere surplusage, for, in the case of a ship afloat, the words "territorial waters" would include "a settlement or port." Moreover, if it had been intended to allow the right of search to be exercised within the limits of any settlement or port other than a settlement or port of the other party, the second "within" should have been omitted, and the sentence should have run as follows: "The right of search shall not be exercised within the limits of a 'settlement or port,' or the territorial waters of the other party." The question, as I have said, is perhaps not quite free from difficulty; at the same time, I am disposed to think that, if the matter came before a Court of Law either in this country or in the United States, the view taken by the United States' Consul would probably be maintained.

Jurisdiction of United States' Consul at Zanzibar.

The second point taken by the United States' Consul, namely, that the fact of the ship's papers being at the United States' Consulate would vest the jurisdiction over the vessel in the Consul, would, of course, depend on the Treaties existing between the United States and Zanzibar. Primarily the jurisdiction over all vessels in Zanzibar waters would belong to the Sultan of Zanzibar, but it may be the Sultan has granted the same rights to the United States' Consul over United States' vessels as he has to Her Majesty's Consul over British vessels. If so, there would be some grounds for Mr. Hathorne's objections.

But whether this be so or not, it appears to me that it was a very ill-advised act on the part of Captain Earle to interfere in any way with a United States' vessel in a foreign port when there was a United States' Consul actually on the spot. I entirely agree with Dr. Kirk, that if Captain Earle, instead of sending an officer and an armed party on board the "Laconia," had intimated, either directly or through Dr. Kirk, to the United States' Consul, that he had reason to believe that there were slaves on board the "Laconia," he would have thrown the onus of acting in the matter upon the United States' Consul, and the question would then have been investigated, and the witnesses examined probably in the presence of the British Consul-General, and there would have been no conflict of evidence, no alleged infringement of Treaty, and no offence given to the authorities and citizens of a friendly State. And, if Captain Earle had thought that the United States' Consul showed a desire to screen the master, and that thus the ends of justice would be defeated, he might have waited until the vessel had left the port, and then, if he had considered it a matter of sufficient importance, he might have seized her in the high seas, and either have sent her in charge of a prize crew to New York or Key West for adjudication, or have handed her over to some American cruizer had he fallen in with one, and had the Commander thereof been willing to accept the charge.

Fortunately, however, Captain Earle did not go the length of seizing and sending in this vessel for adjudication. Had he done so, there can be little doubt what the result would have been, for, as he justly observes, the only witnesses would have been the crew and the negroes, and they would have had a direct interest in exculpating the vessel, inasmuch as, in the event of her condemnation, their shares of the produce would have been liable to forfeiture as well as the ship. Moreover, it appears to me very doubtful whether any Court would have been justified in condemning a vessel of carrying on the Slave Trade because she had on board amongst the crew one negro who had been a slave, and who had been given by his master to the captain, and two others who had been inveigled on board the vessel to assist in navigating her, the vessel being at the time short-handed; and as we are told that the vessel had a valuable cargo of oil on board, the produce of her fishing, the restitution of the vessel and cargo, if accompanied with costs and damages, would have been a very serious matter indeed.

I am not aware that any representations have yet been made by the American Government on the subject. Fortunately, however, no material injury was done to the vessel or cargo or to any one on board, and it is probable that an apology for the offence offered is all that will be necessary.

And should your Lordships concur in the observations which I have ventured to make, it will be proper that a copy of this Report should be forwarded to the Foreign Office for the Marquis of Salisbury's consideration, and, at the same time, the inclosures which have been forwarded to your Lordships in original should be returned, as requested.

All which is most humbly submitted to your Lordships' wisdom.

(Signed) H. C. ROTHERY.

*Somerset House, April* 8, 1879.

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## No. 93.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August* 16.)

*Temple, August* 15, 1879.

My Lord,

Notter and Co. Assumption of character of United States' Consular Agents.

(In connection with "crimping" cases.)

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that he was directed by your Lordship to state to us that, in connection with a correspondence on the subject of crimping, the attention of Her Majesty's Government had been called by the United States' Legation in London, in the letters therewith transmitted to us, to the assumption by Messrs. Notter and Co. of the character of United States' Consular officers.

That Sir J. Pauncefote was accordingly to request that we would take that matter into our early consideration, and report whether, under the circumstances set

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forth in those papers, Messrs. Notter and Co. were amenable to the criminal law for falsely representing themselves as United States' Consular officers.

In obedience to your Lordship's commands we have the honour to report—

No offence against law to personate a foreign Consul, unless property is thereby obtained.

That it is not a criminal offence against the law of this country to personate a foreign Consul, unless by so doing the personator obtains or attempts to obtain property, or induces some one to make a valuable security.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Venezuela.

### No. 94.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 18.)

My Lord, *Temple, April* 18, 1879.

Closing of port of Puerto Cabello by Venezuelan Government, it being in hands of insurgents.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st March ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister at Carácas (No. 8 of the 16th January, 1879) relative to an order recently issued by the Venezuelan Government prohibiting all intercourse with the port of Puerto Cabello, in consequence of that place having fallen into the hands of a revolutionary force, and requiring all vessels touching at La Guayra with merchandise or correspondence for Puerto Cabello to discharge their goods and deliver up their letters at the first-named port.

That we would see from the Reports of Sir Travers Twiss, then Her Majesty's Advocate-General, of the 1st July and 13th August, 1870, which would be found at pp. 177 and 179 of the accompanying printed volume, that a similar question arose in 1870, and that Her Majesty's Government were then advised that they were bound in comity to respect the Decrees of the recognized Government of Venezuela for the regulation of the commerce of British subjects with any of the ports of that Republic, unless those ports were not only not in the possession of, but also not under the dominion of, the Republic.

That as, according to that opinion, the course to be followed depended in a great measure on nice questions of fact, he was to inclose the recent despatches from Her Majesty's Minister at Carácas, showing the present state of affairs in Venezuela, and to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to the instructions that should be sent to Mr. Bunch for his guidance.

In obedience to your Lordship's commands we have the honour to report—

Government must judge as to necessity of closing its ports.

That circumstances may justify a Government in closing a particular port. The Government, in whose country the port is, is the proper judge of the circumstances which may make the closing of the port necessary or expedient.

We assume that Puerto Cabello is closed to the ships of all nations.

Her Majesty's Government cannot remonstrate.

We are, therefore, of opinion that Mr. Bunch may be instructed to remonstrate no further with the Venezuela Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 95.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 18.)

My Lord, *Temple, April* 18, 1879.

Insurrection in Venezuela. German proposals relative to.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 10th March ultimo, stating that, with reference to his letter of the 1st of that month, he had the honour to forward therewith a memorandum, communicated by the German Ambassador in this country, having reference to the line of conduct to be observed by the foreign Representatives towards the contending parties in Venezuela, which memorandum, it was requested, might be taken into consideration, together with the other papers on that subject then before us.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the protest or remonstrance of Mr. Bunch cannot properly be further carried out.

*De facto* Government must be recognized, and its laws respected.

So long as the several States of South America are independent, foreign nations respecting this independence are called upon to recognize the *de facto* Government in those States as representing the nation, and to respect the laws and regulations, however embarrassing to themselves, which the *de facto* Government, for its own preservation, may think it proper to enact.

As to closing of Puerto Cabello.

In the present case, the Government has thought fit to prohibit the access to the port of Puerto Cabello, which is in the occupation of an insurrectionary armed force.

Insurgents might otherwise levy customs duties, &c.

So far as the Government of Venezuela is concerned, this armed force, if access to the port were allowed, might receive all the customs and other duties to the direct loss of the Government.

And might also seize and detain, or use or destroy, the ships and property of the subjects of foreign countries coming into the port to the indirect loss of the Government of Venezuela, which might be called upon to pay heavy indemnities, and to the immediate damage of the foreign owners.

The alternative, if the right of the *de facto* Government be not admitted, suggested in the German memorandum, to "treat the party in insurrection as belligerent, without expressly recognizing it as such from the beginning," seems to us inadmissible.

Cannot recognize one party as belligerent.

There cannot be one belligerent; if, therefore, the insurrectionary party is declared a belligerent, the *de facto* Government must also be belligerent. The *status belli* at once exists, with all its consequences, both in territorial waters and on the high seas; a state of things would thus be brought about more prejudicial, as it seems to us, than the temporary closing of one or more ports.

Presume port is closed to all nations.

Our opinion upon the legal question, whether the Venezuelan Government has the right to close the port of Puerto Cabello, assumes that the port is closed to all nations.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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*Printed for the use of the Foreign Office.* ***November*** **1881.**

**CONFIDENTIAL.**

(4328.)

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FROM

# LAW OFFICERS OF THE CROWN.

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CONFIDENTIAL.

# REPORTS BY THE LAW OFFICERS OF THE CROWN: 1880.

## Argentine Confederation.

### No. 1.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 18.)

My Lord, *Temple, September* 17, 1880.

Arrest of the British vessels "Plato" and "Bessel" on the River Plate, on suspicion of carrying arms for insurgents.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th July last, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Chargé d'Affaires at Buenos Ayres relative to the arrest and detention by the Argentine authorities of two British steamers, named the "Plato" and "Bessel," on the River Plate.*

That the "Plato" and "Bessel" were both passenger steamers belonging to the Liverpool, Brazil, and River Plate Steam Navigation Company. That the facts of the case were stated in the complaint of the agent of the Company, and in the depositions of the Captains of the two vessels, which form inclosures in Mr. Egerton's despatch No. 53. That both vessels were bound for Buenos Ayres. That the "Plato" was arrested by the Argentine gun-boat "within about 20 miles of the Buenos Ayres roads" and "7 miles off Ensenada, on the Argentine shore."

That the "Bessel" was arrested by the gun-boat after her arrival in the roads. That a state of civil war existed at the time, and the object of those proceedings was stated to have been to prevent the clandestine introduction into Buenos Ayres of arms which the Local Government had reason to believe would be found on board those steamers. That Mr. Egerton, in his despatch No. 7, transmitted a chart of that part of the River Plate in which the incident occurred, and it would be observed that the stoppage of the "Plato" occurred in the only navigable channel of the river for such steamers, and on the side of the thalweg nearest to the Argentine coast. That on the 7th May Mr. Egerton addressed a note to the Argentine Minister for Foreign Affairs on the subject of those complaints, a copy of which was contained in his despatch No. 56.

That the reply of Señor Gonzalez, which would be found in Mr. Egerton's No. 6 of the 26th May, justified the action of the Argentine Commander of the gun-boat, on the ground that the exceptional course complained of was reasonable under the circumstances, and that the Argentine Government, being supreme, could order measures of vigilance within its fluvial territory, provided they were rendered necessary in the interests of the Exchequer, or on behalf of public order, which it was their province to maintain.

That Sir Julian Pauncefote was to request that we would take those papers into

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* Mr. Egerton, No. 53, May 6; ditto, No. 56, May 10; ditto, Nos. 6 and 7, Commercial, May 26. 1880.

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our consideration, and favour your Lordship with our opinion as to the instructions that should be sent to Mr. Egerton on the subject.

We were also honoured with Sir Julian Pauncefote's letter of the 29th July last, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Admiralty,* inclosing a Report by their Lordships' hydrographer on the question of territorial jurisdiction in the lower part of the River Plate.

In obedience to your Lordship's commands we have the honour to report—

Cannot express a positive opinion as to legality of arrest.

That, as it appears doubtful whether the "Plato" was within the fluvial territory of the Argentine State at the time she was stopped by the gun-boat, we are not in a position to express a positive opinion whether there is any ground for complaint of the vessel being so stopped; but we think the position taken up by the Argentine Minister in this respect should not be allowed to pass without protest. At the same time, it is to be observed that the real damage for which redress is claimed by the owners of the vessels arose in the case of the "Plato" as well as of the "Bessel" from what subsequently took place in the roads, viz., their being forbidden for a time to hold communication with the shore. It can hardly, we think, be disputed that the vessels were then within Argentine territory. And, as a state of civil war existed, we think the Argentine Government were justified within their own waters in taking measures to prevent the clandestine introduction of arms into their country. If, therefore, the Argentine authorities had reasonable grounds for believing that the vessels in question were intending to land arms, destined for the use of the insurgents, and interfered to no greater extent than was necessary to prevent that object being accomplished, we think that in so acting they were within their rights. But upon these matters of fact and intention our information is very scanty.

Proposed instructions to Mr. Egerton.

We think Mr. Egerton may properly be instructed, in answer to Señor Gonzalez's reply, to insist that no facts had been stated sufficient to show that the vessels were about to land arms for the insurgents, and that the Argentine Government were therefore not warranted in preventing the vessels of a friendly Power from discharging their cargoes and landing their passengers.

Further information necessary to determine question as to compensation for stoppage.

The determination of the question, whether the owners are entitled to any compensation on account of the stoppage of the vessels, must depend upon further information which may be obtained bearing upon the points we have above referred to.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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*Opinion of Dr. Deane.*

Disagreement with above opinion.

I do not concur with the Attorney-General and the Solicitor-General in their opinion; I therefore have the honour to report—

Detention of vessels unjustifiable, and loss caused by it should be made good.

That, in my opinion, the detention of the "Plato" and "Bessel" was unjustifiable. The letter of Señor Gonzalez to Mr. Egerton shows that a similar course may be followed with respect to other vessels, and Mr. Egerton may, therefore, be properly instructed to urge upon the Government at Buenos Ayres the necessity of providing that such proceedings be not again taken; and that the loss, if any, occasioned by the detention of both or either of these two vessels, be made good.

I have, &c.
(Signed) J. PARKER DEANE.

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* Admiralty, July 28, 1880.

## Austria.

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### No. 2.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January 24.)*

My Lord, *Temple, January* 22, 1880.

Austrian claim to include Bosnia and Herzegovina in General Tariff system.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 6th ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, the papers and documents* with reference to the claim of the Austro-Hungarian Government to include the Turkish provinces of Bosnia and Herzegovina in the General Tariff system of the Empire.

That the Treaty of Berlin, as we were aware, provided by Article XXV that those provinces be occupied and administered by Austria-Hungary.

That it was asserted in the letter of the Manchester Chamber of Commerce of the 29th September last, that, for the reasons therein stated, the effect of the contemplated measure would be most disastrous to British trade, and that we should observe that Her Majesty's Chargé d'Affaires at Vienna, in his despatch No. 64, Commercial, of November, stated that the Turkish Ambassador had protested against it as a violation of existing Treaties.

That in the same despatch Mr. Egerton reported that the Austrian Minister for Foreign Affairs supported the measure on the ground that Austria-Hungary was invited by the Powers to occupy and administer those provinces; that the settlement of the Tariff was a detail of administration; and that Austria-Hungary could not have consented to administer the provinces on the Turkish system, though many parts of it might have been settled by Treaty.

That Baron Schwegel observed also that, as regarded Cyprus, Her Majesty's Government were not bound by the Capitulations.

That, on that point, Mr. Lister was to state that in Cyprus the Capitulations had only been departed from in matters of Consular jurisdiction and such other Consular privileges as were incompatible with the administration of the island by Great Britain or by any other European Power.

That to that extent foreign Governments had acquiesced in a departure from the Capitulations in Cyprus.

That Her Majesty's Government, by the Supplementary Agreement of the 14th August, 1878,† obtained from the Sultan a Declaration of the rights and powers vested in Great Britain under the Cyprus Convention, and that the Declaration conferred on them the right to make Treaties with foreign Powers in Her Majesty's name concerning the general government and administration of the island.

That the rights of Austria-Hungary over Bosnia and Herzegovina were governed entirely by Article XXV of the Treaty of Berlin.

That Mr. Lister was to refer us to the inclosure in Mr. Egerton's despatch No. 58, Commercial, of the 10th October, which contained a statement as to the existing rates of duties imposed on British goods entering Bosnia, and from which we should observe that no change in the rate of duties had been made since the Austrian occupation.

That, in view of the impending extension of the General Tariff system of Austria-Hungary to the provinces in question, Mr. Lister was to request that we would favour your Lordship with our opinion as to whether the protest of the Turkish Ambassador at Vienna was well founded, and, if so, as to the grounds upon which Her Majesty's Government may take exception to the proposed measure.

In obedience to your Lordship's commands we have the honour to report—

Such claim not in accordance with Treaty of Berlin.

That, by the Treaty of Berlin, the sovereignty over Bosnia and Herzegovina is not transferred to Austria-Hungary, but only the right to occupy and administer these provinces is accorded to that Power.

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* "Turkey No. 36 (1878);" Treaty of Berlin, July 13, 1878; "Turkey No. 44 (1878);" Manchester Chamber of Commerce, September 29; to Mr. Egerton, No. 36, Commercial, October 10; Mr. Egerton, No. 58, Commercial, October 10; to Mr. Egerton, No. 39, Commercial, October 27; Mr. Egerton, No. 64, Commercial, November 10, 1879.

† "Cyprus No. 1 (1879)."

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The question submitted to us must, we think, be solved by reference to the intention of the High Contracting Powers when they agreed to the insertion in the Treaty of the provision that the provinces "shall be occupied and administered."

The expressions referred to are exceedingly vague and indefinite, but, standing alone, they certainly do not (in our view) import a right to exercise *legislative power for the purpose of abrogating Treaties* which have been entered into with foreign States by the sovereign Power of the territory occupied; nor do we find anything in the context of the Treaty which leads us to the conclusion that it was the intention of the Contracting Parties that the words in question should bear such a construction. On the contrary, we think it is to be assumed that had it been the intention that Austro-Hungary should be invested with the right to deprive the other Powers, parties to the Treaty, of privileges conferred upon them by virtue of Treaties entered into with the Porte, such intention would have been explicitly indicated.

**Turkish protest well founded.**

Such being our view of the construction which the Treaty of Berlin ought to receive, we are of opinion that the protest of the Turkish Ambassador is well founded.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

## Bavaria.

### No. 3.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 17.)

My Lord,

*Temple, August* 17, 1880.

**As to the declaration of nationality to be given to Baron Robert de Grainger.**

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Chargé d'Affaires at Munich (General Stanton's No. 49, July 21, 1880), inclosing a letter which he had received from the Bavarian Foreign Office, requesting him to obtain a declaration respecting the nationality of Baron Robert de Grainger, and that Lord Tenterden was also to transmit to us the accompanying draft of a despatch which your Lordship proposed, with our concurrence, to send to him in reply.

In obedience to your Lordship's commands we have the honour to report—

That we concur with the draft of the despatch which your Lordship proposes to send to Her Majesty's Chargé d'Affaires at Munich. We would, however, observe that we think the insertion of the words "for which purpose application should be made by Baron R. de Grainger to the Secretary of State of the Home Department" is unnecessary, and may have a misleading effect.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Draft of Despatch to General Stanton.*

(No. 17.)

*Foreign Office, August* 19, 1880.

Sir,

With reference to your despatch No. 49 of the 20th ultimo, inclosing a letter which you have received from the Bavarian Foreign Office, requesting you to obtain from Her Majesty's Government a declaration respecting the nationality of Baron Robert de Grainger, I have to inform you that certificates of British nationality are not granted in this country otherwise than under section 7 (paragraph 4) of "The Naturalization Act, 1870" [*for which purpose application should be made by Baron Robert de Grainger to the Secretary of State for the Home Department*]. I may state, however, that by force of the Statute 4 Geo. II, cap. 21, and 13 Geo. III, cap. 21, Baron Robert de Grainger is entitled to claim the status of a British subject, though he and his father were born out of Her Majesty's dominions, if his grandfather by the father's side was a natural-born British subject, and provided the British nationality of Baron Robert, or of his father or grandfather, has not at any time been forfeited by voluntary naturalization in a foreign State within the meaning of section 6 of "The Naturalization Act, 1870."

But Baron Robert de Grainger is not entitled to claim British nationality in Bavaria, the country of his birth, if by the law of that country he is deemed a subject thereof.

I inclose a copy of the Report of the Royal Commissioners for inquiring into the laws of naturalization and allegiance, which you might furnish to the Bavarian Minister, and his attention should be drawn to the Foreign Office instructions to Consul Dale of the 20th December, 1862, printed at page 60.

I am, &c.

## Belgium.

### No. 4.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received April* 28.)

My Lord,

*Temple, April* 27, 1880.

**Marriages at Ostend. Warrants to enable Consular Officers to perform marriages outside their Consular districts.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd March last, stating that, with reference to that part of our Report of the 4th November, 1874, which related to the issue of special marriage warrants under the Consular Marriage Act (12 and 13 Vict., cap. 68) to enable Consular officers abroad to perform marriages between parties who have resided outside of the district of the Consul, as defined in his appointment, Sir Julian Pauncefote was directed by your Lordship to acquaint us that your Lordship learned that it would be highly desirable to grant such special warrant to the Vice-Consul at Ostend, inconvenience having been felt by persons residing in the neighbourhood of that town from the present arrangement, which precluded him from celebrating marriages under his warrant between parties who had not resided within the town.

That Sir Julian Pauncefote was accordingly to transmit to us a form of special warrant which it was proposed to issue to the Vice-Consul, as well as the form of warrant which was ordinarily issued to Consuls, and he was to request that we would take the matter into our consideration and favour your Lordship with our opinion as to whether the special form of warrant was such as could be properly issued under the authority of the 19th section of the Consular Marriage Act in that particular instance, and whether the same form could be issued in other cases, when it was shown to the satisfaction of the Secretary of State that there was a necessity for the enlargement, for the purposes of the Act, of any other Consular district.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the special form of warrant may properly be issued.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Annex.

*Form of Special Warrant.*

Whereas by the 19th section of the Act of the 12th and 13th of Her Majesty, cap. 68, entitled "An Act for facilitating the Marriages of British Subjects resident in Foreign Countries," it is enacted: "That every British Consul-General and Consul already appointed, or hereafter to be appointed, to reside in any foreign country or place, who shall be directed or authorized, by writing under the hand of one of Her Majesty's Principal Secretaries of State, to solemnize and register marriages, and any person duly authorized to act in the absence of such Consul, or in any foreign place where there is no British Consul resident, any Vice-Consul or Consular Agent who shall be directed or authorized as aforesaid by one of Her Majesty's Principal Secretaries of State, to solemnize and register marriages in such place, shall in the country or place in which he is so appointed to reside, or in which he is directed or authorized to solemnize and register marriages as aforesaid, be a Consul duly authorized for all the purposes of this Act; and in the construction of this Act the term 'Consul' shall (save where such construction would be inconsistent with the context) be construed to mean a Consul so authorized, and the district of every such Consul for the purposes of this Act shall be all or such parts of the foreign country in which (or at a place within which) such Consul is appointed to reside, or is so directed or authorized as aforesaid, as such Secretary of State may, by such writing under his hand, direct, or where there shall be no direction in this behalf, shall be the district of the Consulate of such Consul;" I hereby authorize you, the British Consul appointed to reside at Ostend, in Belgium, to solemnize and register marriages under the provisions of the above-recited Act, and in the form and manner therein prescribed; and I direct that, for the purposes of the above-recited Act, your district shall comprise, in addition to the city of Ostend, the following cities in Belgium, that is to say:—Bruges, Ghent, and Nieuport, and all towns, villages, and places lying between the said cities and the city of Ostend.

And for so doing this shall be your warrant.

Given at the Foreign Office in London, this day of .

(Signed)

*Her Majesty's Principal Secretary of State for Foreign Affairs.*

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## No. 5.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 4.)

*Temple, August* 3, 1880.

My Lord,

Mr. G. Horsley's Case (Firm of E. S. Jacobson and Co.). Sale of British steamer "Sophy Jobson." As to rights of English mortgagees.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd July last, stating that he was directed by your Lordship to transmit to us a letter, with its inclosures,* from Mr. G. Horsley, the surviving partner of the firm of E. S. Jobson and Co., relative to the sale of the British steamer "Sophy Jobson," in Belgium, at the suit of creditors, and to the refusal of the Belgian Courts to recognize the rights of the registered English mortgagees to priority in the distribution of the proceeds.

That some correspondence on that case passed between the Foreign Office and Her Majesty's Minister at Brussels in 1876, and Sir Julian Pauncefote was to inclose a despatch from Sir J. S. Lumley, containing the opinion of a competent Belgian lawyer as to the Belgian law applicable to this case.

That we should perceive from that opinion, and also from the Judgments of the Courts, that the law of Belgium did not recognize the mortgage of chattels, and that the Courts declined to apply the *lex loci contractus* in favour of the mortgagee of a British ship.

That Sir Julian Pauncefote was to observe that the case of the "Warbler" (Simpson *v.* Fogo, 29 L. J., Chan. 657) was an instance of a similar case in which the rights of the mortgagee of a British ship were ignored on the same ground by the Court of New Orleans, United States, and in which the mortgagees enforced their claim on the ship on her return to this country.

That no application for diplomatic intervention appeared to have been made in that case of the "Warbler," and Sir Julian was to request that we would take the present case into consideration, and favour your Lordship with our opinion as to whether it is one which calls for such intervention.

That Sir Julian Pauncefote was to inclose a copy of the Treaty between Great Britain and Belgium, from which we should perceive that the case was not affected by any of its provisions.

In obedience to your Lordship's commands we have the honour to report—

That the refusal of the Belgian Courts to recognize the rights of registered English mortgagees (not in possession) of a British vessel to priority in the distribution of the proceeds of the vessel sold in Belgium, at the instance of a foreign creditor of the owners of the vessel, does not, in our opinion, call for diplomatic intervention.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr. Horsley, June 30; Mr. Lumley, No. 54, July 22, 1880; Treaty between Great Britain and Belgium, July 23, 1862.

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## Borneo.

## No. 6.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 18.)

*Temple, September* 17, 1880.

My Lord,

As to grant of a Charter to Association for the improvement of the northern part of the Island of Borneo under concessions obtained from the Sultans of Sulu and Brunei by Mr. Alfred Dent, of the firm of Dent, Brothers, and Co.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th July last, stating that, by direction of your Lordship, he laid before us the papers noted in the list appended thereto, and relating to an application addressed to Her Majesty's Government, through the Foreign Office, for the grant of a Charter of Incorporation to an Association in course of formation for the development of the northern part of the Island of Borneo under certain concessions of territory and grants of sovereign rights thereover which had been acquired from the Sultans of Sulu and Brunei by Mr. Alfred Dent, of the firm of Dent, Brothers, and Co., of London.

That the character and objects of the Association, and the general features of its organization and of the powers which it proposed to exercise, were explained in the printed Statement presented by Mr. Dent to the Foreign Office in December 1878.

That Mr. Dent's application for a Charter was allowed to stand over pending the discussion which was going on at that time respecting the claim of Spain to sovereignty over the north-east coast of Borneo under a Treaty concluded with the Sultan of Sulu in July 1878.

That, in January last, Her Majesty's Government communicated to the Spanish Government (Further Correspondence, Part IV, p. 1) their decision not to recognize the alleged claim of Spain to sovereignty over that part of the Island of Borneo, and on the 12th April Mr. Dent renewed his application for a Charter (*ibid.*, p. 15).

That it was very desirable, for various reasons, that a decision on this application should be arrived at without further delay, and Sir Julian Pauncefote was to submit to us the following observations thereon.

That Mr. Dent and his associates had occupied the principal points in North Borneo under their grants for about two years, but they were unwilling to embark further capital in the undertaking unless it received the sanction and support of Her Majesty's Government.

That, apart from the advantages which might result from the opening up of new outlets for British trade, Her Majesty's Government considered it of great importance to the interests of this country that the territories in question should not fall into the possession of any other nation, and especially of Spain. That, on the other hand,

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they were unwilling to increase their responsibilities in the East by the annexation or protectorate of new territories, which, moreover, in the case of North Borneo, could hardly fail to excite political jealousies. That, under those circumstances, Her Majesty's Government were disposed to look favourably on Mr. Dent's application, as it appeared to them that the occupation of North Borneo by British subjects under a Charter of Incorporation such as was contemplated would greatly diminish, if not remove, the risk of that territory passing into foreign hands.

But a question had been raised whether the status of the Association, as the governing power over those territories under the grants from the Sultans of Sulu and Brunei, was one to which any valid exception could be taken in point of international law.

That, on that point, Sir Julian Pauncefote was to refer us to Acting Consul-General Treacher's despatch No. 3 of the 8th March, 1880 (Further Correspondence, Part IV, p. 17), and to the correspondence therein transmitted, from which we would perceive that Commodore Schufeldt, of the United States' navy, addressed a letter to the Sultan of Brunei (p. 20) in which he contended that the grant by the Sultan of the territories and powers acquired by the Association in Brunei was in disparagement of the Treaty between the Sultan and the United States, of which a copy formed Inclosure 6 of the despatch. That he admitted, however, that a similar grant "to any recognized Sovereign Power" would be free from objection.

That it would be observed that the Sultan of Brunei in his reply (p. 23) pointed out that the United States' Government had never made any objection to similar grants of territory and of sovereign powers to Sir James Brooke, who held and governed Sarawak (see Map annexed to Statement) under the same title as that under which Mr. Dent and his Association proposed to administer the territory ceded to them.

That, assuming that no exception could be taken in point of international law to the government of the territories in question being vested in a private Association under the suzerainty of the Sultans of Sulu and Brunei, it appeared to your Lordship that it was desirable that the Association should be incorporated under a Charter, which would recognize the validity of the grants made by the Sultans, and contain provisions enabling Her Majesty's Government to exercise a control over the operations of the Association, especially in regard to its relations towards foreign States and their subjects.

That, on that point, Sir Julian Pauncefote was to refer us to Articles 35, 36, and 37 of Mr. Dent's printed Statement (pp. 11-13), which set out concisely the nature of the support and facilities which the Association solicited from Her Majesty's Government, and also the conditions to which it offered to submit in consideration of the grant of a Charter.

That, as regarded Article 35 (*b*), your Lordship was not disposed to pledge Her Majesty's Government to afford any greater amount of protection or support to the Association than would be extended to it, according to circumstances, if it were simply incorporated under the Joint Stock Companies Acts.

That, as regarded Article 35 (*c*), your Lordship proposed the insertion in the Charter of a proviso similar to that contained in the Charter granted in 1847 to the "Eastern Archipelago Company" (of which a copy was annexed), whereby the Association would be bound to obey the directions of the Secretary of State in all matters concerning their relations with foreign States.

That, as regarded the general frame of the Charter, your Lordship presumed that it should be substantially in conformity with ordinary commercial Charters, Her Majesty's Government having no special powers to confer on the Association, and the object of its incorporation by Charter being really to declare the recognition by Her Majesty's Government of the validity of the cessions made to it by the Sultans, and to secure a power of control over its proceedings.

That Sir Julian Pauncefote was to request that we would take the accompanying papers into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion as to whether there was any objection, in point of law, to the grant of a Charter to the Association on the terms generally indicated in his letter, and subject to such other clauses and conditions as Her Majesty's Government might be advised to have inserted therein respecting the treatment of the native inhabitants, or any other matters.

That Sir Julian Pauncefote was to add, in conclusion, that Baron Overbeck, whose name frequently appeared in the correspondence, had retired from the undertaking, which was now entirely in the hands of British subjects.

We were also honoured with Sir Julian Pauncefote's letter of the 4th September instant, stating that he was directed by your Lordship to transmit to us the accompanying further papers, as marked in the margin,* from which it appeared that the Dutch authorities in Borneo contemplated claiming a boundary which would conflict with the claims of the projected Association.

In obedience to your Lordship's commands we have the honour to report—

No objection to the grant of the Charter of Incorporation to the Association, but suggests a modification of a clause in the proposed Charter.

That we see no objection in point of law to the grant of a Charter to the Association on the terms generally indicated in Sir Julian Pauncefote's letter, and subject to such other clauses and conditions as Her Majesty's Government may be advised to have inserted therein respecting the treatment of the native inhabitants or any other matters.

We would submit, however, for consideration whether it would be expedient to insert, as suggested, a clause similar to that contained in the Charter of the "Eastern Archipelago Company," whereby the Association would be bound to obey the directions of the Secretary of State in all matters concerning their relation with foreign States. It would be hardly possible, if such a term were contained in the Charter, for Her Majesty's Government to avoid responsibility to foreign Powers for the acts of the agents of the Association, and, having regard to the questions that have already arisen, we conceive it probable, if the Company act under the directions of the Government, serious conflicts would result.

We suggest that the clause as existing in the Eastern Archipelago Charter should be modified, and that, in the present instance, the Charter should contain a term that, if at any time the Secretary of State should think it necessary to dissent from, or object to, any of the dealings of the Company with any foreign State or Power, and should make any suggestion to the Company founded on such dissent or objection, the Company would at all times act in accordance with such suggestions, and that in default of compliance the Charter should be avoided.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## LIST OF PAPERS.

1. Mr. Dent's Statement and Map.
2. Copies of grants.
3. Charter of "Eastern Archipelago Company."
4. Further Correspondence. Part IV. (Affairs of Sulu, &c.)
5. Ibid. (July 1880.) Admiralty to Foreign Office, 19th April.
6. Foreign Office Memorandum by Sir E. Hertslet (4016).
7. Report of meeting at Westminster Palace Hotel.
8. Appendix thereto.
9. North-west Coast of Borneo. (Foreign Office, 4029.)
10. Report of Law Officers on Charter granted by King Thakobau of Fiji to certain Europeans (22nd July, 1871).

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# Chile.

## No. 7.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received January* 6.)

*Temple, January* 5, 1880.

My Lord,

Prohibition to ship guano at Peruvian port of Pabellon de Pica.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 25th November, stating that, with reference to our Report of the 25th

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* Mr. Lees, No. 10, Consular, June 16; ditto, No. 12, July 9; Mr. E. Dent, August 25, 1880.

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September upon the subject of British claims against Chile, arising out of the proceedings of Chilean ships of war on the Peruvian coast, he was directed by your Lordship to transmit to us a letter from Mr. James de Wolf,[*] claiming compensation for the loss caused to him through his ship, the "Latona," being compelled by a Chilean ship of war to leave the port of Pabellon de Pica on the 18th April last before she had completed her shipment of guano.

Claim of Mr. J. de "Wolf's "Latona."

That Lord Tenterden was to request that we would favour your Lordship with our opinion as to whether Mr. de Wolf's claim should be supported by Her Majesty's Government.

That Lord Tenterden was at the same time to remind us that, on the 2nd September, two despatches from Her Majesty's Minister at Lima,[†] on the subject of the proceedings of Chilean ships of war in the Pacific, were sent to us, by your Lordship's direction, for our opinion, and that those despatches were not alluded to in our Report of the 25th September, and had not been returned to the Foreign Office.

That your Lordship had delayed taking any action upon our above-mentioned Report until your Lordship should receive the further Report expected from us in answer to the letter from the Foreign Office of the 2nd September,[‡] and that your Lordship would be glad to be furnished with such further Report at our earliest convenience.

Claims of Messrs. Vaughan and Co. and Mr. Law.

We are also honoured with a letter from Sir Julian Pauncefote, dated the 9th December, stating that he was directed to forward to us two further letters[§] from Messrs. Vaughan and Co. and Mr. Law relative to losses sustained by them in consequence of the prohibition issued by the Chilean Government for vessels to load guano in Pabellon de Pica and Huanillos, and that he (Sir Julian Pauncefote) was instructed to request that those letters might be taken into consideration by us in conjunction with that inclosed in the letter of the 25th November.

In obedience to your Lordship's commands we have the honour to report—

These cases are all similar, and should not be supported.

That, in our opinion, the claim of Mr. James de Wolf should not be supported by Her Majesty's Government.

The "Monmouth," to which Mr. de Wolf refers, was a case of asserted false blockade. In the "Latona," however, it does not appear that the Chilean officer in any way mentioned, or referred to, blockade.

The Chilean vessel, so far as appears from Mr. de Wolf's letter, came into the Peruvian port for a legitimate purpose, namely, to destroy the enemy's property, and that the warning given to the "Latona" was to protect her from any danger or inconvenience to which she might be exposed during the military operations of the Chilean man-of-war.

The circumstances under which the vessels mentioned in the letters of Messrs. Vaughan and Co. and Mr. Law were compelled to leave the Peruvian ports in which they were appear to be precisely similar to those under which the "Latona" was forced to sail from the port of Pabellon de Pica. The Report, therefore, we have made in the case of the latter vessel, is applicable to the claims of the owners of the vessels mentioned in the letters just referred to.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 8.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received February* 11.)

*Temple, February* 11, 1880.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th instant, stating that your Lordship would be glad if we would favour you with our opinion, as early as we could conveniently do so, on the following question:

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[*] November 14, 1879.

[†] Mr. St. John, Nos. 96 and 100, July 21, 1879.

[‡] Memorandum; Law Officers' Report on Foreign Office letter of September 2, sent in to Foreign Office 29th November ultimo.

[§] Mr. D. Law, November 28; Messrs. Vaughan and Co., December 5, 1879.

Chilean declaration as to export of guano from Province of Tarapaca by Peruvian bondholders.

That the Chilean Minister had addressed to your Lordship the accompanying letter,[*] inclosing a copy of a Declaration of the conditions on which his Government were disposed to allow the Peruvian bondholders, during the continuance of the war between Chile and Peru, to load and export guano from the deposits in the province of Tarapaca, specially hypothecated to the bondholders by the Peruvian Government, but at present in the military occupation of Chile.

That he was to inclose a printed Memorandum[†] showing the rights of the bondholders under their contracts with the Peruvian Government, and copies of three telegrams[‡] recently received from Her Majesty's Representative at Lima.

Rights of Chile.

That your Lordship apprehended that Chile, in the exercise of her belligerent rights, might dispose of the products of any part of the enemy's territory in her military occupation, though she cannot alienate the territory itself until a Treaty of Peace and Cession had perfected her inchoate title thereto. That if that be the case your Lordship would propose to reply to Señor Blest Gana's letter, to the effect that Her Majesty's Government have learnt with satisfaction that the Chilean Government have so promptly given effect to their assurance that the rights of the bondholders would be respected, and that they have made arrangements which they understood were acceptable to the latter respecting the disposal of the guano from the deposits in the Province of Tarapaca now in their military occupation. That two letters from Sir C. Russell, M.P., Chairman of the Bondholders' Committee, were likewise inclosed therewith.[§]

Proposed reply to Chilean Government.

Sir Julian Pauncefote was to request that we would be good enough to inform your Lordship whether we concur in the view above stated as to the rights of Chile, and whether there was, in our opinion, any objection to the proposed reply to Señor Blest Gana's communication.

In obedience to your Lordship's commands we have the honour to report—

Concur in view as to rights of Chile, and approve of proposed reply.

That we concur in the view stated in the letter of Sir Julian Pauncefote as to the rights of Chile, and we see no objection to the proposed reply to Señor Blest Gana's communication.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 9.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 5.)

*Temple, June* 4, 1880.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th May last, stating that on the 14th June last the Law Officers of the Crown favoured the Marquis of Salisbury with their opinion as to the steps to be taken by Her Majesty's Government with a view to the protection of British life and property during the conflict between the forces of Chile and Peru.

Conduct by Chile of war with Peru. Destruction of private property at Mollendo. Italian proposal for joint representations.

That the Italian Ambassador at this Court, as we would perceive by the accompanying correspondence,[¶] had now, on behalf of his Government, called the attention of Her Majesty's Government to the proceedings of the Chilean Government in ordering the bombardment of all Peruvian fortified towns and the destruction of railways and private property, the town of Mollendo, as it appeared, not only from information received by the Italian Government, but from the Report of the British Vice-Consul at that place, having been given over to pillage by the Chilean troops, whilst the custom-houses had been sacked and the property of neutrals carried off.

That, under those circumstances, the Italian Government had invited that of Her Majesty to co-operate with them and with other neutral Powers with a view to induce the Chilean Government to put an end to such a state of things; and in transmitting to us the accompanying draft of reply, which your Lordship proposed to return to the Italian representation, Sir Julian Pauncefote was to request that we would take it into

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[*] Señor Blest Gana, January 31, 1880.

[†] *Qy*, Confidential Print No. 3281, p. 14.

[‡] Mr. St. John (Telegraphic), January 17 and 24, and February 2, 1880.

[§] Sir C. Russell, February 2 and 3, 1880.

[¶] General Menabrea, April 27; Pro-memoriâ, April 27; draft answer to, April 27; Law Officers, June 14; to Mr. St. John, No. 28; to Mr. Hay, No. 25; Mr. St. John (received April 4); Mr. Pakenham, No. 16, February 26; Mr. St. John, No. 35, March 22; ditto, No. 44, April 7, 1880.

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our consideration with the correspondence which accompanied it, and that we would favour your Lordship with our opinion whether it was right and proper under all the circumstances of the case.

In obedience to your Lordship's commands we have the honour to report—

Approving reply to Italian proposal.

That the reply which your Lordship proposes to return to the Italian representation is, in our opinion, right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Letter from Earl Granville to General Menabrea.*

M. l'Ambassadeur, *Foreign Office, June* , 1880.

I have the honour to acknowledge the receipt of the *Pro-memoriâ* which your Excellency left with me on the 28th ultimo, referring to the accounts which had reached your Government, through the French Chargé d'Affaires at Santiago, of the orders given by the Chilean Government to bombard all Peruvian fortified towns, and to destroy the railways and even private property; and stating that it appeared from telegrams received that Mollendo and other places on the Peruvian coast had already been pillaged and burnt, and that Callao was blockaded and threatened with bombardment.

Under these circumstances, your Excellency's Government, as appears from your Memorandum above referred to, invites the co-operation of the neutral Powers in some joint action with a view to putting a stop to such a state of things, and desires to know whether Her Majesty's Government will instruct their Representative to unite with those of other countries interested in a protest against the proceedings of the Chilean Government.

I have now to state to your Excellency that the only official documents of the Chilean Government on the subject of the conduct of the war which Her Majesty's Government are acquainted with consist of two letters addressed by Colonel Sotomayor to the Minister of War,* and dated Pisagneo, the 28th January and 3rd February respectively.

Although Her Majesty's Government are not prepared to say that the terms of these letters justify diplomatic remonstrance, recent reports have been received from Her Majesty's Minister at Lima† of the action of the Chilean military commanders, and of the conduct of the Chilean troops at Mollendo, which disclose such excesses on their part as, in the opinion of Her Majesty's Government, to call for immediate remonstrance from foreign Powers, not only on the score of humanity, but for the protection of the rights of neutrals.

It appears from the accounts given by Her Majesty's Consul at Mollendo, a copy of which is inclosed,‡ that the Chilean troops, with the sanction of their officers, not only committed the offences therein described against defenceless and unresisting inhabitants, but sacked the contents of the custom-houses, which were well known to contain the property of neutrals.

Her Majesty's Government are therefore quite ready to join with the Government of Italy and any other foreign Power in addressing, either collectively or separately, a remonstrance to the Chilean Government against the action of their troops at Mollendo, and a protest against a repetition of acts in violation of the usages of civilized warfare, and also a warning that indemnity will be demanded for the wanton destruction of the life and property of neutrals.

I have, &c.

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* In Mr. Pakenham's No. 16 of February 26, 1879.
† Mr. St. John, No. 35, March 22, 1880.
‡ In Mr. St. John's No. 35 of March 22, 1880.

## No. 10.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 12.)*

My Lord, *Temple, June* 11, 1880.

British subject named Scott captured in attempting to blow up a Chilean iron-clad.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th June instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence as marked in the margin* relative to the case of a British subject named Scott, who, together with two other persons, was captured by the Chileans while on an expedition having for its object the attaching a torpedo to a Chilean iron-clad at Iquique.

That we would observe that no public Commission was in the possession of these persons at the time of their capture, but that there was found on one of them a written promise addressed to them on the part of the Peruvian Government guaranteeing to them the sum of 10,000*l.* for each Chilean iron-clad they could contrive to blow up.

Question of piracy.

That he was to request that we would favour your Lordship with our opinion as to whether the possession of this document relieves the attempt in which Scott and his companions were engaged from the character of piracy which has been affixed to it, and whether Her Majesty's Government would be justified in urging the Chilean Government to take a more lenient view of the case.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, Her Majesty's Government would not be justified in urging the Chilean Government to take a more lenient view of the case.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 11.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December 17.)*

My Lord, *Temple, December* 16, 1880.

Claim of West Coast of America Telegraph Company against Chilean Government for cutting their cables during war with Peru.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 5th ultimo, stating that he was directed by your Lordship to transmit to us the correspondence† relative to an application made by the West Coast of America Telegraph Company for the official support of Her Majesty's Government in preferring a claim against the Chilean Government for compensation in respect of the losses they had sustained in the cutting of their telegraph cables off the coast of Peru by the Chilean ships of war engaged in hostile operations off that coast.

That the cables of the Company were laid under two independent concessions from the Government of Chile and Peru respectively, empowering the Company to establish telegraphic communication between Callao and Valparaiso, with intermediate stations (see printed copy of concessions).

That the cables cut by the Chilean Admiral were those connecting the Peruvian ports of Autofagasta, Iquique, Arica, Mollendo, and Cliarillos, and that the Admiral acted, it was presumed, in the exercise of a belligerent right, claimed by Chile during the war, and in order to prevent the transmission between those ports of messages which might have a prejudicial effect upon the Chilean arms.

That it appeared, however, that the Company, besides disputing the right of the Chileans to cut the cables, contended that the place and manner of the cutting entailed a wanton and unnecessary injury to their property.

That the Company, moreover, represented that it had been intimated to one of their agents that the Chilean Government was disposed to recognize the claim and make compensation privately, but that no progress having been made towards such a result, they had found it necessary to lay their claim before Her Majesty's Government.

That Lord Tenterden was to refer us to the accompanying Report of the Law

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* Mr. James Buck, January 13; to Mr. Buck, January 20; to Mr. Pakenham, No. 5, January 21; Mr. Pakenham, No. 23, March 23, 1880.

† West Coast of America Telegraph Company, August 27; to West Coast of America Telegraph Company, September 6; West Coast of America Telegraph Company, September 30; Mr. Kendal, September 4; to Mr. Kendal, September 13, 1880.

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Officers of the Crown, dated the 19th September, 1870, as to the right of a belligerent to disable telegraph cables that might be used by an enemy for the conveyance of military messages.

That Lord Tenterden was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether Her Majesty's Government would be justified in giving any support, official or unofficial, to the claim of the Company.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government may address Chilean Government unofficially on the subject.

That, as the Chilean Government have expressed their intention to compensate the Telegraph Company for the losses sustained by them owing to the injury to their cables, we are of opinion that this is a case in which Her Majesty's Government may properly appeal, unofficially, to the Chilean Government to carry out their intention promptly, but we are of opinion that such appeal should not, without further information, be made officially.

The principles of International Law which bear upon the uses, in time of war, of submarine telegraphs, have not yet been publicly declared, but the principles which have governed analogous cases must, in our opinion, be applied as far as they are applicable to the new circumstances which have arisen. Probably the nearest analogy is to be found in the case of a neutral ship employed to carry messages to a belligerent.

If detected in the act such a vessel is liable to seizure.

And the right to search neutral vessels suspected of carrying despatches is supposed to afford to a belligerent, who exercises due vigilance, complete protection.

In our opinion, a belligerent is entitled to do all such acts as are necessary for the purpose of affording absolute security against the possibility of messages being conveyed in time of war by means of a cable serving as a channel of communication between different parts of his adversary's territory.

What are the acts necessary to secure such protection must depend upon the particular circumstances of each case as it arises. But we think that if the belligerent injures the property of the neutral, to an extent beyond what is reasonably necessary, he may justly be called to account in respect of such excess.

It would seem that in the present case the acts done were, to some extent, wanton, and in excess of what was necessary, especially if it be the fact, as stated in Mr. Bannatyne's letter, that the ports between which the cable was laid were, in fact, in the hands of the Chileans.

Therefore, whilst we hesitate, without fuller information, to advise your Lordship to prefer the claim officially, we think that the circumstances are such as to warrant an unofficial appeal to the Chilean Government, as we have suggested.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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## China.

### No. 12.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 12.)

My Lord, *Temple, August* 11, 1880.

Blockade of Treaty ports in event of a Russo-Chinese war.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st July last, stating that your Lordship had had under your consideration for some time past the following question in connection with the difficulties which had arisen between Russia and China:

That Her Majesty's Minister at Peking had applied for instructions[*] as to the course he should pursue in the event of war breaking out between those Powers as regards any attempt which might be made by Russia to blockade the Treaty ports of China.

That the question was one of grave importance to this country, having regard to the magnitude of British trade with China, which was estimated at not less than 50,000,000*l*. a-year.

That the foreign settlements at the Treaty ports were established on concessions of land rented from the Chinese Government, but although those concessions remain Chinese territory the foreign community residing there enjoyed by Treaty, as we were aware, complete ex-territoriality; that at Shanghae, for instance, they constituted by means of a Municipal Board and Consular Courts what might be termed *imperium in imperio*, and that the Government and Administration of the foreign Settlement was entirely in the hands of the foreign community and the authorities of their respective Governments.

That your Lordship would be glad to know whether, in case of war, the belligerent right of Russia to blockade the Treaty ports would be affected by such ex-territoriality. That if not, Her Majesty's Government might be disposed to consider the expediency of endeavouring to bring about some amicable understanding on the subject between Russia and the Treaty Powers having similar interests at stake, in anticipation of such a contingency.

That Sir Julian Pauncefote was to request, therefore, that we would favour your Lordship with our opinion on that question.

That he was to inclose a Memorandum by the Librarian of your Lordship's Department on the blockade of Canton in 1857.[†]

In obedience to your Lordship's commands we have the honour to report—

Right of Russia to blockade these ports not affected by ex-territoriality of foreigners.

That, in our opinion, the Russian Government may lawfully blockade the Treaty ports in China, notwithstanding the ex-territoriality of foreigners in those ports.

Should come to an understanding with Russia.

In view, therefore, of the existing relations between Russia and China, it will be most expedient that the Treaty Powers should come to an understanding with Russia as to the exercise by Russia of her right to blockade the Treaty ports.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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### No. 13.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 17.)

My Lord, *Temple, August* 17, 1880.

Warning given by Sir Thomas Wade to Colonel Gordon on his entering the service of the Emperor of China.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st July last, stating that he had the honour to transmit to us, by direction of your Lordship, a copy of a telegram[‡] received from Her Majesty's Minister in Peking, in which he reported that he had felt it his duty to warn Colonel Gordon, who was then at Tientsin, presumably in the service of the Chinese Government, and who had telegraphed to the War Office his resignation of his Commission in Her Majesty's army, that, if war breaks out, "he must quit Chinese service or change nationality."

As to the prosecution of Colonel Gordon for violation of the Foreign Enlistment Act.

That Sir Thomas Wade referred to section 6, paragraph 2, of Her Majesty's Order in Council for China and Japan (of which a copy was annexed), and, therefore, probably considered that Colonel Gordon should be prosecuted for a violation of the Foreign Enlistment Act in the event of his disregarding the warning which he had given him.

Precedent during the Russo-Turkish war in 1878 of British Consular jurisdiction in the Levant.

That Sir Julian Pauncefote was to inclose (in original) two Reports[§] of the Law Officers of the Crown on a similar question which arose in 1878, during the Russo-Turkish war, with reference to the exercise of jurisdiction by Her Majesty's Consular Courts in the Levant under Her Majesty's Order in Council of the 12th December, 1873

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[*] Sir T. Wade, Telegraphic, June 11 and July 14, 1880.

[†] July 15, 1880.

[‡] Sir T. Wade, Telegraphic, July 23, 1880.

[§] Sir H. Giffard and Dr. Deane, February 27; Sir J. Holker, February 27, 1878.

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(of which a copy was also annexed), in cases of infraction by British subjects in Turkey of section 4 of the Foreign Enlistment Act.

That we would observe that in both those Reports Her Majesty's Government were advised that Her Majesty's Consular Courts should not exercise jurisdiction in such cases.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to the instructions which should be given to Sir Thomas Wade on this point.

In obedience to your Lordship's commands we have the honour to report—

British subjects entering service of Emperor of China during war without the Queen's license may be prosecuted under section 6 of Order in Council, but inexpedient to exercise jurisdiction over them in such cases.

That section 6, paragraph 82, of Her Majesty's Order in Council for China and Japan in terms constitutes the taking part by a British subject without license of Her Majesty in any operation of war in the service of the Emperor of China, an offence for which any person may be tried and punished by a British Court in China.

This case differs in that respect from the one, somewhat similar, on which the late Law Officers advised. But the difficulties in the way of exercising the jurisdiction and the inconveniences which might arise from its exercise, pointed out in their Reports, apply equally to the present case.

Jurisdiction in certain cases might be exercised.

At the same time, we do not think it would be desirable to lay down by anticipation that the jurisdiction is one which ought not, under any circumstances, to be taken advantage of. We can conceive cases in which such an exercise of jurisdiction would be both expedient and necessary.

Proceedings not to be taken without communicating with Home Government.

But we think Sir Thomas Wade may properly be instructed that proceedings for offences of the nature referred to should not be taken without first communicating with the Home Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 14.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 13.)

My Lord, *Temple, September* 13, 1880.

Appointment of Chinese Consul at Singapore, and the duties assigned to him, in connection with the issue of certificates of registry of vessels trading under Chinese flag.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd August last, stating that he was directed by your Lordship to transmit to us therewith a letter from the Colonial Office,* inclosing copies of two despatches from the Governor of Singapore in regard to the appointment of a Chinese Consul to reside in that Colony, and Sir Julian was to call our attention to the question raised in the earlier of Sir F. Weld's despatches as to the duties assigned to the Chinese Consul at Singapore in connection with the issue by him of certificates of registry for vessels to trade under the Chinese flag in and out of the ports of the Colony.

That Sir Julian Pauncefote was to request that we would take these papers into our consideration and favour your Lordship with our opinion as to whether the grant of Chinese registers to vessels owned by Chinese, by the Chinese Consul at Singapore, could be objected to in point of international law.

That Sir Julian was to observe that, under the "Merchant Shipping Act, 1873," the power to declare foreign ports to be ports of registry was limited to ports in which Her Majesty exercises ex-territorial jurisdiction. That, on the other hand, as pointed out by the Chinese Consul in his letter of the 19th September, British Consuls at all foreign ports were authorized by section 54 of the "Merchant Shipping Act, 1854," under certain circumstances, to grant provisional certificates of British registry to foreign vessels transferred to British subjects.

That, in obedience to your Lordship's commands, we have the honour to report—

The certificates granted by the Chinese Consul need not be objected to if not in substitution for the regular certificate of registration.

That, from the information contained in Sir F. Weld's despatches, we do not gather with so much distinctness as we could wish the nature of the certificates, or of the ships or vessels to which certificates are granted by the Chinese Consul at Singapore.

If these certificates are merely provisional, the practice followed by British Consuls under the Merchant Shipping Act would prevent Her Majesty's Government from objecting to the use of similar documents by the Chinese.

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* August 6, 1880.

If the certificates are intended to be not merely provisional, but in substitution of the regular certificate of registration, the practice of the Chinese Government in this respect may properly be objected to as inconsistent with and going beyond the usage of nations.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 15.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 29.)

My Lord, *Temple, September* , 1880.

Action against Mr. H. A. Giles, Acting Consul at Amoy. In *re* the British ship "Cheang Hock-kian."

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to us the despatches noted in the margin,* and a telegram referring thereto from Mr. H. A. Giles, the Acting British Consul at Amoy, in China, against whom an action for the recovery of 5,000*l.* and damages had been instituted in Her Majesty's Supreme Court at Shanghae, on account of his proceedings in the matter of the British steamer "Cheang Hock-kian," which were detailed in his despatch No. 15 of the 28th July.

That it appeared that the steamer in question being about to carry Chinese passengers from Amoy to Singapore had complied with all the formalities of the "Chinese Passenger Act, 1855," and that the master had obtained the necessary emigration papers. But that it was discovered that he had subsequently taken on board a large number of additional passengers in excess of the number specified in the emigration officers's certificate. That thereupon the Acting Consul, with the assistance of Commander Bridger, of Her Majesty's gun-boat "Sheldrake," prevented the departure of the vessel, caused her to be searched (section 6 of the Act), and, on a subsequent day, proceedings against the master were held before the Acting Consul "for breach of the Chinese Passenger Act, 1855," in being about to proceed to sea with 1,003 passengers, whereas his emigration papers only warranted the conveyance of 574. That Mr. Giles, considering that the charge had been established, and that the master had failed to show cause why the vessel "should not be attached for confiscation by the Vice-Admiralty Court at Shanghae," gave the master and owners the option of handing to him a sum of 5,000*l.*, on payment of which the vessel would be released.

That the money was paid. But that the master having afterwards obtained legal advice in Hong Kong, the further proceedings took place at Amoy before the Acting Consul, which were reported in his despatch No. 17, Confidential, and that on the 20th instant Mr. Giles addressed a telegram to Lord Granville, of which a copy was inclosed, announcing that an action had been commenced against him in the Supreme Court at Shanghae, and asking for information on certain questions of law.

That the proceedings of Mr. Giles appeared to have been altogether illegal.

That, in the first place, no offence was committed which, under the provisions of the Act, rendered the vessel liable to forfeiture; secondly, that such forfeiture could only be declared or a fine substituted in lieu thereof (section 12) by the Courts mentioned in section 10, and that the Vice-Admiralty Court of Shanghae had no such power under the Act.

That as regarded the first question asked by Mr. Giles in his telegram, Sir Julian was to observe that under section 37 of the Order in Council for China and Japan the Supreme Court at Shanghae had concurrent jurisdiction with the Provincial Courts all over China (see also section 160).

That as regarded the second question, it was presumed that section 11 of the Act afforded no protection to Mr. Giles against the claim for the restitution of the 5,000*l.*

That as regarded the third question, Sir Julian was to refer to section 10 of the Act, whereby, if an offence had been committed rendering the vessel liable to forfeiture,

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* Mr. Giles, No. 11, July 15; ditto, No. 15, July 28; ditto, No. 17, August 12; ditto (Telegraphic), September 20, 1880; Chinese Passenger Act, 18 and 19 Vic., c. 104, 1855; Order in Council for China and Japan, March 9, 1865 (No. 1354).

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she might be detained and sent to Hong Kong, which was the nearest port at which there was a Vice-Admiralty Court competent to try the case; but that it did not appear that any of the offences specified in section 8 which alone rendered a vessel liable to forfeiture were committed on that occasion.

That Sir Julian was to request that we would take all the papers into our consideration, and favour your Lordship at our earliest convenience with our opinion and advice on the various points raised in this case, and also as to the course which should be pursued under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

1. That, in our opinion, Mr. Giles had no justification for seizing and detaining the vessel "Cheang Hock-kian," and for receiving the 5,000*l.* under the circumstances mentioned in his despatch of the 28th July, and that sum must at once be repaid to the owners.

2. That Mr. Giles cannot claim immunity or protection under the 11th section of the Statute.

3. That Mr. Giles cannot now attach the vessel, or send her in for adjudication and confiscation.

4. If, after the 5,000*l.* has been repaid to the owners of the vessel, the action should be proceeded with, there seems no course open to Mr. Giles but to compromise or defend it, and we think, considering the real and intended breach of the Statute by the master and owners of the vessel, the damages sustained by them should be regarded as small, if not merely nominal.

5. We are of opinion that the Court at Shanghae has jurisdiction to try the action against Mr. Giles.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# Cyprus.

## No. 16.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January 16.)*

*Temple, January* 16, 1880.

My Lord,

Cyprus. Trial of Sawas Christodoulos for murder.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo,* stating that, with reference to the last paragraph but two of his letter of the 19th ultimo* respecting the status of the man Sawas Christodoulos, sentenced to death by the High Court of Justice in Cyprus, he had the honour to transmit to us, by direction of your Lordship, a copy of the Treaty of the 27th May between Greece and Turkey,† the XXIIIrd Article of which stipulated that no subject of one of the Contracting Parties should be withdrawn from the legitimate authority of the other, or be protected by passports or patents.

We are also honoured with a letter from Sir Julian Pauncefote, dated the 31st ultimo, stating that he was directed by your Lordship to acknowledge the receipt of our Report of the 29th ultimo* respecting the trial before the High Court of Justice in Cyprus of the man Sawas on a charge of murder, and expressing our opinion that, assuming the accused to be an Ottoman subject, the trial was not warranted by law.

That Sir Julian Paunceforte was to state to us that your Lordship would be glad if we would have the goodness to favour you, for the future guidance of the Government of Cyprus in cases between Ottoman subjects and persons of other nationalities, with our opinion on the second question laid before us in his (Sir Julian Pauncefote's) letter of the 19th ultimo,* namely, whether, assuming Sawas to have been properly treated as an Hellenic subject, his trial before the High Court was warranted by law, having regard to the provisions of sections 10 and 108 of the High Court of Justice Ordinance.

That Sir Julian Pauncefote was to return to us, for convenience of reference, the papers inclosed in his above-mentioned letter, and to add to them the accompanying further despatch, since received from Her Majesty's High Commissioner in Cyprus, inclosing copies of the record of proceedings in the case, and of the notes of evidence given before the High Court of Justice, and that he was to request that we would favour your Lordship with any observations which we might have to make thereon.

That, in the meanwhile, the High Commissioner had been instructed by telegram to report fully on the nationality of Sawas.

We have also to acknowledge the receipt of a further letter from Sir Julian Pauncefote, bearing date the 13th instant, stating that, with reference to his letter of the 31st ultimo, asking to be favoured with our opinion on the construction of sections 10 and 108 of the Ordinance* establishing the High Court of Justice in Cyprus, he was directed by your Lordship to transmit to us therewith copy of a telegram† which had been received from General Biddulph, Her Majesty's High Commissioner in that island, asking how he should proceed in the case of a British subject charged with a criminal offence against an Ottoman subject, and that, in reply, General Biddulph had been informed by telegram that the point in question was under our consideration; and that instructions would be sent to him upon receipt of our Report.

That Sir Julian Pauncefote was to request that we would be good enough to take the matter into consideration, and to favour your Lordship, at our earliest convenience, with our opinion as to the reply which should be sent to General Biddulph's inquiry.

We are also honoured with a further note from Sir Julian Pauncefote, dated the 15th instant, inclosing further papers with reference to the question then before us.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

Jurisdiction of Turkish Tribunals under Capitulations.

That we have carefully considered the terms of the Capitulations between Turkey and various foreign States, and have come to the conclusion that, notwithstanding these Capitulations, the Turkish Tribunals have the sole jurisdiction to try a foreigner for an outrage committed against a Turkish subject in any place under the sovereignty of the Porte.

Trial before High Court not warranted by law, whether nationality be British or foreign.

We are therefore of opinion that, even assuming Sawas to have been an Hellenic subject, his trial before the High Court was not warranted by law, having regard to the provisions of sections 10 and 108 of the High Court of Justice Ordinance.

This opinion also applies to offences committed by British subjects, in the telegram transmitted by General Biddulph.

If our view be correct, the nationality of Sawas is immaterial.

And we do not think it necessary to trouble your Lordship with any observations upon a trial which took place before a Court which had no jurisdiction.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 17.

*Memorandum by the Lord Chancellor.*

Trial of Sawas. Objects to his deportation. He must be tried by the Ottoman Tribunal.

I DO not like the idea of Sawas being deported. The step would be much criticized, and it would be a difficult one to justify. I see nothing for it but to let him be tried by the Ottoman Tribunal. He has been tried *coram non judice*. He may still be tried *coram judice;* and if he is a Greek, and has a right to remove his case, and applies to do so, it will be removed; if not, it will go on.

(Signed) CAIRNS.

5, *Cromwell Houses, S.W., January* 29, 1880.

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* See Confidential Print No, 4319.

† Treaty of May 27, 1855, "State Papers," vol. lvi, p. 1381.

* Confidential Print No. 4246.

† No. 4, Telegraphic, January 12, 1880.

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## No. 18.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received February* 11.)

*Temple, February* 11, 1880.

My Lord,

Trial of Sawas. High Court had no jurisdiction. Ottoman Court should deal with him.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd instant, stating that, with reference to our Reports of the 29th December last and the 16th ultimo, respecting the trial of Sawas for murder before the High Court of Justice in Cyprus, he had the honour to transmit to us, by direction of your Lordship, a further despatch* and a telegram from the High Commissioner of Cyprus.

That Sir J. Pauncefote was, in the first place, to refer us to a memorandum by the Legal Advisers of the Cyprus Government, inclosed in the despatch No. 33, commenting on the statement of the case presented to us in his letter of the 19th December last.

That they observed that the case was not, as therein stated, transferred from the Ottoman Court to the High Court by the Judicial Commissioner *proprio motu*, but that the Ottoman Court took the preliminary examination, and "committed the accused to the Court which, in consequence of his own averments, appeared to it to be the Court of proper jurisdiction." That on that point Sir J. Pauncefote was, in the first place, to refer us to the letter of Mr. Cobham, Commissioner at Larnaka, to Mr. Phillips, Judicial Commissioner, of the 16th October, 1879, and to Mr. Phillips' reply of the 18th October—both of which would be found at p. 212 of the printed correspondence.†

That those letters showed that the case was transferred to the High Court with the approval of Mr. Phillips, on the application of Mr. Cobham.

That there was no provision in the High Court of Justice Ordinance whereby, in a criminal case, an Ottoman Court could take the preliminary examination and commit a prisoner for trial before the High Court. That it was conceived that the only legal mode in which a case could pass from the one Court to the other was by transfer, under section 108;‡ and that, even if the High Court of Justice had jurisdiction to try the case of Sawas, the proper course would have been to commence *ab initio* by taking the preliminary examination in the High Court, as provided by section 165 of the Ordinance.‡

That the Legal Advisers, in their memorandum, also expressed their regret that the attention of the Law Officers was not directly called to the fact "that the prisoner's exception to the jurisdiction of the Court was not taken until after he had been convicted and sentenced."

That on that point Sir J. Pauncefote was to observe, in the first place, that it was considered that, if the Court had no jurisdiction, the proceedings were null and void, whether the accused took exception to the jurisdiction or not; and in the next place it appeared, from the report of the trial furnished by the Judicial Commissioner, that the prisoner's counsel did formally protest against the proceedings, "not knowing to what extent may be the right of the Court to try and sentence a Greek subject" (see Protest, p. 215).

That in General Biddulph's telegram No. 8 of the 31st ultimo it was stated that the Greek Vice-Consul had taken no objection to the jurisdiction of the Court, but only to the capital sentence; and it was urged that the best course would be simply to commute the sentence.

That on that point Sir Julian Pauncefote was to observe that if, as we had reported, the proceedings were not warranted by law, the trial was *coram non judice*, and the sentence was a nullity, and cannot, therefore, be commuted.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether the points raised in the two papers under consideration might properly be answered in the sense of the foregoing observations thereon, and whether instructions should be given to the High Commissioner to follow, in the case of Sawas, the course indicated in our Report of the 29th December,§ namely, to leave him to the Ottoman Courts to deal with.

That the previous papers in the case, which had already been before us, were therewith returned for convenience of reference.

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* Major-General Biddulph, No. 33, January 29, 1880.

† Confidential Print No. 4319.

‡ Confidential Print No. 4246.

§ No. 246 of Confidential Print No. 4319.

In obedience to your Lordship's commands we have the honour to report—

That we adhere to our former opinion that the High Court had no jurisdiction, and that instructions may properly be given to the High Commissioner that he should leave Sawas to the Ottoman Court to deal with.

In reference to the further papers, we should observe that assent will not give jurisdiction, and that whether the exception to the jurisdiction was taken before or after conviction and sentence is immaterial.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 19.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 28.)

*Temple, April* 27, 1880.

My Lord,

Project of Judicial Reform in Cyprus.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th March last, stating that, on the 24th February, 1879, he transmitted to us, by direction of your Lordship, a memorandum* entitled, "Project of Judicial Reorganization and Reform for the Island of Cyprus," and he requested that we would favour your Lordship with our opinion thereon.

That our reply, dated the 23rd April following, contained some remarks on the High Court of Justice Ordinance, a copy of which accompanied the memorandum, but omitted to notice the Project of Judicial Reform which had been submitted for our consideration.

That it had only recently been discovered that a note which Sir Julian Pauncefote addressed at the time to Dr. Deane, requesting him to bring the above circumstance to your notice, had miscarried, and in the meanwhile it had not been possible to make any progress in the matter of judicial reform in Cyprus.

That Sir Julian Pauncefote was now directed by your Lordship to transmit to us another copy of the printed memorandum in question, and to request that we would be good enough to favour your Lordship with our opinion on the proposals therein contained.

That Sir Julian was also to request that we would be good enough in connection therewith to consider a further memorandum† on the same subject by Mr. L. Phillips, the present Legal Adviser to the Government of Cyprus, which Sir Julian had transmitted to us in his letter of the 23rd October last, and of which an additional copy was then inclosed.

That we would observe, from the various documents submitted to us, that Cyprus possessed a complete and well-digested Code of laws, but that the procedure of the Turkish Courts was in some respects defective, not only in the matter of evidence, and that the reform which was most urgently called for was in the constitution of the native Bench.

Native Judges.

That it might be desirable, therefore, before attempting any larger measure of reform, to try the effect of replacing the present native Judges by a smaller number of qualified and salaried native Judges, and to provide for an appeal from the decision of the highest native Court to the High Court of Justice.

That for the purpose of such appeal the Judicial Commissioner might be empowered to sit with a certain number of native Judges, and their decision would be subject to a further appeal to the Judicial Committee of the Privy Council.

That the local Legislature might by degrees remedy the defects complained of in the procedure of the native Courts, and the working of that system for a time would, perhaps, afford more practical means than are at present possessed of judging whether it be really necessary or expedient to substitute new Codes of laws for those at present in use, and to subvert to such an extent as was proposed the existing system of judicial organization in the island.

That Sir Julian Pauncefote was to request that we would take the above observations into consideration in connection with the general question of judicial reform in Cyprus, as to which your Lordship would be glad to be favoured with our opinion at our early convenience.

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* Confidential Print No. 4004, No. 389.

† Confidential Print No. 4319, No. 149.

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In obedience to your Lordship's commands we have the honour to report—

As to continuance of Nizam Courts.

That we have carefully considered the memorandum of Mr. L. Phillips, whose local experience and practical knowledge entitle his opinion to the greatest weight. But we are unable to agree with him in his recommendation that the Nizam Courts should be continued. The "scant material at hand from which to select Judges for those Courts, and the difficulty of finding men of known probity, broad intelligence, and who, if not learned, possess the capability of learning," seem to us strong reasons against the continuance of these native Courts.

District Courts.

Temyz Court.

If, however, it is deemed expedient to continue these Courts, the jurisdiction of the District Courts in civil cases should be limited. The jurisdiction of the Temyz Court in civil causes and in criminal cases should also be limited, and in the latter class of cases should be neither final nor exclusive.

Appointment of Judges.

The whole system of electing Judges should at once be abolished, and the appointment during good behaviour given to the Executive.

Fusion of British and Cypriot divisions and system of appeal.

In reference to the "Project of Judicial Reorganization and Reform for the Island of Cyprus," we agree with the views of Sir Henry Maine, and particularly on this point, that the fusion of the British and Cypriot division should be kept in view as the ultimate object to be obtained. From both divisions, and from the fused division, there should be an appeal, in the first instance, to a Court in the island, and in the last resort to the Privy Council, or the Tribunal which will, in due time, take over the appeal jurisdiction of the Privy Council.

Constitution of Appeal Court.

The constitution, however, of the Appeal Court in the island seems to us to require very great consideration. It does not seem probable that for many years any number of native qualified Judges would be obtained, and if this experiment of a native Judge in the Court of Appeal is to be tried, we suggest that not more than one native should at first be made a member of that Court.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 20.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received April* 28.)

*Temple, April* 27, 1880.

My Lord,

High Court of Justice in Cyprus.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th March last, stating that, by the direction of your Lordship, he transmitted to us a copy of the Ordinance of the Legislature of Cyprus* establishing Her Majesty's High Court of Justice in that island, and to request that we would be good enough to favour your Lordship with our views on the following points:—

That a recent trial for murder before the High Court of Justice had directed the attention of your Lordship to the provisions of the Ordinance which regulated the procedure in capital cases.

That we would observe such cases were tried by a single Judge sitting with not less than two Assessors (section 16). That those Assessors had no voice in the decision and sentence of the Court, though they might record their objections thereto (section 7).

That your Lordship had reason to believe that the power thus vested in a single Judge to decide a capital case was viewed with apprehension by the foreign residents in Cyprus, and your Lordship was disposed to think that the Ordinance should be amended in that respect.

That though trial by jury could not, at all events for the present, be conveniently introduced in Cyprus, provision might be made for the attendance in capital cases of a larger numbers of Assessors, who should decide questions of fact by the majority, a casting vote being reserved to the Judge in case the votes should be equally divided; or provision might be made for increasing the judicial staff and for the trial of capital cases before not less than three professional Judges. That your Lordship would be glad to be favoured with our views as to the best mode of dealing with the question.

That the other point to which Sir Julian Pauncefote was to invite our consideration was the following:—

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* No. 1 of 1878.

That owing to the peculiar circumstances of the island and to the variety of nationalities of which the community was composed perplexing questions not unfrequently arose as to the competency of the various Courts to try cases brought before them. That it had been suggested that it might facilitate the administration of justice if the High Court were to possess the power to exercise a concurrent jurisdiction with all the other Courts in Cyprus (other than the Religious Tribunal mentioned in the Ist Article of the Annex to the Convention of the 4th June, 1878, copy of which was annexed), and whenever it should think fit, to hear and determine any case civil or criminal arising in the island, whether the same be within the jurisdiction conferred by Section 10 of the Ordinance or not, subject to such rules as to the particular law to be administered and as to the adjunction of Ottoman Judges in particular cases, as might seem expedient.

That it was conceived that such a facultative provision would not only be found convenient in solving disputed questions of jurisdiction, but would pave the way to the fusion of all existing jurisdictions in one Supreme Court of Judicature.

That Sir Julian Pauncefote was to request that we would also favour your Lordship with our opinion as to the expediency of increasing the jurisdiction and power of the High Court of Justice to that extent.

In obedience to your Lordship's commands we have the honour to report—

Appointment of Assessors objectionable.

Appointment of Judges not native.

Concurrent Jurisdiction.

That in our opinion the appointment of a number of Assessors to decide questions of fact, and of whom a majority, from inexperience or worse reasons, might decide against the opinion of the presiding Judge is objectionable, and we doubt whether it would be desirable to leave the presiding Judge with merely a casting vote in the event of the votes of the Assessors being equally divided. The appointment of three professional Judges for the trial of capital cases would, in our opinion, be a very satisfactory measure. These Judges would, we presume, not be, for the present at least, natives, and, in our opinion, the High Court of Justice may with advantage possess the power to exercise a concurrent jurisdiction with all other Courts in Cyprus other than the Religious Tribunal referred to.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 21.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 2.)

*Temple, May* 31, 1880.

My Lord,

Sawas case. Power of High Commissioner as to commutation of sentence of death.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd May instant, stating that he had to transmit to us, by direction of your Lordship, the papers noted in the margin* relating to the case of a Greek subject, named Sawas, who was recently tried before the competent Turkish Court in Cyprus for the murder of an Ottoman subject, and was found guilty and sentenced to death. That Sir Julian Pauncefote was to invite our attention, in the first place, to the Reports of our predecessors of the 29th December, the 16th January, and the 11th February last, from which we would observe that Sawas was originally convicted of the above crime before Her Majesty's High Court of Justice, established in the island under Ordinance No. 1 of 1878, and sentenced to death; but doubts having arisen as to the jurisdiction of the Court in such a case, having regard to the nationality of the parties and to the terms of Sections 10 and 108(*c*) of the Ordinance, the question was referred to the Law Officers of the Crown, who reported against the jurisdiction of the Court, and advised that the proceedings in the case were null and void, and that the prisoner should be handed over to the proper Ottoman Court for trial.

That that course having been followed, the prisoner had been tried before the last-mentioned Court, found guilty, and sentenced to death; and Her Majesty's High Commissioner, being desirous to commute the sentence to imprisonment for life, had applied for advice as to whether he had legal power to effect such commutation under Article 22 of Her Majesty's Order in Council for Cyprus and Article 23 of the Royal

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* Sir R. Biddulph, Telegraphic, April 26 and May 20; ditto, No. 186, May 20; Law Officers, December 29, 1879; ditto, January 16; ditto, February 11, 1880; Ordinance, Cyprus No. 1 of 1878; Cyprus, Order in Council; Royal Instructions.

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Instructions, by way of conditional pardon, or whether local legislation was necessary for that purpose.

That Sir Julian Pauncefote was to refer us to the Reports of the Law Officers of the Crown on that point,* cited in Forsyth's "Constitutional Law," pp. 76 and 462, and to request that we would favour your Lordship with our opinion at our earliest convenience, on the question raised by the High Commissioner, and as to the Instructions which should be sent to him in reply to his inquiry.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, Her Majesty's High Commissioner in Cyprus has, under Article 22 of the Order in Council for Cyprus, and under Article 23 of the Royal Instructions, legal power to commute a sentence of death to imprisonment for life, or some other punishment, by means of a pardon conditional on the delinquent undergoing the substituted punishment; and local legislation is not necessary for the purpose of conferring such power on the High Commissioner.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 22.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 3.)*

*Temple, July* 3, 1880.

My Lord,

Trial of Sawas Christodoulos. Sentenced to death.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th ultimo, stating that, with reference to our Report of the 31st May last, he had the honour to transmit to us, by direction of your Lordship, the papers relating to the case of Sawas Christodoulos,† who was recently tried in the proper Ottoman Court in Cyprus for the murder of an Ottoman subject, and, having been found guilty, was sentenced to death.

That the prisoner, though born in the Ottoman dominions of Ottoman parents, was claimed as a naturalized Greek subject by the Greek Vice-Consul in Cyprus, and, in consequence of his intervention in that case from the commencement, the High Commissioner applied to the Foreign Office for instructions as to how he should deal with the question of Sawas' nationality, and with the claim of the Greek Vice-Consul to take part in the trial in the manner prescribed by the Capitulations in cases where Greek subjects were concerned. That, with regard to those points, it was considered that, in the first place, the onus fell on the prisoner of showing that he was released by law or Treaty from his allegiance to Turkey, his country of origin, before he could be allowed to claim Greek nationality before a Turkish Court; and, in the next place, that even if he should establish such claim, the right of intervention in the trial, claimed by the Greek Vice-Consul under the Capitulations, could not properly be conceded to him under the present Administration of Cyprus.

That, accordingly, instructions to that effect were sent to the High Commissioner in the Foreign Office despatch No. 126 of the 16th March, 1880, to which Sir Julian Pauncefote was to invite our attention.

Complaint of Greek Minister in London, who urges annulment of sentence.

That we should perceive from the correspondence transmitted in General Biddulph's despatch No. 217 of the 18th May, and from the Report of the proceedings at the trial contained in his despatch No. 227 of the 25th May, that the above instructions were strictly followed, and that, although no evidence was adduced at the trial in support of the prisoner's claim to Greek nationality, the Greek Vice-Consul was allowed all the facilities which could have been extended to him under those instructions if Sawas had been entitled to be dealt with as a Greek subject. That on the 21st May, however, the Greek Minister in London, M. Contostavlos, addressed a letter to your Lordship, complaining that the proceedings on that trial were irregular, and urging that the sentence should be annulled.

That drafts of a reply to the Greek Minister, and of a despatch to General Biddulph approving his proceedings, were inclosed; and that Sir Julian Pauncefote was

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* February 16, 1853; May 3, 1854.

† General Biddulph, No. 217, May 18; ditto, No. 222, May 22; ditto, No. 227, May 25, 1880; Law Officers' Reports, December 29, 1879, January 16 and February 11, 1880; Mr. Currie's Memorandum; M. Contostavlos, May 21; Draft to Greek Minister; Drafts to General Biddulph (2).

to request that we would be good enough to inform your Lordship whether they met with our approval.

That, on the question of Greek naturalization of Ottoman subjects, Sir Julian Pauncefote was to refer us to the printed Foreign Office memorandum, which we should find among the papers.

That the Turkish Law of 1869, and the Circular of the Porte, referred to in the draft to the Greek Minister, were printed at pp. 22 and 23 of that memorandum.

In obedience to your Lordship's commands we have the honour to report—

Reply to Greek Minister.

That we think it right to point out that the terms of the accompanying draft reply to the Greek Minister may give rise to observation hereafter.

Sawas is denied his claim of being a Hellenic subject by naturalization on the ground that whilst in Cyprus he is in a part of the Ottoman dominions, and thus an admission is made that for some purposes Cyprus is subject to the sovereign power of the Porte.

But in the latter portion of the draft the position is assumed that a Hellenic subject in Cyprus would not be entitled to the benefit which the Capitulations confer on the subjects of that country when within the Ottoman dominions.

We desire, further, to state that we have read the evidence given on the trial of Sawas and the Report of Mr. Bovill, and that we are of opinion that if Sawas had been tried in this country, the verdict would probably have been one of manslaughter.

There seems to be no evidence of premeditation, and the testimony of the witnesses certainly leaves in doubt the events which immediately preceded the blow being struck.

But it is to be observed that, according to the witnesses for the prosecution, who were all of them the companions of the deceased, Sawas and the deceased, after some abusive language had passed, "both got up."

Sentence severe; should be mitigated.

In view of these doubts and of the absence of premeditation, and of the probability that there was considerable provocation, we regard the sentence of imprisonment for life as being very severe, and we suggest that a further mitigation of the sentence is desirable.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 23.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received August 6.)*

My Lord, *Temple, August* 5, 1880.

Trial of Sawas Christodoulos for murder. As to commutation of sentence to seven years' imprisonment.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st ultimo, stating that with reference to our Report of the 3rd ultimo respecting the case of Sawas Christodoulos, who was recently tried in Cyprus for the murder of an Ottoman subject and sentenced to death, he had the honour to transmit to us, by direction of your Lordship, a modified draft of a reply to the Greek Minister's letter of the 21st May, amended to meet the objections offered in the first three paragraphs of our above-mentioned Report to the draft as originally prepared, and that he (Sir Julian Pauncefote) was to request us to inform your Lordship whether the draft reply then submitted to us met with our approval.

That, with reference to the opinion expressed in our Report, that in the circumstances of the case the sentence of imprisonment for life, to which the penalty of death had been commuted, was very severe, Sir Julian Pauncefote was to transmit to us a telegram from Her Majesty's High Commissioner, deprecating any interference at present with the commuted sentence, but that he (Sir Julian Pauncefote) was to request us to favour your Lordship with our opinion as to what term of imprisonment would be sufficient to meet the justice of the case.

That Sir Julian Pauncefote was to return to us, for convenience of reference, the papers which had already been before us in connection with that matter.

In obedience to your Lordship's commands we have the honour to report—

That we approve of the draft reply, and that the objection of Her Majesty's High Commissioner may be met by allowing the sentence of imprisonment for life to remain for the present, the prisoner to be pardoned at the end of seven years. If this commu-

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tation is to depend upon "good behaviour," the desirability of informing the convict of the intention to commute should be considered.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Draft of Despatch to M. Contostavlos.*

*Foreign Office, August* 17, 1880.

M. le Ministre,

I have received and carefully considered a Report from Her Majesty's High Commissioner in Cyprus, on the trial and conviction in that island, in the month of May last, of the prisoner Sawas Christodoulos for the crime of murder, and I now have the honour to request that you will lay before your Government the following observations in reply to the representations on the subject of the case which you addressed to me by their direction in your letter of the 21st May:

It appears from the High Commissioner's Report that the trial, which took place in the Temyiz Court at Nicosia, was conducted with great care and regularity under the supervision of an English Judge, and that the Vice-Consul of Greece was invited to attend the proceedings. The prisoner was defended by an advocate, and I am assured that there is no foundation whatever for the complaint made to your Government, that the evidence of the Christian witnesses was not duly considered.

One of the members of the Court dissented from the judgment, on the ground that in his opinion there was not sufficient evidence of premeditation to justify a conviction for murder.

I have great pleasure in informing you, M. le Ministre, that Her Majesty's Government, being anxious to give full weight to the doubt which has been raised on this point, have decided to commute the capital sentence passed on the prisoner into one of imprisonment, and I trust that this announcement will be gratifying to your Government, and will dispose satisfactorily of the case.

I have, &c.

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## No. 24.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received August* 23.)

*Temple, August* 21, 1880.

My Lord,

Mining leases in. Draft contract.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st July last, stating that by your Lordship's direction he transmitted the accompanying despatch from Her Majesty's High Commissioner in Cyprus (No. 209), submitting for your Lordship's approval a draft contract for a lease of certain mines in that island.

That in view of the intended transfer of the business connected with Cyprus to the Colonial Office, your Lordship referred Sir R. Biddulph's despatch to that Office, and we would see from the inclosed letters* that your Lordship was disposed to think that the granting of mining leases was part of the ordinary administration of the island, which was vested in the Queen by the Convention, and had devolved on the High Commissioner in virtue of the Cyprus Order in Council, but that such power of granting leases must be exercised in accordance with the existing Ottoman law regulating the subject, or of a new law to be passed by the local Legislature established under the Cyprus Order in Council.

That we would observe that the draft contract submitted by Sir R. Biddulph would appear upon the face of it to have been drawn up in the form of an ordinary English mining lease, and not, so far as your Lordship was able to judge, in accordance with the prescriptions of the Ottoman Code respecting mines, which we would find at p. 257 of the accompanying volume.

That on the other hand Lord Kimberley expressed doubts whether, in view of the terms of the Convention of the 4th June, 1878, the Queen had acquired such an interest in the mines of the island as the proposed lease purported to transfer, and if so, his Lordship was disposed to think that an Ordinance of the local Legislature would not meet the difficulty.

That Sir Julian Pauncefote was to inclose copies of the Convention of the 4th June, 1878; of the additional Agreement respecting legislation (of the 14th August, 1878); of the Order in Council for Cyprus of the 14th September, 1878; and of the Royal Instructions to Her Majesty's High Commissioner; and he was to request us to take those papers into our consideration, and to favour your Lordship with our opinion—

As to right of the High Commissioner to grant a mining lease under the Convention or Agreement with the Porte.

1. As to whether the High Commissioner could, under the provisions of the above-mentioned Convention and Agreement with the Porte, and of Her Majesty's Order in Council, grant a mining lease in the Island of Cyprus.

2. Whether such lease must be in accordance with the existing Ottoman mining laws, or of an Ordinance of the local Legislature, or whether the High Commissioner might, in virtue of clause 20 of the Order in Council, grant a lease on such terms as he might think fit.

3. Whether a lease granted by the High Commissioner, and otherwise good in law, could validly guarantee possession for a period beyond the British occupation of the island, and whether such a lease would be binding on the Ottoman authorities in the event of the administration of the island being retroceded to the Porte; and

4. Whether the draft contract for a lease submitted by Sir R. Biddulph was one which, subject to our opinion on the previous points, we would advise your Lordship to approve.

In obedience to your Lordship's commands we have the honour to report that—

1. If the matter rested only on the Convention of the 4th June, 1878, we think it would be very doubtful, having regard to Articles III and IV of the Annex to the Convention, whether the High Commissioner could grant a lease such as that proposed. Our attention has, however, been drawn to the Agreement of the 3rd February, 1879, between Her Majesty and the Sultan (which we presume is still in force and binding upon the contracting Governments), whereby the property and rights reserved to the Sultan by Article IV of the Annex to the Convention of June 1878 are commuted by a fixed annual payment. And we think that, reading this Agreement with the prior Convention, it establishes that all mines in Cyprus which at the date of that Convention belonged to the Ottoman Crown and State may now be disposed of by the British Government of Cyprus. We presume that the mines proposed to be leased fall within this description.

2. We are of opinion that such mines may be leased by the High Commissioner in Her Majesty's name, and on her behalf, under the public seal of the island, pursuant to clause 20 of the Order in Council. No greater rights, however, as regards third parties, can be given by such a lease than could have been given by the Sultan prior to the Convention, and any rights acquired under the lease must be held and enjoyed subject to all the limitations and restrictions in favour of third persons which are imposed by the Ottoman law now existing in Cyprus.

3. We think that the lease cannot validly guarantee possession for a period beyond the British occupation of the island, and that it would not be binding on the Ottoman authorities in the event of the administration of the island being retroceded to the Porte, though, of course, when the British occupation comes to an end, Treaty stipulations might be made confirming leases granted by the British Government.

4. We think it would be well that the lease should recite the Agreements with the Porte of the 4th June, 1878, and the 3rd February, 1879, and Article 20 of the Order in Council, so that the title of the Government to make the grant should appear on the face of it. And it should be in the form prescribed by Article 20, which it is not at present. We think, too, it should provide that nothing therein should diminish or affect the rights possessed by any persons under the existing laws of the Island of Cyprus.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* To Colonial Office, June 21, 1880; Colonial Office, July 10, 1880.

## No. 25.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 30.)

*Temple, September* 29, 1880.

Marriages between British subjects, not being Roman Catholics.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us a despatch* from Her Majesty's High Commissioner in Cyprus asking in what manner marriages between British subjects not being Roman Catholics could be legally celebrated in that island.

That he was to state that a Marriage Ordinance for Cyprus was in course of preparation in this country, but that in the meantime your Lordship presumed that the marriage of British subjects in Cyprus by an English clergyman according to the rites of the Church of England would be valid, on the ground that British subjects in a Mahommedan country carried with them the common law right of being married by any person in holy orders (Lantour *v.* Teesdale, 8 Taunton, 880).

That Sir Julian Pauncefote was to inclose a copy of a Report of the Law Officers of the Crown of the 13th November, 1862, on the legality of marriages of British subjects so solemnized in Turkey, and that he was to request that we would favour your Lordship with our opinion as to whether General Biddulph's letter might be answered in the sense proposed.

In obedience to your Lordship's commands we have the honour to report—

Are valid, if solemnized by a clergyman according to the rites of the Church of England.

That, in consequence of the state of government now existing in Cyprus, we consider that General Biddulph's inquiry may be answered by stating simply that the marriage of British subjects in Cyprus by a clergyman according to the rites of the Church of England will be valid, and that no reference should be made to the fact that Cyprus is or may be a Mahommedan country.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 26.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 23.)

*Temple, October* 22, 1880.

Action brought by Messrs. Mucci against Government of Cyprus for an alleged breach of contract in case of the supply of eucalyptus trees.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th September last, stating that he was directed to transmit to us a despatch from Her Majesty's High Commissioner in Cyprus forwarding correspondence respecting an action which had been brought in the High Court of Justice against the Government of the island by Messrs. Mucci for an alleged breach of contract in regard to a contract for the supply of eucalyptus trees.†

That the case had been adjourned in order to take the evidence of Mr. Wild, a member of the Forest Department in India, and, in the meantime, the High Commissioner had applied for advice as to the measure of the liability of the Government in respect of that claim, and also as to their liability under a second contract to which Sir Julian Pauncefote afterwards referred.

That General Biddulph's letter contained copies of the two contracts (Inclosures 2 and 3), and of the correspondence relating thereto (Inclosure 4), and also the two Reports by Mr. Bovill, the Assistant Legal Adviser of the Cyprus Government (Inclosures 1 and 5).

That, as regarded the first contract (Inclosure 2), which formed the subject of the present suit, we were referred to Colonel Maquay's Report of the 26th March, 1879, and also to his letter to Messrs. Mucci of the 27th March, 1879, and to their reply of the 30th April following (Inclosure 4, *i.* and *j.*).

That the Cyprus Government declined to pay for the plants, on the ground that Messrs. Mucci failed to execute the agreement—

1. By not having got 10,000 plants into the ground by the 15th March.
2. In having supplied many plants under one year old.

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* No. 343.

† Sir R. Biddulph, No. 167; To Colonial Office, August 10: Colonial Office, August 24; "Hertslet's Treaties" (Turkey); "Turkey No. 36, 1878;" "Cyprus No. 1, 1879;" High Court of Justice Ordinance.

3. In having negligently planted and staked the young trees.

That Messrs. Mucci, in their reply of the 30th April, justify the delay on the ground of the detention of the vessel, carrying the plants, by quarantine.

That, as regarded the condition of the plants, they urged that the plants were examined and passed and accepted without protest, that part payment was made, and that a certain number of trees were injured by improper irrigation, for which injury the Government officials were responsible.

That the only question of law which seemed to arise at present was whether the defence of delay by quarantine could be sustained, not being founded on any stipulation in the contract; that the further question whether such delay had been waived, and whether the other defences set up could prevail, depended, it was presumed, on the evidence which might be forthcoming at the trial.

That, as regarded the second contract (Inclosure 3) for the lease of a nursery ground to Messrs. Mucci, we would observe that on the 13th February Messrs. Mucci were informed by Captain Patten (Inclosure 4, *f.*) that, as there was not then at the disposal of the Government of Cyprus any land with the requisite supply of water, the contract was cancelled.

That, in their reply of the 16th March (Inclosure 4, *i.* in *g.*), Messrs. Mucci declined to treat the contract as cancelled, but expressed their willingness to wait until July for the allotment of land thereunder.

That the decision of the Government, however, was that as Messrs. Mucci had not fulfilled all the terms of the first contract (that now sued upon), the second contract for the nursery ground must be abandoned; and in Colonel Macquay's letter of the 27th March (Inclosure 4, 1 in *i.*) Messrs. Mucci were informed that, owing to their non-fulfilment of the first contract, the Government would only pay in full for 5,518 trees, and that the second contract would be cancelled.

That that second contract was apparently quite independent of the first, and under its terms it would seem that the Government of Cyprus bound itself, among other things, to purchase annually for six years, at a stipulated price, from 15,000 to 20,000 plants, to be reared for that purpose by Messrs. Mucci, and in the event of the sooner determination of the contract to purchase the plants "at the disposal of the Government for the current year and year following."

That Sir Julian Pauncefote was to refer us to Mr. Bovill's Report of the 22nd March (Inclosure 1), in which he raised a question on the construction of that contract as regarded the obligation of the Government to purchase the plants, and suggested that the opinion of the Law Officers of the Crown should be obtained on that point, and also on the measure of damages recoverable against the Cyprus Government for the non-fulfilment of the contract. That it was presumed that as the land was not actually ascertained and the title of land was not in dispute, no question arose as to the jurisdiction of the High Court of Justice in that case.

That on that point Sir Julian Pauncefote was to refer us to the Turkish Law of Real Property of the 18th June, 1867, and the Protocol relating thereto ("Hertslet's Treaties of Trade with Turkey," pp. 73 and 75), and to the High Court of Justice Ordinance, § 10 and § 108.

That Sir Julian Pauncefote was to request that we would take all the papers into our consideration, and favour your Lordship with our opinion as to the advice and instructions which should be given to the High Commissioner on the subject of both the contracts above referred to.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the facts placed before us appear to establish that Messrs. Mucci have failed to supply the 10,000 trees, and have therefore so far failed in performing their part of the first contract.

This opinion we form independently of the question of delay caused by quarantine Regulations, since it appears that the 10,000 trees have never been imported, planted, or delivered. The Government, however, are liable for the trees which they have accepted.

How many they may have accepted, the age and condition of the trees or plants, and whether they were negligently planted and staked, are questions of evidence upon which we can give no opinion.

With reference to the second contract, the Vth Article of the Convention of the 4th June, 1878, gave the English Government the right to purchase land compulsorily, and we therefore consider that the Government were bound under their contract to provide the required nursery-ground and cannot now repudiate the contract, but will on action brought be liable in damages for the breach of the second contract.

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We should further remark that the two contracts are distinct and separate, and that any supposed failure on the part of Messrs. Mucci under the first contract will not justify the English Government in refusing to perform their part of the second contract.

On the construction of the second contract we differ from the views expressed by Mr. Bovill, and are of opinion that the Government are under an obligation to purchase the plants at the prices scheduled.

The measure of damages, it seems to us, will be the loss of the profits which Messrs. Mucci would have made under their contract.

We would suggest that an attempt should be made to bring all litigation in relation to the two contracts to a termination by paying Messrs. Mucci a fair sum for the trees retained by the Government under the first contract. If such sum cannot be agreed upon, it should be referred to an arbitrator to determine the amount to be paid. If any claim be made under the second contract, a small sum should be paid to Messrs. Mucci in satisfaction of such claim.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Denmark.

### No. 27.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 30.)

*Temple, April* 28, 1880.

My Lord,

Losses sustained by British subjects during negro riots at Ste. Croix in 1878. As to liability of Danish Government.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us a memorandum* which had been prepared at the Foreign Office in regard to claims to compensation which had been advanced by British subjects on account of losses suffered by them during the negro riots at Ste. Croix in October 1878, which formed the subject of the accompanying printed correspondence.†

That further memoranda‡ were also inclosed respecting the manner in which claims for compensation on account of riots had been dealt with by Her Majesty's Government when they had been advanced on previous occasions.

That the claims most nearly resembling the present ones seemed to be those arising out of disturbances in Brazil, the circumstances of which were described in Sir E. Hertslet's memorandum of the 17th March.

That in 1867 the Queen's Advocate,§ in reporting on those Brazilian claims, advised that British subjects would only be entitled to compensation if any were granted to Brazilian subjects, and the question now arose whether that rule should be applied to claims which had been put forward by British subjects in respect of the Ste. Croix riots.

Oath of allegiance to Danish Crown imposed on British merchants and others in Danish colonies.

That there was another question which was raised by the correspondence, viz., as to the right of the Danish Government to impose on British subjects the obligation of taking the oath of allegiance to the Danish Crown (whereby they became Danish subjects according to Danish law) as a condition of their being permitted to trade or follow any professional or other avocation in the Danish Colonies. That it would be observed at p. 104 of the printed correspondence that Mr. Macmillan, who had preferred a claim on account of his imprisonment at the time of the riots, was denied the

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* Memorandum by Mr. Buckley, February 26.

† Printed papers, No. 4087.

‡ Memorandum by Sir E. Hertslet, February 8, 1877, No. 3279; ditto, March 17, 1880 (MS.).

§ Queen's Advocate, March 21, 1867.

right of British protection on account of his having taken the oath of allegiance to Denmark.

That it appeared to your Lordship that if British subjects were not allowed to trade in Danish Colonies without taking an oath which constituted them Danish subjects, such an arrangement was an infraction of the Vth and XVIIth Articles of the Treaty of 1670 between this country and Denmark,* by which subjects of each country were entitled to reside and trade in the dominions of the other without restriction or limitation.

That Sir J. Pauncefote was to observe that the consequences to a British subject of taking the Danish oath of allegiance were very grave, having regard to the provisions of section 18 of the Merchant Shipping Act, 1854, and section 6 of the Naturalization Act of 1870.

That Sir J. Pauncefote was to request that we should take the above questions into our consideration, and favour your Lordship with our opinion thereon.

In obedience to your Lordship's commands we have the honour to report—

That we have carefully considered the papers transmitted to us.

We are of opinion that the Danish Government cannot properly be made responsible for either the negro riots at Ste. Croix, or the consequences of those riots. And that British subjects are entitled to compensation only in cases of loss arising out of those riots where Danish subjects have, in a similar case, been compensated.

Having regard to the provisions of the Vth and XVIIth Articles of the Treaty of 1670, we are of opinion that the Danish Government has no right to impose on British subjects the obligation of taking the oath of allegiance as a condition of their being permitted to trade or follow any professional or other avocation in the Danish Colonies.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Egypt.

### No. 28.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received February* 14.)

*Temple, February* 14, 1880.

My Lord,

**Wild *v.* Whately. Demand for surrender of a black girl placed in a school to be educated.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th January last, stating that a case had arisen in Egypt, in which Mr. Wild, a Swiss, had filed a petition in the British Consular Court at Cairo, praying that Miss Whately, a British subject and manager of the English Mission Schools at Cairo, should be ordered to give up the custody of a black girl whom he had placed at the school at that place to be educated.†

**Judicial reforms and Consular jurisdiction.**

That Mr. Borg, the Legal British Vice-Consul at Cairo, stated that the case was one that came within the competency of the Reformed Tribunals, on account of the different nationality of the parties; unless the schools which were placed under Miss Whateley's direction continued to be amenable to the jurisdiction of the British Consular Court, in virtue of a special agreement with the Egyptian Government.

That we were aware that, under the Convention respecting judicial reforms in Egypt, signed on the 31st July, 1875,‡ it was agreed that "all or any of the stipulations and reservations contained in the Convention relating to judicial reforms, which was concluded between the French and Egyptian Governments on the 10th day

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* Hertslet's Treaties, vol. i, pp. 187–192.

† Confidential Print, "Judicial Reforms," Part II, No. 3015, and Part IV, No. 4489.

‡ Ibid., Part II, p. 104.

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of November, 1874 (copy of which Convention was attached to that Agreement), as well as those contained in the Convention concluded between the German and Egyptian Governments on the 5th of May, 1875 (copy of which Convention was likewise annexed to that Agreement), shall be immediately and unconditionally extended by the Egyptian Government to Great Britain and to British subjects, should the British Government at any time express a wish to this effect."

That the correspondence bearing upon the case was forwarded for our information as noted in the margin.*

That we should perceive that in the French and German Conventions, copies of which were annexed to the British Convention of the 31st July, 1875 (print, p. 105) it had been expressly stipulated that the educational establishments placed under the protectorate of France, and the German schools at Cairo and Alexandria, "shall continue to be as heretofore" under the jurisdiction of their respective Consular Courts.

That if the above reservations be extended, *mutatis mutandis*, to Great Britain, the suit instituted by Mr. Wild against Miss Whately would be properly brought in the British Consular Court at Cairo.

That as yet Her Majesty's Government had not claimed the extension to Great Britain and to British subjects of the stipulations and reservations contained in the French and German Conventions.

That the reason why that claim had been delayed was that the Court of Appeal of Alexandria had decided that, under Article 7 of the French Protocol, foreign Consuls could neither sue nor be sued in the Tribunals of the Reform. That on that point he (Sir Julian Pauncefote) was to refer us to our Report of the 7th November, 1878 ("Correspondence respecting Judicial Reforms in Egypt," Part III, p. 230A), and to the Foreign Office despatch to Mr. Vivian No. 7 of the 8th January, 1879 (Ditto, Part IV, p. 1), the draft of which was submitted to and approved by us in our Report of the 31st December, 1878, inclosed therewith.

That your Lordship would now be glad to be favoured with our opinion whether Her Majesty's Government might properly claim the benefit of the stipulations and reservations contained in the French and German Conventions, without prejudice to the right which Her Majesty's Government claimed for the British Consular officers in Egypt to institute suits in the Tribunals of the Reform, notwithstanding the decision of the Court of Appeal at Alexandria.

That Mr. Malet had been informed that, pending the decision of Her Majesty's Government as to claiming the benefit of the French and German Conventions, Her Majesty's Consular Court at Cairo might properly decline jurisdiction in the suit brought by Mr. Wild, and he had been instructed, in case Mr. Wild should proceed against Miss Whately in the Tribunals of the Reform, to report the fact by telegram.

We were also honoured with a letter from Sir Julian Pauncefote, dated the 5th February instant, stating that, with reference to his letter of the 5th ultimo, he was directed by your Lordship to state to us that a telegram was received on the 28th ultimo† from Her Majesty's Agent and Consul-General in Egypt, reporting that Mr. Wild had instructed his lawyer to take proceedings before the Mixed Tribunals against Miss Whately.

That two days later Mr. Malet reported that these proceedings had been abandoned for the present.‡

That in a despatch dated the 26th of last December, inclosed therewith,§ Mr. Malet was informed that, in your Lordship's opinion, the British Legal Vice-Consul in Egypt would be justified in declining to exercise jurisdiction in the case, as Her Majesty's Government had not as yet claimed the benefit, under the Convention of the 31st July, 1875, of the stipulations contained in the Protocol relative to judicial reforms in Egypt which was concluded between France and Egypt on the 10th November, 1874, and in that concluded between Germany and Egypt on the 25th May, 1875.

That we were already in possession of the correspondence upon that question which was referred to us with his letter of the 5th January.

That he (Sir Julian Pauncefote) was now to request that we would take the whole

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* Mr. Wild, March 28; to Mr. Wild, April 2; to Mr. Vivian, No. 13, Slave Trade, April 2; Mr. Vivian, No. 49, Consular, April 15; to Mr. Wild, May 3; Mr. Wild, May 8; to Mr. Wild, May 18; Mr. Wild, July 25; to Mr Wild, August 7, 1878; Mr. Wild, September 21; to Mr. Wild, October 10; Mr. Lascelles to Mr. Buckley, October 25; Mr. Lascelles, No. 373, June 22; Mr. Malet, No. 613, November 19, 1879.

† Mr. Malet, No. 21, Telegraphic.

‡ Mr. Malet, No. 23, Telegraphic.

§ To Mr. Malet, No. 366, December 26, 1879.

matter into our immediate consideration, and favour your Lordship with our opinion, at our earliest convenience, whether, in view of Mr. Malet's telegram, Her Majesty's Government should at once claim the benefit of the particular clause of the French and German Protocols above alluded to, reserving to the Consular Courts jurisdiction in such a suit as that instituted against Miss Whately.

Sir Julian Pauncefote, in a note dated the 6th instant, also transmitted a copy of a telegram which was received the previous day from Her Majesty's Agent and Consul-General in Egypt,* and requested that we would take it into our consideration, together with the papers which accompanied the letter from the Foreign Office of the 5th relative to the suit brought by Mr. Wild against Miss Whately.

In obedience to your Lordship's commands we have the honour to report—

That we adhere to our opinion submitted to your Lordship (the 7th November, 1878) that British Consul officers may, in cases where their official rights and duties are not concerned, waive their privileges.

We are also of opinion that Her Majesty's Government may properly claim the benefit of the stipulations and reservations with reference to British schools, hospitals, and religious establishments contained in the German and French Conventions without prejudice to the right which Her Majesty's Government claim for the British Consular officers in Egypt to institute suits in the Tribunals of the Reform.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 29.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received February 27.)*

*Temple, February* 26, 1880.

Mr. Scrivenor. Dismissal from appointment of Director-General of Customs in Egypt. Her Majesty's Government may support his claim to be heard.

My Lord,

WE are honoured with your Lordship's commands, signified in Sir Julian Pauncefote's letter of the 11th instant, stating that he had the honour to forward to us herewith, by direction of your Lordship, correspondence† which had taken place on the subject of the dismissal of Mr. Scrivenor from the appointment of Director-General of Customs in Egypt.

That the grounds upon which that measure was decided upon by the Egyptian Government would be found in three Reports of a Commission appointed to inquire into the management of the Customs, under Mr. Scrivenor, the Director-General, and Mr. Archer Shee, the Inspector-General of that Department. That copies of those three Reports were inclosed in Mr. Malet's despatch No. 671 of the 13th December (print B, pp. 1, 15, and 25‡).

That Mr. Scrivenor had replied at length to the conclusions of the Commission, so far as they are concerned himself, in a paper inclosed in Mr. Malet's despatch No. 703 of the 29th December (print D‡).

That in his other correspondence with Her Majesty's Agent and Consul-General at Cairo, Mr. Scrivenor required from the Egyptian Government the fulfilment of the contract entered into by them with him on the 14th October, 1876, for his appointment as Controller and Inspector of Customs for a period of five years from the 1st November following; and for a period of five years or more, provided he fulfilled his duties in a satisfactory manner, and was not guilty of any flagrant misconduct. That in the event of the Egyptian Government being unwilling so to employ him, Mr. Scrivenor claimed compensation on the basis of the ten years' engagement (print C and D‡).

That Mr. Scrivenor complained that no charges were formulated against him, and no opportunity given him of repelling or disputing the statements which must have induced the Commission to recommend his dismissal (print A, p. 961‡).

That he claimed the official support of Her Majesty's Government in vindicating his rights under his contract (print C, pp. 1 and 2‡) and that Mr. Malet, Her Majesty's Agent and Consul-General at Alexandria, had referred the case to your Lordship for instructions.

That Sir Julian Pauncefote was to request that we would take those papers into

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* Mr. Malet, Telegraphic, February 5, 1880.

† Mr. Malet, No. 668, December 12; No. 671, December 13; No. 684, December 20; No. 703, December 29, 1879.

‡ "Further Correspondence respecting the Finances of Egypt," Part III, Vol. ii, No. 4115.

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our consideration, and favour your Lordship with our opinion whether Mr. Scrivenor was entitled to diplomatic support on the part of Her Majesty's Agent and Consul-General, either in part or to its full extent, or whether he should be left to his legal remedies against the Government of the Khedive.

In obedience to your Lordship's commands we have the honour to report—

That we are of opinion that Her Majesty's Agent and Consul-General may properly diplomatically support Mr. Scrivenor, to the extent of urging that that gentleman may be allowed an opportunity of explaining his conduct.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 30.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received March 16.)*

*Temple, March* 16, 1880.

Liquidation Commission. Draft of Decree proposed to be issued by Khedive, and Draft of Declaration to be signed by Great Britain, Austria, France, Germany, and Italy, approving the same.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he had the honour to transmit to us by direction of your Lordship a draft of a Decree* which it was proposed that the Khedive of Egypt should issue for the institution of an International Commission of Liquidation, together with the draft of a Declaration* to be signed on behalf of the Governments of Great Britain, Germany, Austria, France, and Italy, engaging that they would regard the decisions of the said Commission as binding and without appeal.

That a question had been raised in Parliament whether the decisions of the Commission could be made binding on British subjects, and whether Her Majesty's Government, by accepting the Decree, would render themselves responsible for any loss incurred in consequence by British creditors of the Egyptian Government.

That before dealing with the first point, Sir J. Pauncefote was to submit the following observations, in explanation of the principle on which Her Majesty's Government had proceeded in the negotiations which had taken place on the subject, and of the grounds upon which they conceived that in assenting to the proposed Decree, and in joining with other Powers in the Declaration in question, they would not incur any such responsibility as was suggested.

That the Règlement Organique under which the Tribunals of the Reform were constituted was made by the Khedive, like any other Law, Edict, or Statute of Egypt, by virtue of his legislative and sovereign power. That its force and vigour, and the authority of the Judges, were derived from that power. That what was done by the Powers in 1876 seemed to make that clear (see Memorandum† as to the manner in which the various Governments signified their assent to the establishment of the International Tribunals in Egypt).

That as regarded England, an Order in Council was passed (1st February, 1876) which did not profess to confer any jurisdiction on the Mixed Tribunals, but merely suspended the British Consular jurisdiction in mixed cases, so long as the Mixed Tribunals existed, or until further Order. That it treated them as existing by virtue of Egyptian Law.

That it was true that both before and after the "Règlement" was passed, there were diplomatic arrangements and engagements between the Khedive and the other Powers, binding him diplomatically as to the character and jurisdiction of the Courts.

But that whatever might be his obligations to other Powers, the source and limit of the territorial power of the Courts and Judges was the sovereign authority of the Khedive.

That the Decree establishing a Commission of Liquidation would emanate precisely from the same authority. That the "Projet" was in course of being submitted to all the Powers interested, with a view to obtaining diplomatically their assent or approval thereto, and the Governments of Great Britain, France, Germany, and Austro-Hungary had already signified their assent and approval by undertaking to subscribe the proposed Declaration.

That that proceeding was an act of State, which, it was submitted, could not render the Government of this country answerable for any loss or detriment which might result therefrom to the private interests of British subjects.

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* See Confidential Print No. 4295, pp. 104 and 105.

† A. W., October 6, 1879.

That as regarded the point whether the decisions of the Commission of Liquidation could be made binding on British subjects, Sir J. Pauncefote was to observe that it was impossible to say, with certainty, what view might be adopted by Judges who were enabled to decide without appeal, but they could not, as Judges, trace their authority to any higher source than the sovereign power of the Khedive, expressed in the "Règlement" under which the Courts were established, a source no higher than that of the Decree of Liquidation which would control the "Règlement."

That Sir J. Pauncefote was to request that we would be good enough to take the above observations into consideration with reference to the two points involved in the question raised in Parliament, and that we would favour your Lordship with our opinion as to the reply which might be properly given thereto on behalf of Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

Decisions of Commission cannot be made binding on British creditors by any action of Her Majesty's Government.

That, in our opinion, the decisions of the Commission cannot be made binding on British creditors by any action of the British Government.

For the British Government has not, we consider, the power by an Act of State, and independent of Parliament, to make arrangements binding upon the British creditors of a foreign Government.

The establishment of the Tribunals of Reform depended upon principles entirely different from those upon which the agreement to provide for the payment of the Egyptian debt and the claims of the creditors is based.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex.

*Project of Decree adopted by France and England, October 1879.*

*Commission de Liquidation.*

Vu le Rapport de la Commission Supérieure d'Enquête en date du 8 Avril, 1879.

Considérant que le Décret du 6 Avril, 1876, a prorogé l'échéance des dettes du Gouvernement Egyptien en en diminuant l'intérêt et déclaré la nécessité d'arriver à une combinaison financière destinée à régler la dette Egyptienne ;

Considérant que la Commission d'Enquête, par son Rapport en date du 8 Avril, 1879, a reconnu l'impossibilité de faire face actuellement à toutes les échéances des diverses Dettes Consolidées et de liquider intégralement et immédiatement la Dette Non-Consolidée ;

Considérant que la Commission d'Enquête a également reconnu que, pour qu'il puisse être procédé à une répartition équitable des ressources disponibles entre les créanciers du Gouvernement, il faut que la loi de liquidation qui devra être faite soit obligatoire pour tous les créanciers et soit reconnu comme telle par les Tribunaux de la Réforme ;

Considérant que l'Allemagne, l'Autriche-Hongrie, la France, la Grande Bretagne, l'Italie ont déclaré qu'elles acceptaient d'avance la loi qui sera préparée par la Commission constituée en vertu du présent Décret et qu'elles se sont engagées à la porter collectivement à la connaissance des autres Puissances qui ont pris part à l'établissement des Tribunaux Mixtes en Egypte et à les inviter d'y adhérer ;

Décrétons :

Article 1er. Une Commission de Liquidation est instituée. Après avoir examiné l'ensemble de la situation financière et après avoir entendu les observations des parties intéressées, cette Commission préparera, en prenant comme point de départ les conclusions de la Commission Supérieure d'Enquête, et sans modifier les conditions de l'Emprunt Domanial, un projet de loi réglant les relations du Gouvernement ainsi que des Daïras Sanieh et Kassa, avec leurs créanciers, et déterminant les conditions et les formes dans lesquelles devra s'opérer la liquidation de la Dette Non-Consolidée.

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Art. 2. La Commission déterminera les ressources qui pourront être mises à la disposition des créanciers des Dettes Consolidée on Non-Consolidée, mais elle devra en premier lieu tenir compte, avec l'assentiment des Contrôleurs, de la nécessité de réserver au Gouvernement la libre disposition des sommes indispensables pour assurer la marche régulière des services publics.

Il lui sera à cet effet donné communication du Budget de l'année pendant laquelle elle exercera ses fonctions, ainsi que de ceux des années antérieures, qui lui seront nécessaires pour se rendre un compte exact des besoins du Trésor Egyptien.

Art. 3. Les Contrôleurs-Généraux fourniront à la Commission, sur sa demande, les documents et explications complémentaires qui seraient de nature à l'éclairer dans l'accomplissement de sa tâche. Elle transmettra par leur entremise soit au Khédive, soit à ses Ministres, les observations qu'elle aurait à leur faire parvenir.

Art. 4. La Commission aura le droit de surveiller, d'accord avec les Contrôleurs-Généraux, la mise en vigueur des dispositions qui auront été arrêtées par elle, et la durée de ses pouvoirs, après la publication du Décret de Liquidation, pourra être prolongée à cet effet pendant un délai qui n'excédera pas trois mois. A l'expiration de ce délai la Commission sera, dans tous les cas, dissoute de plein droit.

Art. 5. La loi qui sera préparée par la Commission sera revêtue de notre sanction et publiée par nous.

Dès sa publication cette loi sera obligatoire et sans appel malgré les dispositions du Règlement d'Organisation Judiciaire et des Codes de la Réforme.

Art. 6. Cette Commission sera nommée par Décret. Elle se composera de deux Commissaires désignés par chacun des Gouvernements de France et de Grande Bretagne, et d'un Commissaire désigné par chacun des Gouvernements d'Allemagne et d'Autriche-Hongrie et d'Italie. Le Gouvernement Egyptien se fera représenter par un Délégué auprès de cette Commission.

Art. 7. Le crédit nécessaire aux travaux de la Commission sera ouvert par nous conformément au Rapport qui nous sera présenté à cet effet par le Président de la Commission.

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### *Draft Declaration.*

Considérant que par un Décret en date du 30 Mars, 1878, une Commission Spéciale a été chargée d'ouvrir une enquête sur la situation financière de l'Egypte et de réunir les éléments d'un Règlement Général, et que par un nouveau Décret, dont le texte est ci-joint, Son Altesse le Khédive se propose de constituer une Commission de Liquidation définitive composée de membres Allemands, Austro-Hungrois, Français, Anglais, et Italiens, les Gouvernements d'Allemagne, d'Autriche-Hongrie, de France, de Grande Bretagne, et d'Italie sont convenus de donner leur assentiment au dit Décret.

Les Gouvernements précités s'engagent en conséquence à accepter comme obligatoire et sans appel la décision qui sera rendue, en ce qui concerne les obligations et dettes du Gouvernement Egyptien, ainsi que des Daïras Kassa et Sanieh par la Commission de Liquidation établie en vertu du dit Décret. Ils consentent ainsi à ce que les décisions de la Commission constituée en vertu de ce Décret soient reconnues par les Tribunaux de la Réforme comme une loi obligatoire aussitôt qu'elles auront été publiées officiellement par le Gouvernement de Son Altesse le Khédive.

Les Gouvernements d'Allemagne, d'Autriche-Hongrie, de France, de Grande Bretagne, et d'Italie s'engagent en outre à porter collectivement cette déclaration à la connaissance des Puissances qui ont pris part à l'établissement des Tribunaux Mixtes institués en Egypte et à les inviter à y adhérer.

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## No. 31.

### *The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received March* 24.)

Wild *v.* Whately. Approving draft to Mr. Malet.

*Temple, March* 24, 1880.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Paunceforte's letter of the 1st instant, stating that, with reference to our letter of the 14th ultimo, on the subject of the suit instituted in the Reformed Tribunal at Cairo against Miss Whately, the manager of the English Mission School at that place, he had the honour to transmit to us, by direction of your Lordship, a draft of a despatch

which your Lordship proposed to address to Her Majesty' Agent and Consul-General in Egypt, instructing him to claim, on behalf of Her Majesty's Government and in virtue of the Agreement of the 31st July, 1875, the extension to British subjects of the stipulations and reservations contained in the French and German Conventions annexed to that Agreement, and of any other arrangements which might have been concluded with foreign Powers for a like purpose, reserving, however, the right of British Consular officials to waive their privileges, and to sue or be sued in the Tribunals of the Reform in cases where their official rights and duties are not concerned.

That Sir Julian Pauncefote was to request that we would inform your Lordship at our earliest convenience whether the proposed despatch, in our opinion, was right and proper.

That our letter above mentioned, and the correspondence in regard to the question involved, were inclosed for reference if required.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the proposed despatch is right and proper.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex.

### *Draft of Despatch to Mr. Malet.*

*Foreign Office, March* , 1880.

Sir,

I have had under my consideration, in conjunction with the Law Officers of the Crown, the question which has arisen out of the summons to appear before the Reformed Tribunal at Cairo, lately served upon Miss Whately, the manager of the English Mission School at that place, and a British subject, on the suit of Mr. Wild, a Swiss.

A telegram was in consequence sent to you on the 15th ultimo, directing you at once to address a note to the Egyptian Government, claiming, by virtue of the Agreement between Great Britain and Egypt of the 31st July, 1875, that the stipulations and reservations which are contained in the French and German Protocols of the 10th November, 1874, and the 5th May, 1875, respecting schools, hospitals, and religious establishments, shall be extended to Great Britain.

By Article 7 of these Protocols it was expressly stipulated, among other things, that the educational establishments placed under the protection of France and the German schools at Cairo and Alexandria "shall continue to be as heretofore" under the jurisdiction of their respective Consular Courts.

The Court of Appeal of Alexandria, as you are probably aware, have decided that, under another provision of the same Article relating to Consuls, the latter could neither sue nor be sued in the Tribunals of the Reform.

Her Majesty's Government are of opinion that the establishment of those Tribunals did not affect the pre-existing rights of foreign Consuls, and, in consequence of the ruling of the Court of Appeal, they decided to defer claiming the benefit of the French and German Protocols until an understanding had been arrived at among the Governments concerned which would remove all doubt as to the power of the Consular officers to waive their privilege, and to sue and be sued in the Tribunals of the Reforms in cases in which their official rights and duties are not concerned.

The case of Wild *v.* Whately, however, shows that some practical inconveniences may arise from deferring this claim any longer.

I have accordingly to instruct you to claim, on behalf of Her Majesty's Government, in virtue of the Agreement of the 31st July, 1875, the extension by the Egyptian Government to Great Britain and to British subjects of all the stipulations and reservations contained in the Convention relating to judicial reforms, which was concluded between the French and Egyptian Governments on the 10th November, 1874, as well as of those contained in the Convention concluded between the German and Egyptian Governments on the 5th May, 1875, with the exception of so much of Article VII of each of those Conventions as declares that "les Agents et Consuls-Généraux, les Consuls, les Vice-Consuls, leurs familles, et toutes les personnes attachées à leur service ne seront pas justiciables des nouveaux Tribunaux, et la

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## No. 35.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received April* 10.)

My Lord, *Temple, April* 10, 1880.

**Mr. Felice not entitled, in present instance, to immunity from jurisdiction of Reform Tribunals.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that he was directed by your Lordship to acknowledge the receipt of our letters of the 5th and 6th instant, reporting on the papers which had been referred to us relating to the action which had been brought against Mr. Felice, the British Consular Agent at Zagazig, in the Mixed Tribunal at Massowah.

That Sir Julian Pauncefote had now the honour to forward to us a despatch amplifying a telegram which was sent to Mr. Malet on the 5th instant,[*] intimating that some doubt existed with regard to the nature of the suit instituted against Mr. Felice, whether it was taken in connection with his Consular functions or in respect of commercial transactions.

That Mr. Malet was also directed to report on the character of the suit brought against M. d'Aubonne, to which reference was made in Mr. Vivian's despatch No. 52 of the 14th February, 1879, inclosed therewith.

That Mr. Malet had replied, in the telegram[†] of which a copy was forwarded for our information, that the suit against Mr. Felice was not connected with his Consular functions, and that M. d'Aubonne was a trader, the matter of the action in which he was concerned having reference to a protested bill over-due.

That we should observe that it was stated in Mr. Vivian's despatch No. 52, that in the opinion of the French Government the Mixed Courts had no jurisdiction over their Consular Agents, whether traders or not, and whatever might be the subject of the suit; but that that view was not supported by the German and Russian Diplomatic Agents in Egypt.

That Sir J. Pauncefote was directed by your Lordship to transmit to us the despatch addressed to Mr. Vivian by the Earl of Derby on the 19th April, 1877,[‡] to enable us to see the form under which Mr. Felice's appointment was sanctioned by the Secretary of State, and that he was to request that we would take those papers into our consideration, together with our previous Reports upon that subject,[§] which were returned therewith, and favour your Lordship with our opinion as to any further instructions which should be given to Mr. Malet in the matter.

That Sir J. Pauncefote was to observe that as the jurisdiction of the British Consular Courts in Egypt in mixed cases was suspended on the establishment of the Tribunals of the Reform, unless Mr. Felice should be justiciable in the latter in respect of his commercial engagements he should enjoy entire immunity from legal process in respect of a civil claim by an Egyptian subject.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, Mr. Felice is not, in the present instance, in which no official right or duty is involved, entitled to insist upon any immunity from the jurisdiction of the Tribunals of the Reform, and that notwithstanding his appointment by the Secretary of State.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 36.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 13.)

My Lord, *Temple, November* 12, 1880.

**Regina *versus* Zarb. As to remission of sentence of death.**

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us the papers, as marked in the margin,[‖] relative to the case of Regina *versus* Zarb,

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[*] To Mr. Malet, No. 113, April 5, 1880; No. 49, Telegraphic.
[†] Mr. Malet, No. 70, April 7, 1880.
[‡] To Mr. Vivian, No. 30, April 19, 1877.
[§] Law Officers, April 5 and 6, 1880.
[‖] Mr. Fawcett, No. 60, 1880; Home Office, October 5, 1880; Levant Order in Council (See Confidential Paper No. 2354).

which was tried before Her Majesty's Chief Consular Court for Egypt at Alexandria on the 24th August last.

That the prisoner Paolo Zarb was indicted for murder, and that the jury having found him guilty, sentence of death was recorded by direction of Mr. Cookson, the presiding Judge, in accordance with the provisions of section 269 of Her Majesty's Order in Council of the 12th December, 1873, which further directed that in such cases the documents therein mentioned should be transmitted through the Supreme Court to the Secretary of State "for his direction respecting the punishment to be actually imposed."

That he (Mr. Lister) was to request, in connection with the documents accordingly transmitted in Consul-General Fawcett's despatch No. 60, that we would take into consideration the petition which was inclosed in the letter from the Home Office of the 5th October, and favour your Lordship with our opinion as to the direction which should be given in that case respecting the punishment to be imposed on Paolo Zarb.

That he was at the same time to draw our attention to the fact that although from a statement in the petition to that effect it appeared that Paolo Zarb was a native of Malta, that his British nationality was not averred in the indictment nor was proved on the trial, nor was it mentioned by Mr. Cookson or by Mr. Fawcett in their respective despatches.

In obedience to your Lordship's commands we have the honour to report—

That upon the evidence adduced at the trial and the line of defence then taken by the prisoner's advocate, the crime committed by Zarb is absolutely without palliation and is deserving therefore of the extreme penalty sanctioned by the law.

**Inquiry as to facts set out in petition should be made.**

But on the other hand, if the facts set out in the petition which is inclosed in the letter from the Home Office be true to the extent that the deceased man Psaila had been guilty of misconduct with Zarb's wife, and that Zarb might fairly draw the inference that an adulterous connection existed between Psaila and his wife, then the crime bears a very different complexion, and though, in law, murder is murder, attended with circumstances of such extreme provocation that the punishment may fairly be reduced in severity.

It is therefore, we think, essential that inquiry should be made whether the allegations in the petition are to any, and what, extent well founded, and that the determination what punishment should be awarded should await the result of such inquiry. It is of course impossible to accept the statements in the petition as necessarily true.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# France.

## No. 37.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received March* 13.)

My Lord, *Temple, March* 12, 1880.

**"Certificats de Coutume." Transfer of French rentes, railway shares, &c.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he was directed by your Lordship to address us again on the subject of the difficulty which had arisen with reference to the "Certificats de Coutume" required on the transfer of French rentes, railway shares, &c.[*]

That the facts of the case were fully set out in Sir Julian Pauncefote's letters to us of the 8th January and 1st July last year, and our Reports thereon of the

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[*] See also Reports of 20th January and 31st July, 1879.

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20th January and 31st July of the same year. That in the latter Report we expressed our opinion that the Solicitor to the Treasury could not in strictness be invested by the Lords Commissioners with authority to issue "Certificats de Coutume" for the transfer of French stocks and shares, the property of British subjects.

That Sir Julian Pauncefote was then to inclose a copy of a Report by M. Treitt, the Counsel to the British Embassy in Paris,* from which we would perceive that the French authorities were bound in that matter by the provisions of the law referred to in paragraph 6. That it would seem to result from M. Treitt's Report that no solution of the difficulty could be found unless some functionary could be invested with legal authority to grant the necessary certificate as to the facts and the law as hitherto done, without such authority by English solicitors.

That that certificate, though usually called a "Certificat de Coutume," was more correctly styled a "Certificat de Propriété," and was so designated by M. Treitt.

That Sir Julian Pauncefote was directed by your Lordship to request that we would favour you with our opinion as to whether there would be any objection to the introduction of a Bill empowering the High Court of Judicature to appoint any solicitor to be a Commissioner to take the necessary evidence and grant the certificate required, to the effect that the person claiming the transfer was legally entitled thereto.

In obedience to your Lordship's commands we have the honour to report—

**Proposed British legislation to meet requirements of French law.**

That we see in one sense no objection to the introduction of a Bill for the object in view; but we would point out to your Lordship that the Commissioner will in many cases have difficult questions of title before him, and that the mode and extent of his remuneration will need serious consideration. How far Her Majesty's Government need assist investors in foreign undertakings and in the requirements of such undertakings is for your Lordship's consideration as a matter of expediency.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 38.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April 6.)*

**"Certificats de Coutume." Transfer of French rentes, railway shares, &c.**

My Lord, *Temple, April* 5, 1880.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that he had laid before your Lordship our Report of the 12th March last relative to the arrangement proposed for meeting the difficulty which had arisen as to the issue of "Certificats de Coutume" for the transfer of French stocks and shares; and he was directed by your Lordship to submit to us the following suggestions for meeting the difficulties attending the proposed legislation, which were pointed out in our Report—

That as regarded the remuneration to the solicitor appointed a Commissioner under the Act, the Bill might provide that a scale of fees should be fixed by the Judges; and that the solicitors' bill should be liable to taxation by the parties requiring the certificate, who must, of course, pay the cost attending the whole proceeding.

That as regarded questions of difficulty arising in the title of the applicant, the Bill might provide for an application being made in such cases to the Court, and the Court might be empowered to refer the qustions to one of the Conveyancing Counsel of the Court, and on his Report decide whether a certificate might be issued, or whether it should be withheld until the parties had established their rights by a suit. The cost of such proceedings might prove so considerable as to deter British subjects from investing in French funds and railway securities, but in the majority of cases the proposed Act would afford a simple and inexpensive procedure for meeting the requirements of the French law, which at the present time were the cause of great inconvenience to numerous Trustees and executors in this country, and to the persons beneficially interested in the property they had to administer.

That Sir Julian Pauncefote was therefore to request us to take the foregoing observations into our consideration, and to favour your Lordship with our opinion whether the provisions above suggested would suffice to meet the difficulties of the case.

In obedience to your Lordship's commands we have the honour to report—

**Proposed Bill will meet some of the difficulties caused by requirements of French law. Suggests that it should be submitted to French Minister of Justice.**

That a Bill with the provisions suggested will in our opinion meet some of the difficulties caused by the requirements of French law. We suggest, for your Lordship's consideration, that the draft Bill should be referred to Her Majesty's Ambassador in Paris, that he may obtain the opinion of the Minister of Justice whether the intended provisions will be sufficient.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 39.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 3.)*

**Mineral oil duties. Messrs. Young's claim against French Government cannot be preferred officially.**

My Lord, *Temple, July* 3, 1880.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st May last, stating that he was directed by your Lordship to transmit to us the correspondence therewith inclosed respecting the duties on mineral oils imported into France, and to ask our opinion with respect to a claim* preferred against the French Government by Young's Paraffin Light and Mineral Oil Company, on account of the non-execution by France of the stipulations in regard to the mineral oil trade, contained in Article IV of the Treaty of the 23rd July, 1873.

That the stipulations were given in the Paper No. 1, in the correspondence marked No. 25, Commercial, 1878.

That the papers which more particularly bore on that point in the accompanying printed correspondence were marked in the margin.†

That the scale of duties fixed by the Law of the 29th December, 1873 (p. 7, "Commercial No. 25, 1878"), appeared in the result of its operations to include British refined mineral oils from the French market. That the French Government had virtually admitted that the complaints which have been made to that effect are well founded (Nos. 81, 82, and 142, "Commercial No. 25, 1878").

But that although Her Majesty's Government have continued to remonstrate against the action of the French Government in thus setting aside those stipulations of the Treaty of 1873, no steps had been taken to remedy that state of things.

That Messrs. Young's Company accordingly, in May 1879, called attention to the interruption of their trade with France which had thus ensued, and preferred in consequence a claim to an indemnity of 2,500,000 fr. from the French Government. That we should perceive that that claim was made known to the French Government, and that they were pressed to give attention to that matter. But that, as above observed, nothing had been done to effect a settlement of that long-pending question.

That it would be seen on reference to the Law Officers' Reports of the 15th and 26th May, 1874, that at that time the Law Officers of the Crown were disposed to consider that the course taken by the French Government in respect of those duties was correct, although in the latter Report it was suggested that some person familiar with the manufacture of the oils in question would be better able to advise on the subject.

That, in pursuance of that suggestion, and of the application of the parties interested, Professor Abel was consulted; and it would be seen from his Reports, Nos. 40, 42, 51, 53, 82, and 142, in "the Parliamentary Paper No. 25, Commercial, 1878," that he was of opinion that the complaints of the trade were well founded. That, in consequence of his advice, strong remonstrances had been addressed to the French Government.

That in that state of the case, Sir J. Pauncefote was to request that we would favour your Lordship at our early convenience with our opinion whether the claim thus advanced by Messrs. Young was one which Her Majesty's Government should

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* In Lord Lyons' No. 5 of 5th January, 1880.

* Messrs. Young, May 15, 1880.

† "Commercial No. 25 (1878):"—Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 14, 20, 21, 25, 26, 27, 29, 34, 35, 36, 40, 49, 51, 53, 54, 81, 82, 90, 91, 92, 100, 118, 120, 134, 139, 141, 142, 143, 146. "Commercial No. 4 (1879):"—Nos. 9, 12, 13, 14.

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prefer officially; and whether, in that case, the measure of damages insisted on by Messrs. Young and Co. could be properly supported by Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

That we have anxiously considered these papers.

The IVth Article of the Treaty of July 1873* provides that mineral oils of British origin shall be admitted into France at a customs duty of 5 per cent. And, further, that the said oils shall be likewise subject to the duty of 5 fr. or 8 fr. per 100 kilog. established on crude or refined oils by the Law of the 16th September, 1871, or that which may be hereafter levied on the like oils manufactured in France.

The Article, therefore, in terms provided for a future change in the amount of duty on crude and refined oils, but made no provision for the mode of testing the amount of refined oil which could be obtained from the crude oil.

The French manufacturers and the French Government were not slow in seeing and taking advantage of this omission in the Treaty, and by a "complicated mechanism," established by the Law of December 1873, made a distinction between the duties relating to burning oils, according to whether this oil is presented incorporated with the crude oil or separated from it.

This distinction affected at once the British manufacturer who imported refined oils only, and who, though he might have imported crude oil, and either sold or refined that oil in France, was, it appears from the papers, not in a favourable position for so doing.

The Law of December by this plan and in this manner destroyed the British trade in fact; but, as under the Treaty, the French Government had reserved to itself the power of putting on crude and refined oils manufactured in France any duty, and of subjecting to the same duty the like oils of British origin brought into France, the French Government kept within its right.

The French Government is, in our opinion, justified in maintaining that the Treaty has been in strictness observed, and that the course taken by that Government in respect to the oil duties is literally correct, though the effect undoubtedly was to destroy the advantage intended to be secured to the British manufacturer by the Treaty, and the course taken was one properly the subject of grave remonstrance.

For the reasons given, however, we have arrived at the conclusion that the claim advanced by Messrs. Young is one which the French Government would not entertain, and therefore one that Her Majesty's Government should not prefer officially.

We have, &c.
(Signed) HENRY JAMES.
JAMES HERSCHELL.
J. PARKER DEANE.

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## No. 40.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 12.)

My Lord, *Temple*, *July* 10, 1880.

Wrecks.
As to liability of Her Majesty's Government for proceeds entrusted to British Consuls.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th ultimo, stating that he was to transmit to us therewith correspondence and documents, enumerated in the inclosed list,† relative to the liability of Her Majesty's Government for the proceeds of wrecked vessels which might have been deposited with Her Majesty's Consuls in virtue of the Declaration of the 16th June, 1879, between the British and French Governments.

That we should observe that the Committee of Lloyds' in their last letter on that subject, dated the 26th April, asked for a definite answer to the following question:—"Is Her Majesty's Government liable for the proceeds of salved vessels and cargoes which may in future be handed over in France to Her Britannic Majesty's Consular officers under the Declaration between Great Britain and France of the 16th June, 1879," and that Sir Julian Pauncefote was to request us to favour your Lordship with our opinion whether the inclosed draft of a reply which your Lordship proposed to

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* Treaty, No. 563.

† List of Papers: Law Officers' Report of June 23, 1862; Circular to Consuls, December 24, 1875; Declaration, June 16; Lloyds, June 26; to Treasury, July 12; Board of Trade, December 10; Treasury, December 18, 1879; to Treasury, January 2; Treasury, March 23; to Treasury, March 30; Treasury, April 5; to Lloyds, April 7; Lloyds, April 14; to Lloyds, April 23; Lloyds, April 26, to Treasury, May 11; Treasury, May 28, 1880.

return to Lloyds' Committee was right and proper, or whether an explicit answer should be given to the question submitted.

That, on that point, Sir Julian Pauncefote was to refer us to the letter of the Board of Trade to the Foreign Office of the 10th December, 1879, and of the Treasury to the Foreign Office of the 28th May, 1880.

That as regarded the question of the liability of Her Majesty's Government for the defalcations of Consular officers in respect of moneys deposited in British Consulates, Sir Julian Pauncefote was to refer to the accompanying Report of the Law Officers of the Crown of the 23rd June, 1862, and to the Foreign Office Circular of the 24th December, 1875.

That if we should be of opinion that the inquiry should be distinctly answered, Sir Julian Pauncefote was to request that we would advise your Lordship as to the exact terms of the reply which should be returned thereto.

In obedience to your Lordship's commands we have the honour to report—

That we think your Lordship may answer the question contained in the letter from the Committee of Lloyds' of the 26th April somewhat more definitely than in the terms of the accompanying draft, and we beg to suggest a reply in the following terms:—

Proposed reply to Lloyds.

"I am directed by Lord Granville to acknowledge the receipt of your letter of the 26th April last, in which you ask for a definite answer to the question whether Her Majesty's Government is liable for the proceeds of salved vessels and cargoes which may in future be handed over in France to Her Britannic Majesty's Consular officers, under the Declaration between Great Britain and France of the 16th June, 1879.

"I am in reply to state to you that in all cases where the articles or merchandise saved or the proceeds of their sale shall have come into or been allowed to remain in the hands of the Consular officers of the Government, at the request or with the permission, or for the convenience of the owners, or of their representative, in preference to themselves taking possession of such salvage or proceeds, there can be no ground for making any claim on the British Government in case of misappropriation by the Consular officers.

"If, however, cases should arise where the owners or their representatives have had no opportunity of themselves receiving the articles or their proceeds, and have not for their own convenience allowed the said articles or proceeds to remain in the hands of the Consular officers, so that those officers have not acted in any way by the permission of, or as agents for, the owners or their representatives, then Earl Granville considers that in case of defalcation by Consular officers acting under the Declaration of the 16th June, 1879, that, without laying down any general rule, consideration should be given to each case as it arises."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft Letter to the Secretary, Lloyd's.*

Sir, *Foreign Office, June* , 1880.

I am directed by Earl Granville to acknowledge the receipt of your letter of the 26th April last, in which you ask for a definite answer to the question whether Her Majesty's Government is liable for the proceeds of salved vessels and cargoes which may in future be handed over in France to Her Britannic Majesty's Consular officers, under the Declaration between Great Britain and France of the 16th June, 1879.

I am in reply to state to you, that the action or position of Her Majesty's Government in case of defalcations by a public officer with respect to money placed officially in his charge must depend on circumstances, and, in Lord Granville's opinion, there seems to be no sufficient reason why this question should be raised by the Committee with regard to the recent declaration, for under the terms of Articles 2 and 4, the Consul only necessarily intervenes in the absence of the owners or of their Representatives. If the property is abandoned to the Underwriters, the Committee of Lloyds (if and when representing the Underwriters) can appoint their own Agent, either to supersede or act with the master or the next surviving officer; and so long as no special representative is appointed by the owners of the ship or cargo, or of the Under-

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writers, the master or next surviving officer is the representative of all persons and parties concerned in the venture. The Consul, therefore, will not be called upon under the declaration to supersede the parties interested, with reference to the custody of the property or of its proceeds, except at their own request.

I have, &c.

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### No. 41.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 24.)*

New French Mercantile Marine Bill.

My Lord, *Temple, July* 23, 1880.

WE are honoured with your [Lordship's] commands signified in Sir Julian Pauncefote's letter of the 8th July instant, stating that your Lordship would be glad to obtain our opinion with respect to a Bill relative to the Mercantile Marine now before the French Legislature.

Bounties proposed to be given on the construction of vessels in France, and on long voyages made by such vessels.

That the point on which our opinion was more particularly requested was whether the bounties which, under the Bill, would be given on the construction of vessels in France, and on long voyages made by such vessels, were inconsistent with the stipulations of the Commercial Treaties between Great Britain and France.

That the question of the assistance to be afforded by a measure of that nature to the French Mercantile Marine, in its bearing upon the Treaty engagements of France towards this country, was referred to the Law Officers in 1874, when it was first mentioned by the Duc Decazes as a measure in contemplation by the French Government.

That we would perceive that the Law Officers, in their Report of the 7th February of that year, of which a copy was therewith inclosed, were not disposed to think that the then proposed action of the French Government would be necessarily inconsistent with those Treaty engagements.

That Sir Julian Pauncefote inclosed copies of the despatch from Lord Lyons and of the letter from the Board of Trade on which the Law Officers reported in 1874.

That two despatches recently received from Lord Lyons, the former inclosing the Articles of the Bill relative to the Mercantile Marine now before the French Legislature; the second forwarding an extract of a letter from Her Majesty's Consul at Havre, respecting the probable effect of that Bill on British shipping if it became law. Copies of the Treaties of 1860 and 1873 with France were also inclosed.*

That Sir Julian Pauncefote was to observe at the same time that notice was given by the French Government in December 1878 to terminate those Treaties at the end of the following year, and that, by an Agreement made with the French Government last year, they now remain in force for a period not exceeding six months after the new General Tariff, at present under discussion in the French Legislature, had been promulgated.

That Sir Julian Pauncefote was accordingly, as before stated, to request that we would take the matter into early consideration, and favour your Lordship with our opinion whether the Bill relative to the French Mercantile Marine was in any, and in what, respects inconsistent with the Treaty engagements of France towards this country.

In obedience to your Lordship's commands we have the honour to report—

Proposed bounties are not a violation of the Treaties with France, but are opposed to their spirit and intention.

That, in our opinion, the bounties which will be given on the construction of vessels in France, and on long voyages made by such vessels, are not a violation of the stipulations of the Commercial Treaties between Great Britain and France. At the same time, we think it a fair matter of representation that such bounties are contrary to the spirit and intention of those Treaties, and do, in another way, produce the very effect which the stipulations with reference to the import duties are intended to prevent.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* List of Papers :—Treaty with France, January 23, 1860.
" " January 24, 1874.
Lord Lyons, No. 22, Commercial, January 14, 1874.
Board of Trade, January 28, 1874.
Law Officers, February 7, 1874.
Lord Lyons, No. 269, Commercial, July 2, and No. 272, Commercial, July 3, 1880.

### No. 42.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October 13.)*

Request of French Government for information as to British legislation respecting public Companies and Associations.

My Lord, *Temple, October* 12, 1880.

WE were honoured with Lord Tenterden's letter of the 25th ultimo, stating that it had been represented* to him that the French Government were preparing legislation on the subject of public companies and associations of all kinds—scientific, religious, literary, commercial, and others; and that they were desirous of being supplied by Her Majesty's Government with the text of British legislation on the same subjects.

That the legislation in question consisted of so large a number of Statutes, that the collection of them would be a work of great labour, such as your Lordship's Department could not undertake.

That it appeared to your Lordship that the best plan for the French Government to pursue would be to have a Report drawn up by a professional gentleman; but as the question was a somewhat novel one, and embraced so large a range of subjects, your Lordship would be glad to be favoured with our opinion as to the answer which should be returned to the French Government on that subject.

In obedience to your Lordship's commands we have the honour to report—

Suggesting reply to be sent to French Government.

That the French Government may properly be informed that the English law on the subject of public Companies and Associations is to be found partly in Acts of Parliament and partly in the common or unwritten law, and is so voluminous, and in many cases so varied, according to the particular Company or Association to which it is applicable, that Her Majesty's Government are unable to furnish the French Government with the text of the British law on those subjects, but that Her Majesty's Government would suggest to the French Government the employment of some person acquainted with the English legislation to draw up and furnish the French Government with a Report upon the subject of public Companies and Associations, and the laws by which they are regulated.

The French Government may also be informed that there are certain recognized text-books, which are regarded as works of authority, dealing with the law having reference to public Companies, a list of which can be furnished to the Representative of the French Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL
J. PARKER DEANE.

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### No. 43.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November 9.)*

Application on behalf of Mrs. A. Turner, for copy of telegram sent to C. W. Turner after his escape from restraint.

My Lord, *Temple, November* , 1880.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 3rd November instant, stating that he was directed by your Lordship to transmit to us the accompanying letter from Messrs. Laces, Bird, Newton, and Richardson,† reporting the steps they had taken in the interest of their client, Mrs. Anne Turner, in the hope of obtaining a copy of a telegram forwarded to her late son, Mr. Charles W. Turner, at Dieppe, between the 4th and 9th ultimo, that gentleman, as it appeared, having been under restraint in this country for some years, and having escaped to France, and having subsequently died at Rouen on the 13th ultimo.

That it appeared to be the impression of the parties interested in that application that the telegram in question was from a person who aided in the escape of the deceased, and it is represented as being very desirable to fix that person with positive evidence of the fact.

Failure of application to French Government for copy of telegram.

That Messrs. Laces and Co., having failed in their endeavours to obtain a copy of the telegram through the good offices of the British Embassy at Paris, now requested the assistance of the Foreign Office for the same object, which they considered might

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* Memorandum by Sir J. Pauncefote, September 8, 1880, on personal application from Comte d'Aunay.

† October 25, 1880.

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be obtained by means of an official instruction from the Secretary of State to Her Majesty's Ambassador.

That it appeared, however, to your Lordship, that you would not be justified in instructing Lord Lyons to apply officially for the document unless it were required in the interests of public justice as evidence in a suit, civil or criminal, actually pending; and that, if the object be to establish a criminal charge, the assistance of the Foreign Office should be sought through the Home Office.

That we should see from a Memorandum by the Librarian of the Foreign Office, attached to Messrs. Laces and Co.'s letter, that there did not appear to be any record in that Department of any similar application having been granted by the Secretary of State; and your Lordship would therefore be glad to be informed whether the rule above indicated should be followed in that and in analogous cases.

In obedience to your Lordship's commands we have the honour to report—

Course to be pursued.

That, in our opinion, the principle indicated in the Memorandum of Sir Edward Hertslet should be followed in this and in analogous cases. The parties applying may properly be informed that, under the circumstances, your Lordship does not feel justified in complying with the request of Messrs. Laces and Co., and that if criminal proceedings are instituted, and it becomes necessary for the purposes of justice that the copy telegram (which we assume was sent from this country) should be produced, application should be made to the Home Office.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 44.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 24.)

My Lord, *Temple, November* 24, 1880.

Mineral oil duties. Adhere to opinion that Messrs. Young's claim cannot be preferred officially.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 22nd October last, stating that, with reference to our Report of the 3rd July last, he was directed to transmit to us a further letter from Mr. Fyfe relative to the claim of Young's Paraffin Light and Mineral Oil Company against the French Government on account of the non-execution by France of the stipulations in regard to the mineral oil trade contained in Article IV of the Treaty of the 23rd July 1873, between Great Britain and France.*

That your Lordship was reluctant to trouble us again on a question already so carefully considered, but the importance of it to British trade in its bearing on the interpretation of that Article of the Treaty of the 23rd July, 1873, induced your Lordship to request that we would again take the matter into consideration.

That the draft of the letter which was addressed to Mr. Fyfe on our abovementioned Report of the 3rd July, and the papers on which the Report was founded, were therewith inclosed.

In obedience to your Lordship's commands we have the honour to report—

That there is nothing in Mr. Fyfe's letter dated the 8th October, 1880, or in the printed papers forwarded by him, which leads us to change our view already reported to your Lordship.

We are still of opinion that the French Government were acting within the strict letter of the Treaty of 1873 when they made the Customs Laws of December 1873, and that therefore Her Majesty's Government should not prefer Mr. Young's claim for compensation officially.

Mr. Fyfe appears to be under a misapprehension when he states that his claim was presented officially by the late Government. The late Law Officers expressed the same opinion as ourselves with reference to the question submitted to us.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr. Fyfe, October 8; to Mr. Fyfe, July 20, 1880; previous papers. See note to Law Officers' Report of July 3, 1880.

# General.

## No. 45.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received January* 21.)

My Lord, *Temple, January* 20, 1880.

Grant of licenses by the Colonial Office to remove guano from uninhabited islands.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 25th November, 1879, stating that with reference to our Report of the 21st March last, he was directed by your Lordship to transmit to us the further papers noted in the margin* relative to the licenses or leases granted in Australia, with the sanction of the Colonial Office, to British subjects to remove guano from uninhabited islands.

That the practice followed by the Colonial Office of granting Government leases of guano islands not claimed by Great Britain was somewhat peculiar. That the system was explained in the Colonial Office letter of the 20th January, 1879, which accompanied the previous papers in the case therewith inclosed, and which contained a Memorandum of the Emigration Commissioners, and a copy of the usual form of lease. That that Memorandum proceeded on the assumption that Great Britain claimed sovereignty over the islands leased. That, nevertheless, the grant of such leases was authorized by the Colonial Office, though no such sovereignty was claimed by Great Britain, and the islands were not considered as annexed to the Crown.

That, in our Report of the 21st March, above referred to,† we recommended that in all cases occupation on behalf of Great Britain, shown by clear and positive evidence, and a formal Declaration that the islands were British territory, should precede the granting of any lease or licence.

That this conviction, however, would practically put an end to the working of the guano islands by British subjects, and bearing in mind that the Act of Congress of the United States of the 18th August, 1856, only applied to islands which were discovered by American subjects, and were not occupied by the subjects of any civilized State; and, further, that no foreign Government had hitherto attempted to oust British subjects in the actual occupation of guano islands originally discovered by them, your Lordship had felt reluctant to suggest to the Colonial Office for the present any change in their practice.

That the question, however, of the protection which might be given by Her Majesty's ships to British subjects in the enjoyment of such licenses or leases had been raised by the Colonial Office and by the Admiralty; and Lord Tenterden was to request that we would favour your Lordship with our opinion whether the Commanders of Her Majesty's ships might forcibly prevent subjects of a foreign State from attempting, without authority from their own Government, to remove guano from uninhabited islands discovered by British subjects, and occupied by them under a licence from the British Crown (such occupation being notified by their hoisting the British flag), but not claimed by Her Majesty's Government as part of Her Majesty's dominions.

In obedience to your Lordship's commands we have the honour to report—

Opinion as to sovereignty as affected by such licenses,

That we are of opinion that when a licence, in the form adopted under the present system, has been granted by Her Majesty, and the licencee has occupied the island to which the licence applies, and notified his occupation by hoisting the British flag, the island in question becomes part of Her Majesty's dominions, and will remain part of such dominions so long as Her Majesty shall find it expedient to retain the sovereignty thereof.

and right of the licensees to protection from foreign interference

If this view be correct, we think that the Commanders of Her Majesty's ships may forcibly prevent subjects of a foreign State from attempting to remove guano from islands discovered by British subjects, and occupied by them under the circumstances and in manner described in Lord Tenterden's letter.

We have some difficulty in dealing with the phrase "not claimed by Her Majesty,"

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* Colonial Office, October 3; ditto, October 25; Admiralty, October 8; Sir E. Hertslet, Memorandum, October 15, 1879.

† See Foreign Office to Colonial Office, January 13, 1879.

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since a lease granted by the Crown is a claim by Her Majesty; but if it is to be assumed that the islands referred to have not been, and are not, claimed by Her Majesty, we think the Commanders of Her Majesty's ships would be justified in forcibly preventing any actual interference by foreigners with the operations of the British subjects, but not in forcibly preventing foreigners removing guano from any part of any island not in the actual occupation of the British subjects.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 46.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received April* 6.)

*Temple, April* 5, 1880.

My Lord,

Conflicts at sea between British and foreign fishermen.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us therewith the papers noted in the margin,* relative to certain queries which had been addressed to the Foreign Office by the Portuguese Minister, on the subject of conflicts which from time to time had occurred at sea between British and foreign fishermen; and Sir Julian Pauncefote was to request that we would take those papers into our consideration, and inform your Lordship whether we concurred in the answer which your Lordship proposed to return to the inquiries of the Portuguese Minister on the above subject.

In obedience to your Lordship's commands we have the honour to report—

Concur in proposed answer to Portuguese Minister.

That we concur in the answer which your Lordship proposed to return to the inquiries of the Portuguese Minister.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### *Answers to Queries respecting Conflicts between British and Foreign Fishermen.*

#### 1.—*Recent Conflict at Yarmouth.*

1. This case did not form the subject of diplomatic representations on the part of Her Majesty's Government to that of France.

The French offenders on their return to the port of Boulogne were prosecuted criminally by the French Government, and the injured parties were referred to the civil Tribunals for the recovery of pecuniary compensation.

#### 2, 3, 4.—*Responsibility for Damages.*

2, 3, 4. As a general rule, in the opinion of Her Majesty's Government, the course pursued by the French authorities in the Yarmouth case is right and proper.

#### 5, 6.—*Instances which have occurred of such Conflicts.*

5, 6. A case occurred in 1857, when Her Majesty's ship "Otter" captured several French vessels which had destroyed English nets, and from which guns were fired and sticks thrown at the English fishermen. These vessels were taken into Berwick, and were fined 5*l*. each.

About the same period another French vessel was captured by a British ship and taken into the Tyne, when the captain was condemned to pay a penalty of 10*l*. and 18*l*. to the master of the English boat.

Another case occurred at Whitby, in September 1865, when some nets belonging to an English fishing boat were damaged by a French fishing boat. On this occasion the offending boat was taken by the English boats, and brought by them into Whitby upon their own responsibility.

A French cruizer protested at Whitby against the conduct of the English fishermen in this case. Explanations, however, were given on the matter, and eventually the master of the French boat delivered up the English nets, and paid 8*l*. or 9*l*. as compensation for the damage done to them.

In 1868 complaints were made of outrages committed by English fishermen upon Dutch fishermen in the North Sea, by destroying the Dutchmen's nets and taking off the fish therein.

Dutch witnesses were brought over to this country, and examined by the Solicitor to the Customs, with a view to steps being taken to punish the offenders. The evidence given, however, was considered as offering but little chance for a conviction, and the prosecution was consequently abandoned.

In 1870–71 further complaints of a similar nature were made by Dutch fishermen of outrages on the part of British fishermen in the North Sea. It appeared, however, that in the absence of the required information it was impossible to move in the matter with any prospect of success. Legal proceedings in this case had accordingly to be dropped, but with a view to prevent a repetition of the outrages, a gun-boat was ordered to the fishing-grounds, and remained there during the fishing season.

At the end of 1871 the attention of Her Majesty's Government was called to an outrage committed by English fishermen upon Dutch fishermen off Camperdown.

Dutch witnesses were brought over to this country, and the offending fisherman was prosecuted at the instance of Her Majesty's Government, tried and convicted for piracy at the Suffolk Assizes in March 1873, and sentenced to fifteen months' imprisonment with hard labour.

In August 1879 a public notice was issued by the Board of Trade (of which a copy is annexed), warning British fishermen fishing off the coast of Holland of the consequences of any repetition of such outrages, and setting out *in extenso* the provisions of section 267 of the "Merchant Shipping Act, 1854."

#### 7.—*Measures adopted by Her Majesty's Government for the Prevention of Conflicts between Fishermen.*

7. A copy is inclosed of the "Sea Fisheries' Act, 1868," which contains, in schedule 1, the Convention agreed upon between Her Majesty's Government and that of France; together with copies of the regulations now in force for the lettering, numbering, and registering of British sea-fishing boats. One of the principal objects of the above Convention was to frame rules for the prevention of quarrels between fishermen of the two nations; while the Sea Fisheries Act, and the regulations made thereunder, were intended to provide means for enforcing those rules. It should, however, be mentioned that the Convention has never been put in force between the two countries, and that consequently so much of the Sea Fisheries Act as relates thereto does not apply to French subjects and French vessels.*

*Foreign Office, March* , 1880.

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## No. 47.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received April* 23.)

*Temple, April* 23, 1880.

My Lord,

Trial of the "Parlement Belge."

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th instant, stating that he had to transmit to us, by your Lordship's desire, the correspondence and documents noted in the margin† with reference to the difficulty which was apprehended in consequence of the recent Judgment of the High Court of Admiralty in the case of the "Parlement Belge," in carrying into effect in Her Majesty's dominions of Article V of the Postal Convention with France, and Article VI of the Postal Convention with Belgium, in cases where the foreign mail packets were not the property of the State by which they were employed, but private vessels chartered or subsidized for their mail service.

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* Queries of Portuguese Minister; Memorandum, December 18, 1879; Memorandum, Sir E. Hertslet, January 12 (M.S.); Board of Trade, February 23; draft to M. d'Antas, with proposed Memorandum of Answer.

* See notice in "Gazette" of February 9, 1869.

† Treasury, March 11; Foreign Office to Treasury, March 19; Treasury, March 31; Colonial Office, March 10; to Colonial Office, March 19, 1880; Memorandum by Sir E. Hertslet, January 8, 1879, No. 3863; Postal Convention with France, September 14, 1856; Postal Convention with Belgium, February 17, 1876.

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That Sir Julian Pauncefote was to refer us to the letter from the Foreign Office to the Treasury of the 19th March last for a statement of the grounds on which it had been suggested that the Law Officers of the Crown should be consulted as to the expediency of introducing a Bill in Parliament to meet the difficulty which was apprehended; and Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether such legislation was necessary, and, if so, that we would be good enough to state generally the nature or frame of the provision which we might consider best calculated to carry out the object in view.

That Sir Julian Pauncefote was also to draw our attention to the recent case of the French mail packet "Anadyr," at Hong Kong, reported in the Colonial Office letter of the 10th March last, and to previous cases which had occurred in that Colony, of which an account was given at pp. 13—18 of Sir E. Hertslet's printed memorandum on mail packets.

That if we should be of opinion that legislation was necessary in the case of the steamers of the Messageries Maritimes, as held by the Supreme Court of Hong Kong on the authority of the Judgment of the High Court of Admiralty in the case of the "Parlement Belge," your Lordship would be glad to be informed whether, in view of the great traffic carried on by those steamers in Hong Kong, and of the frequent discussions arising there as to their privileges and immunities, we considered that there would be any objection to the immediate passing of a short local Ordinance to secure to them, while within the waters of the Colony, all the privileges and immunities which the Vth Article of the Postal Convention with France purports to confer on them.

In obedience to your Lordship's commands we have the honour to report—

Immunity of mail packets. A short Act of Parliament should be passed.

That in our opinion it may be expedient to introduce a Bill in Parliament to meet the difficulty which it is apprehended may be the result of that part of the Judgment of the Admiralty Court in the "Parlement Belge" which was not reversed, and upon which it was not necessary to raise any question in the Court of Appeal.

A short Act giving the power by Order in Council to grant the privileges and immunities of national ships, the property of the Government, to vessels chartered or subsidized by that Government for the conveyance of mails under any postage convention with such Government, will probably be the most convenient way of attaining the object in view.

Vessels of the "Messageries Maritimes."

But, and especially with reference to the vessels belonging to the "Messageries Maritimes," whose business is not so much the carrying of mails as that of general merchant-ships, we desire to call your Lordship's attention to a great practical difficulty, namely, the easy and cheap means of obtaining the advantage of the Postages Convention and Orders in Council for merchant-ships by a slight and nominal payment as a subsidy.

Some arrangement should therefore be made, if possible, to secure that a real and substantial charter or subsidy be entered into or paid by the foreign Government.

An Ordinance might be passed at Hong Kong.

We see no objection to the passing of a local Ordinance at Hong Kong, giving the privileges and immunities of the Vth Article of the Postal Convention with France to the vessels of the "Messageries Maritimes;" but we think that local Ordinance should at first be only temporary, and that the attention of the French Government should be called to the difficulty in which Her Majesty's Government is placed by the decision in the "Parlement Belge," and which difficulty Her Majesty's Government will endeavour to remove by legislation at the earliest moment.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 48.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July* 12.)

My Lord,
*Temple, July* 12, 1880.

Sugar bounties. Proposed imposition of countervailing duties on sugar, the produce of, or coming from, certain foreign countries, such as Austria or France.

WE are honoured with your Lordship's commands signified in Sir Julian Panncefote's letter of the 4th ultimo, stating that he was directed by your Lordship to state to us that your Lordship would be glad to ascertain our opinion with respect to a suggestion (in its bearing upon Treaty stipulations) which had been put forward on behalf of the sugar interest in this country. That the suggestion in question was that an import duty should be imposed in this country upon sugar, the produce of or coming from foreign countries where a bounty was, or was alleged to be, obtained on the exportation of sugar, whether raw or refined, in order to "countervail" the said bounty.

That the point upon which our opinion was sought was, whether, apart from considerations of policy, such countervailing duty could be imposed, consistent with the stipulations of the Commercial Treaties between Great Britain and the foreign countries concerned. In other words, whether to impose such countervailing duty on sugar, the produce of or coming from, for example, Austria or France, would constitute an infraction of the most-favoured-nation Article in our Commercial Treaties with Austria or France.

That Sir J. Pauncefote was to explain that negotiations with respect to sugar drawbacks had taken place for several years past between different Governments.

That, in 1864, a Convention* for regulating the drawbacks on sugar was entered into between Great Britain, Belgium, France, and the Netherlands, at that time the principal sugar-refining countries.

That that Convention, it would be seen by Article XXI, was concluded for a term of ten years, and it had accordingly now expired.

That its stipulations were, however, never completely carried into effect by France. That the bounty of which complaint was made was obtained, first, from the defective correlation between the excise duty charged on the sugar—raw or refined, as the case might be—and the drawback, viz., the supposed equivalent for such excise duty granted on exportation, and also, to some extent, from the nature of the regulations in force in different countries with respect to manufacturing or refining sugar.

That, in the case of French refined sugar, that defective correlation became more marked on the increase of the sugar duties in France after the Franco-German war of 1870.

That, in the case of Austrian raw sugar, the regulations in force on the subject appeared to fix at a far too low rate the yield of raw sugar to be obtained from a given quantity of beet-root.

That the Government of this country had recognized that that state of things produced a disturbance, in the ordinary course of trade, which was productive of injurious consequences; but that they had hitherto abstained from any fiscal measures with a view to counteract those bounties.

That it would be observed that Article XIX of the Convention of 1864 contemplated the imposition of a surtax on refined sugars with respect to which a bounty was granted on exportation. That Her Majesty's Government had contended, when that Article had been appealed to, that it was permissive in its terms, and that it did not entail any obligation to a particular course of action on this country.

That it did not appear, however, that the opinion of the Law Officers was ever taken on that Convention.

That Sir J. Pauncefote was to add that no specific Treaty engagements had been entered into with respect to raw sugar, and, as before observed, those entered into relative to refined sugar had now expired.

That Sir J. Pauncefote inclosed, for our information and reference, a copy of the Sugar Convention of November 8, 1864, a copy of a Parliamentary Paper (No. 22, Commercial, 1879), containing (1) a memorandum showing what passed in connection with the Convention of 1864 and the subsequent negotiations on the Sugar question; (2) Reports explaining the systems of Sugar duties and drawbacks under which the bounties complained of were obtained; and (3) the most-favoured-nation Articles in our Commercial Treaties with the countries concerned.†

That Sir J. Pauncefote also inclosed a memorandum on the subject of countervailing duties and their bearing on most-favoured-nation stipulations of Treaties, together with a memorandum on the suggested countervailing duties in relation to Commercial Treaties with foreign countries and in connection with the Sugar question.

That a Paper was likewise therewith transmitted, giving the volume and pages in the collection of Hertslet's Treaties, which was in our possession, where the complete

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* November 8, 1864, No. 489.

† List of Papers: Convention, Great Britain, Belgium, France, and Netherlands, November 8, 1864; Hertslet's Treaties, vol. xii, p. 199; "Commercial No. 22 (1879);" Memorandum, Countervailing Duties, Sir E. Hertslet, May 19, 1879. Confidential No. 3911; Memorandum, Sugar Question and Countervailing Duties, Mr. Kennedy, May 13, 1880, Confidential No. 4223.

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text was to be found of the Treaties with the several foreign countries, the most-favoured-nation Articles of which were above referred to.

That Sir J. Pauncefote was accordingly to request that we would take that subject into our early consideration, and favour your Lordship with our opinion on the point above submitted to us.

That, in the event of our being of opinion that that countervailing duty could, consistently with the Treaty engagements of this country, be imposed, Sir Julian Pauncefote was to request that we would state further—Whether we thought it could be levied as an "all-round" duty at a uniform rate, say, as suggested, of *2l. 4s.* per ton; or whether an attempt should be made to ascertain the exact rate of the bounty obtained in each country and on each class of sugar, and the duty be assessed in each case accordingly; and likewise what course it would be open to this country to pursue with respect to certificates of origin and requiring foreign countries to take measures to establish the place of production or manufacture of sugars passing in transit through their territories.

In obedience to your Lordship's commands we have the honour to report—

That it is unnecessary to determine whether the most-favoured-nation clause would, in all cases, however expressed, be violated by the imposition of a countervailing duty.

The question before us must depend upon the true construction of the most-favoured-nation clauses in the Treaties with those countries which it is alleged afford a bounty on exported sugar. By the Treaty with Austria of the 5th December, 1876, it is provided that the produce and manufactures of, as well as all goods coming from, Austria-Hungary which are imported into the territories of Her Majesty shall, during the continuance of the Treaty, be treated in the same manner as, and in particular shall be subjected to no higher or other duties than, the produce and goods of any third country the most favoured in this respect.

We think it would clearly be an infraction of this provision if a duty were imposed on sugar imported from Austria-Hungary, whilst sugar imported from any other country was admitted free of duty. There is no stipulation in the Treaty which prohibits Austria from granting bounties on export, or which makes the unequivocal provisions of the Treaty with reference to import duties conditional on her abstaining from doing so.

It is, in our opinion, impossible, on any sound construction of the Treaty, to insist that such a condition can be implied. And this country has, in the absence of any Treaty rights, clearly no power to attempt to interfere with the internal fiscal regulations of any other country.

By the terms of the Treaty with France, that country is to have the benefit of every favour or immunity, every privilege or reduction of Tariff in regard to the importation of merchandise which have been or may be conceded to any foreign nation whatsoever.

This language is somewhat less pointed than that of the Treaty with Austria, but we think that the same construction must be put upon it, and that the same reasoning applies. Indeed, if it be the case that this country cannot, consistently with Treaty engagements, impose a duty on the bounty-fed sugar imported from Austria, whilst no duty is levied upon sugars imported bounty-free, it seems impossible to put any construction on the Treaty with France which should entitle us to impose a duty on sugars receiving bounties imported from that country, whilst sugars imported from Austria, also receiving bounties, are admitted free of duty.

Even if the view we have thus taken be not well-founded, we think it would not be possible, consistently with any rational construction of the Treaties, to contend that an "all-round" duty at a uniform rate could be properly imposed. It must, in any view, be a breach of our Treaty engagements, if, in respect of the imports from either of the countries in question, the so-called countervailing duty exceeds the bounty.

It would be necessary, therefore, to fix duties applicable to each country, which should be in strict correlation with the amount of the bounty received in respect of the sugars on which the duties are imposed. For, whilst it would obviously be a violation of Treaty rights to impose a duty in excess of the bounty, it would equally be so, if the import duty in the case of one country was an equivalent to the bounty, whilst as regards the other country it fell short of that amount.

It would be open to Her Majesty's Government to request foreign Governments to take the necessary steps for affording information as to the place of manufacture of sugars imported into this country.

## No. 49*.

*The Law Officers of the Crown to Colonial Office.*

My Lord,

*Temple, August* 3, 1880.

Jurisdiction over British subjects and foreigners in native territories in South Africa.

WE were honoured with your Lordship's commands signified in Mr. Wingfield's letter of the 28th June last, stating that he was directed by your Lordship to invite our attention to the following Acts of Parliament:—

26 & 27 Vict., cap. 35
6 & 7 Vict., cap. 94
28 & 29 Vict., cap. 116
29 & 30 Vict., cap. 87
38 & 39 Vict., cap. 85
41 & 42 Vict., cap. 67

Foreign Jurisdiction Acts, 1843 to 1878,

and to request that we would advise your Lordship on the following points:—

That, owing to the increase of population and to the development of trade and intercourse with the natives in the interior of South Africa, consequent upon the acquisition by Her Majesty of the territories now known as Griqualand West and the Transvaal, the provisions of the Act 26 & 27 Vict., cap. 35, were no longer sufficient for dealing with offences committed by British subjects in the native territories adjacent to and to the northward of Her Majesty's possessions in South Africa, and beyond the 25th degree of south latitude. That it had therefore become necessary for your Lordship to consider the best method for extending Her Majesty's jurisdiction so as to meet the case of such offenders.

That similiar powers to those conferred upon the Courts in South Africa by the last-mentioned Acts were conferred upon the Courts of Sierra Leone, Gambia, Gold Coast, and Lagos by the Acts of 24 & 25 Vict., cap. 31, and 34 Vict., cap. 8, and upon the Courts of the Straits Settlements by the Act 37 & 38 Vict., cap. 38.

Proposed extension by Order in Council.

That your Lordship, however, was of opinion that, if practicable, it might be preferable to take advantage of the Foreign Jurisdiction Acts, and to proceed by Order in Council, instead of applying to Parliament for an extension of the Act 26 & 27 Vict. cap. 35, and with that object to obtain from the Chiefs of the several tribes Treaties granting to Her Majesty power and jurisdiction within their respective territories, and thereafter by Order in Council under the Act 38 & 39 Vict., cap. 87, to assign to such of the Courts in Her Majesty's possessions in South Africa as she might be advised jurisdiction over offenders in such of the aforesaid territories as might be proper, with such regulations as might be necessary respecting the exercise of the jurisdiction so assigned.

That it had, however, been suggested that, inasmuch as Parliament, by the Act 26 & 27 Vict., cap. 35, had already provided a special mode of dealing with offences in the native territories of South Africa, it was no longer competent to Her Majesty to vary the mode without having recourse to Parliament.

Questions submitted.

That Mr. Wingfield was therefore to request that we would be good enough to favour your Lordship with our opinion—

1. Whether it was competent for Her Majesty to take any steps in that matter except under the sanction of a special Act of Parliament.
2. Whether it was competent to Her Majesty to proceed in the manner above indicated under the powers conferred by the Foreign Jurisdiction Acts, 1843 to 1878.
3. Whether it would be lawful in any Order in Council under the Foreign Jurisdiction Acts to include a provision empowering the Courts to which jurisdiction was assigned to issue a subpœna to enforce the attendance of a witness resident in the native territories.
4. Whether it was competent to Her Majesty to acquire by Treaty with native Chiefs jurisdiction over persons, subjects of foreign civilized States, resident within the territories of such Chiefs, so as to make such persons amenable to the Courts of Her Majesty's possessions in South Africa.

That Mr. Wingfield was also to request that we would favour your Lordship with any observations that might occur to us generally upon the matter.

In obedience to your Lordship's commands we have the honour to report:—

Act unnecessary; may proceed by Order in Council.

That (1 and 2) we are of opinion that the principal objects desired by your Lordship can be obtained without a special Act of Parliament by an Order or Orders in Council under the Foreign Jurisdiction Acts, 1843 (6 & 7 Vict., cap. 94), 1865

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(28 & 29 Vict., cap. 116), 1866 (29 & 30 Vict., cap. 87), 1878 (41 & 42 Vict., cap. 67), sections 3 and 5, and the Act of 37 & 38 Vict., cap. 27.

Application of Acts of 1863 and 1878.

The South Africa Act of 1863 (26 & 27 Vict., cap. 35) does not appear to us to create any difficulty. It does not extend to the countries north of the 25th degree, to which alone we understand the question to relate, and even if the question relates also to countries south of the 25th degree, we think that the application of the Act of 1878 is not excluded by the Act of 1863, except so far as (if at all) the two Acts are inconsistent.

As to enforced attendance of witnesses.

3. We are of opinion that it is so doubtful whether the Foreign Jurisdiction Acts, or any of the Acts mentioned in the Schedule to "The Foreign Jurisdiction Act, 1878," empower Her Majesty to authorize a Court to which jurisdiction is assigned under the Foreign Jurisdiction Acts to issue a subpœna to enforce the attendance of a witness resident in the native territories, that we cannot advise that any exercise of such supposed power should be attempted. When such a power is meant to be given, it is given expressly, as in the 23 & 24 Vict., cap. 121 (in which the power is limited to witnesses in other possessions of Her Majesty). But the desired object can, to some extent, be attained by applying the 26 Vict., cap. 20, as authorized by "The Foreign Jurisdiction Act, 1878," and issuing a Commission from the Court which desires the evidence to the judicial officer of the native territory to examine British or (with the consent of the native Chief) native witnesses there.

Acquirement of jurisdiction over foreigners.

4. We are of opinion that Her Majesty can, by Treaty with a native Chief, obtain jurisdiction within his territories over subjects of foreign civilized States resident within such territories, but the exercise of any such jurisdiction might be made the ground of diplomatic objection by the civilized State to whose subject it is extended, and it should not, as a rule, be exercised without the concurrence of that State given generally or in the particular case. No such Treaty could give power to Her Majesty to exercise any such jurisdiction beyond the territories of the Chief.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.

But it appears to us that the difficulties in the way of enforcing the request for any such information would be practically insuperable.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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## No. 49.

*The Attorney-General's Clerk to Sir J. Pauncefote.—(Received August 3.)*

Address to which Foreign Office communications should be sent.

THE Attorney-General's Clerk presents his compliments to Sir Julian Pauncefote, and will be much obliged if directions are given for communications, from the Foreign Office to the Law Officers and Dr. Deane, to be left at the Attorney-General's Chambers, or at Dr. Deane's Chambers, in the Temple.

When papers are left with the Attorney-General they are handed to Dr. Deane to draft the Report, and if a communication is left at the Attorney-General's residence, as was the case with the letters of the 29th instant, considerable time elapses before the documents reach Dr. Deane.

*New Court, Temple, July* 31, 1880.

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## No. 50.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October 4.)*

My Lord, *Temple, October* 2, 1880.

As to circumstances under which British subjects can be required to quit the service of a foreign Power.

WE are honoured with your Lordship's directions signified to us in Lord Tenterden's letter, requesting that we would favour your Lordship with our opinion as to the circumstances under which the Queen can legally require Her Majesty's subjects to quit the service of a foreign Power.

In obedience to your Lordship's directions we have the honour to report—

Not required to leave except during war with that Power, or for having contravened provisions of Foreign Enlistment Act.

That, except in cases where the subject of Her Majesty has entered into the service of the foreign Power in contravention of the provisions of the Foreign Enlistment Act, or where Her Majesty is at war with the Power in whose service the subject is, we are not aware of any legal right on the part of the Crown by which Her Majesty's subjects can be required to quit the service of a foreign Power.

Prerogative of the Crown may be exercised to require them to abandon a foreign service.

Her Majesty has, by virtue of the prerogative, the right to require her subjects, by writ under the Privy Seal, to return to this country and to remain here. And by the exercise of this prerogative Her Majesty's subjects might no doubt indirectly be required to abandon a foreign service. But there is no modern instance of the exercise of such prerogative, and it would seem that its exercise was never justified save by the Sovereign requiring the services of the subject in time of war or other grave necessity.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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## No. 51.

*Mr. Mackenzie to Earl Granville.—(Received December 27.)*

My Lord, *House of Lords, December* 25, 1880.

Rule of domicile as applied to movable succession and of wills abroad. Submitting proposals and draft Bill made by Mr. Westlake for opinion of Foreign Office.

I AM directed by the Lord Chancellor to state to your Lordship that his attention has been called by Mr. Westlake, Q.C., to the desirableness of legislation on the subject of the rule of domicile as applied to movable succession, and of the solemnities necessary for wills of real and personal estate made out of this country. Mr. Westlake's views (in which the Lord Chancellor generally concurs) will be found clearly explained in the printed paper sent herewith, and he has prepared a draft Bill, with an explanatory Memorandum (also sent), at the Lord Chancellor's request, by

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which the manner in which he would propose to carry his suggestions into effect will be seen.

The Lord Chancellor would be glad if your Lordship would consider these papers, which his Lordship has also sent to the Colonial and Home Secretaries (as concerning more or less all those Departments), and would favour his Lordship with your opinion thereon; and his Lordship ventures to suggest that it may perhaps be desirable to submit them to the Law Officers for their opinion.

I am, &c.
(Signed) KENNETH MUIR MACKENZIE,
*Principal Secretary.*

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### Inclosure 1 in No. 51.

#### *Memorandum by Mr. Westlake on a Bill intituled "An Act to amend the Law relating to Wills, Personal Succession, and Domicile."*

SECTION 1. The first is Lord Kingsdown's Act, which is dealt with as after appears. The clauses of the second, which it is intended to repeal, are those for Conventions with foreign Powers as to domicile. The 4th section of the latter Act relates to the administration of the effects of foreigners by their Consuls, and is not intended to be repealed.

Section 2. So far as regards personal estate or movable property, this section re-enacts sections 1 and 2 of Lord Kingsdown's Act, with the following additions and alterations:

1. The testator's allegiance, on which the application depends, is expressed to be that at the time of his death.

2. The form given by the law of the testator's domicile at the date of his will is permitted for wills made in as well as out of the United Kingdom, as in fact results indirectly from section 3 of Lord Kingsdown's Act, and the form given by the law of the testator's allegiance at the same date is also permitted.

3. The form given by the law of the testator's British domicile of origin is permitted for wills made by British subjects not then having any British domicile, instead of for wills made by British subjects out of the United Kingdom; and the form given by the law of the testator's then last British domicile is also permitted.

4. The common law is incorporated. See (4).

So far as concerns real estate or immovable property, this section, besides incorporating the common law by (5), permits the same forms as for personal estate or movable property. The necessity of making a will for one part of their fortune in a different form from that permitted for another part would be a trap for many British subjects, and still more for aliens, who, since the date of Lord Kingsdown's Act, have been allowed to hold English real estate.

Section 3. This re-enacts section 3 of Lord Kingsdown's Act, adding a mention of change of allegiance, and an express limitation to the wills of British subjects relating to personal estate or movable property.

The incorporation of the common law in section 2 of this Bill renders it needless to repeat section 4 of Lord Kingsdown's Act, and section 5 of the same Act is worked into the phraseology of this Bill.

Sections 4 and 5. These substitute allegiance for domicile, as the governing principle for personal or movable successions.

Section 6. For example, a person is born in England of French parents, but has never lived in England, and has consequently never thought of making the declaration of alienage required by the Naturalization Act, 1870. He is French by French law and British by British, but is really a Frenchman to all intents and purposes.

Section 7. This applies to the scheduled British dominions the system of registration of domicile which the second of the Acts above-mentioned, in the clauses which it is intended to repeal, proposed to establish by Conventions with foreign countries. The section is not limited to the purposes of personal or movable succession, because it is plainly expressed that domicile shall not be acquired by mere registration and residence for a year.

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### Inclosure 2 in No. 51.

#### *Draft of a Bill intituled "An Act to amend the Law relating to Wills, Personal Succession, and Domicile."*

WHEREAS the present law of domicile often defeats the just expectations of testators, intestates, and other persons, and causes much and costly litigation:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Statute 24 and 25 Vict., cap. 114, intituled "An Act to amend the law with respect to wills of personal estate made by British subjects," and the first three sections of the Statute 24 and 25 Vict., cap. 121, intituled "An Act to amend the law in relation to the wills and domicile of British subjects dying whilst resident abroad, and of foreign subjects dying whilst resident within Her Majesty's dominions," are hereby repealed.

2. Every will or other testamentary instrument made by a person dying after the passing of this Act, who at the time of his death shall be a British subject, shall, in all Her Majesty's dominions mentioned in the Schedule hereto, be held to be well executed as regards personal estate or movable property;

And every will or other testamentary instrument made by a person dying after the passing of this Act shall be held to be well executed as regards real estate or immovable property situate in any of Her Majesty's dominions mentioned in the schedule hereto;

If the same was made according to the forms required, either—

(1.) By the law in force when the same was made at the place, whether British or foreign, where it was made;
(2.) By the law in force when the same was made either at the place, whether British or foreign, where the testator was then domiciled, or in the State to which he then owed allegiance;
(3.) By the law in force when the same was made in that part, if any, of the British dominions in which the testator, not being then domiciled in the British dominions, was then last domiciled or had his domicile of origin;
(4.) By the law in force at the time of the testator's death at the place, whether British or foreign, where the testator was then domiciled;

Or, in the case of real estate or immovable property,

(5.) By the law of the place where such estate or property is situate; or
(6.) By the law which, under Section 5 of this Act, is to govern the execution of the will of the testator, being an alien at the time of his death, as regards his personal or movable succession.

3. So far as regards personal estate or movable property, no will or other testamentary instrument made by any person dying after the passing of this Act, who at the time of his death shall be a British subject, shall, in any of Her Majesty's dominions mentioned in the schedule hereto, be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of the domicile or allegiance of the person making the same.

4. The personal or movable succession, whether testate or intestate, of every person dying after the passing of this Act, who at the time of his death shall be a British subject, shall in all Her Majesty's dominions mentioned in the schedule hereto, and so far as regards matters other than the execution of his will, be governed by the law of that part of Her Majesty's dominions in which he was domiciled at the time of his death, or, if he was not then domiciled in Her Majesty's dominions, by the law of that part of the same in which he was then last domiciled, to the extent and in the manner to and in which the same has heretofore in the respective scheduled dominions been governed by the law of the place at which the deceased was domiciled at the time of his death.

5. The personal or movable succession, whether testate or intestate, of every person dying after the passing of this Act, who at the time of his death shall be the subject of any foreign State, shall in all Her Majesty's dominions mentioned in the schedule hereto, and both as regards the execution of his will, if any, and in all other respects, be governed by the law of such foreign State, to the extent and in the manner to and in which the same has heretofore in the respective scheduled dominions

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been governed by the law of the place at which the deceased was domiciled at the time of his death.

6. When any person dying after the passing of this Act shall at the time of his death be both a British subject according to British law, and the subject of some foreign State according to the law of that State, and shall be adherent to that State and not to the British Crown, he shall for the purposes of this Act be deemed to be a subject of such foreign State.

7. No person *sui juris*, whether a British subject or an alien, shall, after the passing of this Act, be deemed to have acquired for any purpose a domicile in any of Her Majesty's dominions mentioned in the schedule hereto, unless he shall

(1.) Have signed a declaration in writing of his desire to become domiciled in the country or place in question, and deposited the same in the public office mentioned in the said schedule for such country or place; and

(2.) Have resided in such country or place during one year immediately preceding the date for which his domicile is to be determined.

Provided that nothing herein contained shall prejudice any domicile acquired before the passing of this Act, nor shall anything done in pursuance hereof be construed to confer a domicile which would not have been acquired if this Act had not been passed.

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SCHEDULE.

| Country or Place. | Public Office. |
|---|---|
| England .. .. | Office of Secretary of State for Home Department. |
| Scotland .. .. | The same. |
| Ireland .. .. | The same. |

### Inclosure 3 in No. 51.

*Paper by J. Westlake, Q.C., LL.D., entitled "Domicile or Political Nationality? and Ascertainment of Domicile by Registration," published by Spottiswoode and Co.,* 1880.

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## Germany.

### No. 52.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received January* 19.)

*Temple, January* 17, 1880.

My Lord,

Exemption of German subjects from service in the militia of the Cape of Good Hope.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 20th October last, stating that on the 23rd May last the German Ambassador at this Court addressed a note to the Marquis of Salisbury protesting against the application to German subjects of a law passed in Cape Colony on the 2nd August, 1878, entitled "The Burgher Force and Levies Act," for the enrolment in the militia of all male inhabitants from 18 to 50 years of age, and requesting that German subjects might be exempted from such service.

A copy of that note was sent to Her Majesty's Secretary of State for the Colonies on the 3rd June, and was by him forwarded to the Governor of the Cape Colony for a Report thereon.

That that Report had then been received, and was inclosed in the Colonial Office letter of the 20th September, transmitted therewith. That Sir Bartle Frere, in his despatch No. 240 of the 18th August last (Inclosure 1 in the Colonial Office letter), annexed a copy of the opinion given on the question by the Colonial Attorney-General, and expressed his concurrence and that of his Ministers therein.

Burgher Act of 1878 applies only to domiciled foreigners.

That the Colonial Attorney-General pointed out that the law complained of applied only to domiciled foreigners, and that the "Burgher Act" No. 9 of 1878 provided only for the enrolment of the inhabitants of the Colony for its defence, and although service might be required "beyond the borders of the Colony," that service was never intended to be anything more than pursuit of an enemy beyond the borders, or an advance beyond the borders to prevent an invasion of the Colony by outlying native tribes.

That Lord Tenterden was directed by your Lordship to transmit to us the papers, as noted in the margin,* relating to that case, and to request that we would take them into our consideration, and favour your Lordship with our opinion as to the reply which should be returned to the German Ambassador.

In obedience to your Lordship's commands we have the honour to report—

Reply to be returned to Count Münster's protest.

That after referring to Count Münster's letter in the usual manner, he may be answered that the provision in section 17 of the Act in question in reference to the employment of the force beyond the boundaries of the Colony applies simply to those cases in which the pursuit of an invading enemy beyond the borders, or an advance beyond the borders to prevent an invasion of the Colony, may be necessary for the protection of life and property.

That in the event of any German subject resident in Cape Colony being recalled to his own country to perform military duties in Germany, such German subject would be entitled to claim his discharge from the Colonial force and leave the Colony.

Even if it were admitted (which it is not) that German subjects resident in a foreign country have the right to claim their exemption from service in the militia of such country, the circumstances of the Cape Colony and the position of German subjects who, in pursuit of their own interests, have taken up their abode in the Colony, form an exception to such suggested general rule.

The Colony is bordered by, and exposed to, the sudden attacks of barbarous tribes, who, in their mode of warfare, spare neither life nor property, and the German subject resident at the Cape is as much interested in the repulse and defeat of these native tribes as the British subject.

Too high an opinion is felt for the character of those German subjects who may be residing in Cape Colony to believe that they, or the Imperial Government on their behalf, would wish that they and their families and their property should be left to the sole protection of the British, and that they should avail themselves of any general international rule, which is not applicable to the circumstances, in order to avoid a service which may become necessary for the preservation of all, whether British or German.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 53.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 15.)

*Temple, September* 14, 1880.

My Lord,

Case of Mr. Warns before the Oldenburg Tribunals.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 21st August last, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Ambassador at Berlin, with its inclosures,† on the subject of a case at present pending before the Oldenburg Tribunals, and in which Messrs. Walton, Bubb, and Company, a firm of London solicitors, ask for the assistance of Her Majesty's Government, under the circumstances stated in their letter to your Lordship of the 30th June last, also transmitted therewith, and Mr. Lister was to submit to us the answer which your Lordship proposed, with our concurrence, to address to the Ambassador with reference to his inquiry as to the law

As to the enforcement of foreign judgments in England.

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* Count Münster, May 23, 1879; copy of Colonial Act (Burgher Force and Levies Act); Colonial Office letter of September 20, with eleven inclosures.

† Lord Odo Russell, No. 337, August 29, 1880.

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which governed the enforcement of foreign judgments in this country, and to request that we would favour your Lordship with our opinion as to whether the proposed reply was, under the circumstances, right and proper.

In obedience to your Lordship's commands we have the honour to report—

That, subject to the alteration made in pencil on page 2, we think the proposed despatch is right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Annex.

*Draft of Despatch from Earl Granville to Lord Odo Russell.*

My Lord, *Foreign Office*, , 1880.

I have to acknowledge the receipt of your Excellency's despatch No. 337 of the 29th August, inclosing a Report from Her Majesty's Consul at Bremen respecting the refusal of the Oldenburg Tribunal to transfer $\frac{3}{8}$ shares of the "Gesine" to M. H. Victsch, junior, as purchaser thereof, under a sale effected in this country under a writ of *fieri facias* in execution of a judgment obtained in England against M. T. K. Warns, the former owner of the shares, and requesting to be furnished with a copy of the English law relating to the enforcement in this country of foreign judgments.

I have to acquaint you, in reply, that there is no Statute law in this country on the subject, but British Law Courts have power, in the exercise of their general jurisdiction, to enforce judgments of foreign Tribunals, and to enforce them on proper proceedings being instituted for that purpose, unless the defendant can impeach them as being contrary to natural justice, or on the ground of the judgment having been irregularly obtained.

Your Excellency should inform the German Government in the above sense, and Her Majesty's Government will be happy to answer any further specific question which may be addressed to them on the subject.

Mr. Ward's despatch is herewith returned.

I have, &c.

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# Greece.

## No. 54.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January 21.)*

My Lord, *Temple, January* 21, 1880.

Mr. Woodley. Import duties on goods said to be lost at sea in the "Adelaide."

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us therewith two despatches from Her Majesty's Minister at Athens* relative to a case in which the intervention of Her Majesty's Government had been invoked by a British subject named Woodley against a decision on the part of the Greek Government, ordering him to pay duty upon certain merchandise, his property, which he alleges was lost at sea, but which the Greek Minister of Finance suspects was really landed on the coast and smuggled into the country.

That it would be observed that the real penalty for such an act of smuggling was eight times the amount of the duty, whereas the original duty alone was claimed from Mr. Woodley.

That it would seem that there was a total absence of proof, and that the charge entirely rests on suspicion; nevertheless, it was asserted that the Decree of the Minister of Finance was final.

That it would further be seen that the vessel was insured, but that the Insurance Company had refused to pay the insurance, although they had totally failed in substantiating before the Law Courts a charge of barratry against Mr. Woodley.

That the facts of the case were stated in detail by Mr. Woodley in his letters to Her Majesty's Minister, and in Mr. Corbett's letter to M. Delyanni (Inclosures 1, 2, and 3 in No. 234), and the reply of the Greek Government to Mr. Corbett's representations will be found in No. 261, from which we would perceive that they refuse to give any redress.

That under those circumstances Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to what further action, if any, Her Majesty's Government could properly take on behalf of Mr. Woodley.

In obedience to your Lordship's commands we have the honour to report—

That the question is not whether the ship was lost or not, but whether the cases of tin-plate were taken out of her and smuggled on shore.

In the papers we find no proof of smuggling, and the imposition of one-eighth of the amount which would have been imposed had the goods been proved to have been smuggled, leads to the conclusion that Mr. Woodley has been subjected to a penalty on sheer suspicion.

Mr. Woodley should, in our opinion, take proceedings against the insurance offices in which the goods were insured.

And Her Majesty's Government may properly instruct Mr. Corbett to ask the Hellenic Government to inform him upon what evidence Mr. Woodley was held guilty of smuggling.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Mr. Corbett, No. 234, October 8, and No. 261, November 4, 1879.

## No. 55.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April 14.)*

My Lord, *Temple, April* 13, 1880.

Mr. Woodley. Import duties on goods said to have been lost at sea in the "Adelaide."

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th March last, stating that with reference to our Report of the 21st January last he was directed by your Lordship to transmit to us therewith a despatch, with its inclosures, from Her Majesty's Minister at Athens,* containing the answer which had been returned by the Greek Government to the representations addressed to them respecting the Ministerial decision imposing on Mr. Woodley the payment of import duty on goods which he declared were lost at sea in the schooner "Adelaide."

That the reply of the Greek Government in that case (Inclosure 2, No. 5) appeared to your Lordship to be most unsatisfactory. It denied that the duty was imposed on mere suspicion that the goods had been landed, and it stated that the Ministerial decision was mainly based on the Judgment of the Court of Arraignment, on the investigation of the charge of barratry.

That Sir Julian Pauncefote was to observe, however, that on that investigation the Court of Arraignment (Inclosure 3, No .5) distinctly found that there was no proof of the cargo having been landed, and that although the case might be suspicious as regarded the charge of barratry against the master and crew, the rumours current were based on evidence not inconsistent with their innocence; that the goods were not over insured to such an extent as to account for the supposed barratry; that the suspicions attaching to the case were founded on the following facts, namely, that the captain was a man of bad character; that he was disqualified by ill-health to command a sailing-vessel, all of which was known to Mr. Woodley; that he was loitering about the place where the vessel sank under pretence that the wind was adverse (which was denied by

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* Mr. Corbett, No 5, Commercial, March 6, 1880.

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the witness, Alex. Panas); that nothing was saved from the ship, not even the papers, though the crew remained on board two hours at the pumps to pump out the water which was pouring in from a hole.

That it appeared to your Lordship that, even if the above facts should warrant a suspicion that barratry was committed, they afforded no justification whatever for the imposition of duty on the cargo on the ground that it had been surreptitiously landed. That even the witness Panas, "who was looking at the ship," and deposed to the state of the wind on the day in question, did not suggest anything of the kind, and the Ministerial decision, therefore, whether revocable or not, seemed to be based on the vaguest suspicion.

That, under those circumstances, Sir Julian Pauncefote was to request that we would take Mr. Corbett's despatch into our consideration, and favour your Lordship with our opinion as to the further instructions which should be addressed to him in the matter.

That the previous papers* in the case were annexed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Suggesting further remonstrance to Greek Government.

That Mr. Corbett may, in our opinion, properly be instructed to inform the Hellenic Government that Her Majesty's Government deeply regrets the answer which has been returned by the Greek Government to the representations addressed to them respecting the Ministerial decision imposing on Mr. Woodley the payment of import duties on goods which were not proved in any legal proceedings, or by any evidence, to have been landed.

That Her Majesty's Government still hopes and expects that the Hellenic Government, considering the extreme injustice of condemning a man to pay a penalty or a Customs duty upon the merest suspicion that certain goods were secretly landed, will reconsider their decision, and return the amount of the penalty or duty inflicted on and paid by Mr. Woodley.

That should this renewed application to the good feeling and sense of justice so often shown by the Hellenic Government be unsuccessful, Her Majesty's Government may be obliged by a strong necessity to consider in what way redress may be obtained for an act of injustice committed against a British subject and the refusal to repair such act of injustice.

Mr. Woodley, if not paid, should sue insurers.

It is not said in Mr. Corbett's despatch whether or no Mr. Woodley has been paid the insurance on the goods alleged to have been landed, or has taken proceedings against the insurers. Should the matter unfortunately become serious by the persistent refusal of the Greek Government, it is obvious that the case of Her Majesty's Government would be prejudiced or strengthened by the issue of the insurance proceedings, and we think Mr. Woodley should be informed that Her Majesty's Government expect him, if he has not been paid, to sue the insurers.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Japan.

### No. 56.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September 7.)*

*Temple, September* 7, 1880.

My Lord,

Trial of John Martin Ross at Yokohama before the United States' Consul-General for the murder of Robert Kelley, second mate, on board the American merchant-vessel "Bullion" at that port.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd August last, stating that he had the honour to transmit to us, by direction of your Lordship, the papers noted in the margin† relating to the trial and conviction before the United States' Consul-General at Yokohama, in Japan, of John Martin Ross, a British subject, on the articles of the American merchant-vessel "Bullion," on a charge of having murdered Robert Kelley, the second mate of the "Bullion," on board that vessel while lying in the port of Yokohama on the 9th May last.

That the particulars of that case, which involved an important question of jurisdiction, were set out in Mr. Kennedy's despatch No. 87 and in a Report furnished by Mr. Rennie, Judge of Her Majesty's Court for Japan, which formed Inclosure 2 in Mr. Kennedy's despatch No. 98.

That the prisoner, through his counsel, demurred to the jurisdiction of the United States' Consul-General in the case, and claimed British protection. That, on that demurrer being overruled, Her Majesty's Consul addressed a formal request to the United States' Consul-General for the surrender to him of the prisoner (Inclosure 3 in No. 87). That this request was declined (Inclosure 4 in No. 87).

That the decision of the United States' Consul-General on the objection taken to his jurisdiction formed Inclosure 2 in Mr. Kennedy's despatch No. 87, and that the Judgment and sentence on the trial of Ross would be found in Inclosure 6 of the same despatch.

That Sir Julian Pauncefote was to invite our attention to the letter addressed by Mr. Kennedy to Mr. Bingham, the United States' Minister in Japan, which formed Inclosure 7 in his despatch No. 87, and to the reply of Mr. Bingham, inclosed in despatch No. 97 (Inclosure 1). That the case had given rise to comments in the local American paper, and that in his despatch No. 105 Mr. Kennedy transmitted an article on the subject from the "Tokio Times."

That the main question appeared to be whether, having regard to the terms of the Treaty between the United States and Japan, the jurisdiction of the United States' Consular Courts in Japan extends to the trial and punishment of offences committed by British subjects serving on board American merchant-vessels in Japanese waters. That Sir Julian was to inclose a copy of the Treaty between the United States and Japan, from which we would perceive that the jurisdiction thereby conferred applied to "Americans committing offences in Japan."

That the United States' Minister, in his letter to Mr. Kennedy (No. 97, Inclosure 1), maintained that the word "Americans," as used in the Treaty, included not only all citizens of the United States of America, but also "all persons whose domicile of origin or adoption is in the United States, and especially all American seamen, of whatever nativity, who have been lawfully engaged and enrolled as such in the merchant or naval service of the United States."

That the opinion of Mr. Bingham was adopted by the United States' Consul-General in the case of Ross, who, having accordingly been tried and found guilty, was sentenced to death; but notice of appeal was given, and execution of the sentence was respited pending a reference to the United States' Government.

That we would observe, from the correspondence and the printed papers annexed, that the same question arose in Japan in 1875 as regarded Consular jurisdiction over British subjects serving on board foreign ships of war (Print 2637), and also in China as regarded men serving on board foreign merchant-vessels in Chinese waters when their nationality differed from that of the vessel to which they belonged (Print 2631).

That, as regarded British subjects serving on board foreign men-of-war, Sir Julian was to refer us to the Report of the Law Officers of the Crown of July 1875, and to the Earl of Derby's instructions to Sir H. Parkes of the 4th September, 1875, at pp. 15 and 17 of Printed Paper 2637 respectively. That, as regarded foreign merchant-vessels, he was to refer us to the Circular of the United States' Consul-General in China, Mr. G. F. Seward, of the 3rd August, 1868 (Print 2631, p. 2), in which an opinion contrary to that of Mr. Bingham was maintained as regarded the extent of the jurisdiction conferred under the words "Americans committing offences;" the same words being used in Article XI of the Treaty between the United States and China, of which a copy was annexed.

That, with reference to that Circular, Sir Julian was to direct our attention to the Reports of the Law Officers of the 30th January and the 19th May, 1875, and to the Earl of Derby's despatch of the 12th July, 1875, referring to the Earl of Clarendon's despatch No. 18 of the 30th October 1869, all of which were printed at pp. 7, 13, 15, and 5 respectively of the printed Paper 2631.

That Sir Julian was to request that we would take all papers in this case into our consideration, and favour your Lordship with our opinion as to whether the

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* See Report of January 21, 1880.

† Mr. Kennedy's No. 87, May 24; No. 88, May 24; No. 97, June 2; No. 98, June 4; No. 105, June 16, 1880; Printed Correspondence, Foreign Office, September 8, 1875 (No. 2637), and August 1875 (No. 2631); Report of Queen's Advocate (Siam), January 29, 1872; Treaty between United States and Japan, July 29, 1858; Treaty between United States and China, June 18, 1858.

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United States' Consul-General had either exclusive or concurrent jurisdiction over the case; and, if neither, whether Mr. Kennedy's letter to Mr. Bingham of the 22nd May, 1880 (Inclosure 7 in No. 87), might be approved, and any representations on the subject of this case should be addressed by Her Majesty's Government to that of the United States.

In obedience to your Lordship's commands we have the honour to report—

That we are of opinion that the Japanese authorities have not by their Treaty with the United States surrendered their jurisdiction within their own territory and territorial waters, or transferred that jurisdiction to the American Government, except in cases where the citizens or subjects of the United States are concerned.

British subjects entering into the merchant service of a foreign country do not become citizens of that State.

We also consider that a seaman does not become a citizen or subject of the country by entering into and serving in the merchant service of that country.

The distinction between breaches of discipline on board merchant-ships and serious offences, whether committed on shore or on board ships within territorial waters, and the principles of jurisdiction drawn from that distinction, are, in our opinion, properly stated by Mr. Seward in his Circular on Consuler jurisdiction of the 3rd August, 1868.

According to the Treaty between Japan and the United States, the Consul-General of the latter country had no Consular jurisdiction over the British seaman Ross, and a representation might properly be made to that Government.

Mr. Kennedy's letter to Mr. Bingham should be approved.

And we are of opinion that a British subject signing articles and serving on board a United States' merchant-ship, and committing on board that ship, whilst in Japanese waters, a capital offence, as in the case of the seaman Ross, is not an "American committing offences" within the terms of the Treaty between the United States and Japan.

For these reasons, we are of opinion that the United States' Consul-General had neither exclusive nor concurrent jurisdiction over the case; that Mr. Kennedy's letter to Mr. Bingham of the 22nd May, 1880, may be approved; and that, with the view of preventing as far as possible the frequent conflicts of jurisdiction in Japan, Her Majesty's Government may properly address some representation on the subject to the Government of the United States.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Muscat.

### No. 57.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received March* 1.)

*Temple, March* 1, 1880.

Slaves seized on board the "Rokeby" at Bushire in 1877.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd January ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter from the India Office, dated December 18, 1879, forwarding copy of a despatch, with its inclosures, from the Government of India, relating to certain questions which had arisen in regard to the seizure, in March 1877, of certain slaves found on board the British steamer "Rokeby," in the harbour of Bushire, and their subsequent condemnation by Her Majesty's Consular Court at Muscat.

That the facts of the case and the questions raised by the Government of India were so clearly stated in the printed correspondence annexed, that he had only to request that we would take them into our consideration, and favour your Lordship with our opinion thereon.

That volume vi of Aitcheson's Treaties referred to in the last paragraph of the India Office letter accompanied these papers, and, with reference to the case of the slave, Grace, cited in the correspondence, he was to refer us to our Report of the 10th April, 1877.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, Captain Prideaux, acting with the sanction of the Persian authorities, was justified in his search on board the British steam-ship "Rokeby," while lying in Bushire Harbour.

Captain Prideaux would have had no authority to seize and detain the boy, Abdulla, without the intervention of the Persian authorities, and he was justified in obtaining the surrender of Abdulla by and through the intervention of the Persian authorities.

Seizure of slaves owned by foreigners on board a British private ship in a foreign harbour not justifiable.

Captain Clayton was, in our opinion, not justified in seizing the seven slaves owned by foreigners on board a British private vessel lying in a foreign harbour. Such vessel was subject to the jurisdiction of the country within the territory of which she was lying, and the action of Captain Clayton was contrary to the principles and practice of international law.

The proper course for Captain Clayton to have adopted would have been to apply for and obtain the intervention of the Persian authorities.

As to jurisdiction of Muscat Court.

The case, in our opinion, ought not to have been brought before the Muscat Court. We entirely agree with Mr. Phillips that that Court had no jurisdiction at all in the matter.

And supposing the Court to have had jurisdiction, the slaves in respect to whom it was to adjudicate should have been brought before the Court, or at least have been within its local jurisdiction.

A slave does not obtain freedom by going on board a British private ship.

Lastly, we are of opinion that a slave does not absolutely obtain his freedom by having been on board a British private ship, and that if such a slave returns to the country of his master, and where slavery is recognized, Her Majesty's Government could not properly insist upon such slave being liberated or held to be free.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Netherlands.

### No. 58.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January* 21.)

*Temple, January* 20, 1880.

"Bolivar." Detention at Curaçoa of munitions of war forming part of cargo *in transitu*.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st of December, 1879, stating that, with reference to our Report of the 29th October, he was directed by your Lordship to transmit to us a despatch from Mr. Fenton,* forwarding the answer of the Netherlands Government to the representation, founded on that Report, which was made on the part of Her Majesty's Government respecting the detention at Curaçoa of certain munitions of war, forming part of the cargo of the British steamer "Bolivar."

That he was also to inclose the draft of a despatch which your Lordship proposed to address to Mr. Fenton in reply; and to request that we would take that draft into consideration, and favour your Lordship with our opinion whether, under the circumstances, it appeared to us to be proper and sufficient in the case.

The previous papers were inclosed for convenience of reference.†

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* Mr. Fenton, No. 69, Commercial, December 17, 1879.

† To Mr. Stuart, No. 35, Commercial; Mr. Stuart, No. 62, Commercial, November 15, 1879.

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In obedience to your Lordship's commands we have the honour to report—

That the draft despatch is, in our opinion, proper and sufficient in the circumstances.

Approving draft to Mr. Fenton.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch to Mr. Fenton.*

(No. . Commercial.)

Sir, *Foreign Office, January* , 1880.

I have had under my consideration, in communication with the Law Advisers of the Crown, your despatch No. 69, Commercial, of the 17th ultimo, forwarding a note from Baron de Lynden relative to the course pursued by the authorities at Curaçoa in detaining certain warlike stores which formed part of the cargo of the British steamer "Bolivar."

In reply, I have to observe that Her Majesty's Government do not dispute the right of the Netherlands Government to pass the Law of 1822, requiring munitions of war to be landed for safety, nor their right to pass the Law of 1878 to prohibit the exportation from Curaçoa of munitions of war; but they complain that the provisions of the last-mentioned Law against exportation from Curaçoa should be applied to munitions of war which a foreign ship in transit is compelled to land for safety, which form part of her original cargo, and which upon being returned to the ship on her departure would not constitute an "exportation" in the ordinary mercantile sense of the term, any more than the rest of the cargo which may not have been landed. Such an application of the Law of 1878 must necessarily work the injustice which is complained of in the "Bolivar," and give rise to well-founded reclamations.

Her Majesty's Government, however, observe with satisfaction that the Netherlands Government recognize the justice of their complaint by proposing that in future munitions of war in transit, landed under the Law of 1822, shall not be subject to the operation of the Law of 1878, on production of a Consular certificate setting forth that they had not been shipped from Curaçoa, but from a port of the State represented by the Consul. Her Majesty's Government have no objection to offer to the proposed arrangement for the future, provided the Consular certificate be deemed sufficient if it shows that the munitions were really in transit when landed, and are not being shipped from Curaçoa in the ordinary sense of exportations from that island.

The requirement that the Consul should certify that they were shipped in the country which he represents, is a restriction on the principle conceded, viz., that the conjoint applications of the two laws in question in the case of munitions of war *in transitu* is inconsistent with international usages and rights in such matters. Subject to the above reservation, Her Majesty's Government accept the arrangement proposed, and they trust that the Netherlands Government will not hesitate to apply it to the case of the "Bolivar," and to satisfy the claim of indemnity which Her Majesty's Government have submitted to their favourable consideration on behalf of the West India and Pacific Steam-ship Company.

I am, &c.

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### No. 59.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 23.)

My Lord, *Temple, April* 23, 1880.

Detention at Curaçoa of munitions of war. "Bolivar." No reason for waiving claim to compensation made by Pacific Steam-ship Company.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that, with reference to our Report of the 20th January last, he was directed by your Lordship to transmit to us the further papers, noted in the margin,* relative to the detention at Curaçoa of the British steam-ship "Bolivar."

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* To Mr. Fenton, No. 3, Commercial, January 27; Mr. Fenton, No. 3, Commercial, January 30; to Mr. Fenton, No. 7, Commercial, February 7; Mr. Fenton, No. 12, Commercial, March 13, 1880.

## NETHERLANDS.

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### No. 58*.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received January* 21.)

My Lord, *Temple, January* 20, 1880.

Leases granted to two Australian Companies by New South Wales and Netherland Governments to work guano on Ashmore Shoal Islands.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that, with reference to the letter which he addressed to us, by direction of your Lordship, on the 25th November, 1879, respecting the grant of leases in Australia to British subjects to remove guano from unoccupied islands, he was to inclose, at the suggestion of Her Majesty's Secretary of State for the Colonies, some correspondence which had taken place with the Netherlands Minister, showing the views of that Government on the subject.*

That in the case which gave rise to that correspondence, a lease was granted to an Australian Company by the Governor of New South Wales to enable it to work guano on a group of islands known as the Ashmore Shoal Islands, and it was subsequently discovered that a previous Concession had been granted also to an Australian Company by the Government of Netherland India.

That the Netherlands Government, though they do not press a claim to sovereignty over the islands as against a British claim, contend that they could fairly do so if they were disposed, and demand consideration for the Company to which their Concession was granted in compensation for their abandonment of their assumed rights. That the ground upon which their view was based would be found fully stated in the reply from Count Bylandt of the 7th November to the Foreign Office letter of the 11th August, both of which we would find among the accompanying papers.

In obedience to your Lordship's commands, we have the honour to report—

That the conflicting claims of the two Companies have apparently arisen from the mistaken rights of either the British or the Netherlands Government.

The latter Government now waives all right, and the Concession made by that Government consequently is at an end.

Her Majesty's Government is not, in our opinion, strictly called upon to make any compensation to the Company, which has thus lost the right of working the guano, but both Companies being English, some attempt may not improperly be made to effect a compromise between the two Companies.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Count de Bylandt, June 20 and November 7; to ditto, May 20 (inclosing Memorandum) and August 11, 1879.

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That Sir Julian Pauncefote was to observe that the arrangements proposed on the part of the Netherlands Government, as to the production of a Consular certificate in the case of munitions of war in transit, appeared to your Lordship unobjectionable, seeing that the Netherlands Government had yielded the point as to the country of shipment.

That it seemed therefore, in your Lordship's opinion, that the only question then remaining was whether the claim for indemnity in the particular case which raised the discussion [which?] was that of the West India and Pacific Steam-ship Company, should be waived by Her Majesty's Government; and that Sir Julian Pauncefote was accordingly to request that we would favour your Lordship with such observations as we might have to offer on that point.

In obedience to your Lordship's commands we have the honour to report—

That we see no reason why Her Majesty's Government should waive the claim for compensation made by the Pacific Steam-ship Company.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Peru.

### No. 60.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received February 11.)*

My Lord,

*Temple, February* 11, 1880.

Peruvian Decree as to commerce of Iquique and ports of Tarapaca. Mr. St. John's note to Peruvian Government.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch, and its inclosures, from Her Majesty's Minister at Lima,* upon the subject of a Decree issued, on the 6th December last, by the Peruvian Government, closing the port of Iquique to commerce, and prohibiting the exportation from the ports of the Department of Tarapaca of saltpetre, borax, and all other articles.

That your Lordship proposed to approve the note which Mr. St. John had addressed to the Peruvian Government on the subject, but, before doing so, your Lordship would be glad to be favoured with our opinion, especially as the question might become one of great practical importance to British subjects in view of the arrangements about to be made by the Chilean Government with the Peruvian bondholders for the export of guano from the Province of Tarapaca, which was the subject of a separate reference to us of that date.

In obedience to your Lordship's commands we have the honour to report—

Approve Mr. St. John's note.

That, in our opinion, the note addressed by Mr. St. John to the Peruvian Government may properly be approved.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Mr. St. John, No. 184, December 22, 1879.

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### No. 61.

*The Law Officers of the Crown to Earl Granville.—(Received December 27.)*

*Temple, December 27, 1880.*

My Lord,

Detention of coin at Chimbote, in transit from Arica to Panama. Are of opinion that Peruvian authorities were wrong.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 7th December instant, stating that he was directed to transmit to us a despatch from Her Majesty's Minister at Lima,* reporting that permission having been given by the Chilean authorities at Arica for the export of two bags of coin, they were stopped by the Custom-house at the Peruvian port of Chimbote in transit for Panama, when on board the British steamer, in pursuance of an existing law in Peru forbidding the export of money under pain of forfeiture.

That Lord Tenterden was to request that we would consider the matter and inform your Lordship whether we were of opinion that the view taken by Mr. St. John was correct, and whether he should insist on the bags being sent on to Panama without being examined.

In obedience to your Lordship's commands we have the honour to report—

That the port of Arica, so long as it is in the occupation of the Chileans, is a Chilean port and not a Peruvian port, and the laws of Chile and not those of Peru prevail there. We are therefore of opinion that Mr. St. John is right in the view which he has taken of the law applicable to the case, and that he should insist on the bags being sent on to Panama without being examined.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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*Opinion of Dr. Deane.*

Is of opinion that Peruvians were right.

I agree that the port of Arica, whilst occupied by the Chileans, was a Chilean and not a Peruvian port, and that the coin was therefore not subject to the laws of Peru, and might lawfully be exported from Arica.

But when that coin was voluntarily brought within Peruvian waters, it, in my opinion, became subject to the laws of Peru, and was therefore properly detained by the Peruvian authorities at Chimbote.

This consideration does not appear to have occurred to Mr. St. John. The Attorney and Solicitor-General are of opinion that the Customs authorities at Chimbote had no right to seize and detain the coin.

With some diffidence I differ from them, and submit my opinion to the consideration of your Lordship.

I have, &c.
(Signed) J. PARKER DEANE.

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## Portugal.

### No. 62.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 8.)*

*Temple, July 8, 1880.*

My Lord,

Collision between "City of Mecca" and "Insulano."

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us printed correspondence on the subject of the collision between the British steamer "City of Mecca" and the Portuguese steamer "Insulano," which occurred in January 1875, about 10 miles off the coast of Portugal.

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* Mr. St. John, No. 95, October 23, 1880.

That that case had formed the subject of previous references to the Law Officers of the Crown, whose Reports thereon would be found at pp. 47, 73, and 118 of the Correspondence;* and the annexed printed Memorandum which accompanied the case laid before them on the 5th September, and which was referred to in the Report of the 6th October (p. 73), contained a brief statement of the facts and references to the most material parts of the correspondence.

That the opinion of the Law Officers contained in their Report of the 4th December, 1879 (p. 118), was communicated to Her Majesty's Minister at Lisbon in the Foreign Office despatch No. 48 of the 18th December, 1879 (p. 120), and on the 9th January last Mr. Morier was instructed both by telegram and despatch (Nos. 82 and 83, p. 124) to address representations to the Portuguese Government on the grounds indicated in the Foreign Office despatch No. 48 (p. 120).

That the representations made in pursuance of those instructions to the Portuguese Government by Her Majesty's Minister at Lisbon would be found in Mr. Morier's despatch No. 8, Commercial, of the 1st February last (p. 125), and that Sir Julian Pauncefote was to request us to favour your Lordship with our opinion as to whether the note addressed by Mr. Morier to Senhor Braamcamp on the 30th January last† should receive the approval of Her Majesty's Government.

That Sir Julian Pauncefote was to add that no reply to the above-mentioned note had yet been received from the Portuguese Government, and that your Lordship would be glad to learn our opinion also as to any further instructions which it might be expedient to address to Mr. Morier on that question.

In obedience to your Lordship's commands we have taken the above papers into our consideration, and have the honour to report—

That the note addressed by Mr. Morier to Senhor Braamcamp contains within it two principal grounds of complaint.

Agree with Mr. Morier's note with reference to Portuguese assumption of jurisdiction and proceedings of Courts as to sailing rules.

The first cause of complaint is the assumption of jurisdiction by the Portuguese Courts to deal with a suit *in personam* beyond the limit which could properly appertain to the Portuguese courts. With this part of Mr. Morier's despatch we entirely agree.

The second ground of remonstrance is founded upon the view that the sailing rules have been misinterpreted and misapplied. We think it was both proper and desirable that attention should be called to the extraordinary views put forward during the course of the proceedings in the Portuguese courts with reference to the sailing rules.

But the ultimate decision of the case was not based upon misinterpretation of the rules. And Mr. Morier's despatch is not confined to the subject of the sailing rules, but contains also a most able and minute criticism of the reasoning of the judgment, and the evidence upon which it was founded is ably dissected. We wish to point out to your Lordship that in the absence of any suggestion that either the jury or the Court have acted corruptly or intentionally neglected to perform the duty of arriving at a just conclusion, it is a dangerous precedent for a Minister to submit to criticism and review the decision upon a question of fact of a Tribunal, from whose judgment he sees cause to dissent.

But do not approve of his note in its entirety.

Whilst, therefore, the objection to the jurisdiction of the Portuguese court may well be maintained, and will carry out the object of protesting against the judgment delivered, we doubt the advisability of approving of Mr. Morier's despatch in its entirety.

Protest as to jurisdiction ought to be repeated.

Now that the judgment has become final, we think Mr. Morier may properly be instructed to repeat his protest against the judgment, on the ground that the Portuguese Courts had no jurisdiction, and to urge an early answer from the Portuguese Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Confidential Print No. 4243.

† Print, p. 126.

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## No. 63.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 6.)

*Temple, December* 4, 1880.

Arrest of British subjects, and domiciliary visits made at houses of British subjects at Delagoa Bay.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter received on the 8th November last, stating that he had the honour to transmit to us, by direction of your Lordship, a printed correspondence* relative to the complaint of certain British subjects at Delagoa Bay (Lorenço Marques) of ill-treatment at the hands of the Portuguese authorities, who were charged with having, in the month of January last, maliciously arrested two of them (Messrs. Menlove and Meikle) on a pretence of their assisting soldiers to desert to the Transvaal; and with having forcibly entered the houses of three other British subjects (Messrs. Cassidy, Thompson, and Williams) in search of evidence, without any probable cause or legal justification whatever.

That the first intimation received at the Foreign Office of those proceedings was contained in a telegram from Mr. Thompson, and from the letters of Mr. Pender and Messrs. Lilley and Wheeler, at pp. 1 and 2 of the Print, Nos. 1 to 4.

That Mr. O'Neill, Her Majesty's Consul at Mozambique, was immediately instructed by telegraph to proceed to Lorenço Marques and furnish a Report on the case.

That Consul O'Neill's Report, with the statements on oath of Menlove and Meikle, would be found at p. 7 (No. 17), and that Lord Tenterden was to refer us also to the Consul's further despatch No. 12 of the 4th February (p. 15, No. 18).

That on receipt of the above despatches, Her Majesty's Minister at Lisbon was instructed to represent to the Portuguese Government the complaint made of the ill-treatment of the prisoners in gaol, and of the domiciliary visits; and to express the hope that a strict investigation would be made into the conduct of the Colonial authorities. (Lord Salisbury to Mr. Morier, No. 21, March 24, 1880. Print, p. 16, No. 19.)

That thereupon Mr. Morier addressed to the Portuguese Minister for Foreign Affairs, on the 3rd April, two notes (one of them confidential), copies of which formed the two inclosures in his despatch No. 26 of April 7th (Print, p. 17, No. 20).

That Senhor Braamcamp, whose replies would be found in Mr. Morier's despatch No. 35 of April 26 (Print, p. 21, No. 21), stated that telegraphic instructions had been sent out to Lorenço Marques to institute an inquiry into the proceedings in question. That that was in the month of April last, and that the reply of the Portuguese Government to the complaint of Her Majesty's Government was not received by Mr. Morier until the 23rd August. That on the 9th September it was transmitted to your Lordship by Mr. Morier, together with a copy of Mr. Morier's rejoinder thereto, dated the 9th September (see despatch No. 102, Print, p. 25, No. 30).

That in that despatch Mr. Morier, after recapitulating the general features and incidents of the case, referred to his rejoinder of the 3rd April to Senhor Braamcamp's reply to the complaint of Her Majesty's Government, and urged that the charge against Menlove and Meikle involved the complicity of British officials in the Transvaal, and, therefore, that Her Majesty's Government should insist on a thorough explanation and investigation on that point; and further, that, as it was admitted that the domiciliary visits were ordered and carried out "without the shadow even of a pretext or an excuse," some reparation or apology was due from the Portuguese Government.

That your Lordship felt some hesitation in adopting the conclusions arrived at by Mr. Morier in that case, having regard to the conflicting statements of fact, and to the official declaration of the Portuguese Government, that the domiciliary visits "were carried out with all the legal formalities," from which your Lordship concluded that such visits were warranted by the law of Portugal or of the Colony on the grounds put forward in justification of the proceedings.

That your Lordship would, therefore, be glad to be favoured with our opinion as to whether Mr. Morier's letters to Senhor Braamcamp of the 3rd April (Inclosure 1 in No. 20, p. 18) and of the 9th September (Inclosure 2 in No. 30, p. 28) might be approved; and as to the further action, if any, which should be taken in that matter by Her Majesty's Government.

We are also honoured with a further letter from Lord Tenterden, dated the 25th ultimo, stating that, with reference to his letter of the 6th ultimo,* he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Minister at Lisbon upon the subject of the recent arrests of British subjects, and domiciliary visits to their houses by the Portuguese authorities at Lorenço Marques, and that he was to request that we would take that despatch into our consideration, together with the papers then before us.

In obedience to your Lordship's commands we have the honour to report—

Approve of Mr. Morier's despatches.

That Mr. Morier's despatch of the 9th November materially alters the aspect of the case, and, taking into consideration the facts stated in it, we think your Lordship may approve Mr. Morier's letters of the 3rd April and 9th September, 1880.

There is no doubt that when residing in a foreign country British subjects are amenable to the laws of that country, as applied to its own subjects, and if the law of the Colony had authorized domiciliary visits, there would have been no just ground for diplomatic remonstrance, unless it could be shown that the law had been oppressively and improperly used against British subjects.

But it now appears, both from the opinion obtained by Mr. Morier and the admission of the Portuguese Minister for the Colonies, that the domiciliary visits were illegal.

Remonstrances and demand for investigation warranted.

Under these circumstances, grave remonstrances and the demand for a strict investigation into the action of the Portuguese authorities in Lorenço Marques were certainly well warranted.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Confidential Print No. 4303.

* Received by Law Officers, November 8.

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# Russia.

## No. 64.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 23.)

*Temple, December* 22, 1880.

Jean d'Elie Cernogorcevich's nuncupative will.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us a correspondence† relative to the nuncupative will of Jean d'Elie Cernogorcevich, a native of Bocche de Cattaro, who died during a voyage on board the steam-ship "Mogoutchi," of which vessel he was chief officer;

That the verbal testamentary dispositions of the chief officer were recorded in a declaration of the witnesses in whose presence they were made, and this declaration in writing was deposited at Her Majesty's Consulate-General at Odessa by M. de Antonini, sworn lawyer to the Tribunal of Commerce of that town;

That the original document had been transmitted to this country at the request of Messrs. Ingledew and Ince, solicitors, who stated that it was necessary that the original should be lodged in the Probate Division of the High Court of Justice, as the foundation for the granting of letters of administration (with the document annexed) to an administrator in this country, for the purpose of enabling him to obtain from the Bank of England and to distribute a sum of money belonging to the estate of the deceased;

That Mr. Lister was to request that we would take the inclosed papers into our consideration, and favour your Lordship with our opinion as to whether, under the circumstances, your Lordship would be justified in acceding to Messrs. Ingledew and

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† Messrs. Ingledew and Ince, October 1; Acting Consul-General Hunt, No. 36, October 14; Messrs. Ingledew and Ince, October 23; Consul-Gendral Stanley, No. 45, November 16; to Messrs. Ingledew and Ince, November 30; Messrs. Ingledew and Ince, December 1, 1880.

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Ince's request in parting altogether with the custody of the document for the purpose above mentioned.

In obedience to your Lordship's commands we have the honour to report—

That Messrs. Ingledew and Ince do not in any of their letters say on whose behalf they are applying for the delivery of the so-called nuncupative will.

Reply to be returned to Messrs. Ingledew and Ince. No objection to will being deposited in Probate Court.

In our opinion, Messrs. Ingledew and Ince should be requested to state in whose behalf they apply, and if the information given by them on this point is satisfactory, we see no reason why your Lordship should not direct the original paper to be lodged in the Probate Division of the High Court of Justice.

We think this course preferable to giving up the document altogether.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

## Spain.

### No. 65.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May* 26.)

My Lord,
*Temple, May* 25, 1880.

Copyright Convention of July 7, 1857.

WE are honoured with the commands of the Marquis of Salisbury signified in Sir Julian Pauncefote's letter of the 6th ultimo, stating that he was directed by his Lordship to transmit to us a copy of a Convention between Her Majesty and the Queen of Spain for the establishment of international copyright, which was concluded on the 7th July, 1857, and also a copy of the Order in Council* issued under the International Copyright Act to give it effect.

That the second paragraph of Article XIII of the Convention stipulated that it should continue in force for six years from the day on which it may come into operation; and that, if neither party should, twelve months before the expiration of the said period of six years, give notice of its intention to terminate its operation, the Convention should continue in force for a year longer, and so on from year to year, until the expiration of a year's notice from either party for its termination.

That, in virtue of the power conferred by that Article, the Spanish Government, on the 17th February, 1879, gave the year's notice for the termination of the Treaty.

That on the 17th January last, a month prior to the date fixed for the termination of the Treaty, the Spanish Government proposed that its duration should be prolonged for six months from the 17th February last.

That, on the 2nd February, Her Majesty's Government assented to the proposal for prolonging the duration of the Treaty, but suggested that the period of such duration should, in order to allow more time for the negotiation of a new Copyright Treaty, be a year instead of six months.

That no reply to that counter-proposal of Her Majesty's Government was received from the Spanish Government until the 15th March, when the Spanish Minister at this Court informed Lord Salisbury that his Government were willing to prolong the Treaty for a year instead of six months, and that he was ready to sign an instrument to that effect.

That, in the meantime, however, in accordance with the notice of the Spanish Government above referred to, the Treaty expired on the 17th February last, and that the question arose whether it could now be revived and continued by agreement between the two Governments, and if so, whether the existing Order in Council would remain in force and operation so as to give effect to such agreement.

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* September 24, 1857.

In obedience to the commands signified in Sir Julian Pauncefote's letter we have the honour to report—

That, in our opinion, the Treaty expired by virtue of the notice given.

Expired by virtue of notice, and cannot be revived.

The prolongation for a period of six months, as proposed by the Spanish Government, was not within the terms of the Treaty, nor was it accepted by the English Government. And the consent of the Spanish Government to prolong the Treaty for another year, not being given till after the expiration of the Treaty, will not now revive it.

Any agreement now come to will not be a revival or continuation of the old Treaty, but will amount to a new one, to carry which into effect a new Order in Council will be necessary.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### No. 66.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 13.)

My Lord,
*Temple, October* 12, 1880.

Mr. Young imprisoned at Fernando Po for shooting a native of Elobey in self-defence.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd September last, stating that he was directed by your Lordship to transmit to us the accompanying correspondence* and statement relating to the case of Mr. Young, a British subject, who, for having in self-defence shot a native of Elobey who tried to murder him, had been detained by the Spanish authorities in the Island of Fernando Po for upwards of two years and a-half, a portion of the time as a close prisoner.

That we should perceive that after repeated representations made to the Spanish Government for his release, the Supreme Court of Havana had at last pronounced its decision, declaring him to be innocent, Mr. Young in the meantime having suffered privations which had at times endangered his life.

That, under those circumstances, your Lordship would be glad to be furnished with our opinion as to whether Her Majesty's Government would be justified in demanding compensation of the Spanish Government, on behalf of Mr. Young, for the sufferings inflicted upon him by the delay of justice on the part of their colonial authorities in that case.

In obedience to your Lordship's commands we have the honour to report—

Strongest representations should be made to Spanish Government with a view to obtain compensation, but it cannot be demanded.

That, in our opinion, Her Majesty's Government, looking to the action of the British Government in analogous cases, would not be justified in demanding compensation of the Spanish Government on behalf of Mr. Young, but that the strongest representations may properly be made to the Spanish Government by Her Majesty's Government, with a view to obtain for Mr. Young some compensation for the serious sufferings which he has undergone. We think it would be well to point out to the Spanish Government the following facts:—

That the homicide happened in January 1878, and Mr. Young was at once imprisoned.

That he was not informed until June 1878 that he had been found guilty of imprudence, and sentenced to four months' imprisonment and a fine of 20*l*.

That thereupon the fine was paid, and his sentence of four months' imprisonment having been undergone the Spanish law was satisfied, and at that time Mr. Young ought to have been set at liberty, but was unjustly detained a prisoner.

That representations were made on his behalf by the British Minister at Madrid to the Spanish Government in June 1879, September 1879, October 1879, February 1880, and May 1880, and that it was only in June 1880 that Mr. Young was released, having suffered both in body and mind for two years and a-half, and that such delay apparently resulted from the defects in the administration of public justice, which must be under the control of the Spanish Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Printed Correspondence, Confidential, No. 4364.

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## Annex.

### *Memoradum on Mr. Young's Case.*

Nos 1 and 5 of Print, Confidential No. 4364.

Mr. J. C. Young, a British subject, when defending himself from the attack of an armed native, at Elobey, in Spanish territory, who was trying to kill him, shot him, and was arrested on the 17th January, 1878, and brought a prisoner to Fernando Po.

Nos. 5 and 6. Inclosure 2 in No. 10.

He was tried and found guilty of "imprudence," and sentenced to four months imprisonment, or, according to Mr. Young's statement, a fine of 20*l*., having already been kept a close prisoner before the trial for nearly four months.

No. 1.

Nos. 10 and 16, and Inclosure 6 in No. 10.

Inclosure in No. 11, and Inclosure 1 in No. 16.

As regards the alternative of the fine, there is much discrepancy in the different statements. In his first Report, Consul Hopkins says—"Governor Salgado intimated to us that if we paid 20*l*. compensation to the friends of the man killed, and became bail to the extent of 50*l*. for Mr. Young, he would release him." But in later despatches, and in one communication which he addressed to the local authority, he asserts that Mr. Young was sentenced to "four months' imprisonment and a fine of 20*l*.," while in another letter to the local authority he says "fined 20*l*. and or (?) four months' imprisonment." The fine is denied by the Acting Governor, whose version agrees with Consul Hopkins' first statement.

No. 1.

Inclosure 2 in No. 10.

However, the 20*l*. was raised among the English in Fernando Po and paid, together with 10*l*. or 12*l*. for doctors' fees, and Mr. Young was released on the 13th July, 1878. After remaining quietly in the island for about four months he endeavoured to make his escape on the 7th November, in an English mail-steamer. The Captain fearing the consequences brought him back, and he was made a close prisoner on board the guard-ship.

Inclosure 3 in No. 16.

Fernando Po being under the jurisdiction of Cuba, the sentence was referred to Cuba, and Mr. Young remained a prisoner either on board the guard-ship, in hospital, or in prison ("cuartel," *i.e.*, quarters or barracks), to the serious injury of his health, and even danger of his life.

The time during which he remained a close prisoner appears to have been:—

1. From the 17th January, 1878, to the 13th July, 1878—seven months.

No. 5, and Inclosure 2 in No. 9.

Inclosure 3 in No. 16.

Inclosure in No. 19.

2. After his attempt to escape on the 7th November, 1878, to some date between the 11th August, 1879, when he complained to the Consul of his continued detention, and the 29th October, the date of a despatch from the Fernando Po authorities to the Spanish Government, reporting that he was released on bail, viz., between nine and eleven months, or altogether from sixteen to eighteen months.

No. 27.

(Mr. Easton, writing on the 7th February, 1880, says he is not detained in gaol.)

7 altogether, viz.:—on January 29, 1879, No. 4; June 25, 1879, No. 9; September 20, 1879, Inclosure in No. 13; October 27, 1879, No. 18 and Inclosure; February 12, 1880, No. 24; February 13, 1880, Inclosure in No. 29; March 20, 1880, No. 27.

Inclosure in No. 13.

Repeated representations, verbal and written, were made to the Spanish Government by Her Majesty's Representative at Madrid, on behalf of Mr. Young, and in the communication of the 20th September, 1879, they were informed that he had put forward a claim to compensation, which Her Majesty's Government considered to be well founded.

Inclosure in No. 10.

The amount then claimed by Mr. Young, the 23rd June, 1879, more than a year ago, was 1,000*l*.

No. 16 and Inclosure No. 2, and Inclosure 7 in No. 10.

Several representations were also made by Mr. Hopkins to the local authorities, who, however, informed him that he had no right to interfere, and Mr. Young states that the Governor refused him a copy of his case, to which he understood he was entitled by law, on the ground of a possibility of his submitting it to the Consul, and thereby obtaining the interference of Her Majesty's Government.

Inclosure in No. 36.

Inclosure in No. 37.

It was not till the 27th July that Mr. Wyndham was informed that a telegram had been received from the Captain-General of Cuba, reporting that Mr. Young had been "acquitted and exempted from all responsibility." In a further communication, dated the 4th August, the Spanish Government informed Mr. Wyndham that the Havana Court of Justice had found Mr. Young to have acted in self-defence, and declared him fully acquitted, and had given costs against the Government.

We do not know if he has yet been released.

On this charge, then, which turns out to have been quite unfounded, he has been kept a prisoner, either in actual custody or on bail, for more than two years and a-half, of which about one year and a-half was spent in prison under such privations and sufferings as to injure his health, and even at times to endanger his life; and this treatment was inflicted on him in spite of the continued remonstrances of Her Majesty's

Consul, and although the compensation to the family of the deceased suggested by the Governor as a condition of his release had been paid by public subscription.

*September* 16, 1880. J. W. W.

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## Switzerland.

### No. 67.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July* 16.)

*Temple, July* 15, 1880.

My Lord,

Trade marks. New Swiss law.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us therewith papers, as marked in the margin,* on the subject of a law respecting the protection of trade marks passed by the Swiss Government on the 19th December last.

That we would find a copy of that law inclosed in Mr. Vivian's despatch No. 14, Commercial, of the 7th April last, together with a memorandum on the questions to which it had given rise; and copies of an opinion by Professor König, and of a memorandum by M. Droz, the Federal Minister of Commerce and Agriculture.

That the law in its terms dealt generally with the registration and protection of Swiss trade marks, but Article 7 (2) provided for the registration of foreign trade marks where there was a reciprocity of treatment; nevertheless, by Articles 27 and 28 a period of three months was to be fixed within which application was to be made for the registration only of Swiss trade marks legitimately used before the 1st October, 1879; and by Article 29 (as to which we were referred to the statement of M. Droz, reported in Mr. Vivian's despatch No. 20 of the 3rd May), the registration of foreign trade marks could not be effected until after the applications for the registration of Swiss trade marks under Articles 27 and 28 had been disposed of.

That it further appeared that, in the opinion of M. Droz, a special Convention would be necessary to secure the protection of the new law to British trade marks. That Sir Julian Pauncefote was to refer us to the inquiries addressed by direction of your Lordship to the Federal Government (Mr. Vivian's No. 22 of the 19th May), and to their reply (*ibid.*, No. 29 of 12th June). That, that reply did not give a definite answer to the important question whether the registration of a Swiss trade mark under Articles 7, 27, and 28 of the new law could be opposed on the ground of its being a piracy of a British trade mark duly registered in this country. That, if not, it followed that British subjects, being precluded from registering a trade mark in Switzerland until after the expiration of the period assigned for the registration of Swiss trade marks, would have no redress against such piracy.

That the French Government, in their reply, intimated their willingness to enter into a Convention with Great Britain, whereby reciprocity of treatment to Swiss trade marks in Great Britain should be guaranteed.

As to British rights under "most-favoured-nation" Clause of Treaty 1855.

That Sir Julian Pauncefote was to invite our attention to the letter addressed to the Foreign Office by the Huddersfield Chamber of Commerce (26th May), and by the Association of Chambers of Commerce (16th June), and he was to request that we would favour your Lordship with our opinion on the questions discussed in the Report of Professor König (Inclosure 3 in Mr. Vivian's No. 14 of the 7th April), as to whether, under the most-favoured-nation clause of the Treaty of 1855, between Great Britain and Switzerland, of which a copy was annexed (see § 10),† Her Majesty's Government were entitled to claim all the advantages in regard to the protection of trade marks secured by the Treaties and Conventions between Switzerland and France, Germany and Italy, referred to by Professor König. We would observe that Mr. Vivian, in his

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* Mr. Vivian's Nos. 14, 17, 20, 22, and 29; to Mr. Vivian, No. 5, May 14, 1880; Memorandum by Mr. March, April 15, 1880; Mr. Hole, June 16, 1880; Huddersfield Chamber of Commerce, May 26, 1880; Treaty of 1855; Declaration of 1855.

† September 6, 1855: Hertslet's Treaties, vol. x, p. 593.

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memorandum (Inclosure 2 in No. 14), suggested that such a claim on the part of Her Majesty's Government might perhaps be considered to be precluded by the Declaration signed in 1877 by Her Majesty's Minister and the Federal Council for Reciprocal Protection, in respect of trade marks, but which Declaration was not ratified by the Federal Chambers, for the reasons stated in Professor König's Report.

That Her Majesty's Government had also quite recently notified to the Federal Government their readiness to conclude a Convention on the subject (Mr. Vivian's No. 22 of the 19th May). That, on the other hand, it was more convenient in practice to enter in Special Conventions than to rely on a most-favoured-nation clause, and that it was not the intention of Her Majesty's Government to waive their rights under Article X of the Treaty of 1855 by the negotiations in question.

Safest course would be to conclude a Convention on the subject with Swiss Government.

In obedience to your Lordship's commands we have the honour to report—

That it is open to contention that under Article X of 1855 Her Majesty's Government are entitled to claim all the advantages in regard to the protection of trade marks secured by the Treaties and Conventions between Switzerland and other countries, but that, in our opinion, considerable difficulties may be raised if the question of trade marks is left to be dealt with solely under the most-favoured-nation clause in the Treaty of 1855, and the safest and most desirable course will be to conclude a Convention on the subject which may adequately protect British interests in Switzerland under the new law in that country.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Turkey.

### No. 68.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received January* 6.)

*Temple, January* 5, 1880.

My Lord,

Piracy in Persian Gulf.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 2nd December instant, stating that, with reference to his letter of the 4th October relative to the measures proposed for the suppression of piracy in the Persian Gulf, he had the honour to transmit to us therewith, by direction of your Lordship, a further despatch received from Her Majesty's Ambassador at the Porte,* reporting that he had found it necessary to make fresh representations to the Turkish Government upon the subject; and to request that we would take that despatch into consideration, together with the papers previously forwarded, and would return it with our Report.

In obedience to your Lordship's commands we have the honour to report—

That the previous papers referred to in Lord Tenterden's letter of the 2nd instant were, with our Report upon them, transmitted to the Foreign Office before we received Lord Tenterden's letter.

Protection of British interests in Turkish waters. Steps to be taken in case of neglect by Porte to act.

Should the Porte neglect to take any measures for the security of British trade in the Persian Gulf, Her Majesty's Government may, consistently with international law, endeavour to obtain from the Porte permission to act in Turkish waters against pirates and marauders, and should this permission be refused, and the Porte continue to allow piracy in its waters, Her Majesty's Government might not improperly make such negligence a ground for reprisals. Whether either of these courses would be worth the expenses and trouble abroad, and possibly at home, we cannot form an opinion.

Another and less objectionable measure, though probably not attended with any success in the present state of Turkey, would be to demand compensation in any case

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* Sir H. Layard, No. 996, November 16, 1879.

where British subjects or British property may have been injured in Turkish waters.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD
J. PARKER DEANE.

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### No. 69.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received February* 11.)

My Lord,

*Temple, February* 11, 1880.

Dr. Koelle, Protestant missionary. Arrest at Constantinople. Right of Turkish authorities to arrest foreigners.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th instant, stating that he was directed by your Lordship to request that we would be good enough to favour your Lordship, at our earliest convenience, with our opinion on a question of great practical importance in the Levant, which had arisen in connection with the case of Dr. Koelle, a Protestant missionary at Constantinople.

That that gentleman (who was a German subject) was lately arrested by the Turkish police on suspicion of having committed an offence against Turkish law. That he was not only arrested, but his person was searched and his papers examined and detained without the intervention of the Diplomatic or Consular Representative of his nation.

That Dr. Koelle was a clergyman of the Church of England; and in the course of the correspondence between Her Majesty's Ambassador at Constantinople and the Porte to which the above incident had given rise, Sawas Pasha, the Turkish Minister for Foreign Affairs, addressed to Sir H. Layard a letter which was embodied *in extenso* in a telegram to Musurus Pasha (the Turkish Ambassador at this Court), of which a printed copy was annexed.* That in that letter Sawas Pasha endeavoured to vindicate the action of the Porte in the case of Dr. Koelle, and with reference to his arrest he claimed for the Turkish police the right to arrest in the public street, and in accordance with Turkish procedure, any person, whether a native or a foreigner, whom they might believe to have been guilty of a crime or offence against Ottoman law, and also to search for and examine the papers and effects which he might carry about him, and that he proceeded to describe the course which it was the duty of the police to follow where the accused was a foreigner.

That Sir H. Layard and other foreign Representatives at Constantinople had protested against those pretensions.

That it appeared that a copy of the above-mentioned letter of Sawas Pasha was communicated to some of the Powers through the Turkish Representatives abroad, and the question having thus become one of general interest, the German Ambassador at this Court had expressed to your Lordship the desire of his Government to know what are the views of Her Majesty's Government on the subject, and he had intimated at the same time the opinion of his Government that the right to arrest a foreigner in the public street without the intervention of the Representative of his nation could only be conceded to the Turkish authorities in cases where the offender is found *flagrante delicto*.

That your Lordship would be glad to know whether, in our opinion, the view of the German Government was founded on legal right, and if not, to what extent Her Majesty's Government were entitled to object to the arrest of British subjects for a crime or offence against Turkish law, and to the search for and examination of the papers and effects which they might carry about them, without the intervention of the British Diplomatic or Consular Representative.

That Sir Julian Pauncefote was to inclose a copy of the Capitulations, and a printed memorandum, prepared by the Librarian of that Department,† in which reference was made to the particular Articles bearing on Her Majesty's ex-territorial rights in the Levant, and also to various cases in which British subjects had been arrested by the Turkish authorities. That it did not appear, however, from the Reports of those cases, whether the arrest was effected *flagrante delicto* or otherwise.

We are also honoured with a further letter from Sir Julian Pauncefote, dated the 9th instant, stating that, with reference to his letter of the 4th instant, relative to

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* The Porte to Musurus Pasha, Telegraphic, January 25, 1880.

† No. 4050.

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certain questions which had arisen with regard to the circumstances under which the Turkish police authorities had a right to arrest foreigners and examine their papers and effects, he had the honour to transmit to us, by direction of your Lordship, a despatch from Her Majesty's Ambassador at Constantinople inclosing the note from the Turkish Minister for Foreign Affairs, upon which our opinion was desired.

That Sir Henry Layard also inclosed memoranda* by Her Majesty's Consul-General and Judge of the Supreme Court at Constantinople upon the claim advanced in that note, and opinions which had been communicated to him by his German and Italian colleagues.

That Sir J. Pauncefote was further to inclose a despatch from Her Majesty's Ambassador at Rome,† reporting that the Italian Government had expressed themselves willing to support Her Majesty's Government in contesting the claim of the Porte.

That Sir J. Pauncefote was to request that we would take those papers into our consideration, with those already forwarded to us, and would return them with our reply.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the Turkish police have the right to arrest a foreigner in the public streets, whom they have reasonable grounds to believe guilty of a crime or offence against Ottoman law, and to search and examine the papers and effects which he may carry about him.

This right is one which every Government, for the sake of maintaining public peace and order, must be deemed to possess, unless the right has been surrendered by Treaty, or in some other way.

We are not aware of any surrender of this right by the Porte. On the contrary, it seems to us that in the Protocol of the 18th June, 1867,‡ Article 11 (p. 76 of Sir E. Hertslet's Treaties with Turkey), the right to arrest is so expressly referred to that we consider (at least so far as Her Majesty's Government is concerned) the argument of Sawas Pasha is unanswerable.

The passage in the Protocol to which we refer is the following :—

"Beyond the dwelling the action of the police shall be free and without reserve; but in case an individual accused of a crime or offence should be arrested, and the accused be a foreign subject, the immunities attaching to his person shall be observed with regard to him."

We can find no reason or authority for believing that these immunities can be extended to save the person of the accused from being searched, or the papers and effects upon his person from being seized.

For these reasons, and as far as Her Majesty's Government is concerned, we are of opinion that the view of the German Government is not well founded.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 70.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received February 24.)*

*Temple, February* 24, 1880.

Danube Commission. Additional Act may be ratified, but wishes of Roumania should be considered, and accession of Russia obtained before ratification.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th instant, stating that, by your Lordship's direction, he transmitted therewith a copy of the Additional Articles to the Public Act for the Navigation of the Danube, which had been signed by the English, French, Italian, and Turkish Commissioners at Galatz, and to which the adhesion of the Austrian and German Governments might shortly be expected.§

That an account of the discussions which took place previous to the signature of that document, and copies of the Protocols in which those discussions were recorded, would be found in the despatch from Colonel Siborne, Her Majesty's Commissioner, which was also inclosed.

That the history of the previous negotiations was given in the accompanying collection of printed papers,|| in which those bearing upon the particular questions were marked in the margin; and Sir Julian Pauncefote was to inclose a memorandum containing a brief statement of the present position of the question, and of the circumstances under which Colonel Siborne was authorized to give his adhesion, subject to the ratification by Her Majesty, to the Additional Act signed by the Commissioners above mentioned.

That Sir Julian Pauncefote was to request that we would take all those papers into our consideration, and favour your Lordship, at our earliest convenience, with our opinion whether Her Majesty might properly be advised to ratify the Supplemental Act in its present form, and in the manner prescribed in Article X; and also generally with any observations which we might have to offer with regard to any of its provisions.

That Sir Julian Pauncefote was to call our attention to the reservations made by the Roumanian Delegate, as recorded in the Protocol of the sitting of the Commission held on the 3rd January, 1880 (print, No. 4301, p. 225), and repeated in the inclosed note from the Roumanian Agent at Paris to Her Majesty's Ambassador there,* as to the acceptance by his Government of Articles VI and VII of the Additional Act.

We were also honoured with Sir Julian Pauncefote's letter of the 21st instant.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, Her Majesty may properly be advised to ratify the Supplemental Act in its present form, and in the manner prescribed in Article X.

But we, in obedience to your Lordship's directions that we should offer any observations which might occur to us in reference to any of the provisions in the Supplemental Act, submit for your consideration whether, unless time is of great importance, the apparently reasonable wishes of the Roumanian Government should not be considered and made part of the Act; and, in order to avoid future complications, the accession of the Russian Government be obtained before Her Majesty actually ratifies the Act.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 71.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received March 15.)*

*Temple, March* 15, 1880.

Dr. Koelle's case. Adhere to previous Report on arrest of foreigners in Turkey.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he had the honour to transmit to us, by your Lordship's direction, a further despatch† from Her Majesty's Ambassador at Constantinople with reference to the question which had arisen in Dr. Koelle's case, as to the right of the Turkish authorities to arrest a foreigner suspected of a crime against Ottoman law, and which was the subject of our Report of the 11th ultimo.

That in that despatch Sir H. Layard drew attention to an article in the "Courrier d'Orient," in which reference was made to certain clauses of the Treaties concluded by the Porte with France, Austria, Denmark, and the United States, the benefit of which could be claimed by Great Britain under the most-friendly-nation clause (see Treaty of 1861, Article I: Hertslet, p. 42), and which it was contended were opposed to the contention of the Turkish Government in that matter. That, as regarded the clauses of the Treaties with France and Austria which were cited in the newspaper article inclosed in the despatch, Sir Julian Pauncefote was to observe that they appeared to relate to the actual trial and punishment of offenders, and not to their preliminary arrest on a charge.

That the clause cited from the Danish Treaty did not seem to apply to the question of jurisdiction at all.

That, as regarded the Treaty with the United States, the citation of Article IV was incomplete. That the concluding words, which had been omitted, were "et punis suivant leur délit en observant sur ce point l'usage établi à l'égard d'autres Francs."

That that Article, when examined in its entirety, did not seem to go further than

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* Sir H. Layard, No. 130, January 27, 1880.

† Sir A. Paget, No. 34, January 27, 1880.

‡ This should read "dated the 28th July, 1868" (the law is dated 10th June, 1867; see p. 73).

§ Lord Lyons, No. 2, Commercial, January 2, print, No. 4301, p. 124.

|| No. 4301, Confidential.

* Lord Lyons, No. 70, January 30, 1880.

† Sir H. Layard, No. 203, February 13, 1880.

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the Treaty stipulations of other Powers on the same subject. That, apparently, it had reference only to cases of offences cognizable by the Consuls of the United States, and declared that American subjects committing such offences should not be arrested and imprisoned by the Turkish authorities, but should be judged and punished by their Ministers and Consuls, as in the case of other foreigners.

That Sir Julian Pauncefote was to transmit therewith Férand-Giraud's work on French Jurisdiction in the Levant, in which we should find the full text of the clauses, except Article XII of the Danish Treaty, which was not even mentioned (see Vol. I, Austria, p. 132; France, p. 188; Denmark, p. 122; United States, p. 133).

That Sir J. Pauncefote was also to inclose copies of two despatches* which your Lordship had addressed to Her Majesty's Ambassadors at Constantinople and Berlin in regard to the point at issue, and that he was to request that we would inform your Lordship whether Sir Henry Layard's despatch then submitted to us modified in any way the views expressed in our Report of the 11th ultimo.

That the former papers bearing on that case were inclosed therewith for convenience of reference, together with our letter of the 11th ultimo.

That it was requested that they might be returned with our reply.

In obedience to your Lordship's commands we have the honour to report—

That the despatch of Sir H. Layard contains nothing which induces us to change the opinion which we have submitted to your Lordship.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 72.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April 9.)*

*Temple, April* 8, 1880.

My Lord,

Mr, O. Arsenian. Seizure of his offices and warehouses by Persian Minister.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us two letters which had been received from the Manchester Chamber of Commerce,† claiming the intervention of Her Majesty's Ambassador at Constantinople on behalf of Mr. Oskian Arsenian, a naturalized British subject, against the proceedings of the Persian Representative at the Porte, by whose orders his offices and warehouses in that capital had been seized and sealed.

Claim for British intervention.

That the Queen's Advocate in his Report of December 8, 1871, which was inclosed therewith,‡ advised that a native of Gibraltar born of Spanish parents, and therefore having a double nationality, British and Spanish, could not, when in Morocco, be protected by the British Consul as against the Spanish Consular authorities who claimed to exercise jurisdiction over him within the territories of Morocco, under Treaty engagements with that Power.

That your Lordship would therefore be glad to be favoured with our opinion as to the reply which should be returned to the application of the Manchester Chamber of Commerce.

We were also honoured with Sir Julian Pauncefote's letter of the 25th ultimo, transmitting a letter which had been received from Mr. Arsenian,§ containing further explanations respecting his case, which it was requested might be taken into consideration together with the other papers.

In obedience to your Lordship's commands we have the honour to report—

That we presume that the origin of Mr. Arsenian is Persian, and that in Constantinople the relation between Persian subjects and the Persian Representative is similar to that between British subjects and Her Majesty's Representative.

On this presumption the application of the Manchester Chamber of Commerce may properly be replied to by saying that—

He has no rights as a naturalized British subject at Constantinople against Persian Minister.

Mr. Oskian Arsenian, a Persian subject by origin, has at Constantinople no rights as a naturalized British subject which Her Majesty's Ambassador can enforce on his behalf in opposition to the Persian Representative at the Porte.

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* To Sir H. Layard, No. 138, February 25; to Lord Odo Russell, No. 66, February 24, 1880.

† Manchester Chamber of Commerce, March 19, 1880.

‡ Law Officers' Report for 1871, No. 127, p. 69.

§ Mr. Arsenian, March 23, 1880.

That your Lordship, however, will instruct Sir H. Layard to employ officiously the best means in his power to assist Mr. Arsenian.

Sir H. Layard may we think properly be instructed so far and to that effect.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 73.

*The Attorney- and Solicitor-General to Earl Granville.—(Received May* 11.)

*Temple, May* 11, 1880.

My Lord,

Appointment of a Member of Parliament as Special Ambassador abroad without salary.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 5th May instant, stating that he was directed by your Lordship to state that it was proposed to appoint a Member of Parliament to proceed, without salary, as Special Ambassador to a foreign Court. That before completing the appointment your Lordship would be glad to be favoured with our opinion whether, by accepting that office, the Member of Parliament would vacate his seat.

That as instances of Members of Parliament who had proceeded on special Missions Lord Tenterden was to mention Mr. Cobden, who negotiated at Paris and signed, under full powers the Royal Sign-manual, the Treaty of Commerce with France in 1860; the Right Honourable Sir Stafford Northcote, who acted as High Commissioner, and signed the Treaty of Washington in 1871, under similar full powers; the Right Honourable Sir Stephen Cave, who proceeded on a special Mission to Egypt in 1875; Mr. Russell Gurney, who was Claims' Commissioner in the United States during various periods from 1871 to 1873; and Sir H. Wolff, recently Delegate in the Eastern Roumelian Commission.

That Lord Tenterden was also to refer us to Sir Erskine May's "Parliamentary Practice," edition 1879, p. 655, in which it was stated that: "It has always been held that the office of Ambassador, or other foreign Minister, does not disqualify, nor its acceptance vacate, the seat of a Member."

That it would be seen from the note to that passage that the acceptance of the paid appointment of Minister at Madrid by Mr. Layard in 1869 did not vacate the seat he then held for the Borough of Southwark.

In obedience to your Lordship's commands we have the honour to report—

He does not thereby vacate his seat.

That we are clearly of opinion that the Member of Parliament proceeding without salary as Special Ambassador to a foreign Court does not thereby vacate his seat in Parliament.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 74.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June* 9.)

*Temple, June* 9, 1880.

My Lord,

Case of Mr. A. V. Arsenian, a naturalized British subject of Persian origin, and question as to his protection against action of Persian Consul at Constantinople.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th May last, stating that he had the honour to transmit to us, by direction of your Lordship, the papers noted in the margin,* relating to the case of Mr. A. V. Arsenian, a naturalized British subject, of Persian origin, residing at Manchester, and carrying on business as a merchant there and at Constantinople.

That Mr. Arsenian was naturalized in 1868.

That, on the 19th March last, the Manchester Chamber of Commerce addressed a letter to the Foreign Office requesting the intervention of Her Majesty's Government for the protection of Mr. Arsenian against the action of the Persian Consul at Constantinople, by whose orders his warehouses there had been taken possession of and sealed.

That doubts being entertained whether Her Majesty's Government could claim the right to interfere in the case, the question was referred to the Law Officers of the Crown, who reported that, assuming the relation between Persian subjects and the

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* Sir A. H. Layard, No. 500, May 11; Manchester Chamber of Commerce, March 19; Sir A. H. Layard, No. 353, March 29; Law Officers, April 8; Sir A. H. Layard, No. 223, Telegraphic, May 9, 1880.

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Persian Representative at Constantinople to be similar to that existing between British subjects and Her Majesty's Representative, Mr. Arsenian, being a Persian subject by origin, had at Constantinople no rights as a naturalized British subject which Her Majesty's Ambassador could enforce on his behalf in opposition to the Persian Representative at the Porte, but that Her Majesty's Ambassador might be instructed officiously to employ the best means in his power to assist Mr. Arsenian.

That Sir H. Layard was instructed accordingly, and, on the 9th May, he telegraphed to the effect that the Porte denied the right of the Persian Consulate to exercise jurisdiction over Mr. Arsenian, and he had consequently protested to the Persian Ambassador against the intended sale on the following day by the Persian Consulate of Mr. Arsenian's stores, holding the Consul responsible for all loss and damages resulting therefrom. That Sir Julian Pauncefote was now to refer us to Sir Henry Layard's despatch No. 500 of the 11th May, which had since been received, and to the twelve numbered documents therein contained, especially to the letters of the Persian Ambassador (Nos. 4 and 5) explaining the nature of the legal proceedings, and vindicating the action of the Persian Consulate, also to the protest of Sir H. Layard, No. 10, and to the copy of the Convention between the Porte and Persia (No. 12).

That in the letters above referred to (Nos. 4 and 5) it was stated by the Persian Ambassador that, according to Persian law, Mr. Arsenian, not having obtained the sanction of the Persian Government to his assumption of British nationality, he still remained a Persian subject. That Sir Julian Pauncefote was to observe that, although the Capitulations did not apply to Persia, Article VII of the Convention (No. 12) provided that all suits or proceedings, civil or criminal, arising between Persian subjects should be heard and determined by the Consuls and Vice-Consuls of Persia.

That it would seem to follow, therefore, that as regarded civil and criminal jurisdiction, the relations between Persian subjects and the Persian Representative in Constantinople were placed by the above Convention on the same footing as the relations which existed between the subjects of Christian Powers and their Representatives under the Capitulations.

That we would observe, however, that Sir H. Layard based his protest (No. 10) on Article XII of the Convention, treating Mr. Arsenian as a British subject.

That Sir Julian Pauncefote was to request, therefore, that we would take all the papers into consideration, and favour your Lordship with our opinion as to whether Sir Henry Layard's protest was well founded, or whether the Persian Consul was entitled to treat Mr. Arsenian as a Persian subject, notwithstanding his British naturalization, and to exercise jurisdiction over his property at Constantinople.

In obedience to your Lordship's commands we have taken all the papers submitted to us into consideration, and we gather from them that the parties to the litigation will be Mr. Arsenian on the one side, and Persian subjects on the other side, Mr. Arsenian being a Persian subject by birth, but a naturalized British subject since 1868.

And the question is whether, by virtue of such naturalization, Mr. Arsenian can claim British protection, and exemption from the jurisdiction of the Persian Consul in Constantinople.

We think that Article XII of the Convention between the Porte and Persia is not applicable unless we could assume that Mr. Arsenian was, in a controversy with other Persian subjects in Constantinople, to be considered a British subject, and we are unable to make this assumption; Article VII of the Convention appears to us to give the Persian authorities in Constantinople the same control over processes between their subjects as other Powers have under the Capitulations, and the Persian law, it seems, requires the permission of his own Government before a Persian can change his nationality, a permission which Mr. Arsenian has not obtained.

We think, therefore, that Mr. Arsenian is amenable to the jurisdiction of the Persian Consul, and is not entitled to protection, as a British subject, against the exercise of such jurisdiction, and therefore report—

That, in our opinion, Sir Henry Layard's protest is not well founded, and the Persian Consul is entitled to treat Mr. Arsenian as a Persian subject, notwithstanding his British naturalization, and to exercise jurisdiction over his property in Constantinople.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 75.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 16.)

My Lord,

*Temple, July* 14, 1880.

Imprisonment of G. Scifo at Malta: as to period of termination of second sentence.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th ultimo, stating that he was directed by your Lordship to lay before us the papers noted in the margin,* and relating to the case of Guglielmo Scifo, a prisoner in the gaol at Malta, who had petitioned for the remission of his remaining term or terms of imprisonment.

That Scifo was tried at Smyrna in March 1870 before Sir Philip Francis, Judge of the Supreme Consular Court in the Levant, and was sentenced to fifteen years' imprisonment with hard labour for the manslaughter of Giacmo Remur, and to five years' imprisonment with hard labour for wounding one Antonio Sansonn, with intent, etc. That both charges were tried on the same day, and arose out of the same disturbance. In the month of May in the same year Scifo was tried for breach of prison, and was sentenced to undergo one year's imprisonment with hard labour "after the expiration of the former terms of fifteen and five years' imprisonment."

That a report on the case was called for from Mr. Fawcett, the present Judge of the Supreme Consular Court, and Sir Julian was also to refer us to Mr. Fawcett's despatch No. 40 of the 31st May last, inclosing a copy of the Judge's notes of the evidence taken on the three trials, and pointing out that the record of the second sentence did not show that it was intended to take effect after the expiration of the first.

That Scifo stated in his petition that he had now completed his first sentence of fifteen years. That he had possibly obtained some remission under the prison regulations, as an official note in the petition recorded that his conduct in prison for the last seven years had been very good. That further information on that point would be called for. That in the meanwhile Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether the second sentence of five years must be taken to have run concurrently with the first sentence, and consequently to have expired.

In obedience to your Lordship's commands we have the honour to report—

That we are of opinion that, inasmuch as the second sentence of five years is not directed to commence at the termination of the first sentence, it must be regarded as commencing from the time it was pronounced, and therefore it has now expired.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# United States.

## No. 76.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received February* 11.)

My Lord,

*Temple, February* 11, 1880.

Claims on account of violent interference by British subjects with United States' citizens whilst fishing in Fortune Bay.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, the correspondence† respecting a claim which the United States' Government have preferred against that of Her Majesty, amounting to

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* Colonial Office, February 26; to Consul-General Fawcett, No. 14, March 25; Consul-General Fawcett No. 40, May 31, 1880.

† Printed Correspondence, 1878–79, Confidential Nos. 3851, 3920, and 3920*; Correspondence relative to the Halifax Fsihery Commission, "North America No. 1 (1878)," Parliamentary No. 2055; Correspondence relative to the North American Fisheries, 1854 to 1863, Confidential No. 2286.

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the sum of 105,305 dollars, on account of damages alleged to have been sustained through the violent interference by British subjects with United States' fishermen while engaged in catching herring at Fortune Bay, in the Colony of Newfoundland, in the alleged exercise of their rights under the Treaty of Washington.

That Sir J. Pauncefote was also to inclose a printed Memorandum* containing a statement of the facts and a reference to the Treaties, Colonial Acts, and other documents bearing on the case; and that Sir J. Pauncefote was to request that we would take all those papers into our consideration, and favour your Lordship with our opinion on the claim, and with our advice as to the answer which should be returned to the letter addressed by the United States' Minister to your Lordship on the 13th August, 1879 (see Further Correspondence, p. 1), transmitting a copy of Mr. Evarts' despatch to him of the 1st August, 1879.

In obedience to your Lordship's commands we have the honour to report—

United States' fishermen have no right to use the beach for fishing.

That, in our opinion, the American fishermen had not, under the Treaty of Washington, the right to use the beach for the purpose of working their seine and barring the fish.

Their claims should not be entertained, though unnecessary violence was used.

Probably greater and more continued violence was used by the British fishermen than was necessary, but as the Americans were the first offenders, their claim for compensation should not be entertained.

United States' citizens have equal rights with British subjects, which cannot be modified by local legislation subsequent to Treaty.

Legislation subsequent to the time of the Treaty of Washington cannot, in our opinion, modify or restrict the rights and privileges which the citizens of the United States acquired, and their Government have paid for, under that Treaty.

But we think the Americans were bound by all local laws in existence at the time when the Treaty was made; that, by the words of the Treaty, they were on the territorial waters of Newfoundland entitled to equal rights, and to the fishery in common with British subjects.

As to the answer, we have the honour to report—

Answer to United States' Minister.

That the United States' Minister may, in our opinion, properly be answered to the following effect:—

That the right of the citizens of the United States to compensation for damage sustained by them in Fortune Bay, Newfoundland, in January, 1878, depends upon the facts and occurrences which happened on the day and in the place named, and the construction of those Articles of the Treaty of Washington of 1871 which are applicable to the facts.

First, as to facts.

The ends of the seines of the United States' citizens were secured to the shore. This fact, which is material, is not noticed by Mr. Evarts in his Inclosure No. 1 to Mr. Welsh, though at p. 5 of the Further Correspondence, in continuation of No. 2920, he says, referring to the affidavits of Rode, Dagle, and Murray, that "the seining was conducted at a distance from any land, fishery, or privilege, or the occupation of any British subject."

From the affidavits of Maclurison, p. 14, and the deposition of Ramsey, p. 17, of Correspondence 3851, it appears that on the day in question a large number of the crews belonging to the United States' fishery vessels came on shore and from the beach barred the herrings.

If these facts are true—and that they are true appears clearly from the statement transmitted by Mr. Evarts to Sir E. Thornton (Correspondence No. 3851, p. 5)—the United States' citizens, in landing and setting and working their seines from the shore, were guilty of a breach of the Convention of 1818 and the Treaty of Washington of 1871.

The rights secured by these to the citizens of the United States are to take fish on certain portions of the coast of Newfoundland, and to use the shore for the purposes of purchasing wood, obtaining water, drying their nets, and curing fish. The citizens of the United States are thus, by clear implication, absolutely precluded from the use of the shore in the direct act of catching fish.

In endeavouring to use the shore for fishing purposes they committed a breach of the privileges given by the Treaty.

It may be admitted, with regret, that more force than was necessary may, on the occasion, have been used by the Newfoundland people; but as the citizens of the United States, by a direct infringement of the Treaties and of the rights of the Newfoundland people, were the first and real cause of the mischief, Her Majesty's Government sees no reason for compensating them for any damages which they may have sustained in consequence of their own illegal acts.

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* Memorandum by Mr. Bergne, November 1879, Confidential No. 4064.

Her Majesty's Government has already stated "that British sovereignty, as regards these waters, is limited in its scope by the engagements of the Treaty of Washington, which cannot be modified or affected by any municipal legislation."

And Her Majesty's Government fully admits that United States' fishermen have the right, by Treaty, of participation in the Newfoundland inshore fisheries in common with British subjects.

But it does not follow that from this right of participation in common with the British fishermen, the United States' fishermen have any other, and still less greater rights than the British; on the contrary, the proper meaning of the provision would be that the rights and the obligations were equal, and that in the territorial waters, as distinct from the shore or land, each had the same and no greater right than the other.

If then, at the time of the Treaty of Washington, 1871, certain restraints were, by the municipal law, imposed upon the British fisherman, the United States' fisherman was, by the very words of the Treaty, bound to observe, in common with the British, the then existing local laws and regulations.

The obligation implied by the words "in common" attached upon the United States' citizen as soon as he claimed the benefit of the Treaty. The local regulations existing at the time of the Treaty, and established by the Colonial authorities for the protection of the fisheries, are as binding upon the citizens of the United States, who claim the privileges secured by the Treaty, as they are binding upon the British.

True it is that the Consolidated Statutes of Newfoundland, passed since the Washington Treaty, 1871, contain certain restrictions as to the time and manner of fishing on the shores, and, as already said, those restrictions, when in conflict with the Treaty rights of the United States, cannot be insisted upon by the British Government.

But the regulations which were in force at the time of the Treaty were not abolished but confirmed by the Statutes subsequent to that time, should have been known to the United States, and are binding, under the Treaty, upon the citizens of the United States in common with British subjects.

This Act at p. 17, Correspondence 3920, should be annexed for convenience to the answer.

Her Majesty's Government, sharing the regret expressed by Mr. Evarts on the part of the United States' Government at any apparent conflict of interests or of opinions which may exist as to the privileges secured by the Treaty to the citizens of the United States, will willingly co-operate with the Government of the United States "in settling the mutual obligations of the Treaty of 1871, and in making regulations which shall be a matter of reciprocal convenience and right, a means of preserving the fisheries at their highest point of production, of conciliating a community of interests by a just proportion of advantages and profits," and removing any future ground or cause of complaint on the part of the Government and citizens of the United States or the British Government and British subjects.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 77.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received March* 16.)

My Lord,
*Temple, March* 16, 1880.

Claims of United States' fishermen on account of occurrence at Fortune Bay.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that, with reference to our Report of the 11th ultimo, he was directed by your Lordship to transmit to us a draft of the note which your Lordship proposed to address to the United States' Minister in London, in reply to Mr. Welsh's note of the 13th August last, in which he preferred the claim of United States' fishermen to compensation for damages alleged to have been sustained by them at Fortune Bay on the 6th January, 1878.

That Sir J. Pauncefote was also to inclose, for convenience of reference, the

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papers which accompanied his letter to us of the 1st January last,* and that he was to request that we would favour your Lordship with our opinion as to whether the proposed reply on behalf of Her Majesty's Government is right and proper, under the circumstances of the case.

That Sir J. Pauncefote was to add that the United States' Government were urgently pressing for an immediate reply to the claim preferred by them.

In obedience to your Lordship's commands we have the honour to report—

**Approving reply to United States' Minister, with slight modifications.**

That, in our opinion, the proposed reply to the United States' Minister is, in the circumstances of the case, right and proper.

We beg, however, to suggest that at p. 5, line 13 of the proposed reply, after the words "rights than the British" the words "fishermen had at the date of the Treaty" be added; and that the rest of the paragraph following those words be omitted.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Annex.

### *Draft of a Despatch from the Marquis of Salisbury to Mr. Lowell.*

*Foreign Office, March* , 1880.

Sir,

In the note which I had the honour to address to Mr. Hoppin on the 12th instant I explained the reason why a certain time has unavoidably elapsed before Her Majesty's Government were in a position to reply to Mr. Welsh's notes of the 13th August last, in which he preferred, on the part of your Government, a claim for 105,305 dol. 2 c. as compensation to some United States' fishermen on account of losses stated to have been sustained by them through certain occurrences which took place at Fortune Bay, Newfoundland, on the 6th January, 1878. The delay which has arisen has been occasioned by the necessity of instituting a very careful inquiry into the circumstances of the case, to which, in all its bearings, Her Majesty's Government were anxious to give the fullest consideration before coming to a decision. Her Majesty's Government having now completed that inquiry so far as lies within their power, I beg leave to request you to be so good as to communicate to your Government the following observations on the case.

In considering whether compensation can properly be demanded and paid in this case, regard must be had to the facts as established, and to the intent and effect of the Articles of the Treaty of Washington and the Convention of 1818 which are applicable to those facts.

The facts, so far as they are known to Her Majesty's Government, are disclosed by the affidavits contained in the inclosed printed paper, which, for convenience of reference, have been numbered in consecutive order. Nos. 1 and 2 were received by Her Majesty's Government from his Excellency the Governor of Newfoundland; Nos. 3 to 10, inclusive, were attached to the Report made by Captain Sulivan, of Her Majesty's ship "Sirius," who was instructed to make an inquiry into the case. These were communicated to Mr. Welsh with my note of the 7th November, 1878. Nos. 11 to 16, inclusive, are the affidavits of United States' fishermen, printed in the "New York Herald" of the 28th January, 1878, and were received from Her Majesty's Minister at Washington. They have not been received officially from the Government of the United States, but Her Majesty's Government see no reason to doubt their authenticity. Nos. 17 to 22 were annexed to Mr. Welsh's note of the 13th August last.

A careful examination of the above evidence shows that on the day in question a large number of the crews of the United States' fishing vessels came on shore, and from the beach barred the herrings, the ends of their seines being secured to the shore. That the fishermen of the locality remonstrated against these proceedings, and upon their remonstrances proving unavailing, removed the nets by force.

Such being the facts, the following two questions arise:—

1. Have United States' fishermen the right to use the strand for purposes of actual fishing?

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* See List in Report of February 11.

2. Have they the right to take herrings with a seine at the season of the year in question, or to use a seine at any season of the year for the purpose of barring herrings on the coast of Newfoundland?

The answers to the above questions depend on the interpretation of the Treaties.

With regard to the first question, namely, the right to the strand fishery, I would observe that Article I of the Convention between Great Britain and the United States of the 20th October, 1818, secured to citizens of the United States the right, *in common with British subjects*, to take fish of every kind on certain specified portions of the coast of Newfoundland, and to use the shore *for the purposes of purchasing wood and obtaining water, and for no other purpose whatever.*

Articles XVIII and XXXII of the Treaty of Washington superadded to the above-mentioned privileges the right for United States' fishermen to take fish of every kind (with certain exceptions not relevant to the present case) on all portions of the coast of that island, and permission to land *for the purpose of drying their nets and curing their fish*, "provided that in so doing they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the same purpose."

Thus, whilst absolute freedom in the matter of fishing in territorial waters is granted, the right to use the shore for four specified purposes alone is mentioned in the Treaty Articles from which United States' fishermen derive their privileges, viz., to purchase wood, to obtain water, to dry nets, and cure fish.

The citizens of the United States are thus by clear implication absolutely precluded from the use of the shore in the direct act of catching fish. This view was maintained in the strongest manner before the Halifax Commission by the United States' Agent, who, with reference to the proper interpretation to be placed on the Treaty stipulations, used the following language: "No rights to do anything upon the land are conferred upon the citizens of the United States under this Treaty, with the single exception of the right to dry nets and cure fish on the shores of the Magdalen Islands, if we did not possess that before. No right to land for the purpose of seining from the shore; no right to the 'strand fishery' as it has been called; no right to do anything except, water-borne on our vessels, to go within the limits which had been previously forbidden.

"So far as the herring trade goes, we could not, if we were disposed to, carry it on successfully under the provisions of the Treaty; for this herring trade is substantially a seining from the shore—a strand fishing, as it is called—and we have no right anywhere conferred by this Treaty to go ashore and seine herring any more than we have to establish fish-traps."

Her Majesty's Government, therefore, cannot anticipate that any difference of opinion will be found to exist between the two Governments on this point.

The incident now under discussion occurred on that part of the shore of Fortune Bay which is called Tickle Beach, Long Harbour. On this Beach is situated the fishing settlement of Mark Bolt, a British fisherman, who, in his evidence taken upon oath, deposed as follows: "The ground I occupy was granted me for life by Government, and for which I have to pay a fee. There are two families on the Beach; there were three in winter. Our living is dependent on our fishing off this settlement. If these large American seines are allowed to be hauled it forces me away from the place."

John Saunders, another British fisherman of Tickle Beach, deposed that the United States' fishermen hauled their seine on the beach immediately in front of his property.

The United States' fishermen, therefore, on the occasion in question, not only exceeded the limits of their Treaty privileges by fishing from the shore, but they "interfered with the rights of private property and with British fishermen in the peaceable use of that part of the coast in their occupancy for the same purpose," contrary to the express provisions of Articles XVIII and XXXII of the Treaty of Washington. Further, they used seines for the purpose of in-barring herrings, and this leads me to the consideration of the second question, viz.: whether United States' fishermen have the right to take herrings with a seine at the season of the year in question, or to use a seine at any season of the year for the purpose of barring herrings on the coast of Newfoundland.

The in-barring of herrings is a practice most injurious; and, if continued, calculated in time to destroy the fishery; consequently it has been prohibited by Statute since 1862.

In my note to Mr. Welsh of the 7th November, 1878, I stated "that British

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sovereignty as regards these waters is limited in its scope by the engagements of the Treaty of Washington, which cannot be modified or affected by any municipal legislation;" and Her Majesty's Government fully admit that United States' fishermen have the right of participation on the Newfoundland inshore fisheries, *in common* with British subjects, as specified in Article XVIII of that Treaty. But it cannot be claimed, consistently with this right of participation in common with the British fishermen, that the United States' fishermen have any other, and still less that they have greater, rights than the British; on the contrary, the only true construction must be that, in the territorial waters, as distinct from the shore or land, the rights and obligations of the people of each nation are identical.

If, then, at the date of the signature of the Treaty of Washington certain restraints were by the municipal law imposed upon the British fishermen, the United States' fishermen were, by the express terms of the Treaty, equally subjected to those restraints; and the obligation to observe, in common with the British, the then existing local laws and regulations which is implied by the words "in common," attached to the United States' citizens as soon as they claimed the benefit of the Treaty.

That such was the view entertained by the Government of the United States during the existence of the Reciprocity Treaty, under which United States' fishermen enjoyed precisely the same rights of fishing as they do now under the Treaty of Washington, is proved conclusively by the Circular issued on the 28th March, 1856, by the Collector of Customs at Boston, which so thoroughly expressed the views of Her Majesty's Government on this point that I quote it here *in extenso*:—

"*Mr. Marcy to Mr. Peaslee.*

"(Circular.)

"*Department of State, Washington, March* 28, 1856.

"Sir,

"It is understood that there are certain Acts of the British North American Colonial Legislatures, and also, perhaps, executive regulations intended to prevent the wanton destruction of the fish which frequent the coasts of the Colonies, and injuries to the fishing thereon. It is deemed reasonable and desirable that both United States' and British fishermen should pay a like respect to such laws and regulations, which are designed to preserve and increase the productiveness of the fisheries on those coasts. Such being the object of these laws and regulations, the observance of them is enforced upon the citizens of the United States in the like manner as they are observed by British subjects. By granting the mutual use of the inshore fisheries, neither party has yielded its right to civic jurisdiction over a marine league along its coasts.

"Its laws are as obligatory upon the citizens or subjects of the other as upon its own. The laws of the British provinces, not in conflict with the provisions of the Reciprocity Treaty, would be as binding upon the citizens of the United States within that jurisdiction as upon British subjects. Should they be so framed or executed as to make any discrimination in favour of British fishermen, or to impair the rights secured to American fishermen by that Treaty, those injuriously affected by them will appeal to this Government for redress. In presenting complaints of this kind, should there be cause for doing so, they are requested to furnish the Department of State with a copy of the law or regulation which is alleged injuriously to affect their rights, or to make an unfair discrimination between the fishermen of the respective countries, or with a statement of any supposed grievance in the execution of such law or regulation, in order that the matter may be arranged by the two Governments.

"You will make this direction known to the masters of such fishing-vessels as belong to your port in such manner as you may deem most advisable.

(Signed) "W. L. MARCY,
"*Collector of the Customs, Boston.*"

I have the honour to inclose a copy of an Act passed by the Colonial Legislature of Newfoundland, on the 27th March, 1862, for the protection of the herring and salmon fisheries on the coast, and a copy of Cap. 102 of the Consolidated Statutes of Newfoundland, passed in 1872. The first section of the Act of 1862 prohibited the taking of herrings with a seine between the 20th day of October and the 12th day of April, and further prohibited the use of seines at any time for the purpose of barring herrings. These Regulations, which were in force at the date of the Treaty of Washington, were not abolished, but confirmed by the subsequent Statutes, and are binding under the Treaty upon the citizens of the United States in common with British subjects.

The United States' fishermen, therefore, in landing for the purpose of fishing at Tickle Beach, in using a seine at a prohibited time, and in barring herrings with seines from the shore, exceeded their Treaty privileges and were engaged in unlawful acts.

Her Majesty's Government have no wish to insist on any illiberal construction of the language of the Treaty, and would not consider it necessary to make any formal complaint on the subject of a casual infringement of the letter of its stipulations which did not involve any substantial detriment to British interests, and to the fishery in general.

An excess on the part of the United States' fishermen of the precise limits of the rights secured to them might proceed as much from ignorance as from wilfulness; but the present claim for compensation is based on losses resulting from a collision which was the direct consequence of such excess, and Her Majesty's Government feel bound to point to the fact that the United States' fishermen were the first and real cause of the mischief by overstepping the limits of the privileges secured to them, in a manner gravely prejudicial to the rights of other fishermen.

For the reasons above stated, Her Majesty's Government are of opinion that, under the circumstances of the case as at present within their knowledge, the claim advanced by the United States' fishermen for compensation on account of the losses stated to have been sustained by them on the occasion in question is one which should not be entertained.

I have only to add, in conclusion, that Her Majesty's Government, sharing the regret expressed by Mr. Evarts, on the part of the Government of the United States, at any apparent conflict of interests or of opinions which may exist as to the privileges secured by the Treaty to the citizens of the United States, will willingly co-operate with the Government of the United States in settling any differences that may have arisen as to the mutual obligations of the Treaty of 1871, and in making such regulations as shall remove any just cause of complaint on the part of the Government and citizens of the United States, or the Government and subjects of Great Britain.*

I have, &c.

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### No. 78.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received April* 14.)

*Temple, April* 14, 1880.

My Lord,

Mr. J. H. Tunstall, British subject, murdered in New Mexico.

WE were honoured with your Lordship's commands, signified in Sir Julian Pauncefote's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers as marked in the margin,† relative to the murder of Mr. J. H. Tunstall, a British subject, in New Mexico, whose father demanded compensation for the loss sustained by himself through his son's death and the plunder of his property, and Sir Julian Pauncefote was to request that we would take those papers into our consideration and favour your Lordship with our opinion as to whether the circumstances of the case justified Her Majesty's Government in presenting a claim on behalf of Mr. J. P. Tunstall to the United States' Government.

Claim of the father to compensation.

That the facts were stated in the case laid by Sir Edward Thornton before Mr. Calderon Carlisle, the Legal Adviser of Her Majesty's Legation at Washington, and in that gentleman's Report thereon. (Inclosures 1 and 2 in Sir Edward Thornton's No. 24.)

In obedience to your Lordship's commands we have the honour to report—

That we entirely agree with Mr. Calderon Carlisle, and in our opinion the circumstances of the case justify Her Majesty's Government in presenting a claim on behalf of Mr. J. P. Tunstall to the United States Government.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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* Another paragraph substituted for this, March 15.

† Sir E. Thornton, No. 30, February 3, 1879; ditto, No. 24, January 26, 1880.

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## Annex.

### *Opinion of Mr. Calderon Carlisle.*

In the matter of the Murder of the British subject John H. Tunstall, in Lincoln County, New Mexico, United States of America.

*307, D Street, Washington, D.C., January* 22, 1880.

Sir,

**Opinion of Mr. C. Carlisle.**

I HAVE the honour to acknowledge your letter of the 8th instant, in which you do me the honour to ask my opinion on certain questions, arising upon a state of facts therein set forth, which is further elucidated by voluminous inclosures.

Amongst these inclosures is a Report of the Special Agent of the Department of Justice (or rather, a copy thereof), laid before the Secretary of State by the Attorney-General, which is accompanied by a large number of depositions or extracts from depositions. After diligent consideration of your questions, in the light of the papers laid before me, I am of opinion that the Report of the Special Agent of the Department of Justice of the United States, supported by depositions, shows a state of facts which, independent of the unsworn allegations of aggravating circumstances made by the father of the murdered man, make a *primâ facie* case against the United States which would warrant the intervention of Her Majesty's Minister.

The Special Agent in question was sent out to New Mexico "charged" with the duty "of especially learning all the particulars of the murder, as well as the causes which led to the same." The material facts found by him are:—

1. That the murdered man was a peaceful inhabitant of Lincoln county, New Mexico, of the highest character, deserving well of the community, and having given no just cause of offence to any officer or private citizen.

2. That an attachment, issued against the property of one McSween and the Sheriff of Lincoln county, determined to levy the same on certain property in the possession of Tunstall; that thereupon he sent his deputy, who assembled "a large posse, among whom were the most desperate outlaws of the territory," and started for Tunstall's ranch. Tunstall, informed of this, left his ranch, taking with him all the horses, and started for Lincoln, the county seat. The deputy Sheriff arriving at the ranch and finding that Tunstall had left with the horses, sent forward one Morton, of the posse, who selected eighteen men to accompany him, "ostensibly to capture the horses." This posse overtook "Tunstall and his party with the horses, and commenced firing on them. Immediately Tunstall and his party left the horses, and attempted to escape; were pursued, and Tunstall was killed some 100 yards or more from the horses." The Special Agent adds "There was no object in following after Tunstall except to murder him, for they had the horses which they desired to attach before they commenced to pursue him and his party," and he closes his narrative of facts by stating his "conclusion that John H. Tunstall was murdered in cold blood, and was not shot in attempting to resist an officer of the law."

From the above facts, found by an official of the United States after diligent inquiry, it appears—

That the people who murdered Tunstall were a portion of a Sheriff's posse, and were lawfully deputed to execute a lawful process of the United States, *i.e.*, to attach certain horses in the possession of Tunstall, and that, in the actual execution of this process, they murdered the man in whose possession they found the horses.

I use the terms "process of the United States" advisedly, because the territory of New Mexico is under the exclusive jurisdiction of the Federal Government, and all officers appointed or elected, and all laws passed therein, derive their authority and sanction from the Statutes enacted by the Congress of the United States.

I proceed now to answer the questions which you have done me the honour to submit for my opinion.

1. Whether you "should be justified in demanding from the Government of the United States compensation for the losses to which Mr. J. P. Tunstall has been subjected by reason of the murder of his son, and of the subsequent plunder of his property."

I confine myself for the moment to the single ground of claim which is the subject of the investigation by the Department of Justice, and of which the remaining ground, referred to in your question, may be said to be a direct consequence. I should premise, also, that my opinion is not asked as to whether Mr. J. P. Tunstall, the father, is the only person entitled to be compensated for the murder of his son, though I infer that the murdered man had no wife or children, in which case the father would be the proper party claimant.

1. I am of opinion that you would be justified in demanding compensation for the murder of a British subject under the circumstances found by the special Agent.

The allegations of Mr. J. P. Tunstall would seem to furnish grounds for—

First, a claim on his part on account of his pecuniary interest in his son's life; and

Second, on account of the alleged plundering of his son's property by a Sheriff's posse after the murder.

The state of the county and intent and surroundings of the murder, as disclosed by the depositions, would seem to render it extremely probable that these allegations are substantially true. In any event, satisfactory proof would be required by the United States if they should admit the principles contended for, and, unless diplomatic usage or the precedents in Her Majesty's Legation require these allegations to be supported by sworn proof, I submit with great deference that the claim, as it appears by the allegations of the claimant, except, perhaps, the charge that General Dudley made a "criminal use" of United States' troops, may be presented by you to the Secretary of State.

If I am right in this opinion, and if no other person is interested more closely in the life of J. H. Tunstall, the claim may be presented as indicated in your question, *i.e.*, "for compensation for the losses to which Mr. J. P. Tunstall has been subjected by reason of the murder of his son, and of the subsequent plunder of his son's property."

2. Whether I "consider that there were any acts of omission or commission on the part of the authorities, federal or territorial, which you could adduce in support of such demand?"

2. In my opinion the facts found by the Special Agents, as already summed up by me, furnish an affirmative answer to this question; and I may add that the alleged failure of the Sheriff to aid in the arrest of the murderers in the house of the enemies of the murdered man, may be called an act of omission on his part strongly supporting the theory of his connection with the murder, while the alleged actual prevention by him of the arrest of the murderers, who had taken refuge in the house where he was, would seem to place his complicity in the murder beyond a doubt.

3. "Whether there is any precedent that 'I" know of of such compensation having been granted under similar circumstances by the United States?"

3. I am not aware of any precedent of a grant of compensation by the United States under similar circumstances. But before the Spanish and American Commission the Department of State has presented three claims on behalf of relations of American citizens shot in Cuba, and quite recently the Umpire has made an award of 65,000 dollars in favour of a son whose father was shot by some volunteers.

In this last case the defence, apart from questions of nationality, was that the deceased endeavoured to escape when under arrest, but as this was not substantiated in the opinion of the Umpire, an award of the above-mentioned sum was made in favour of the United States, though there was no proof of pecuniary loss by the son in consequence of his father's death, and though Spain's authority in Cuba was crippled by the bloody insurrection then at its height, and the consequent disorder and excitement.

4. "Whether Mr. J. P. Tunstall has it in his power to recover damages by proceedings at law, or otherwise, from the Territorial Government of New Mexico."

4. To this I must answer that, in my opinion, he has not. It is a case where an American citizen could not obtain anything like a fair compensation without resort to Congress; and the only reasonable hope of redress which this British subject can entertain is that he may obtain compensation through the intervention of Her Majesty's Goverment.

In conclusion I have to say that I have based my opinion upon the facts found by the Special Agent, because it is reasonable to suppose that they represent fairly the state of the case.

If my answers to your questions, or the statement on which they are based, are too general, or are wanting in any respect, I beg that you will indicate it to me that I may, if I should be able, remedy the defect.

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The inclosures, five in number (the testimony being in two parts), are herewith returned.

I have, &c.
(Signed) CALDERON CARLISLE.

The Right Hon. Sir E. Thornton, K.C.B.,
&c. &c. &c.

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## No. 79.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received April* 29.)

*Temple, April* 28, 1880.

My Lord,

Trial, at Calcutta, of a British subject, John Anderson, for manslaughter on board the American barque "C. O. Whitmore," on the high seas.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, papers respecting the case of a British subject named John Anderson, who, in May 1879, was convicted by the High Court of Calcutta of the crime of manslaughter on board the American barque "C. O. Whitmore," on the high seas.

That John Anderson at the time of the commission of the offence was serving on board the "C. O. Whitmore" as an ordinary seaman.

That on the 29th July, 1879, Mr. Welsh, the United States' Minister in London, addressed a note to your Lordship, objecting, on behalf of his Government, to the exercise of jurisdiction by the High Court of Calcutta, in that case as a breach of comity, and contending that, as regards common crimes committed on board merchant-vessels on the high seas, the competent Tribunals of the vessel's nation had exclusive jurisdiction, whatever might be the nationality of the offender. That a copy of Mr. Welsh's note was transmitted to the India Office in the Foreign Office letter of the 5th August, 1879.

That in that letter the attention of the Secretary of State for India was drawn to the fact that the offence having been committed on board a foreign ship on the high seas, the accused could only be tried under clause 11 of the Act 30 and 31 Vict., cap. 124, and that as the accused belonged to the ship he was within the exception of that enactment, and that inquiry was made whether Lord Cranbrook was in possession of any information showing the jurisdiction of the High Court of Calcutta in the case. (Foreign Office to India Office, 5th August, 1879.)

That the correspondence was referred by Lord Cranbrook to the Government of India, from whom a Report had been received, which formed the printed inclosure to the letter from the India Office to the Foreign Office of the 11th ultimo. That Sir J. Pauncefote was to refer us to the letter from the Government of India to Lord Cranbrook of the 28th January, 1880 (print p. 1), for a precise statement of the facts of the case, and of the legal questions raised thereby.

That it appeared from that letter that Anderson was tried by the High Court under the Admiralty Jurisdiction Act, 12 and 13 Vict., cap. 96, as extended to India by the Act of 23 and 24 Vict., cap. 88 (print p. 7), and that the Government of India, in support of their view that in the present case jurisdiction was rightly exercised under that Act, referred to the case of a British subject named Murphy, who was tried by the Calcutta High Court in 1867 for an offence committed by him on board the American ship "Nonantium" on the high seas, and to the opinion of Sir Travers Twiss and Mr. W. Forsyth on that case, which we should find at p. 11 of the second printed annexe to their letter.

That they added, however, that the course of subsequent Parliamentary legislation seemed adverse to their view, and that, as the matter was open to doubt, they suggested that an authoritative ruling should be obtained from Her Majesty's Law Officers as to the proper construction of the Act 12 and 13 Vict., cap. 96, as also in regard to the points mentioned in paragraphs 13 and 14 of their letter.

Question of Admiralty jurisdiction.

That the first question submitted by the Government of India was, whether the High Court at Calcutta had jurisdiction to try a British subject for an offence committed by him on the high seas on board a foreign vessel to which he belonged; or, in other words, whether the jurisdiction of the Admiralty extended to offences committed on the high seas on other than British ships?

Question of extradition.

That the second question was, whether, having regard to the decision in Tirnan's case (33 L. T. M. C., 201), that the word "jurisdiction" in the Extradition clause of the Ashburton Treaty meant exclusive jurisdiction, Her Majesty's Government might decline to surrender a fugitive to the United States' Government under that clause in a case where there was concurrent jurisdiction, notwithstanding the provisions of sections 6 and 27 of the Extradition Act of 1870.

That the third question was whether, supposing that Her Majesty's Government were not bound to give up the fugitive in such a case, they had power to do so under the Extradition Act above referred to. That for a more detailed statement of the above questions, Sir J. Pauncefote was to refer us to paragraphs 11, 13, 14, and 15 of the letter of the Government of India, and that he was to request that we would favour your Lordship with our opinion thereon.

That as regarded the question raised by the United States' Minister, whether, assuming the High Court to have had jurisdiction in the case of John Anderson, the statutes conferring such jurisdiction violated any principle of international law or comity, your Lordship would be glad to be informed whether, in our opinion, the objection taken by the United States' Government might properly be answered in the sense of the observations thereon, which were contained in paragraph 12 of the letter of the Government of India.

In obedience to your Lordship's commands we have the honour to report—

Jurisdiction of Admiralty does not extend to offences on the high seas in other than British ships.

That, in our opinion, the jurisdiction of the Admiralty does not extend to offences committed on the high seas in other than British ships. The jurisdiction of the Admiralty cannot, we think, be held to reach foreign vessels of every kind on board of which any crime may have been committed on the high seas; and though the words of a British statute may seem large enough to cover all offences committed on the high seas, the meaning of those words must be limited, and applied only to British ships which are on the high seas, and not within territorial waters.

Extradition. Concurrent jurisdiction.

2. Having considered the provisions in sections 6 and 27 of the Extradition Act, 1870, the decision in Tirnan's case, and the Ashburton Treaty (Article X), we are of opinion that Her Majesty's Government may not properly decline to surrender a fugitive to the United States' Government in a case where there is concurrent jurisdiction.

3. And we think Her Majesty's Government has the power to surrender a fugitive[*] where there is concurrent jurisdiction, under the Extradition Act, 1870.

We are not prepared to say that a statute conferring jurisdiction on the Court of the country of the offender in the case of offences committed on the high seas on board a foreign vessel, or in places within foreign jurisdiction, would violate any principle of international law or comity. On the contrary, we are of opinion that there are many cases in which the conferring of such jurisdiction would subserve the purposes of justice, and be quite consistent with the principles of international law and comity. But the right to exercise such a jurisdiction in cases where the extradition has been properly demanded is a totally different matter, and that right should, in our opinion, be, if ever, most sparingly exercised.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## No. 80.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 3.)

*Temple, June* 2, 1880.

My Lord,

Murder of Mr. J. H. Tunstall in New Mexico.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th instant, stating that he was directed by your Lordship to transmit to us the accompanying draft of a despatch which it was proposed to address to Her Majesty's Minister at Washington, instructing him to demand from the United States' Government compensation for the loss sustained by Mr. J. P. Tunstall through the murder, in New Mexico, of his son, Mr. J. H. Tunstall, and the plunder of his property.

That that draft despatch was founded on a report upon the case furnished by our

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[*] *i.e.*, under the Ashburton Treaty—that is the point.—J. P.

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predecessors, which, together with the papers to which it referred,* was then transmitted for our information, and that Sir Julian Pauncefote was to request that in taking those documents into our consideration, we would favour Lordship with our opinion as to whether the proposed instruction was proper to be sent.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the draft instruction is proper to be sent.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Proposed Draft to Sir E. Thornton.*

Foreign Office, May , 1880.

Sir,

The claim of Mr. J. P. Tunstall for compensation for the loss sustained by himself through the murder of his son, Mr. J. H. Tunstall, in New Mexico, and the plunder of his property, has been considered by myself, as well as by my predecessor, in communication with the Law Officers of the Crown, to whom your despatches No. 30 of the 3rd February, 1879, and No. 24 of the 26th January, 1880,† were referred, and I am advised that the conclusions arrived at in this case by Mr. Calderon Carlisle, the Legal Adviser to Her Majesty's Legation at Washington, and contained in his Report which forms Inclosure 2 to your last-named despatch, are well founded; I have accordingly to intrust you to present to the United States' Government a claim based on that Report for such compensation, as upon due examination of the injury and losses sustained, may be found to meet the justice of the case.

I am, &c.

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## No. 81.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 3.)*

Temple, June 2, 1880.

My Lord,

Trial of John Anderson for murder on board an American vessel on the high seas.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th instant, stating that he had to transmit to us, by direction of your Lordship, the papers noted in the margin‡ relating to a complaint on the part of the United States' Government of the exercise of jurisdiction by the High Court of Judicature at Calcutta in the case of John Anderson, a British subject, on the Articles of the American barque "C. O. Whitmore," who was charged with having killed the first officer of that vessel while on the high seas.

That the facts of the case appeared in the reference to the Law Officers of the Crown, and in the papers annexed thereto, which were then transmitted, together with a copy of their Report thereon of the 28th ultimo, from which we would perceive that, in the opinion of our predecessors, the High Court at Calcutta had no jurisdiction to try the offender, and that, under the circumstances, his extradition should have been granted to the United States' Government.

Offences committed on board merchant-vessels on the high seas. Exclusive jurisdiction of State to which the vessel belonged.

That your Lordship now proposed to reply to the letter of the late United States' Minister, Mr. Welsh, to the Marquis of Salisbury of the 29th July last. That that letter, as we would observe, dealt only with the general proposition, that offences committed on board merchant-vessels on the high seas were under the exclusive jurisdiction of the State to which the vessel belonged, irrespectively of the nationality of the offender, and the United States' Government would seem to have assumed that the jurisdiction of the High Court at Calcutta was exercised in that case under powers

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* Sir E. Thornton, No. 30, February 3, 1879; ditto, No. 24, January 26, 1880

† Law Officers, April 14, 1880.

‡ Law Officers to India Office, October 25, 1867; Mr. Welsh, July 29, 1879 (Act 12 and 13 Vict., cap. 96, 1849; Act 23 and 24 Vict., cap. 88, 1860; Act 30 and 31 Vict., cap. 124, 1867); Foreign Office to India Office, August 5; Mr. Welsh, August 5; India Office, August 30, 1879, and March 11, 1880; Government of India (print), January 28, 1880.

conferred by some legislative provisions which, in their opinion, would constitute a breach of the comity of nations.

That in view, however, of the fact, that the High Court had no jurisdiction to try the case at all, your Lordship was disposed to think that in replying to Mr. Welsh's communication, your Lordship should not confine yourself to combating the general proposition therein laid down, but should explain that, in the opinion of the Law Officers of the Crown in this country, there was an excess of jurisdiction on the part of the High Court in the present case, and should express the regret of Her Majesty's Government at the incident.

That Sir Julian Pauncefote was to inclose a draft of a proposed reply to Mr. Lowell, the present United States' Minister, in the above sense, and he was to request that we would favour your Lordship with our opinion as to whether we concurred in the course suggested, and, if so, whether the proposed draft met with our approval, or required any, and what, amendments.

In obedience to your Lordship's commands we have the honour to report—

That we concur in the course suggested and in the terms of the draft.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Draft of proposed Note to Mr. Lowell.*

Foreign Office, June , 1880.

Sir,

Her Majesty's Government have had under consideration, in communication with the Government of India, the letter addressed by Mr. Welsh to my predecessor on the 29th July,* on the subject of the trial at Calcutta, in January 1879, of one John Anderson, a British subject, on the Articles of the American barque "C. O. Whitmore," who was charged with having killed the first officer of that vessel while on the high seas.† In that letter Mr. Welsh stated that, in the opinion of the Government of the United States, the exercise of jurisdiction in that case by the High Court at Calcutta was a breach of comity. He urged that, "as regards common crimes committed on board merchant-vessels on the high seas, the competent Tribunals of the vessel's nation have exclusive jurisdiction of the question of trial and punishment of any person thus accused of the commission of a crime against its municipal law."

As regards the general proposition above laid down, Her Majesty's Government are not prepared to admit that a statute conferring jurisdiction on the Court of the country of the offender, in the case of offences committed by its own subjects on the high seas, on board a foreign vessel or in places within foreign jurisdiction, would violate any principle of international law or comity. On the contrary, they are of opinion that there are many cases in which the conferring of such jurisdiction would subserve the purposes of justice, and be quite consistent with these principles.

Such an assumption of jurisdiction does not involve a denial of jurisdiction on the part of the State in whose territory the offence was committed; it involves no more than an assertion of a right of concurrent jurisdiction; and the most eminent authorities on international law in this country and also in the United States‡ lay down that the legislative and judicial powers of a State extend to the punishment of all offences against its municipal laws by its subjects, wheresoever committed.

But as regards the particular case of John Anderson, it appears, from a Report furnished by the Government of India, that, in the opinion of their Law Officers, the High Court at Calcutta had jurisdiction to try the accused by virtue of the Imperial Act 23 & 24 Vict., cap. 88, which extends to Her Majesty's territories in India the provisions of the Act 12 & 13 Vict., cap. 96, "to provide for the prosecution and trial, in Her Majesty's Colonies, of offences committed within the jurisdiction of the Admiralty."

The question of jurisdiction was not raised at the trial, and no decision was, therefore, pronounced on it, but Her Majesty's Government are advised by the Law Officers of the Crown in this country, that the jurisdiction of the Admiralty does not extend to offences committed on the high seas in other than British ships. It follows,

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* Law Officers, April 28, 1880.

† Inclosure in India Office, March 11, 1880.

‡ Wheaton, § 113. Halleck, cap. 7, § 14, per Dr. Lushington in the "Zolverein." 1 Swa. Ad. 96.

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therefore, from their view of the law, that the High Court at Calcutta had not jurisdiction to try the case, and that the trial was a nullity. It further appears, from the Report of the Governor of India, that after the trial the Consul-General of the United States applied for the extradition of the prisoner, and was informed that the Government of India were unable to order the surrender of a person on a charge, in respect of which he had been already tried and convicted by a competent British Court.

I have the honour to request that you will express to your Government the regret of Her Majesty's Government that the action of the authorities at Calcutta, in the case of John Anderson, should have been governed by a view of the law which, in the opinion of Her Majesty's Government, cannot be supported; and I trust that you will convey to them the assurance that Mr. Evarts has justly attributed this incident to a misconception, and not to any design to question the jurisdiction of the United States in this or any similar case.

I have, &c.

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## No. 82.

*The Law Officers of the Crown to Earl Granville.—(Received July 15.)*

*Temple, July* 15, 1880.

My Lord,

Fortune Bay fishery claims.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd June last, stating that he was directed by your Lordship to lay before us the papers noted in the accompanying list* relating to a controversy now pending between Her Majesty's Government and that of the United States.

That the controversy arose out of a claim preferred by the Government of the United States for compensation in respect of injuries and losses alleged to have been sustained by American fishermen while engaged in the exercise of the fishery rights secured to them by the Treaty of Washington, owing to the violent interference and obstruction they encountered from British fishermen at Fortune Bay, in the Colony of Newfoundland, on Sunday, the 6th January, 1878.

That the correspondence which took place between the two Governments was laid before the Law Officers of the Crown on the 1st day of January last, together with a printed Memorandum containing a statement of the facts and a reference to the Treaties, Colonial Acts, and other documents bearing on the case. (Further Correspondence, No. 20, p. 35.)

That their Report was printed at p. 38 (No. 22); and on the 3rd April last the Marquis of Salisbury, in accordance with the advice tendered therein, transmitted to the United States' Chargé d'Affaires the reply of Her Majesty's Government to the claim in question, stating the grounds on which they considered that it should not be entertained.

That that reply, which was printed at p. 44 (No. 31), was the same (with a variation which did not affect the legal argument) as that which had been previously submitted to and approved by the Law Officers of the Crown (No. 29, p. 44). That the refusal of Her Majesty's Government to satisfy that claim had caused great dissatisfaction in the United States, and, after a careful examination of the whole question, your Lordship felt great difficulty in adopting the conclusions arrived at by the late Government.

That their refusal to entertain the claim was based on the ground that the losses sustained by the United States' fishermen resulted from a collision which was the direct consequence of an excess on their part of their Treaty privileges, and of a violation by them of the local fishery laws.

That they were charged with having exceeded their Treaty privileges by fishing from the shore, and with having violated the local laws in using a seine during the close season and in barring herrings, contrary to section 1 of the Newfoundland Act of 1862 (25 Vict., cap. 2: Further Correspondence, p. 63), confirmed by section 1 of the Consolidated Act of 1872 (*ibid.*, p. 64).

That as regarded the excess of Treaty privileges by fishing from the shore, Sir Julian Pauncefote was to observe that it appeared from the depositions of the British witnesses (Further Correspondence, pp. 49–55) that no objection had been raised before or since the day on which the disturbance occurred to the use of the shore by the American fishermen for the purpose of hauling their seines, and that the grievance which really gave rise to the disturbance was the prosecution by them of their fishery on Sunday, contrary to the provisions of a local law which was passed subsequently to the date of the Treaty, and was therefore admitted to be inapplicable to them. That it appeared to your Lordship hardly equitable to base the refusal of Her Majesty's Government to award compensation for the damage sustained by the American fishermen on the ground that they were technically, and perhaps unwittingly, exceeding their Treaty rights by fishing from the shore, a practice which, up to that time, had been tolerated, if not encouraged, by the local fishermen.

That the only ground on which it appeared to your Lordship that such refusal could fairly be based was that they were knowingly committing a breach of some local fishery law which they were bound to observe, and it became most important, therefore, to consider whether they were bound by the provisions of the local laws which they were charged with having violated.

That on that point Sir Julian Pauncefote was to invite our particular attention to the correspondence which took place between the two Governments in 1873-74, and which was referred to in Sir Edward Thornton's despatch No. 296 of the 4th November, 1878 (Correspondence, Part I, p. 40). That that correspondence, of which a précis was annexed to the papers, was contained in the "Foreign Office Confidential Papers respecting the British North American Fisheries," and, having regard to the objection of the United States' Government to the proposed Proclamation under the Act passed in Newfoundland to give effect to the Treaty, to the consequent repeal of the Act, and to the substitution of a new Act and Proclamation in which the proviso objected to was omitted, your Lordship entertained grave doubts whether Her Majesty's Government were not now precluded from maintaining that the fishery laws of Newfoundland, whether in force at the date of the Treaty or not, were binding on citizens of the United States.

That we would observe that Mr. Evarts' letter to Mr. Welsh of the 28th September, 1878 (Correspondence, Part I, p. 36, par. 5), contains the following passage:—

"This Government conceives that the fishery rights of the United States conceded by the Treaty of Washington are to be exercised wholly free from the restraints and regulations of the Statutes of Newfoundland now set up as authority over our fishermen, and from any other regulations of fishing now in force or that may hereafter be enacted by that Government."

That, on the other hand, in his letter to Mr. Welsh of the 1st August, 1879 (Further Correspondence, p. 13, last paragraph), Mr. Evarts, after expressing regret at "the conflict of interests which the exercise of the Treaty privileges enjoyed by the United States appears to have developed," concluded as follows:—

"There is no intention on the part of this Government that these privileges should be abused, and no desire that their full and free enjoyment should harm the colonial fishermen.

"While the differing interests and methods of the shore fishery and the vessel fishery make it impossible that the regulation of the one should be entirely given to the other, yet, if the mutual obligations of the Treaty of 1871 are to be maintained, the United States' Government would gladly co-operate with the Government of Her Britannic Majesty in any effort to make those regulations a matter of reciprocal convenience and right, a means of preserving the fisheries at their highest point of production, and of conciliating a community of interest by a just proportion of advantages and profits."

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* List of Papers sent to the Law Officers, June 22, 1880:—

1. Confidential Print No. 3851.
2. Draft to Law Officers, Foreign Office, January 1, 1880, inclosing (see p. 35 of Print (No. 4234) in continuation of No. 3851, annexed):—
    - (*a.*) Print No. 3851. See above.
    - (*b.*) Print in continuation of No. 3920. August 13 to November 3, 1879.
    - (*c.*) Blue Book, "North America No. 1 (1878)."
    - (*d.*) Print No. 2286. 1854-63.
    - (*e.*) Memorandum by Mr. Bergne. See p. 35 in Print (No. 4234) in continuation of No. 3851, annexed.
3. Law Officers' Report, February 11, 1880. See p. 38 in Print (No. 4234) in continuation of No. 3851.
4. Draft to Law Officers, Foreign Office, March 13, 1880, and their reply of March 16. See pp. 43 and 44. *idem.*
5. Draft to Mr. Hoppin, Foreign Office, April 3, 1880. *Idem.*
6. Confidential Print (No. 4234) in continuation of No. 3851.
7. Sir E. Thornton's despatch No. 162, May 24, 1880.
8. Précis of Correspondence in 1874.

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That if we should be of opinion, after examining the correspondence relating to the Newfoundland Act of 1874, that Her Majesty's Government were precluded from maintaining that the American fishermen were bound by the fishery laws which they were charged with having violated on the occasion in question, your Lordship would be disposed to consider the propriety of at once satisfying the claim of the United States' Government to the extent of the losses which could be shown to have been really sustained by the American fishermen, and to accept the offer of the United States' Government to co-operate with Her Majesty's Government in framing such regulations for future observance by the fishermen of both nations as were suggested in the concluding paragraph of Mr. Evarts' letter above referred to.

That Sir Julian Pauncefote was to request that we would take all the papers in this case into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion upon the points raised in that letter, and on the legal rights of this country in relation to the controversy in question.

In obedience to your Lordship's commands we have the honour to report—

That we have carefully considered the facts connected with this case, and the different views which have been presented in relation to them.

We have regarded the facts as being as follows:—

**Views with regard to the restrictions imposed by local legislation prior and subsequent to March 1874.**

By the Treaty of May 1871 the United States secured for American subjects additional rights of fishery on certain coasts of the British North American Colonies in common with the subjects of Her Britannic Majesty (Article XVIII).

By Article XXXII of the Treaty the provisions of the Fishery Articles XVIII to XXV, inclusive, were extended to the Colony of Newfoundland, subject to the Legislature of Newfoundland and the Congress of the United States, embracing the Colony of Newfoundland, in their laws enacted for carrying such Articles into effect.

The Consolidated Statutes of Newfoundland, 1872, c. 102 (substantially re-enacting an Act of 1862), placed certain restrictions upon the prosecution of the fisheries by British subjects.

By section 1 of that Statute fishermen were prohibited from using a seine for taking herrings between the 20th October and the 12th April. By the same section they were further prohibited from using a seine at any time except by way of shooting and forthwith hauling it, thus preventing herrings from being "barred."

By section 18 it was declared that nothing in that chapter should affect the rights and privileges granted by Treaty to the subjects of any State or Power in amity with Her Majesty.

It will be observed that the above restrictions were imposed prior to the acceptance of the Fishery Articles of the Treaty of Washington by the United States so far as they relate to Newfoundland, which took place in March 1874.

By the Act of the Newfoundland Legislature of the 5th May, 1873, passed for carrying into effect the Treaty of Washington, the laws relating to the time and manner of prosecuting the fisheries were expressly saved from suspension. Mr. Fish, on the part of the United States' Government, objected to this provision on the ground that no such limitations were contained in the Treaty, and in consequence declined taking the necessary steps on the part of his Government for bringing the Fishery Articles into operation. In the following year, on the 28th March, 1874, an Act was passed by the Legislature of Newfoundland enabling the Governor by Proclamation to declare that the provisions of Articles XVIII to XXV of the Treaty should come into operation in Newfoundland, and should continue in force, any law of the Colony to the contrary notwithstanding. This Act omitted all reference to the laws relating to the time and manner of prosecuting the fisheries, and on the 29th April, 1874, an Act was passed repealing the Act of the 5th May, 1873. Thereupon the requisite Proclamations for bringing the Treaty into operation were published by the United States' Government and the Governor of Newfoundland. It will be seen that Mr. Fish's objection was thus substantially recognized.

On the 26th April, 1876, an Act was passed by Newfoundland prohibiting any taking of herrings between 12 o'clock on Saturday night and 12 o'clock on Sunday night.

On Sunday, the 6th January, 1878, the destruction of the American nets by the local fishermen occurred. A careful perusal of the depositions seems to make it apparent that the only reason which influenced the Newfoundland fishermen to pursue the course they took was the fact that the Americans were fishing on a Sunday.

No objection seems to have been made by the British fishermen to the Americans fishing from the land, or to the use of the seine during the prohibited time, or to the mode in which the nets were used. Captain Sulivan (p. 24, par. 7, 3851) says: "It does not appear that the native fishermen were aware of the illegality of hauling a seine in the month of January; it is therefore to be presumed that the Americans were also ignorant of that law."

It will be observed that the real cause for the destruction of property complained of was the breach of a local law passed after the coming into operation of the Fishery Articles of the Treaty.

We therefore think that, in considering the course which should be pursued, whilst there is no reason to abandon the contention that the rights of the American fishermen are controlled by local legislation which came into operation before the acceptance of the Fishery Articles of the Treaty, that to rely upon breaches of such regulations as a justification in theory of the conduct of the British fishermen, who did not proceed upon, and were not influenced, in fact, by any such breaches of the local law, would be inexpedient and inequitable. It may also be observed that, even if Her Majesty's Government found in the facts connected with the occurrence ground for relying upon the breaches of local law existing prior to the acceptance of the Fishery Articles, it would be difficult to justify the conduct of the British fishermen in taking the law into their own hands. It must be conceded that, as early as 1873, there was a clear notice given on the part of the United States' Government that the application of local laws limiting the enjoyment of the fishing was objected to, and such contention cannot justly be met by a violent destruction of property.

If this view be correct, the only ground on which Her Majesty's Government can seek to justify the acts of the British fishermen must be the breach by the American fishermen of the Newfoundland Statute of 1876, prohibiting fishing on Sundays.

We are of opinion that the restrictions created by local legislation subsequent to March 1874 cannot be insisted upon by the British Government.

We would observe that the late Law Officers of the Crown, in their Report dated the 11th February, 1880, express a similar opinion.

**Conduct of the British fishermen was unjustifiable.**
**Her Majesty's Government should satisfy United States' claims for compensation for losses actually sustained, and accept offer as to framing future regulations.**

We therefore think that the Government of the United States can find a justification for their contention that the action of the British fishermen was unjustifiable.

For these reasons we submit that, whilst Her Majesty's Government need not abandon the contention that they still regard American fishermen bound by the local laws existing prior to March 1874, they may take into consideration the real cause of the destruction of property in this case, and may admit that both in relation to the manner and the extent of that destruction it cannot be entirely excused, and that therefore your Lordship will be justified in considering the propriety of satisfying the claim of the United States' Government to the extent of the losses which can be shown to have been really sustained by the American fishermen, and to accept the offer of the United States' Government to co-operate with Her Majesty's Government in framing such regulations for future observance by the fishermen of both nations as are suggested in the concluding paragraph of Mr. Evarts' letter.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

P.S.—Dr. Deane has prepared a separate Report.

H. J.
F. H.

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*Opinion of Dr. Deane.*

I regret that, in this case, I am unable to agree entirely with the Attorney- and Solicitor-General.

**United States' fishermen have acted contrary to the Treaty, and therefore are not entitled to compensation. Their claims may, however, be entertained as a matter of policy, subject to withdrawal of Mr. Loring's Bill.**

In my opinion, the United States' fishermen are bound by the local laws existing at the time of the Treaty of Washington, 1871.

The liberty to fish "in common" with the British gave the United States' fishermen the same and no greater rights than those enjoyed by the British fishermen.

At the date of the Treaty of Washington strand fishing and herring fishing in close time were forbidden to the British, and were not allowed under the Treaty, either expressly or by implication, to the United States' fishermen.

Two infractions of the Treaty were, therefore, committed in Fortune Bay by the

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United States' fishermen, and they are, I conceive, not entitled to compensation for any injury or loss sustained on that occasion.

But the permanent settlement of the North American Fisheries question, independently of the provisions of the Treaty of Washington, is, at the present time, so important that, in accepting the offer of the United States' Government to co-operate in making regulations for the fisheries in future, Her Majesty's Government may take the opportunity for waiving the strict rights of this country under the Treaty, and entertaining the subject of compensation as expedient.

Your Lordship, however, I would respectfully suggest, may properly make the withdrawal of the Bill introduced by Mr. Loring a condition preliminary to the consideration of the amount of compensation to be paid to the United States' fishermen.

I have, &c.
(Signed) J. PARKER DEANE.

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## No. 83.

### *Memorandum by the Lord Chancellor.*

*Fortune Bay.**

Fortune Bay Fisheries question.

I FIND it difficult to express my opinion in terms of simple assent to the Report of the Law Officers, and I cannot without much qualification agree with Lord Northbrook's Memorandum.†

Three points to be considered.

There are three distinct questions which ought, I think, to be separately considered :—

1. The question of the conduct of the Newfoundland fishermen on the occasion out of which the complaints of the United States' Government arose.

2. That of policy, as to the course which it is for the interest of this country to take, having regard to its relations with the United States on the one hand, and to the rights and interests of the Colony of Newfoundland on the other.

3. The question of law, as to the true construction and effect of the Treaty of Washington.

It is on the latter mainly that I propose to state my opinion.

Construction and effect of the Treaty of Washington with regard to the provisions of local legislation.

1. I agree with the opinion given in 1873 by Lord Coleridge, Sir G. Jessel, and Dr. Deane that the clause in the Treaty of Washington, which provides that the citizens of the United States shall be entitled, *in common with British subjects*, to fish in Newfoundland waters within the limits of British sovereignty, means that the American and the British fishermen shall fish in these *waters* upon terms of equality, not that there shall be an exemption of American fishermen from any reasonable regulations to which British fishermen are subject. There is nothing to waive any part of the territorial sovereignty of Great Britain in those waters, or to give the citizens of the United States any privilege or advantage in them above British subjects. Mr. Marcy's Circular of the 28th March, 1856, seems to me to be altogether right, and its principle is as much applicable to the fishery provisions of the Treaty of Washington as to those of the Treaty which Mr. Marcy had in view.

2. I cannot regard the correspondence, &c., which took place in 1873-74 as to the terms of the Act passed on the 5th May, 1873, by the Newfoundland Legislature, and the subsequent repeal of that Act, and the substitution of that passed on the 28th March, 1874, as involving any waiver or relinquishment of the right of the British Government to regulate the use of Newfoundland waters for fishing purposes. The United States' Government objected (as it was entitled to object) to the form of the Act of the 5th May, 1873, because it was not a simple adoption of the Treaty, but was a conditional adoption, subject to all local laws, &c., "relating to the time and manner of prosecuting the fisheries;" which laws, if consistent with the Treaty rights of the United States, did not require any such saving; and, if not consistent with those rights, could not properly be so saved. The British Government, and the Newfoundland Legislature, rightly yielded to this objection; but the only effect of this was, that any question as to the force and validity of the local regulations was left to be determined according to general principles of international law, and the true construction and effect of the Treaty. And I think there is sufficient proof that this

was the understanding, at the time, of the United States' Government. Sir Edward Thornton's Confidential telegram to the Foreign Office on the 26th June, 1873, is in these terms: "Mr. Fish states, confidentially, that he presumes that in the waters of each country the fishermen of the other would have to comply with reasonable police regulations; but that his Government could not accept restrictions inserted in the Newfoundland Act with reference to the Treaty." In a previous conversation with Sir E. Thornton (reported 23rd June, 1873) Mr. Fish had said "that, in both cases, the fishermen of the two countries would have to observe the laws of the country within whose jurisdiction they might be fishing; but that such restrictions had not formed part of the Treaty."

3. This is a principle of much too considerable and general importance to be waived or relinquished, even to get out of a temporary difficulty with the United States. And I do not agree with what seems to have been the view of the late Law Officers (adopted, apparently, by the present) that there is any difference in this respect between territorial laws and regulations which were in existence at the time of the Treaty and those made afterwards. Both, if reasonable, and of impartial incidence on British and American fishermen, are, in my judgment, equally binding and equally consistent with the Treaty; neither would it be so if they gave to British fishermen, in the exercise of those rights of sea-fishing in which citizens of the United States were by the Treaty admitted to participate, any preference or other unfair advantage over American fishermen.

4. The two Coast Fisheries Acts of Newfoundland (Appendix (A) and (E) to "Correspondence, &c., in January 1878") must be read together, the second, which was later than the Treaty of Washington (39 Vict., cap. 6, 26th April, 1876), being a mere amending Act, and referring to the first for the penalties by which it is to be enforced. The concluding section of the first Act is in these words: "Nothing in this chapter shall affect the rights and privileges granted by Treaty to the subjects of any State or Power at amity with Her Majesty." These local regulations, therefore, are, on the face of them, limited by any Treaty rights belonging to the United States or to any other Power. But so far as they are reasonable, and not protective of British as against American fishermen, it appears to me that they are consistent with the Treaty rights of the United States, and that American, as well as British fishermen, ought to be held bound by them. Any other view would involve one or other of three impossible alternatives: (1) that there can be no law or regulation at all as to the fishing in these waters; (2) that Great Britain has admitted the United States to participation in her own rights of sovereignty in Newfoundland waters, and can now only legislate as to them (so far as fishing is concerned) with the concurrence of that foreign Government; or (3) that the Treaty has a protective operation in favour of American against British fishermen in British waters.

5. With respect to the three provisions of these Newfoundland Acts, which are said to have been violated by the American fishermen in Fortune Bay in January 1878, two only, as I understand them, are applicable to those rights of fishing, in which the citizens of the United States are by the Treaty permitted to participate, viz.: (1) the regulation prohibiting certain modes of capture between the 20th December and the 12th April (extended by the amending Act of 1876 to the 25th April); and (2) the regulation of 1876 as to Sundays. It is not obvious to me that either of these regulations is unreasonable in itself, or unfair and unequal in its operation against United States' fishermen in their competition with British subjects while in British waters. I do not think it is a sound argument that, because United States' fishermen may have come to those waters from a distance, and may stay there only for a limited time, it is therefore an encroachment upon their Treaty rights to place them, equally with the British fishermen who live on the spot, under restrictions in themselves reasonable, though such restrictions may prevent them from fishing continuously during the whole of that time or with nets of a certain sort or size. Nor do I think that any such inference can fairly be drawn from the arguments which preceded the Halifax Award, or from that Award itself. It would, however, be right for Her Majesty's Government to give a friendly and equitable consideration to all arguments which the United States' Government may be able to bring forward, in order to show (if such is their opinion) that these regulations are unfair or unreasonable, and if any such arguments should appear to Her Majesty's Government to be of substantial weight, it may be proper that those regulations should be repealed. With respect to the four months' "close time" (as it is called), I suppose that herrings may be caught with other kinds of nets besides those which are forbidden, and I do not perceive that "seines" are by name prohibited. But if the use of seines during those months is (as seems to be

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* See list of Papers annexed to No. 82, p. 96.

† June 10, 1880.

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assumed in Captain Sulivan's Report of the 21st June, 1878) prohibited in effect, and if the native fishermen at Fortune Bay were ignorant of the existence of any such prohibition, and habitually disregarded it, I agree with Lord Northbrook that would be wrong to ascribe importance in the present controversy to the violation by the American fishermen of that particular law, which the Colonial Government did not practically enforce, and which British fishermen were permitted habitually to disregard.

6. The third provision of the local Statutes, that against *barring* herrings (an operation performed from the shore, and by the use of the shore) stands on quite different ground. Not only does this provision appear to me to have been in itself very proper and reasonable, but it is no restriction upon any right of fishing conceded by the Treaty of Washington to the United States. The right of strand fishing, or of using the shore for the purpose of catching fish by nets thrown out from the shore and carried back to it, is not one of those in which, under the Treaty, the citizens of the United States have any right to participate. This is (to my mind) made perfectly clear by the facts and reasons stated in the opinion of the late Law Officers, dated the 11th February, 1880,* and in Lord Salisbury's despatch of the 3rd April, 1880, and also by the decision of the Halifax Commission mentioned in Mr. Bergne's Memorandum of the 5th March, 1880. Nor do I perceive that any reply has been offered by the United States' Government to Lord Salisbury's despatch upon this point. The operation of *barring* (which I understand to be the inclosure or impounding for an indefinite time of a certain water-space between the shore and a seine carried out from and brought back to the shore, for the purpose of accumulating and keeping alive in it, as long as may be convenient, large quantities of captured herrings) would, if legal, be in excess of any Treaty rights which can be claimed by the United States, and could (in that case) only be practised by sufferance, or under arrangements with native Newfoundland fishermen entitled to make such a use of the shore. It is, in fact, illegal, and it appears to me to be prohibited for very good reasons. Being so prohibited to British fishermen (a prohibition which, though it may have been more or less frequently violated, is not alleged to have been either unknown or misunderstood), no connivance on their part, and no assistance by some of them, could make it lawful to Americans; and when the Americans practised it on a Sunday, against a further special prohibition by law applicable to all fishing on that day (which appears to have been strictly obeyed by the British fishermen, and which, whatever might be its efficacy as to fishing by Americans in the open water, was unquestionably binding upon them when they fished from the shore in a manner not within their Treaty rights), they were acting, not illegally only, but so as to take (as it seems to me) an unfair and unreasonable advantage of the British fishermen. Although, therefore, the resistance of the British fishermen was caused by the violation of the Sunday rule, and not by any zeal on their part for the observance of any other local laws, still it was caused by the violation of the Sunday rule in that manner, under those circumstances, and with that effect, and I cannot agree with Lord Northbrook that the double illegality of "barring" from the shore, and of doing this on Sunday, can be excused by considerations which might possibly have been more to the purpose if the United States' fishermen had confined themselves to open water fishing on Sundays, and had merely disputed their obligation to observe in that respect the local law.

Compensation for losses caused by British fishermen ought to be paid, but not on grounds put forward by United States' Government.

7. That the Newfoundland fishermen were not entitled to take the law into their own hands, and forcibly to remove or destroy one or more of the seines used by the Americans, is a point which Her Majesty's Government ought certainly, without hesitation, to admit; and there might be no objection to a grant of reasonable compensation (if fairly assessed) on that principle. But the actual claim made by the American Government is for compensation upon the hypothesis that the United States' fishermen ought to have been allowed to continue, without interruption, their illegal and unauthorized mode of strand fishing, by "barring" the fish throughout that Sunday, and that, as (if they had done so) they might possibly have caught all the herrings then in the bay, they ought to be compensated for the loss of such a catch. Such a claim seems to me to be altogether inadmissible. Whatever concessions Her Majesty's Government may be disposed to make, out of friendliness towards the United States, and whatever understanding they may find it convenient to establish for the future, I cannot think that it would be either wise or right to abandon the ground taken up in Lord Salisbury's despatch as to those questions of law, on which I consider Lord Salisbury to have been rightly advised.

Lord Salisbury's despatch right as to questions of law, and ground thus taken up ought not to be abandoned.

(Signed) SELBORNE.

*July* 21, 1880.

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* See No. 76.

## No. 84.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received August* 10.)

My Lord, *Temple, August* 10, 1880.

H. Cheers, a deserter from the American ship "R. Robinson."

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th July last, stating that he was directed to transmit to us the accompanying communication* which had been received from the United States' Chargé d'Affaires at this Court relative to the case of Henry Cheers, a British subject, who, having deserted from the American merchant-ship "R. Robinson," at Yokohama, went on board Her Majesty's ship "Hornet" and gave himself up as a deserter from the Royal Navy. That the United States' Consul-General at Yokohama, however, acting under the instructions of the United States' Minister at Yedo, demanded the surrender of the man to be dealt with as a deserter from the American vessel, but Commander Eaton declined to accede to this request on the ground that Cheers being a deserter from the Royal Navy, his case came within the provisions of the Naval Discipline Act† and of the Queen's Regulations and Admiralty Instructions, copies of which Sir Julian annexed. That he was to refer us to section 19 of the Act, and to section 368 of the Admiralty Regulations (p. 126), and he observed that although the jurisdiction of the United States' Consul over Henry Cheers as a deserter from an American vessel was not contested (see inclosed printed correspondence, August 1875, No. 2631),‡ it would seem that, the prisoner being in the legal custody of the Commander of the British man-of-war charged with an offence against the Naval Discipline Act, the latter was justified in refusing to surrender him to the United States' Consul.

That Sir Julian Pauncefote was to request that we would take the case into consideration, and favour your Lordship with our opinion as to the reply which should be returned to Mr. Hoppin's letter.

In obedience to your Lordship's commands we have the honour to report—

The Commander of Her Majesty's ship "Hornet" justified in refusing to surrender him to United States' Consul-General on ground of his having previously deserted from the Royal Navy.

That the United States' Chargé d'Affaires may, we consider, be properly informed:—

That if no other right intervened effect would naturally be given to his claim, and acknowledgment would be made that it would be the duty of the British Captain to give up the seaman to the American authorities.

But, on the other hand, the claim of the British Captain to deal with a British subject in relation to desertion or any other crime committed against our law must be maintained, and that therefore, if it had been ascertained that the seaman was a deserter from the British service, the Captain would have been fully justified in detaining him for the purposes of punishment.

It may be that in this case it was not established by proof that the seaman was a deserter, but if the Captain had reasonable grounds for believing him to be so, it was right that the seaman should be detained in order to obtain such proof; and such right of detention would intervene and prevent effect being given to the claim made on the part of the United States' Consul-General at Yokohama, and that under these circumstances the British Government is not prepared to disavow the acts of Captain Eaton.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

## No 85.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September* 28.)

My Lord, *Temple, September* 27, 1880.

Fortune Bay Fisheries question. Concur generally in draft to United States' Minister. Remarks on United States' Treaty rights.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd August last, stating that, by your Lordship's direction, he transmitted to us the draft of a letter on the subject of the Fortune Bay case, which your Lordship, after consultation with the Secretary of State for the Colonies and other members of the Cabinet, proposed to address to the United States Minister.

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* Mr. Hoppin, May 7, 1880.

† 29 and 30 Vict., cap. 109.

‡ Confidential No. 2631.

That Sir Julian Pauncefote was to inclose a copy of a Memorandum* on the case by the Lord Chancellor; and he was to request that we would inform your Lordship, at our earliest convenience, whether the proposed draft met with our concurrence.

In obedience to your Lordship's commands we have the honour to report—

That we concur generally with the proposed draft, but we desire to submit the following observations with reference to the reasoning contained in p. 2 of the draft, with which we are not able entirely to concur.

We quite agree that there is nothing in the Treaty to waive any part of the territorial sovereignty of Great Britain in the Newfoundland waters, or to give the citizens of the United States any privilege or advantage in them over British subjects. But it does not appear to us to follow that the Treaty may not, as a matter of international obligation, have limited the extent to which the territorial sovereignty could properly be exercised in legislation restricting the rights of fishing.

We think the United States' Government might well concede that Great Britain has not admitted the United States to participation in her right of sovereignty in Newfoundland waters, and that the Treaty has no protective operation in favour of American against British fishermen, and yet contend that it would be a violation of the rights acquired by the United States under the Treaty, if by legislation the right of fishing in Newfoundland waters was substantially restricted or limited.

We fully agree that it would be quite consistent with the Treaty to enact any reasonable police regulations, and also to pass any reasonable laws, having for their object the more convenient and beneficial enjoyment of the fishery; but we are not satisfied that legislation going beyond what was necessary for these purposes could be justified, even though it could be shown to affect British and American fishermen impartially.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Annex.

*Draft of a Letter from Earl Granville to Mr. Lowell.*

Sir, *Foreign Office, August* , 1880.

Her Majesty's Government have carefully considered the correspondence which has taken place between their predecessors and the Government of the United States respecting the disturbance which occurred at Fortune Bay on the 6th January, 1878, and they have approached this subject with the most earnest desire to arrive at an amicable solution of the differences which have unfortunately arisen between the two Governments on the construction of the provisions of the Treaties which regulate the rights of United States' fishermen on the coast of Newfoundland.

In the first place, I desire that there should be no possibility of misconception as to the views entertained by Her Majesty's Government respecting the conduct of the Newfoundland fishermen in violently interfering with the United States' fishermen, and destroying or damaging some of their nets. Her Majesty's Government have no hesitation in admitting that this proceeding was quite indefensible, and is much to be regretted. No sense of injury to their rights, however well founded, could, under the circumstances, justify the British fishermen in taking the law into their own hands, and committing acts of violence; but I will revert by and by to this feature in the case, and will now proceed to the important question raised in this controversy, whether, under the Treaty of Washington, the United States' fishermen are bound to observe the Fishery Regulations of Newfoundland in common with British subjects.

Without entering into any lengthy discussion on this point, I feel bound to state that, in the opinion of Her Majesty's Government, the clause in the Treaty of Washington which provides that the citizens of the United States shall be entitled, "in common with British subjects," to fish in Newfoundland waters within the limits of British sovereignty, means that the American and the British fishermen shall fish

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* July 21, 1880.

in these waters upon terms of equality; and not that there shall be an exemption of American fishermen from any reasonable regulations to which British fishermen are subject.

Her Majesty's Government entirely concur in Mr. Marcy's Circular of the 28th March, 1856. The principle therein laid down appears to them perfectly sound, and as applicable to the fishery provisions of the Treaty of Washington as to those of the Treaty which Mr. Marcy had in view. They cannot, therefore, admit the accuracy of the opinion expressed in Mr. Evarts' letter to Mr. Welsh of the 28th September, 1878, "that the fishery rights of the United States conceded by the Treaty of Washington are to be exercised wholly free from the restraints and regulations of the Statutes of Newfoundland," if, by that opinion, anything inconsistent with Mr. Marcy's principle is really intended. Her Majesty's Government, however, fully admit that, if any such local Statutes could be shown to be inconsistent with the express stipulations, or even with the spirit, of the Treaty, they would not be within the category of those reasonable regulations, by which American (in common with British) fishermen ought to be bound; and they observe, on the other hand, with much satisfaction, that Mr. Evarts, at the close of his letter to Mr. Welsh of the 1st August, 1879, after expressing regret at "the conflict of interests which the exercise of the Treaty privileges enjoyed by the United States appears to have developed," expressed himself as follows:—

"There is no intention on the part of this [the United States'] Government that these privileges should be abused, and no desire that their full and free enjoyment should harm the colonial fishermen.

"While the differing interests and methods of the shore fishery and the vessel fishery make it impossible that the regulation of the one should be entirely given to the other, yet if the mutual obligations of the Treaty of 1871 are to be maintained, the United States' Government would gladly co-operate with the Government of Her Britannic Majesty in any effort to make those regulations a matter of reciprocal convenience and right, a means of preserving the fisheries at their highest point of production, and of conciliating a community of interest by a just proportion of advantages and profits."

Her Majesty's Government do not interpret these expressions in any sense derogatory to the sovereign authority of Great Britain in the territorial waters of Newfoundland, by which only regulations having the force of law within those waters can be made. So regarding the proposal, they are pleased not only to recognize in it an indication that the desire of Her Majesty's Government to arrive at a friendly and speedy settlement of this question is fully reciprocated by the Government of the United States, but also to discern in it the basis of a practical settlement of the difficulty; and I have the honour to request that you will inform Mr. Evarts that Her Majesty's Government, with a view to avoiding further discussion and future misunderstandings, are quite willing to confer with the Government of the United States respecting the establishment of regulations under which the subjects of both parties to the Treaty of Washington shall have the full and equal enjoyment of any fishery which, under that Treaty, is to be used in common. The duty of enacting and enforcing such regulations, when agreed upon, would, of course, rest with the Power having the sovereignty of the shore and waters in each case.

As regards the claim of the United States' fishermen to compensation for the injuries and losses which they are alleged to have sustained in consequence of the violent obstruction which they encountered from British fishermen at Fortune Bay on the occasion referred to, I have to state that Her Majesty's Government are quite willing that they should be indemnified for any injuries and losses which, upon a joint inquiry, may be found to have been sustained by them, and in respect of which they are reasonably entitled to compensation; but on this point I have to observe that a claim is put forward by them for the loss of fish which had been caught, or which, but for the interference of the British fishermen, might have been caught, by means of strand fishing, a mode of fishing to which, under the Treaty of Washington, they were not entitled to resort.

The prosecution by them of the strand fishery being clearly in excess of their Treaty privileges, Her Majesty's Government cannot doubt that, on further consideration, the United States' Government will not be disposed to support a claim in respect of the loss of the fish which they had caught, or might have caught, by that process.

I have, &c.

### No. 86.

*Memorandum by the Lord Chancellor.*

Fortune Bay. Agree with Law Officers' Report of September 27 as to draft reply to United States' Minister.

I DO not perceive the difference between the present view of the Law Officers* and my own, except that they think there may be some expressions in the draft despatch capable of being so construed as to seem inconsistent with the principle (in which I entirely agree, and which I have myself laid down) that any local regulations, not substantially consistent with the enjoyment of the rights of fishing conceded to the United States by the Treaty of Washington, would be *unreasonable,* and would not be binding under that Treaty on the United States.

And approve alterations in draft.

Although I do not myself see that there was in the draft despatch anything fairly open to a misconstruction of that kind, I think it will nevertheless be improved by the omission of the parts proposed to be left out by Sir Julian Pauncefote, provided it is also in other respects altered, as suggested by myself in red ink, in the copy returned herewith.

(Signed) SELBORNE.

*October* 7, 1880.

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## Venezuela.

### No. 87.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 10.)

*Temple, April* 9, 1880.

Blockade of Orinoco. Venezuelan Decree abolishing Custom-house at Ciudad Bolivar; prohibiting trade, and proposal to treat foreign vessels fitted out for war by insurgents as pirates.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister at Carácas (No. 12)† enclosing a Decree issued on the 10th February last by the President of Venezuela, in consequence of the outbreak of disturbances in the State of Guyana.

That that Decree abolished the custom-house at Ciudad Bolivar, prohibited all trade after certain dates with the Orinoco, directed the capture and trial as smugglers of all vessels entering the Orinoco after the dates fixed by the Decree; and ordained that all vessels fitted out for warfare by the insurgents in the Orinoco or in its vicinity should be considered as pirates.

That Sir Julian Pauncefote was to request that we would be so good as to favour your Lordship with our opinion upon the terms of that Decree, and as to the steps that Her Majesty's Government should take in regard to it.

We were also honoured with Sir Julian Pauncefote's letter of the 6th instant, transmitting two further despatches (Nos. 13 and 17)‡ from Her Majesty's Minister at Carácas, relative to the Decree of the Venezuelan Government.

In obedience to your Lordship's commands we have the honour to report—

That in our opinion a strong protest should be made against that part of the Decree which provides that "foreign vessels found fitted out for warfare by the insurgents in the Orinoco or in the vicinities shall be considered as pirates."

Subject to the above observation we see no objection to the Decree.

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* No. 85, September 27, 1880.

† Mr. Bunch, No. 12, February 16, 1880.

‡ Mr. Bunch, No. 13, February 25; No. 17, March 2, 1880.

Opinion as to publication of Decree in "Gazette."

The Decree may, we think, be properly published in the "Gazette."

A sufficient force should be sent for the protection of British interests from any high handed acts which Her Majesty's Minister at Carácas anticipates as probable, and also for the purpose of warning British ships and perhaps ships of other countries from entering the Orinoco.

We think the Decree establishing the blockade should also be published in the "Gazette."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### No. 88.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received April* 28.)

*Temple, April* 27, 1880.

Island of Patos, or Goose Island. Venezuelan claim to right of Sovereignty over.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th February last, stating that he was directed by your Lordship to transmit to us papers* relative to a claim put forward by the Government of Venezuela to the Island of Patos, or Goose Island, a small islet situated in the channel between the Venezuelan coast and the British Colony of Trinidad.

That we should see from those papers that Her Majesty's Government contended that the Islet of Patos was a dependency of Trinidad; and that in support of that contention they relied upon a grant of that and two other islets by Don J. M. Chacon, Governor of Trinidad, to the municipality of Port of Spain, the chief town of that island, in the year 1791; the territory now belonging to Venezuela and the Island of Trinidad being, at that date, possessions of the Spanish Crown.

That the Island of Trinidad having been captured by the British forces in 1797, was formally ceded to the British Crown by Article IV of the Treaty of Amiens of the 27th March, 1802, and that Her Majesty's Government maintained that the cession included, as a matter of course, all the small adjacent islets, which had, up to that time, been considered as dependencies of Trinidad. (See Grant of Patos and other islets to Municipal Corporation of Trinidad. Print, p. 3. Copy of Capitulation of 18th February, 1797. Treaty of Amiens.)

That the Venezuelan Government, on the other hand, dispute the validity of the grant made in 1791, on the ground that it was not ratified by the King of Spain.

That they further contended that the Island of Trinidad was the only one of those adjoining the territory now belonging to Venezuela which was ceded to Great Britain by the Treaty of 1802, and they therefore claimed that all the other islands so situated passed to Venezuela under the Treaty with Spain of the 30th March, 1845.

That Her Majesty's Government did not admit the contentions of the Venezuelan Government, but that, apart from the question of the original validity of the British claim, they relied upon the fact that the Islet of Patos had been held and treated as a dependency of the British Colony of Trinidad, ever since the occupation of that island in 1797—that no question as to the right of Great Britain to sovereignty over that islet was raised until the year 1859, and that thus uninterrupted and undisputed possession for a period of sixty-two years conferred upon Great Britain a prescriptive right which could not now be called in question.

That on that point Sir Julian Pauncefote was to refer to the authorities on the subject of usucaption and prescription, as applicable to the title to national property, cited in Creasy on International Law (sections 250-255, pp. 249-255).

That Sir Julian Pauncefote was also to observe that Sir Arthur Gordon (then Governor of Trinidad) in his despatch of the 8th July, 1867 (Print, p. 11) pointed out that if the principle contended for by Venezuela be correct, that the Act of Cession applied to Trinidad alone, the Islands of Morros, Huevos, and Chaccuchacaro would, equally with Patos, be excluded from its operation, and their loss, giving as it would the entire control of all the northern entrances to the Gulf of Paria to Venezuela, would be a serious injury to Trinidad.

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* Confidential Print, 1859–77, No. 3149; to Colonial Office, April 30, 1877; Señor Rojas, May 19; to Señor Rojas, June 4; to Colonial Office, June 4; Colonial Office, June 30; to Colonial Office, July 12; ditto, September 24; Colonial Office, October 20, 1879; ditto, January 1; to Señor Rojas, January 10, 1880; Capitulation of February 18, 1797; Treaty of Amiens, March 27, 1802.

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That the situation of those islands was shown in the sketch map contained in Sir E. Hertslet's Memorandum, at p. 24 of the print.*

That the arguments of the Venezuelan Government in support of their claim to the Island of Patos were contained in the note from Señor Seijos to Mr. Fagan of the 15th February, 1867 (Print, p. 6).

That the answer of Her Majesty's Government to the note was contained in Lord Stanley's despatch No. 31 of the 27th August, 1867 (Print, p. 15), and Mr. Joel's communication thereof to Señor Gutierrez on the 9th November following (Print, p. 16).

That the question was again raised by Señor Calcano, in his letter to the Earl of Derby of the 14th November, 1876 (Print, p. 22), and by Señor de Royas in his letter to the Earl of Derby of the 15th February, 1877 (Print, p. 24), and in his letter to your Lordship of the 18th May, 1879 (annexed).

That to that last communication your Lordship, with the concurrence of the Colonial Office, replied in the terms of the concluding paragraphs of your Lordship's letter to Señor de Royas of the 10th January, 1880.

That on the 12th January Señor de Royas called at the Foreign Office and verbally intimated his dissent from the views therein expressed. That he argued that Her Majesty's Government could not set up a title to the Islet of Patos by usucaption or prescription; that the cession under which they claimed was invalid *ab initio*, and that their claim had been protested against by Venezuela from the earliest moment. That he urged that the question be referred to arbitration.

That under these circumstances Sir Julian Pauncefote was to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to whether there was any substantial doubt in regard to the title of Great Britain over the Island of Patos.

In obedience to your Lordship's commands we have the honour to report—

Require further evidence as to Islet of Patos being a dependency of Trinidad.

That, before advising your Lordship more fully upon the conflicting claims of Great Britain and Venezuela to the Island of Patos, we desire to be informed what evidence can be produced to establish the fact stated in the letter of Sir Julian Pauncefote, "that the Islet of Patos has been held and treated as a Dependency of the British Colony of Trinidad ever since the occupation of that island in 1797."

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Würtemberg.

### No. 89.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received January* 17.)

*Temple, January* 16, 1880.

Succession duties. Proposed Declaration between British and Würtemberg Governments.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the correspondence relating to a duty of 10 per cent. levied on all property in Würtemberg inherited by British subjects.†

That Sir Julian Pauncefote was also to transmit to us, for our consideration, the draft of a Declaration between the British and Würtemberg Governments, the object of which was to place the subjects of one country, in all that related to succession to property in the other country, on precisely the same footing as native subjects.

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* No. 3149.

† From Mr. Gosling, No. 14, February 27, 1879, to Mr. Petre, No. 8, March 26, 1879. From Mr. Petre, No. 39, October 19, 1879. Convention, Belgium and Würtemberg, October 24 (November 24), 1845. From Treasury, November 29, 1879.

That Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion whether there was any objection to the conclusion of an arrangement with the Würtemberg Government in the terms of the proposed Declaration.

In obedience to your Lordship's commands we have the honour to report—

That the Declaration, so far as this country is concerned, is not needed, since, in this country, subjects of Würtemberg are, in matters of succession and similar duties, exactly under the same laws as British subjects.

The Declaration, on the part of the Government, may lead to some observations on the power of the Crown in matters of taxation, and we should suggest that your Lordship should not allow the Declaration, but, if possible, obtain the concession for Würtemberg, upon informing that Government of the state of the English law.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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### Annex.

*Draft Declaration between British and Würtemberg Governments respecting Succession Duties.*

The Government of Her Britannic Majesty and the Government of His Majesty the King of Würtemberg, being desirous of placing on a satisfactory footing the question of succession duties on property inherited by British subjects in Würtemberg, and by Würtemburg subjects in the dominions of Her Britannic Majesty, the Undersigned, duly authorized to this effect, have agreed as follows:—

In all that relates to succession to property by British subjects in the dominions of His Majesty the King of Würtemberg, and by Würtemberg subjects in the dominions of Her Britannic Majesty, the subjects of the one country shall be placed in the other on precisely the same footing as native subjects.

No deduction shall be made on account of the transfer of property from one State to the other, and all deductions from property which have hitherto taken place on that account, under any designation whatsoever, shall be abrogated by virtue of the present Declaration, without any distinction, whether such transfer of property result from authorized emigration, purchase, barter, donation, inheritance, or any other legitimate cause.

The present Declaration shall come into force immediately on the signature thereof, and shall apply to all future succession to property as well as to all transfers of property of any kind, the exportation of which has not as yet been effected.

In witness whereof the Undersigned have signed the present Declaration, and have affixed thereto the seals of their arms.

Done at Stuttgart the day of , 1880.

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### No. 90.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received April* 27.)

*Temple, April* 27, 1880.

Succession duties. Proposed unilateral Declaration by Würtemberg Government.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, stating that with reference to our Report of the 16th January last, on the subject of a Declaration between Her Majesty's Government and the Government of Würtemberg, with regard to succession duties, and in which we suggested, for reasons given in that Report, that it would be inexpedient for Her Majesty's Government to agree to a Declaration between the two Governments, but that they should, if possible, obtain from Würtemberg the desired concession in favour of British subjects, upon informing the Würtemberg Government of the state of the English law in that respect, Sir Julian Pauncefote was directed by your Lordship to transmit to us, for our consideration, the draft of a unilateral Declaration which your Lordship proposed to submit to the Würtemberg Government for their approval, stipulating that British subjects should henceforward be placed in all that relates to duties on succession to property in Würtemberg on precisely the same footing as

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Würtemberg subjects; and Sir Julian was to request that we would be good enough to favour your Lordship with any observations we might have to make on the draft Declaration, or on the accompanying draft of a despatch which your Lordship proposed to address to Her Majesty's Chargé d'Affaires at Stuttgart on the subject.

In obedience to your Lordship's commands we have the honour to report—

That the proposed draft provides for duties other than those on succession to property; and the enumeration of those subjects of duties may perhaps lead to some difficulty from confusion or omission.

We suggest, for your Lordship's consideration, either that the Würtemberg Government should itself draw up and submit for consideration a draft Declaration, or that the draft transmitted to us should be altered by omitting paragraphs 2 and 3, and that paragraph 1 should be as follows:—

British subjects shall henceforth, in all that relates to duties on deductions on the transfer of property, or the exportation of property in Würtemberg, be placed on precisely the same footing as Würtemberg subjects.

We have, &c.
(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

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## Annex.

### *Draft Declaration of Würtemberg Government respecting Succession Duties.*

Whereas no distinction is made by the laws of Great Britain and her Colonies between British subject and foreigners in regard to succession duties, and to the other matters hereinafter mentioned, the Undersigned, duly authorized to this effect, declares as follows:—

1. British subjects shall henceforward be placed, in all that relates to duties on succession to property in Würtemberg, on precisely the same footing as Würtemberg subjects.

2. No deduction shall therefore be made on account of the transfer of property from the dominions of His Majesty the King of Würtemberg to the dominions of Her Britannic Majesty, and all deductions from property which have hitherto taken place on that account, under any designation whatsoever, shall be abrogated by virtue of the present Declaration, without any distinction, whether such transfer of property results from authorized emigration, purchase, barter, donation, inheritance, or any other legitimate cause.

3. The present Declaration shall apply to all future succession to property, as well as to all transfers of property of any kind, the exportation of which has not as yet been effected.

4. The present Declaration shall come into force immediately on the signature thereof, and shall remain in force so long as the provisions of British law shall continue as aforesaid.

In witness whereof, &c.

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*Printed for the use of the Foreign Office. June 1882.*

**CONFIDENTIAL.**

(4637.)

# REPORTS

BY THE

# LAW OFFICERS OF THE CROWN.

1881.

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CONFIDENTIAL.

# REPORTS BY THE LAW OFFICERS OF THE CROWN: 1881.

## Africa.

### No. 1.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April* 14.)

*Temple, April* 13, 1881.

My Lord,

Criminal jurisdiction on the West Coast of Africa. Proposed Order in Council.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the draft which had been prepared by Mr. Reilly of an Order in Council providing for the exercise of criminal jurisdiction over Her Majesty's subjects resident in or resorting to the western parts of Africa.

That Sir Julian Pauncefote was to observe that it was found that in the development of trade on the West African Coast British subjects, both European and coloured, were in the habit of ascending the African rivers, and in some cases, as in the Niger, establishing themselves several hundred miles in the interior, where they carried on trade far beyond the reach of any existing controlling authority.

That at some of those establishments great irregularities prevailed. Slave Trade was carried on, and that even murders took place, and that no provision at present existed for dealing adequately with the offences committed, and we were referred to the Report of Law Officers of the 9th August, 1877.

That in order to provide a remedy for that state of things, which should not be allowed to continue, the draft of the proposed Order in Council had been prepared, giving power to such of Her Majesty's Consular Officers on the West African Coast as might be authorized for the purpose, to hold Consular Courts anywhere within their Consular districts, to exercise a limited criminal jurisdiction over British subjects, and to arrest and send offending parties for trial, or to undergo their sentence, to the nearest, or most convenient, British Colony.

That Sir Julian Pauncefote was to inclose the papers noted in the margin* bearing upon the subject, and to request that we would take the same into our consideration, and favour your Lordship with our opinion whether the provisions of the proposed Order were such as might properly be submitted to the Queen for Her Majesty's approval.

That Sir Julian Pauncefote was to add that your Lordship would be glad to receive our Report upon the matter at our early convenience.

In obedience to your Lordship's commands we have the honour to report—

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* Draft Order in Council (in Mr. Reilly's letter of March 11, 1881); Memoranda by Mr. Reilly and Mr. Wylde, May 5, 1880; Foreign Jurisdiction Act, 1875; ditto, 1878; West African Order in Council, 1872, No. 2258; Ottoman Order in Council, 1873, No. 2354; Law Officers, August 9, 1877, Confidential No. 4216.

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Draft of Order in Council may be submitted to the Queen.

That the provisions of the proposed Order in Council are such as, in our opinion, may properly be submitted to the Queen for Her Majesty's approval.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 2.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 11.)

My Lord, *Temple, August* 11, 1881.

Murder of a slave-girl at Onitsha by W. F. John.

Williams and his wife implicated.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* attending the murder of a black girl at Onitsha, West Coast of Africa, by one W. F. John, a native interpreter to a missionary establishment, in which crime another man named Williams, with his wife, were alleged to be implicated.

That Sir Julian Pauncefote was to invite our attention to the two accompanying Reports of our predecessors, dated respectively the 27th March and 10th May, 1878, and to the notes of the evidence taken before Consul Hewett, and he (Sir Julian Pauncefote) was to request that we would take those papers into our consideration, and favour your Lordship with our opinion whether a Commission, as proposed in the Colonial Office letter of the 1st July, should be issued under the Acts 46 Geo. III, cap. 54, and 57 Geo. III, cap. 53, for the purpose of bringing the man Williams and his wife to trial at Sierra Leone.

In obedience to your Lordship's commands we have the honour to report—

Williams and his wife may be tried by a Commission under 57 Geo. III, cap. 53, sec. 1.

That we entertain some doubt whether a Commission can be issued in this case. The question turns upon the construction of 57 Geo. III, cap. 53, sec. 1. That section, after dealing with murder and manslaughter committed in Honduras, proceeds to treat with like offences committed in other places "by the master or crew of any British ship or vessel, or by any person sailing in or belonging thereto, or that shall have sailed in or belonged to and have quitted any British ship or vessel to live in any of the said places, *or that shall be there living*." It has to be considered whether the latter words refer only to persons who have arrived in British vessels and quitted them to live in the places referred to, or include all persons (limited necessarily to British subjects) living in those places.

We do not enter upon the arguments which may be employed in support of either construction, but say that, upon the whole, we incline to the opinion that the words are broad enough to include the latter view, and that, therefore, Williams and his wife may be tried by a Commission under the Statute referred to.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 3.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 19.)

My Lord, *Temple, October* 18, 1881.

Murder of a slave-girl at Onitsha. Arrest of Williams and his wife lawful. Jurisdiction of the Commissioners.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 6th instant, stating that, with reference to our Report of the 11th August on the case of the slave-girl murdered at Onitsha, he was directed by your Lordship to transmit to us the subsequent correspondence,† together with a letter from the Colonial Office of the 1st July, which had already been before us, and that Mr. Lister

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* Colonial Office, November 13, 1880; to Colonial Office, January 10; ditto, January 17; ditto, March 11; ditto, March 21; to Consul Hewett, No. 4, March 24; ditto, No 5, March 31; Colonial Office, April 1; ditto, June 16; ditto, July 1, 1881; Law Officers, March 27 and May 10, 1878, Confidential No. 4280.

† To Treasury, August 16; Treasury, August 25; to Colonial Office, August 31; Colonial Office, September 19; to ditto, September 22; to Treasury, September 22; Treasury, September 26; Colonial Office, September 27, 1881.

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## AFRICA.

No. 1 *b*. **[Colonial Office.]**

**[May 6, 1881.]**

*Note by the Lord Chancellor.*

Power of Crown to grant self-government to the Transvaal.

1. BY the Sand River Convention (16th January, 1853) the Commissioners representing the Queen "guaranteed in the fullest manner, on the part of the British Government, to the emigrant farmers beyond the Vaal River the right to manage their own affairs, and to govern themselves without any interference on the part of Her Majesty the Queen's Government in the territory beyond to the north of the Vaal River." (Orange River correspondence, printed the 10th April, 1854, p. 86.)

2. In 1877 Sir Theophilus Shepstone, acting under powers conferred by a Commission from Her Majesty, took possession of the territory of the Transvaal Republic, and declared it to be annexed to, and to have become part of, Her Majesty's dominions. This step was "taken without, on the one hand, any act of cession by the President or the Volksraad (the Legislature of the Republic), though at the instance of a large number of the inhabitants; and without, on the other hand, any exertion of force; though a corps of British soldiers had been encamped on the frontier of the Republic," and (after the Proclamation) marched into it. The late Law Officers (Sir John Holker and Sir H. Giffard) advised—quite correctly in my opinion—that the territory lately under the Government of the Transvaal Republic was to be regarded as conquered or ceded territory, and that Her Majesty had the same power, by Order in Council, of legislating for the inhabitants of the territory as she possessed in cases of conquered or ceded Colonies. (See their Report of the 12th May, 1877.)

3. Whatever legislation has since taken place for the territory in question has been by Order in Council, revocable at the pleasure of the Crown. The Transvaal territory is not mentioned in, or in any way directly, expressly, or necessarily legislated for by, "The South Africa Act, 1877." The events which (if they had happened) might have brought it within the scope of that Act never happened in fact.

4. It is, in my opinion, within the legislative power of the Crown, by Order in Council and Proclamation, to give to the inhabitants of this territory a free constitution, with complete powers of self-government (including the power to elect their own Governor), under the "suzerainty of the Crown; and, by such a constitution, fully to carry out the terms of peace agreed upon between Sir Evelyn Wood and the Boer leaders. The term "suzerainty" denotes not the total relinquishment and abdication, but only some restriction of the powers of sovereignty; and, as long as there is "suzerainty" there must be subjection, though in a qualified sense.

5. This case, therefore, falls far short of what was done with respect to the Orange River territory in 1853, and the relinquishment of British sovereignty which then took place, and which has since been acquiesced in without objection by Parliament (and must now be assumed to have been valid and effectual), is a precedent, *à fortiori*, for whatever may now be done by the Crown. That relinquishment was carried into effect by Order in Council and Proclamation, without any Act of Parliament; it was done with the full knowledge of Parliament, and, notwithstanding protests and remonstrances (by those who did not wish their subjection to the British Crown to cease) as loud and vehement as those which we now hear. Considering the local, historical, and other relations between the inhabitants of the Orange Free State and those of the Transvaal territory, it appears to me to be impossible to dispute the power of the Crown to carry into effect, by Order in Council and Proclamation, the arrangements intended without also disputing the title of the Orange Free State to its present autonomy and independence.

6. With respect to the opinions which were expressed at the time of the relinquishment of the Orange territory, those of the then Law Officers, adopted and acted upon by the Crown with the acquiescence of Parliament and of the nation,

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must now be taken to have been correct, whoever else may have then dissented from them. It is true that an opinion (in writing) adverse to the relinquishment was given at that time by the late Mr. Justice Wills and myself—not on the ground that the Crown could not, under any circumstances, cede any British territory without an Act of Parliament, nor (as far as I now remember) on the ground of a distinction between a cession in time of war, and one in time of peace, but because this was *not* a cession to any foreign Power, but was a mere *renunciation of sovereignty.* We thought that, as it was a principle of law that no man could divest himself of his allegiance, so he could not be absolved from it, or lose his recognized right to the protection of British law by the mere will of the Sovereign—that, having been once a British subject, he could not become *homo nullius*, a citizen of no country, and a subject of no Government. I do not stop to consider what force there may have been in this view, because (as I have said) it was practically overruled, and Great Britain is now bound, as a nation, by the transactions which overruled it.

7. The Act to enable George III to make peace with the revolted American Colonies (22 Geo. III, cap. 46) was rendered necessary by a wholly different state of circumstances. Many Acts of Parliament relating directly and expressly to those Colonies had been passed, and not a few (of which 16 Geo. III, cap. 5, may be taken as a sample) were passed during the war of Independence, and expressly with reference to it. No peace could be made with the revolted Colonies (still less a peace recognizing their independence) while these Acts of Parliament continued in force. Therefore it was that the Statute in question enabled the King to conclude a peace or truce, "*any law, Act, or Acts of Parliament, &c., to the contrary in any wise notwithstanding;*" and not only so, but also by Letters Patent "*to repeal, annul, and make void, or to suspend the operation and effect of any Act or Acts of Parliament relating to the said Colonies.*"

8. I do not think it necessary to enter into the question of the power of the Crown, in time of peace, to cede British territory to a foreign State without the consent of Parliament. There are several precedents (chiefly Indian and African) of the exercise of this power. The question was very fully discussed (though there was, in the result, no occasion to decide it) before the Judicial Committee of the Privy Council in 1875 in an Indian case (Danodharfordhar *v.* Deeram Kanji), which will be found reported in the Law Reports (Appeal cases, vol. 1, pp. 333–383). The Court in India had decided adversely to the right of cession; but the Judicial Committee (on which both Lord Cairns and I sat) was by no means disposed to concur in that view. In the report of the arguments of Sir W. Harcourt and Sir James Fitzjames Stephen for the Appeal (pp. 349–363), a concise account of the instances of cession on which they relied to establish the general power of the Crown will be found, and will repay perusal.

(Signed) SELBORNE.

*May* 6, 1881.

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*No. 1 b.* **[Colonial Office.]**

**[July 18, 1881.]**

As to who are British subjects in the Transvaal.

1. WHO shall be defined to be British subjects within the meaning of this Convention?

2. What shall be the condition of—

(*a.*) Persons domiciled in the Transvaal before the annexation?

(*b.*) Persons born of the preceding during the continuance of British sovereignty?

(*c.*) British subjects (and their children) who became domiciled in the Transvaal after the annexation?

K.

*July* 13, 1881.

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*Memorandum by the Lord Chancellor.*

It appears to me that it is necessary to obtain the opinion of the Law Officers of the Crown upon these very important questions.

I know of no way in which those who are once British subjects can cease to be so, except (1) the cession or abandonment of all territorial rights of the British Crown, in a particular territory, in favour of some foreign or other *Independent* State or Power, or (2) expatriation, under the terms of the Naturalization Acts.

But for the Orange River precedent I might have doubted whether the mere renunciation of sovereign rights by the Crown over a territory not ceded to, or conquered by, any Independent State or Power having a political existence apart from such renunciation, would come within the first of these two categories. But I think this point must be regarded as now practically settled by the Orange River precedent; not, indeed, as to the status, after such renunciation, of those who were previously natural-born British subjects by (what may be described as) any *extra-territorial* title, but as to the status of those whose title to be regarded as British subjects depended only on their domicil or inhabitancy within the borders of the abandoned territory.

In the present case I cannot perceive that any absolute renunciation of British sovereignty, similar to that which took place when the Orange River territory was abandoned, has taken place, or is intended to take place, in the Transvaal. The reservation of (what it has been thought convenient to call) "*Suzerain*" rights, has always appeared to me to make the two cases quite different. There *is*, indeed, to be a limitation of the former *plenum dominium* of the British Crown, which will secure to the Transvaal people, under certain conditions, rights of self-government, in most respects equal to those which they would have if they were entirely independent. But (as I have before said) these are rights, which, in theory of law, will be granted by virtue of, and will be derived from, the *plenum dominium* of Her Majesty; and which, to give them unquestionable legality in this country, must be granted (in the absence of Imperial legislation) by an Order in Council, and Proclamation consequent thereon, of the British Crown.

My impression is, that (in the absence of Imperial legislation) *all* the three classes (*a*), (*b*), and (*c*), mentioned in the *second* question now proposed by Lord Kimberley, will continue to be British subjects, in the view of British law.

To the *first* question, "Who shall be defined to be British subjects, within the meaning of this Convention," I find it difficult to give any satisfactory answer, because (if the view which I have above expressed is correct) I do not see how any authority less than that of the Imperial Parliament can give effect to any such definition, so as to deprive any of the classes referred to of any legal rights which may properly belong to British subjects *as such.*

The intention of the telegram of the 9th July seems to be that all the persons belonging to *any* of the classes (*a*), (*b*), and (*c*), should be entitled to retain the status of British subjects, after the Convention, in the Transvaal if they elect to do so, and register their names (as having made such election) within twelve months, with the British Resident. But what privileges or other advantages they would gain by reason of such election within the Transvaal territory (except the exemption from all compulsory military service mentioned in the telegram of the 1*st July*) is not (to me) apparent. And, if there is to be any law of compulsory military service under the Local Government to be established in the Transvaal territory, it seems to be scarcely possible that an option to become exempt from it, by registering themselves within twelve months, can be reasonably claimed for all the present inhabitants of that territory.

(Signed) SELBORNE.

*July* 18, 1881.

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was to request that we would take the papers then submitted into our consideration, and favour your Lordship with our opinion, at our earliest convenience, as to whether Williams and his wife could be arrested and sent to Sierra Leone for trial with John, as proposed in the last-mentioned letter of the 1st July. That, in the event of our being of opinion that there was no legal power to arrest them, then your Lordship would wish to be advised whether they should nevertheless be taken and brought to trial at the risk of any consequences.

In obedience to your Lordship's commands we have the honour to report—

That it is not perfectly clear what power exists for arresting offenders whose offences are committed, not on the high seas, but in countries where no civilized Government exists. But, having regard to the provisions of the Acts of the 46th and 57th Geo. III, and of the 11th Wm. III, which is recited in the former of those Acts, we think that Williams and his wife may lawfully be apprehended under a warrant issued under the hands of the Commissioners appointed to try the case. We think it well to call attention to the fact that the jurisdiction of the Commissioners appointed under the 57th Geo. III only extends to the trial of murders and manslaughters, as we observe that it has been suggested that charges of offences against the Slave Trade should be added.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Austria-Hungary.

### No. 4.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 2.)*

My Lord, *Temple, February* 1, 1881.

**Hungarian Law of Naturalization of December 24, 1879.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 3rd January, stating that he was directed by your Lordship to transmit the papers relating to a Law of Naturalization, which was promulgated in Hungary on the 24th December, 1879,* and inclosing a form of notice which had been issued by Her Majesty's Consul-General in that country, calling the attention of British subjects resident in Hungary to its provisions, and that he (Sir J. Pauncefote) was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether the provision of the law in question imposing the status of Hungarian subjects on foreigners by reason of residence in the country for five years was open to objection in an international point of view, and, if not, whether the notice contained in Mr. Gosling's despatch No. 27 of the 8th December, 1880, might be approved or required amendment.

That a French translation of the Law in question would be found in Mr. Gosling's despatch to Sir H. Elliot No. 54 of the 19th December, 1879, and a copy of the Treaty between Great Britain and Austria of the 5th December, 1876, was transmitted therewith. That a copy of the notice published by Mr. Gosling was inclosed in his despatch No. 27 of the 8th ultimo.

In obedience to your Lordship's commands we have the honour to report—

**Law not open to objection in an international point of view.**

That, in our opinion, the provision of the law in question, imposing the status of Hungarian subjects upon foreigners by reason of a certain number of years' consecutive residence, is not open to objection in an international point of view. We would observe that in the printed copy of the law, which is before us, and which purports to

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* Mr. Gosling to Sir H. Elliot No. 54 of December 19, 1879; Mr. Gosling, No. 25, November 30; ditto, No. 27, December 8, 1880; Treaty of Commerce with Austria, December 5, 1876, No. 601, "Commercial No. 22 (1877)."

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be a print of the copy sent by Mr. Gosling, section 48 (the section referred to by him), provides that foreigners shall become naturalized after twenty, and not after five years continuous residence. We presume that this is either a mistranslation, or that the law was altered between the 19th December, when Mr. Gosling sent the copy, and the 24th of that month, when it was promulgated. Although it seems very doubtful whether the registration required to preserve nationality should not be by the Hungarian authorities and not at the British Consulate, yet, as the year within which the foreigner, desirous of retaining his nationality, was required by the law to prove that he had preserved it, expired on the 24th December, 1880, it does not seem necessary to consider how far Mr. Gosling's notice was susceptible of amendment, or what amendments should be made.

**Not now necessary to consider Mr. Gosling's notice.**

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J PARKER DEANE.

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## Annex.

*Notice to British Subjects.*

THE Undersigned, Her Britannic Majesty's Consul-General for Hungary, desires to draw the attention of British subjects resident in Hungary and the territories belonging thereto to paragraph 48 of Law L of the 24th December, 1879, which prescribes that:—

"Whosoever shall have resided in Hungary, or the territories belonging thereto, at the time the present Law came into force (namely, the 24th December, 1879), for a period of at least five consecutive years, although at different places, and whose name has been entered in the Register of Tax-payers in any parish within the said dominions, shall be deemed to be a Hungarian subject, unless he shall prove, within one year from the date above referred to (the 24th December, 1879), to the Magistrate of the place in which he resides, that he has retained his foreign nationality."

Under these circumstances, and in order to obviate difficulties which might arise to subjects of Her Britannic Majesty in establishing their nationality, the Undersigned suggests the advisability of British subjects resident in Hungary having their names entered in a Register kept for that purpose at Her Britannic Majesty's Consulate-General at Buda-Pesth.

(Signed) AUDLEY GOSLING,
*Her Britannic Majesty's Consul-General.*

26, *Waitzner Boulevard, Buda-Pesth,*
*November* 30, 1880.

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# Belgium.

## No. 5.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 31.)

My Lord, *Temple, January* 31, 1881.

**Arrest and imprisonment of Mr. P. Musgrave at St. Hubert for vagabondage.**

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 14th January instant, stating that he transmitted to us, by direction of

your Lordship, the correspondence noted in the margin,* and relating to the arrest and imprisonment of Mr. Philip Musgrave (a British subject and a retired Naval Officer) by the police authorities at St. Hubert, in Belgium, on a charge of vagabondage.

That the case was brought to the notice of your Lordship by Mr. Musgrave's solicitors, Messrs. Hadden, Woodward, and McLeod, in their letter of the 8th November last, which contained a statement of his complaint against the Belgian authorities and also against Her Majesty's Legation.

That on receipt of that letter your Lordship requested Her Majesty's Minister at Brussels to furnish a Report on the case, and you were to refer us to Sir Savile Lumley's despatch No. 174 of the 12th November transmitting the same.

That your Lordship being of opinion that the case still called for further inquiry, Her Majesty's Minister was instructed to bring it to the notice of the Belgian Government, and Sir Savile Lumley, in his despatch No. 195 of the 10th December, transmitted a letter on the subject from the Belgian Minister of Justice, and offers further explanation vindicating the course pursued in that case by Her Majesty's Legation.

That the substance of the explanations furnished by the Belgian Minister was communicated to Messrs. Hadden, Woodward, and McLeod in the letter from the Foreign Office of the 31st December, and they were informed that, while it was to be regretted that Mr. Musgrave should have been arrested as a vagabond, your Lordship considered that the circumstances of the case were not such as to warrant further diplomatic action, at all events, pending the result of the legal proceedings which Mr. Musgrave proposed to institute against the Belgian officials concerned.

That Lord Tenterden was to invite our attention to the reply of Messrs. Hadden, Woodward, and McLeod to the above communication, which was dated the 6th instant, and in which they denied the accuracy of the statements contained in the letter of the Belgian Minister of Justice, and requested to be informed whether your Lordship would take any further steps in the matter, or whether Mr. Musgrave was to be remitted to such remedy (if any) as the law of Belgium might afford him. Your Lordship had no reason to doubt that the law of Belgium did afford a remedy against arbitrary and malicious acts on the part of police officers, and your Lordship was disposed to think that, under all the circumstances, and especially in view of the conflict which existed as to the facts, the case was one which should be left, in the first instance, to the decision of the local Tribunals. That, on that point, Lord Tenterden was to refer to the last paragraph of the Report of the Law Officers of the Crown of the 26th August, 1879, at p. 30 of the collection for that year.

That your Lordship would be glad to be furnished with our opinion as to whether any further diplomatic action was called for and with such observations as we might have to offer on the case generally.

In obedience to your Lordship's commands we have the honour to report—

**Further diplomatic action not necessary.**

That we think that Mr. Musgrave's solicitors may be informed that inasmuch as a representation has already been made to the Belgian Minister of Justice, and the Commissioner of Police has been reprimanded, Mr. Musgrave's case, as it now stands, does not demand any further diplomatic action, and that gentleman should, if so advised, prosecute his threatened proceedings against the Belgian police authorities.

We agree with the opinion of the Law Officers of the 20th August, 1879, on the point referred to in Lord Tenterden's letter.

It is singular that the circumstance that Mr. Musgrave was shooting with two Belgian landowners by their invitation was not stated till January of the present year, either in Mr. Musgrave's letters or those of Messrs. Hadden. Either of these landowners would apparently have been a better reference than M. Verrou or Vezzon to disprove the charge of "vagabondage."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Messrs. Hadden and Co., November 8, 23, December 15, 1880, and January 6, 1881; to ditto, November 10, 24, and December 18, 31, 1880; Sir S. Lumley, No. 174, November 12, and No. 195, December 10, 1880; to ditto, No. 81, November 10, No. 87, November 24, and No. 94, December 31, 1880; Law Officers' Report, collection 1879.

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## Borneo.

### No. 6.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 14.)

My Lord, *Temple, July* 14, 1881.

Grant of Charter to North British Borneo Company.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th ultimo stating that, with reference to our Report of the 17th September last* on the application of Mr. Alfred Dent, of the firm of Dent, Brothers, and Company, of London, for the grant of a Royal Charter of Incorporation to an Association in course of formation for the development of the northern part of the Island of Borneo, under certain concessions of territory and grant of sovereign rights thereover from the Sultans of Brunei and Sulu, and that he (Sir Julian Pauncefote) was directed by your Lordship to state that in a letter from your Lordship's Department, dated the 16th December last,† Mr. Dent was informed that, after a careful consideration of the printed statement presented by him to the Foreign Office in December 1878, Her Majesty's Government were disposed, under the special circumstances of the case, to recommend to the favourable consideration of the Queen his application for a Royal Charter on the conditions set out in his statement, and subject to such other conditions as Her Majesty's Government might be advised to have inserted therein, when the draft should be submitted for their approval.

That in a letter of the same date from your Lordship's Department to the Privy Council Office,† the Lord President was informed of the decision arrived at, and his Lordship was requested to give the necessary directions on the petition for a Charter when presented by Mr. Dent, and to cause the draft of the Charter to be submitted to your Lordship's Department with a view to the insertion therein of such clauses as your Lordship, after consultation with the Law Officers of the Crown, might deem expedient.

That Sir Julian Pauncefote had now the honour to lay before us, by the direction of your Lordship, a letter from the Privy Council Office,‡ transmitting a copy of the draft of a Charter which had been applied for by Mr. Dent, and Sir Julian Pauncefote was to request that we would take the same into consideration, and favour your Lordship with our opinion as to whether it might be approved by your Lordship in its present form, or whether it required any modification or addition.

That Sir Julian was at the same time to transmit to you a letter from the Colonial Office,§ containing observations on the draft, together with the reply‖ which had been returned thereto by your Lordship's Department; and he was further to request that we would favour your Lordship with our opinion as to the questions raised by the Secretary of State for the Colonies.

In obedience to your Lordship's commands we have the honour to report—

Effect with reference to sovereignty over territory,

That in our opinion the granting of the Charter will not have the effect of vesting in Her Majesty the sovereignty over the territory in question, and the Sultans of Brunei and Sulu will be Suzerains, notwithstanding the delegation of their authority to a private Association incorporated under Her Majesty's Charter.

and suing of Company in Colonial Courts.

The clauses empowering the Company to sue and be sued in the Courts of the Colonies and to hold land in the Colonies are, as is pointed out in the letter of the 13th January, 1881, to the Colonial Office, usual provisions in Charters similar to that now under consideration, and great inconvenience, if not injustice, would probably be occasioned if such clauses were omitted.

Approve Charter with modification.

With reference to the terms of the proposed Charter, and apart from the questions raised by the Secretary of State for the Colonies, and above referred to, the Charter may, in our opinion, be approved in its present form, except that we would suggest the insertion at the end of clause 5 of the words "if he is willing to undertake the same."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Confidential, No. 4539, p. 7.

† Confidential Print, No. 4476, p. 72.

‡ Privy Council Office, May 24, 1881.

§ Colonial Office, June 2, 1881.

‖ To Colonial Office, June 13, 1881.

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## Chile.

### No. 7.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 29.)

My Lord, *Temple, April* 29, 1881.

Chilean excesses during their advance on Lima.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to us two despatches, as marked in the margin,* from Her Majesty's Minister in Peru, reporting the occurrences which took place on the occasion of the advance of the Chilean troops on Lima, and the battles fought on the 13th and 15th January last which resulted in the surrender of the city.

That the excesses committed by the Chilean troops on that occasion were of a still graver character than those which occurred at Mollendo and Pisagua, and which formed the subject of the Report of our predecessors of the 25th September, 1879 (vol. 1879, p. 9).

Plunder of Mr. St. John's house and murder of Dr. Maclean.

Sir Julian Pauncefote inclosed the draft instructions which on receipt of Mr. St. John's despatch No. 9 your Lordship addressed to Her Majesty's Minister at Santiago, desiring him to enter a protest against the acts of the Chilean troops in connection with the plunder and destruction of Mr. St. John's house at Chorillos, and the murder of Dr. Maclean, the Legation Physician, residing therein.

That Sir Julian was to request that we would favour your Lordship with our opinion as to whether Her Majesty's Government should take any further action at present respecting the outrages on the lives and property of neutrals, reported in both the accompanying despatches, or whether it would be better to await more precise particulars.

In obedience to your Lordship's commands we have the honour to report—

Need not await further information before taking action.

That, in our opinion, it is not necessary for Her Majesty's Government to await more precise particulars before taking action in consequence of the reported outrages on the lives and property of neutrals.

Her Majesty's Government may now, we consider, properly communicate to the Chilean Government the information received respecting those outrages, and ask what steps the Chilean Government propose to take for the purpose of inquiring into those outrages, and for making compensation to the persons and families of the persons who may have suffered.

Should act with other Governments.

We, however, suggest, for your Lordship's consideration, whether it would not in this case be advisable to act in concert with the French and Italian and other Governments whose subjects may have suffered.

Mr. St. John's attention should, we consider, be directed to the conduct of the mob as described by him, so that no charge be made against the Chileans on account of acts committed by the populace or Peruvians.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr. St. John, No. 9, January 22; ditto, No. 13, February 5, 1881; Law Officers' Reports, Vol. 1879; to Mr. Pakenham, No. 13.

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# China.

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## No. 8.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 4.)

My Lord, *Temple, January* 3, 1881.

Registration of mortgages, bills of sale, and co-partnerships. Regulations of 1866 invalid.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 23rd October last, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires in Japan,* inclosing a copy of a Report from Her Majesty's Crown Advocate at Shanghae, respecting the validity of certain Regulations issued by Sir H. Parkes in 1866, under sections 85 and 90 of the China and Japan Order in Council, 1865, for the registration of mortgages, bills of sale, and co-partnerships.

That those Regulations were approved at the time by the Secretary of State, and were identical with those issued for China by Her Majesty's Minister at Peking, and printed at page 213 of Hertslet's "Treaties on Trade (China)," which had also been approved by the Secretary of State, with the advice of the Law Officers of the Crown, as conveyed in their Reports of the 16th February and the 30th October, 1866.

That Mr. Hannen was of opinion that the Regulations in question were not binding on British subjects, being "beyond the powers of Her Majesty's Minister granted by the Order in Council."

That Lord Tenterden was to request that we would take Mr. Hannen's Report into our consideration, and favour your Lordship with our opinion as to whether the Regulations in question were invalid on the grounds therein stated or on any other grounds.

In obedience to your Lordship's commands we have the honour to report—

That we agree substantially with the Report of Mr. Hannen, and think the Regulations in question are invalid. It appears to us that the power to make such Regulations is not within the authority conferred by section 85 of the Order in Council. And when the subsequent paragraphs of that Order are examined, especially sections 86 and 91, it seems clear that such Regulations as those in question were not in contemplation by the framers of the Order in Council.

The third Regulation, viz., that relating to co-partnerships, might probably well have been made by the Judge of the Supreme Court under the powers conferred by section 127; but this will not give validity to the Regulations made by Her Majesty's Minister in China.

If we had thought that the Law Officers, who were parties to the Reports of the 16th February and the 30th October, 1866, had considered the question now submitted to us, we should have arrived at the conclusion we have expressed with great doubt and hesitation. But it appears to us that the only considerations entertained by them were in themselves of such a nature, and so worded, that it was proper to approve of them. And their attention does not seem to have been directed to the question whether they were within the powers conferred on Her Majesty's Minister in China by the Order in Council.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] Mr. Kennedy, No. 192, October 28, 1879

## No. 9.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 8.)

My Lord, *Temple, January* 8, 1881.

As to jurisdiction of Supreme Court of Hong Kong in suit against Consul Hewlett of Canton.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th ultimo, stating that he was to transmit to us a paraphrase of a telegram from Her Majesty's Consul at Canton* asking to be furnished with the opinion of the Law Officers of the Crown as to the jurisdiction of the Supreme Court at Hong Kong to entertain a suit instituted against him in that Colony for the recovery of damages in consequence of a Judgment given by him in his judicial capacity at Canton.

That your Lordship doubted whether his (Mr. Hewlett's) request ought to be complied with, as the suit was actually before the Supreme Court of the Colony for decision.

That Sir Julian Pauncefote was to observe, however, that the section 157 of Her Majesty's Order in Council for China and Japan,† cited in the telegram, would seem to be repealed by paragraph 8 (3) of the Foreign Jurisdiction Act, 1878 (4), and 42 Vict., cap. 67, and that under paragraph 160 of the Order in Council, the former jurisdiction of the Supreme Court of Hong Kong over British subjects in China, save as therein excepted, absolutely ceased.

That your Lordship would be glad to be favoured with our opinion as to the reply which should be sent to Consul Hewlett's telegram.

In obedience to your Lordship's commands we have the honour to report—

Secretary of State cannot interfere.

That, in our opinion, Mr. Consul Hewlett may be informed that your Lordship cannot properly interfere on his behalf in a case which is before the Supreme Court at Hong Kong. All objection to the jurisdiction of the Court can be taken before it.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 10.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 26.)

My Lord, *Temple, January* 25, 1881.

Legal Practitioners in Provincial Courts.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from the Chief Justice of Her Majesty's Supreme Court for China and Japan, submitting, for your Lordship's approval, two Rules which he had framed under the 2nd clause of section 41 of the China and Japan Order in Council, 1865, for the admission of legal practitioners to practise in Her Majesty's provincial Courts in China, and that he was to request that we would take those Rules into our consideration, and favour your Lordship with our opinion as to whether they should be approved.

That he was at the same time to inquire whether we considered that Rule 2 should provide that only members of the legal profession should be admitted to practise in the provincial Courts, and that they should produce certificates of their status as such in the country to which they belong.

In obedience to your Lordship's commands we have the honour to report—

Approving proposed Rules.

That, in our opinion, the proposed Rules may properly be approved by your Lordship.

There may be a difficulty sometimes in finding a sufficient number of members of the legal profession in a provincial Court, and the suitors in such Court might consequently be put to inconvenience and delay, if they were obliged to conduct their own cases in person, or were compelled to wait for a member of the legal profession.

We, therefore, think it undesirable that Rule 2 should provide that only members of the legal profession should be admitted to practise in the provincial Courts.

The provision that the Chief Justice must be satisfied that the applicant is a fit

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[*] Consul Hewlett, Telegraphic, December 28, 1880.

[†] Confidential No. 1354.

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and proper person seems to afford as much security as can reasonably be required under the circumstances.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*Inclosure in Despatch from Chief Justice French No.* 15 *of November* 18, 1880.

Rules of Her Britannic Majesty's Supreme and other Courts in China, framed under the China and Japan Order in Council, 1865, by the Chief Justice of Her Britannic Majesty's Supreme Court for China and Japan, and approved by one of Her Majesty's Principal Secretaries of State.

Dated the day of , 188 .

*Practitioners in Provincial Courts.*

Practitioners in Supreme Court entitled to practise in Provincial Courts.

EVERY person whose name is now on the Roll of Practitioners of the Supreme Court, or who shall hereafter be admitted to practise in that Court, shall be entitled to practise in Her Britannic Majesty's Provincial Courts in China.

Persons not Practitioners in Supreme Court may be admitted by Chief Justice to practise in Provincial Courts.

2. If any person not now, or not hereafter, admitted to practise in the Supreme Court shall be desirous of practising in any of Her Britannic Majesty's Provincial Courts in China, the Chief Justice of the Supreme Court may admit such person to practise in any of such Courts on the Chief Justice being satisfied that such person is a fit and proper person to practise therein.

(Signed) GEORGE FRENCH,
*Chief Justice.*

Approved.

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## No. 11.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 9.)

My Lord, *Temple, February* 9, 1881.

As to validity of marriages between British subjects in English Cathedral at Shanghae.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 7th December last, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Mr. Allen, the Acting British Consul at Shanghae,* asking for an authoritative statement as to the validity of marriages between British subjects, celebrated in the English Cathedral at Shanghae, with a view to its publication.

That Lord Tenterden was to inclose the Report of our predecessors of the 22nd March, 1878, which was referred to in that despatch. That though your Lordship presumed that such marriages, celebrated by a clergyman either of the English or American Episcopal Churches, would be held valid, your Lordship was of opinion, for the reasons stated in the Foreign Office despatch No. 21 of the 28th March, 1878, to Sir Harry Parkes, that it was not desirable to encourage the solemnization of marriages in China or Japan otherwise than under the Acts of Parliament referred to in the Law Officers' Report above cited, and that Her Majesty's Consul at Shanghae should not be authorized to issue any notification on the subject.

That Lord Tenterden was to request that we would inform your Lordship whether we concur in the above views, and that we would favour your Lordship with our advice as to the reply which should be returned to Mr. Allen's despatch.

In obedience to your Lordship's commands we have the honour to report—

Such a marriage, if solemnized by an English or an American clergyman, would be valid.

That a marriage between British subjects at Shanghae, celebrated there by a clergyman in holy orders, whether American or English, is a valid marriage.

Difficulties as to registration.

One object, however, of the Consular Marriage Act was to provide and secure evidence of the marriage by registration.

The notification which Mr. Allen applies for permission to issue would probably induce British subjects to marry in the Cathedral at Shanghae, rather than under the Consular Marriage Act, and thus lose the advantage of having the marriage entered in the Consular books.

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* Acting Consul Allen, No. 16, October 4, 1880.

No notification on the subject to be issued.

Mr. Allen may, therefore, we think, properly be answered that, in your Lordship's opinion, the issue of the proposed notification is inexpedient, and that he is not authorized to issue any notification on the subject.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 12.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 17.)

My Lord, *Temple, February* 16, 1881.

Registration of public Companies in China.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th ultimo, stating that he was directed by your Lordship to lay before us the papers in relation to the proposed issue of an Order in Council for the registration of public Companies in China.*

That that question had occupied the attention of Her Majesty's Government at various times for several years, and that in 1879 Mr. F. S. Reilly was instructed to prepare, for consideration, the draft of an Order in Council to carry out the object in view.

That Mr. Reilly accordingly submitted to the Secretary of State the draft marked (A), together with a memorandum therein marked (B).

That, before taking any steps in the matter, it was decided to transmit the draft and memorandum to Her Majesty's Minister at Peking for his observations, and those of the Chief Justice of Her Majesty's Supreme Court for China and Japan.

That Sir T. Wade's reply (C), dated the 16th April, 1880 (Foreign Office, Confidential 4263) was referred to Mr. Reilly, who forwarded a Report thereon (D), dated the 22nd August, 1880, to which Sir J. Pauncefote was to invite our special attention, as it sets out the particular points upon which your Lordship desired to be favoured with our opinion.

That those points which related to the difficulties which had been suggested in dealing with non-British shareholders were discussed in Mr. Reilly's Report, and also paragraphs 3 and 6 of his memorandum of the 29th May, 1879 (B), and that we should perceive that, in his opinion, there were no difficulties of law or procedure sufficient to interfere with the system proposed to be established under the Order in Council.

That if we should concur in that view, your Lordship considered that, as a matter of legislative expediency, the passing of such a measure was desirable.

In obedience to your Lordship's commands we have the honour to report—

Objections to proposed Order in Council on account of the contemplated membership of foreigners.

That we have carefully considered the difficulties suggested with respect to the system proposed to be established under the Order in Council. If the membership of the Companies to be formed were limited to British subjects, we think, apart from questions of expediency, that there would be no objections to the proposed Order. But, inasmuch as it is contemplated that the membership shall not be so limited, we are unable to concur in the view taken by Mr. Reilly, that there are no difficulties of law or procedure sufficient to interfere seriously with the system proposed to be established.

As regards non-British members, it appears to us that difficulties might arise beyond those existing in the case of Companies registered in England which comprises foreigners among their members. Such Associations are created and have their domicile within British territory, and all members of such Associations are subject therefore to British law.

But it is now proposed to make a law which is to operate in a foreign country to control the rights and liabilities of persons resident there, whether such persons be or be not British subjects, whilst it is of course clear that our extra-territorial jurisdiction in China only enables us to legislate for British subjects. It is possible that the difficulty of enforcing the obligations of the foreign shareholders of the Company might be met in the manner suggested by Mr. Reilly. But we do not see how the provisions

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* (A) Draft Order in Council; (B) Memorandum by Mr. Reilly, May 29, 1879; (C) Sir T. Wade's No. 56, April 16, 1880, Confidential 4263; (D) Mr. Reilly's Report, August 22, 1880.

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of the law which are for the protection of the shareholders are to be enforced in the case of those who are not British subjects.

How, for example, is their liability to be limited to the amount of unpaid calls in the liquidation of a limited Company, or, if the Company be unlimited, to the amount of calls made *pari passu* on all the shareholders?

We do not know what the law of China is; but supposing that the members of a trading Association are liable, without limit, to the debts incurred by the Association, and that a Chinese subject were proceeded against by a Chinese or foreign creditor of the Company, we do not think the Chinese Tribunals could be expected, or would be bound, to recognize the fact that, by the terms of the British law, under which the Company purported to be formed and registered, the liability of every member was limited.

And, if a foreign member were sued in his own Consular Court, it seems to us that the same difficulty would arise. It is suggested by Mr. Reilly that the incorporation would be held good by all Courts by the comity of nations, and that it would have a special claim to be held good by a foreign Court in China, which Court could only exist by virtue of the like extra-territoriality as that on which the incorporation would rest. But we are unable to concur in this view.

The creation into a corporation under the Companies Act of persons who associate themselves together for trading purposes is only another way of declaring what their rights and liabilities shall be towards each other, and also as between them and third parties. And, in our opinion, the British law is incompetent to declare this in any binding manner in China, except for the purpose of affecting British subjects. The extra-territorial jurisdiction of any Consular Court is limited to the subjects of its country, and we do not think it is bound to regard any foreign law made in China as competent to prescribe the rights and liabilities of those subjects. Any other view would lead to the conclusion that if an Association existed consisting of Chinese or foreigners only (for all the British subjects might have transferred their shares), its rights and liabilities would have to be determined wholly by British law, because the Association was registered under the British Order in Council, no matter what the rights and liabilities of the shareholders might be under the law to whose jurisdiction they were in general subject.

It may be said that the considerations to which we have called attention are, rather, reasons which should restrain Chinese or foreigners from becoming members of such Companies, than objections to the Order in Council itself. But we think it would be greatly to be deprecated that a Company should be formed by British subjects, under the apparent sanction and authority of British law, and that Chinese and foreigners should be led to become members of it, under the belief that they were protected by the limitation of the liability which the law provided, and afterwards find that, whilst British subjects were freed from liability, on the payment, perhaps, of a trifling amount, the other shareholders were not protected by the law, and were left to bear the entire liabilities of the concern.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 13.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 2.)

Draft Order in Council for China and Japan. Approving of. (Registration of mortgages, &c.)

My Lord,
*Temple, August* 1, 1881.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that with reference to our Report of the 3rd January, 1881, he was directed by your Lordship to transmit to us a draft Order in Council for China and Japan which had been drawn up by Mr. Reilly, together with a Memorandum thereon,* and that Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether the proposed Order in Council might properly be submitted to the Queen for Her Majesty's approval.

In obedience to your Lordship's commands we have the honour to report—

That the proposed Order in Council may, in our opinion, properly be submitted to the Queen for Her Majesty's approval.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr. Reilly, June 30, 1881.

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## No. 14.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 19.)

Action against Acting Consul Giles of Amoy, in the case of the "Chiang Hock Kiang," a passenger-ship.

My Lord,
*Temple, October* 18, 1881.

WE are honoured with your Lordship's commands, signified in Lord Tenterden's letter of the 8th instant, stating that with reference to our Report of the 29th September, 1880, respecting the case of the British steamer "Chiang Hock Kiang," and the action brought against Mr. Giles, Her Majesty's Acting Consul at Amoy, in China, he had then the honour to transmit to us, by direction of your Lordship, a letter from Messrs. Lloyd, Kow Teing, Poh, and Co., the Agents for the above-named steamer at the port of Amoy, submitting various complaints against Mr. Giles.

That two actions, which had been commenced against Mr. Giles, by the owners of the steamer, for alleged illegal proceedings on his part, were ultimately settled.

Refusal of Mr. Giles to accept sureties or deposit.

That it appeared, however, that since that time the firm of Lloyd, Kow, Teing, Poh, and Co., had experienced great difficulty in clearing their passenger ships, owing, as they suggested, to the intrigues of rival firms and to the animosity of Mr. Giles, who had refused to accept the members of their firm as "sufficient" sureties to the bond of 1,000*l.* required of a master of a Chinese passenger steamer under section 4 of "The Chinese Passenger Act, 1855." That, on one occasion in September 1880, Mr. Giles agreed to accept certain persons, whom he named, as sureties, or a deposit of 1,000*l.* in lieu of sureties. That the firm paid the deposit in order to avoid the heavy commission demanded by the sureties. That since that time, however, Mr. Giles had refused to accept a deposit in lieu of sureties, and the firm had been compelled to procure sureties at great expense.

That they then asked that the members of the firm be accepted as sureties, or that they might be permitted to deposit in the hands of the emigration officer, that was, in the Consulate, the sum of 1,000*l.* in lieu of the master's bond and sureties required by the Act.

That it appeared to your Lordship that the bond and sureties could not be dispensed with, but that Her Majesty's Consul, Mr. Forrest, who had returned to his post at Amoy, might be instructed that if he should have any doubt as to the sufficiency of the members of the firm or of any persons whom they might propose as sureties, he was at liberty, nevertheless, to accept them, on a deposit of 1,000*l.* being made in the Consulate.

That before sending out instructions in the above sense, your Lordship would be glad to be favoured with our opinion as to whether they were right and proper under the circumstances.

That Lord Tenterden was to inclose, in addition to the letter of Messrs. Lloyd, Kow, Teing, Poh, and Co., copies of "The Chinese Passenger Act, 1855," and of our Report of the 29th September, 1880.

In obedience to your Lordship's commands we have the honour to report—

Approval of instructions to Consul Forrest.

That, in our opinion, the instructions proposed to be sent by your Lordship are right and proper, under the circumstances.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

1. Messrs. Lloyd, Kow, Teing, Poh, and Co., July 18, 1881.
2. Law Officers' Report, September 29, 1880.
3. Chinese Passenger Act, 18 & 19 Vict., cap. 104.

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## Colombia.

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### No. 15.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 16.)

My Lord, *Temple, August* 15, 1881.

Panamá Ship-canal.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 27th June last, stating that, by your Lordship's direction, he transmitted to us the correspondence and documents noted in the accompanying list,* and relating to the proposed establishment by the United States' Government of coaling depôts and naval stations "at proper points on the Atlantic and Pacific coasts of Central America and of the American isthmus," with a view to the exercise of a certain control over the projected interoceanic canal.

That Lord Tenterden was to invite our attention to the inclosed Memorandum on that correspondence, showing the present position of the question, and to the Memorandum by Sir E. Hertslet of the 6th May and the documents annexed thereto, among which we should find (C) a copy of the Convention between Great Britain and the United States of America of the 19th April, 1850, "relative to the establishment of a communication by ship-canal between the Atlantic and Pacific Oceans," commonly known as "the Clayton-Bulwer Treaty."

That Lord Tenterden was to request that we would take all the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion upon the question raised at p. 9 of Sir E. Hertslet's printed Memorandum of the 20th May, 1880 (marked "A"), on the proposed abrogation by the United States of the "Clayton-Bulwer Treaty," namely, whether the establishment by the United States' Government of naval stations and depôts of coal for the supply of steam-ships of war at the Isthmus of Panamá would be in violation of the Ist Article of that Treaty.

That we would perceive from Sir E. Thornton's despatch No. 71 of the 7th March last that a Bill authorizing the expenditure of 200,000 dollars for the above purpose was passed by the Legislature of the United States.

We were also honoured with Lord Tenterden's communication of the 15th ultimo, transmitting further correspondence bearing upon the same question.

And we were also honoured with Lord Tenterden's further letter of the 16th ultimo, transmitting further despatches and a printed volume of diplomatic correspondence of the United States, containing a correspondence which passed between the United States' and Colombian Governments in 1865-66 bearing upon the interpretation to be put upon the Guaranteeing Clause of the Treaty of 1846 between those two States.

In obedience to your Lordship's commands we have the honour to report—

As to right of United States, under Clayton-Bulwer Treaty, to establish naval stations in Central America.

That, in our opinion, there is some doubt whether the mere securing by the United States' Government of adequate harbours and depôts of coal for their steam-ships of war at the Isthmus of Panamá would be an infraction of the Ist Article of the Clayton-Bulwer Treaty, since they might conceivably be requisite for the convenience and safety of the United States' navy. But it seems to us impossible to read the papers transmitted to us without coming to the conclusion that much more than this is intended, and that, in fact, an absolute control by the United States' Government over the approaches to the canal is meditated by means of the erection of forts and fortified harbours commanding those approaches, and that the exercise, to some extent, of dominion over the use and navigation of the canal and the territory through which the canal is to pass is contemplated. This would, in our opinion, be clearly a violation of the provisions of the Clayton-Bulwer Treaty.

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* Memorandum (H. C. J.), June 25, 1881; Mr. Graham, No. 43, May 17; Mr. Drummond, No. 334, November 20; Sir E. Thornton, No. 392, December 20, 1880; No. 9, January 10; No. 44, February 7; Mr. Graham, No. 4, January 22; Sir E. Thornton, No. 53, February 21; No. 71, March 7; No. 89, March 21; No. 95, March 28; No. 116, April 16; Memorandum (E. H.), May 6, eight Annexes, marked (A) to (H); Sir E. Thornton, No. 136, April 30; Mr. O'Leary, No. 17, April 5; Lord Lyons, No. 502, May 22; Mr. O'Leary, No. 26, May 4; Sir E. Thornton, No. 167, May 30; No. 171, June 6, 1881.

The reports of speeches and the comments on the subject in the United States' newspapers show that even in that country the proposed action of the Government is regarded as inconsistent with the Treaty.

The Bogotá Protocol is contrary to the Clayton-Bulwer Treaty.

If any such arrangement were concluded by the United States' Government as is provided for by the Bogotá Protocol, giving as it does to the United States territorial possession in the neighbourhood of the canal and a control over its use, and conferring upon the vessels of war of that country privileges in the use of the canal which are denied to the navy of Great Britain, it would, we think, be a direct violation of the terms of the Clayton-Bulwer Treaty.

Reply to Mr. Blaine's despatch.

The despatch of Mr. Blaine of the 24th June, 1881, raises somewhat different questions. It insists upon the right and duty imposed on the United States' Government, under their Treaty of 1846 with Colombia, to guarantee the neutrality of the canal, and points out the special interest which the United States have in the preservation of this neutrality and in preventing the use of the canal in a manner detrimental to themselves in case they should at any time be at war. But it is chiefly directed against any concerted action of the European Powers for the purpose of guaranteeing the neutrality of the canal or determining the conditions of its use. It is manifest that the United States' Government are resolved to resist any such action on the part of the European Powers, and it is impossible not to feel the force of many of the arguments urged by Mr. Blaine. It is not within our province to enter into the question of policy thus raised. But we would point out that Great Britain stands as regards this matter in a different position to any other of the European Powers, not only by reason of the magnitude of her commercial relations with countries to and from which the proposed canal will form the highway, but more especially by reason of the Clayton-Bulwer Treaty, which gives to Great Britain as between her and the United States a special right to be placed upon the same footing as the latter country in relation to the canal. It would not be inconsistent with the objection taken to the apprehended interference of the European Powers that the United States should recognize and hold itself bound by the provisions of a Treaty solemnly entered into for regulating the respective rights of Great Britain and the United States. Whatever reply Her Majesty's Government may determine upon making to the despatch of Mr. Blaine, and the broad and important questions raised in it, we would suggest that their reply should call attention to the fact that the position of the two Governments with reference to the canal is determined by the engagements entered into by them respectively in the Clayton-Bulwer Treaty, and that Her Majesty's Government rely upon the observance of the engagements thus entered into by the United States.

Her Majesty's Government should state that they rely on observance of the Clayton-Bulwer Treaty, which determines the position of the two Governments.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Egypt.

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### No. 16.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 12.)

My Lord, *Temple, February* 10, 1881.

Jurisdiction of Courts over Consular officers and servants. Egyptian proposals.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 26th ultimo, stating that by your Lordship's direction he inclosed the accompanying despatch from Mr. Cookson, Acting British Agent at Cairo, forwarding three proposals drawn up by the Egyptian Government in modification of the present state of the law as to the liability of Consular officers and servants to the jurisdiction of the Courts of Law in Egypt, and he was to request that we would favour your

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Lordship with our opinion both upon the proposals themselves and upon the questions raised by Moustapha Pasha Fehmy and commented upon by Mr. Cookson as to whether they should form the subject of separate Conventions with the different foreign Governments, or be embodied in the amended Charter for the regulation of the Mixed Courts which had been submitted by the Egyptian Government to the International Commission then sitting at Cairo for the purpose of revising the Code hitherto administered by those Tribunals.

In obedience to your Lordship's commands, we have the honour to report—

(*a*) and (*b*) may be accepted; but (*c*) requires further consideration.

That proposals (*a*) and (*b*) are in our opinion right, and may properly be accepted.

We should have been inclined to consider proposal (*c*) as reasonable, but Mr. Cookson's knowledge of the practise of the different Consulates in Egypt, and the habits of the Consular servants referred to, makes him far more capable of forming a sound opinion upon the subject than ourselves.

And we therefore concur with his suggestion that any further arguments and facts which the Egyptian Government may be able to adduce in the International Commission should be weighed by Her Majesty's Government before coming to a definite decision for or against this proposal.

One system should be adopted by all Governments.

It is probably very desirable that one system should be accepted by the different foreign Governments, and in one and the same regulation, and we are therefore of opinion that the proposals when acceded to by those Governments should be embodied in the amended Charter and not made the subject of separate Conventions.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*Mr. Cookson to Earl Granville.*—(*Received October* 28.)

(No. 322. Political.)

My Lord, *Cairo, October* 20, 1880.

I HAVE the honour to inclose a copy of a draft given to me by the Minister of Foreign Affairs of proposals which the Egyptian Government wish to make to the foreign Powers modifying the present state of the law as to the liability of Consular officers and servants to the jurisdiction of the Courts of Law in Egypt.

The proposals relate to the position of three different classes of Consular officers:—

(*a*.) As to those who belong professionally to the Diplomatic and Consular services, it is proposed formally to sanction their right to maintain suits as plaintiffs in the Mixed Tribunals, without prejudice to their immunity from being sued as defendants.

(*b*.) As to such members of the Consular service who are engaged in commerce, hold land in Egypt, it is proposed to subject them to the jurisdiction of the Mixed Courts in all commercial and real property cases which have nothing to do with their official position.

(*c*.) As to such native subjects as enjoy temporary foreign protection from their being Consular officers or servants, it is proposed to subject them to the jurisdiction of the Mixed Courts in all cases whatever which have nothing to do with their official functions.

Some of these points have already formed the subject of discussion between the Egyptian and foreign Governments, and the proposals now made are intended finally to settle the points in dispute.

(*a*.) The right of Consular officers to sue in the Mixed Courts has been expressly asserted by Her Majesty's Government, on the advice of the Law Officers of the Crown, that the Agreement of the 31st July, 1875, had not altered the position of Consular officers in this respect, and Her Majesty's Government have refused to accept the decision of the Mixed Court of Appeal, interpreting the Conventions of the 10th November, 1874, between the French and Egyptian Governments, and of the 5th May, 1875, between the German and Egyptian Governments, as depriving Consular officers of their right of suing in the Mixed Courts.

This view was opposed by the Egyptian Government in a *note verbale* of Moustapha Pasha Fehmy, communicated to Mr. Malet in April last, but the Proposal (*a*) now made by the Egyptian Government formally adopts the conclusions of Her Majesty's

Government and sets aside the decision of the Court of Appeal. I may point out that Proposal (*a*) only gives Consular officers the right of suing as plaintiffs in the Mixed Courts, and not of submitting themselves as defendants to their jurisdiction, as claimed by Her Majesty's Government.

This view of their rights, as appears from a communication made by the Italian Consul-General, has been taken by the Italian Government, and, if adopted, would obviate the objection urged in Moustapha Pasha Fehmy's *note verbale* of the 18th April, against the anomaly of leaving to one party in a suit the right of choosing his own forum.

(*b*.) As regards the liability of trading Consuls to the jurisdiction of the Mixed Courts in cases not relating to their official position, there exists at present a considerable conflict of opinion and even of legal decisions. The question was brought to the notice of Her Majesty's Government by a suit brought in the Mixed Court at Mansourah in 1879, by a local subject, Ameen Bey, against Mr. Felice, British Consular Agent and merchant at Zagazig, relative to purely commercial transactions in which Mr. Felice was engaged. Instructions were at first given by Lord Salisbury that Mr. Felice should plead the incompetency of the Court, the establishment of the Mixed Tribunals not having affected immunities of British Consular officers. This view had already been taken by the French Government in 1877, in opposition to that of the Court of Appeal at Alexandria, which had declared himself competent in an action against M. d'Aubonne, a French Consular Agent, precisely similar to that brought against Mr. Felice. In consequence of a declaration by the French Consular authorities of their intention to resist it, the execution of this sentence of the Mixed Court has never been enforced. But following the decision of the Court of Appeal, the Court at Mansourah declared itself competent in the suit against Mr. Felice. Further instructions were thereupon asked from Her Majesty's Government, and on the 15th April last Mr. Felice was ordered to defend the action under protest, and pay the amount of the Judgment into this Agency, pending any diplomatic action which it might be possible to take in the matter. The reason for these fresh instructions was stated to be that "it is doubtful whether Mr. Felice is entitled to invoke the privileges of exemption from the jurisdiction of the Courts accorded to Consular officers in the Levant in order to enable him to escape from his legal liabilities in respect of his commercial transactions;" and on the 21st April last a further instruction, based on the opinion of the Law Officers of the Crown, was given to Mr. Felice to defend the action on its merits, the Law Officers not considering "that he is entitled in the present instance, in which no official right or duty is involved, to insist upon any immunity from the jurisdiction of the Tribunals of the Reform, notwithstanding the fact of his appointment by the Secretary of State."

On this point, also, therefore, the Proposal (*b*) of the Egyptian Government is in substance only an embodiment of the decision finally arrived at by Her Majesty's Government. It is, I believe, in itself deserving of support as a natural consequence of the success of the Mixed Courts; and it would undoubtedly relieve the Egyptian Government of serious difficulties with some foreign Consulates. But I would observe, on the terms in which this Article is drawn up, that they appear to me to be unsatisfactorily vague, for "s'occupant de commerce et d'industrie," I would propose to substitute Article 9 of the Egyptian Commercial Code, giving the definition of "commerçants," *i.e.*, "ceux qui exercent des actes de commerce et en font leur profession habituelle," otherwise the Mixed Courts will be able to claim jurisdiction in a case (for example) in which a "Consul de Carrière" paid for goods furnished from abroad by a bill due at three months, as is not an unusual practice.

I think also the jurisdiction of the Mixed Courts over Consuls possessing real property in Egypt should be clearly restricted to cases arising out of the possession of that property.

This might be effected by throwing this part of the Article into a distinct paragraph. The whole Article, as amended, would then run something like this:—"Tout fonctionnaire ou employé Consulaire exerçant des actes de commerce ou d'industrie et en faisant leur profession habituelle sera soumis à la juridiction de ces Tribunaux pour toutes les affaires commerciales et industrielles où leur qualité officielle n'est pas en cause. Tout fonctionnaire ou employé Consulaire possédant des biens-fonds en Egypte sera soumis à la même juridiction pour toutes les affaires immobilières où leur qualité officielle n'est pas en cause."

(*c*.) The question raised by the third proposal of the Egyptian Government, to give the Mixed Courts exclusive jurisdiction over all natives in Consular employ in all cases where their official functions are not involved, is, as far as I know, now

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brought forward for the first time. It arises from a very natural desire to bring again under the local jurisdiction the whole class of native Dragomans and servants in Consular employ; but I do not think it is so much of practical as of theoretical importance to the Egyptian Government. The cases in which it would be required are, I believe, rare, even with those Consulates which are least scrupulous in extending their protection to their native subordinates in cases where they are not fairly entitled to it. It is directly opposed to the Capitulations, which form the present basis of international law in the Levant, and it would have the effect of diminishing the authority of Consuls over the natives in their employment. At present, when a British Consular servant is likely to be sued in the Consular Court, he takes care to arrange with his adversary if he has not a good case, rather than expose himself to the animadversions of his superior. No doubt this is the case also in other Consulates of the same high character. But it is different in some others, where the old bad traditions of the paramount duty of a Consul to defend the acts and interests of his countrymen still unfortunately survive; and this Article is intended to meet these exceptional cases. I venture to submit that any further arguments and facts which the Egyptian Government may be able to adduce in the International Commission might be weighed by Her Majesty's Government before coming to a definite decision for or against this proposal.

Moustapha Pasha Fehmy, in giving me these draft Proposals, asked my opinion as to whether I thought it necessary that they should form the subject of separate Conventions with the different foreign Governments, similar to those of the 31st July, 1875, with Great Britain; of the 10th November, 1874, with France; and of the 5th May, 1875, with Germany; or whether they might properly be inserted in the amended "Règlement d'Organisation Judiciaire" of the Mixed Courts, and submitted to the Commission.

I told him that I thought the latter would be much the simpler plan, and that I did not see any objection to it in point of principle. They might properly be inserted under the head of "Compétence," in tit. iii, cap. 1, sect. 2, of the amended Règlement. Indeed, I would venture to suggest that this would be the proper place also for the whole subject matter of the Conventions above cited. The "Règlement d'Organisation Judiciaire" and Codes of the Egyptian Mixed Courts form, both in theory and fact, an international Agreement formally concluded between Egypt and the foreign Powers. The reason why the Agreements of the 10th November, 1874, the 5th May, 1875, and the 31st July, 1875, were concluded separately and not embodied in the Code, was that France insisted on these modifications as a condition of her adhering to the Judicial Reform after the bases of the "Règlement d'Organisation Judiciaire" had been settled by the International Commission. The present seems the proper occasion for throwing the whole charter of the Mixed Courts into one instrument. This will have the additional advantage of putting all foreigners in Egypt on the same footing, and of excluding separate agreements with individual Powers.

I have, &c.
(Signed) CHAS. A. COOKSON.

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### Inclosure.

*Draft of Egyptian Proposals.*

(A.) LES Agents Diplomatiques, Consuls-Généraux, Consuls, et Vice-Consuls de Carrière en Egypte, ne sont pas justiciables des Tribunaux Mixtes; ils auront pourtant la faculté d'actionner les tiers devant ces Tribunaux.

(B.) Tout fonctionnaire ou employé Consulaire, quelqu'il soit, s'occupant de commerce, d'industrie ou possédant des biens-fonds en Egypte, sera soumis à la juridiction de ces Tribunaux pour toutes les affaires commerciales, industrielles, et immobilières où leur qualité officielle n'est pas en cause.

(C.) Les Agents Consulaires, Drogmans, et Cawas, sujets indigènes jouissant temporairement d'une protection étrangère, seront toujours assujettis à la juridiction de ces Tribunaux pour toutes les affaires qui ne concernent pas leurs fonctions officielles.

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## No. 17.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 28.)

*Temple, February* 26, 1881.

My Lord,

Death at Cairo of Mr L. D. Kirby. Inquiry by Vice-Consul and Assessor

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th February instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to the death at Cairo of Mr. Lawrence D. Kirby, an English barrister lately practising in Egypt.

That it appeared that on the 28th October last Mr. Kirby had an altercation in a public billiard-room at Cairo with a Mr. Waller, in the course of which he received from the latter a violent blow at the back of the head, inflicted with a billiard-cue.

That Mr. Kirby died on the 2nd November, and on the 8th November an inquiry into the causes of his death was held by Her Majesty's Vice-Consul at Cairo, Mr. Borg, assisted by Mr. Rowsell as Assessor.

That the Report of that inquiry would be found in Mr. Malet's No. 23, Inclosure 5.

That medical evidence was given to the effect that the deceased had been suffering from *delirium tremens*, and that his death was not caused by the blow he had received from Mr. Waller. That at the close of the inquiry the following finding was recorded:—"Death from natural causes." That Sir Julian Pauncefote was then to refer us to a letter addressed by the widow of the deceased to Mr. Cookson, Her Majesty's Consul and Judge of the Court for Egypt, and to Mr. Cookson's reply thereto (which formed Inclosures 1 and 2 in the above-mentioned despatch), and to correspondence between Mrs. Kirby and Her Majesty's Agent and Consul-General, contained in the same despatch and in Mr. Malet's No. 32 of the 26th January. Also to a letter addressed to your Lordship, on the 20th ultimo, by Mr. E. Kirby, a brother of the deceased.

That we would perceive from the above correspondence that the relatives of the deceased were not satisfied with the finding at the inquiry of the 8th November, and asked that it should be reopened, and that the widow should have an opportunity of being represented by counsel.

That Sir Julian Pauncefote inclosed a copy of Her Majesty's Order in Council for the Levant of the 12th December, 1873, and he was to refer to the Report of the Law Officers of the Crown of the 12th April, 1879 (Collection for that year, No. 77, p. 73), in which they advised that the Judge of Her Majesty's Consular Court at Constantinople, under section 34 and the general provisions of that Order, could discharge the duties of Coroner.

It would seem, therefore, that in the present case an ordinary inquest might have been held at Cairo on the body of the deceased (see Part VI, sections 31 and 37), but there did not appear to be any provision in the Order in Council authorizing the judicial proceeding and finding of the Vice-Consul and Assessor reported in Mr. Malet's despatch No. 23.

That Sir Julian Pauncefote was to request that we would take all the papers in the case into consideration, and favour your Lordship with our opinion as to whether there was any legal warrant in the provisions of the Order in Council for the judicial inquiry held by the Vice-Consul at Cairo, with the assistance of an Assessor, and for the finding recorded by them; and as to the reply which should be returned to the application of the widow and relatives of the deceased, and the instructions, if any, which should be sent to Mr. Malet on the subject.

In obedience to your Lordship's commands we have the honour to report—

Proceedings were unauthorized; but further inquiries ought to be made of Consul.

That, in our opinion, the Order in Council contains no provision which authorized the proceedings of the Vice-Consul and the Assessor, as reported by Mr. Malet, and we think that if this be so, the supposed finding of the Court should be declared a nullity. But before this is done it would, we think, be proper to call the attention of the Consul to the matter, and to inquire by what authority the inquiry was held before a Tribunal constituted as this one was. In the meantime, the relatives of the deceased may be informed that inquiries are being made with reference to the competency of

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* Mr. Malet, Nos. 23 and 24, January 17; ditto, No. 32, January 26; Mr. E. Kirby, January 20, 1881; Order in Council for Levant, December 12, 1873; Law Officers' Report, April 12, 1879.

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the Court before which the inquiry was held, and that they will be further communicated with when an answer to these inquiries has been received.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 18.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 27.)

*Temple, April* 26, 1881.

Death of Mr. L. D. Kirby at Cairo.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 6th April instant, stating that, with reference to our Report of the 26th February, regarding the inquiry which was held at Cairo into the circumstances attending the death of Mr. Kirby, he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Agent and Consul-General in Egypt,* containing a Report by Mr. Cookson, the Judge of Her Majesty's Consular Court, giving his reasons for instructing Mr. Vice-Consul Borg to hold the inquiry in question. That Mr. Lister was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to the instructions which should be sent with reference to that inquiry, and as to the reply which should now be returned to the application of the widow and relatives of the late Mr. Kirby, which formed the subject of our previous Report.

In obedience to your Lordship's commands we have the honour to report—

Proceedings of Vice-Consul and Assessor were unwarranted by law, and finding should be declared a nullity. Relatives should be informed as above, and be told that it is open to them to take proceedings.

That we have considered the explanations given by Mr. Cookson with reference to the proceedings of the Vice-Consul and the Assessor.

It appears to us that the proceeding was unwarranted in point of law, and can have no legal effect.

If the inquiry were for the purpose of ascertaining whether criminal proceedings should be taken by the Crown, it ought, in our opinion, to have been made by the judicial officer alone and in private, and there should have been no formal finding published as to the cause of death.

But if the inquiry was intended to have the same effect as an inquest, it should, in our opinion, have been held by the Consul himself, and the facilities usual in such cases should have been afforded to the person implicated and to the representatives of the deceased to take part in the proceedings.

We think that, as suggested in our former Report, the supposed finding of the Court should be declared a nullity.

The relatives of Mr. Kirby may also properly be informed that your Lordship is advised that the Court as constituted was not competent to entertain the inquiry in any judicial capacity, and that its finding has been declared a nullity.

They may further be informed that it is open to them to take such proceedings (if any) as they may be advised in respect of the transaction which led, in their opinion, to the death of Mr. Kirby.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 19.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 11.)

*Temple, August* 9, 1881.

Fresh water canal from Ismaïlia to Port Saïd. M. de Lesseps' proposal for its construction, and for appropriation of land.

My Lord,

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 4th ultimo, stating that in the month of April last M. de Lesseps applied to the Khedive of Egypt for authority to form a Company for the construction of a

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* Mr. Malet, No. 16, Consular, March 20; and previous papers, viz., Mr. Malet, Nos. 23, 24, January 17; and No. 32, Political, January 26; Mr. Kirby, January 20; to Law Officers, February 12; Law Officers, February 26; to Mr. Malet, No. 5, Consular, March 5, 1881.

canal from Ismaïlia to Port Saïd for the purpose of keeping the latter town adequately supplied with fresh water. That Lord Tenterden transmitted therewith a copy of the despatch* from Her Majesty's Agent and Consul-General in Egypt, which inclosed the text of the application.

That the construction of such a canal was included in the original scheme of the Suez Canal Company, as set forth in the Concession of 1856. That out of that Concession arose various claims, which after much discussion and diplomatic correspondence were finally adjudicated upon by the Emperor of the French; and His Majesty's conclusions were embodied in the Conventions between the Viceroy of Egypt and the Suez Maritime Canal Company of the 30th January and 22nd February, 1866. That those documents, as well as the Emperor's award, and other Concessions, Conventions, and Statutes relating to the Suez Canal, were contained in the accompanying Parliamentary Paper.†

That, in his Memorandum of the 7th April last (Inclosure 2 in Mr. Malet's No. 127), M. de Lesseps quotes the Concession of 1856 in support of his application, makes no mention of the Emperor's Award and the Conventions based thereon, states that, as the Egyptian Government, on whom the duty should devolve, was not in a position to carry out the undertaking, a Company should be formed for the purpose, and be recouped for its outlay by the lands brought into cultivation through irrigation from the waters of the canal, as stipulated in the Concession of 1856.

That that proposal, involving as it did considerable concessions of land, appeared to be very objectionable, and likely to raise again questions which it was hoped had been finally set at rest by the Award of the Emperor Napoleon. That your Lordship accordingly sought the advice of the British Directors of the Suez Canal Company as to the means of averting the difficulty, and their views as to the pretensions of M. de Lesseps were very fully stated in their Reports‡ of the 23rd May, which Lord Tenterden inclosed, and to which he was directed to call our particular attention.

That M. de Lesseps had in the meanwhile (May 12) issued a notice to the promoters of the scheme which was forwarded to your Lordship in the inclosed despatch§ from the British Acting Agent and Consul-General in Egypt. That it quoted certain Articles of the 1856 Concession, interpreted the Award of the Emperor Napoleon as not having related to the projected canal between Ismaïlia and Port Saïd, and referred to Article V of the Convention of the 22nd February, 1866, in support of that interpretation. That Her Majesty's Government, however, adopted the view taken of the matter by the British Directors, and in the despatch,‖ of which a copy was annexed, your Lordship resumed the arguments in support of that view, and instructed the Directors, in the event of the question being discussed at a meeting of the Council of the Company at Paris, to represent that under the Award of the Emperor Napoleon in 1864, and the Convention of the 22nd February, 1866, the Suez Canal Company resumed¶ the power of constructing irrigation canals, having attached to them rights over fertilized lands, but at the same time to express the readiness of Her Majesty's Government to concur in any proposals having for their object simply the supply of water to Port Saïd, which the Company were entitled to provide for at their own expense, either by an extension of the present pumping apparatus and conduits, or by a small open canal if that method should be considered preferable, and if it should be made clear that a canal was one of the "moyens d'alimentation" contemplated by Article VII of the Convention of 1866, or was accepted as such by the Government of Egypt.

That the Egyptian Government had, on the 15th May, in reply to M. de Lesseps' notice of the 12th of that month, declared that it could not accept the interpretation sought to be placed on the Conventions of 1854 and 1856, and the answer which M. de Lesseps proposed to make to the note from the Egyptian Government was confidentially communicated by him to Her Majesty's Ambassador at Paris. That the first of those documents was inclosed in the despatch from Mr. Cookson,** of which Lord Tenterden transmitted a copy therewith. The second accompanied a despatch†† from the British Directors of the 16th ultimo, which was also annexed. That M. de Lesseps' proposed note endeavoured to prove the correctness of his interpretation of the Emperor's Award, called attention to the obligation under which the Egyptian Government lies of keeping up a certain head of water in the navigable canal between

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* Mr. Malet, No. 127, April 11, 1881.

† "Egypt No. 6 (1876)."

‡ British Suez Canal Directors, May 23, 1881.

§ Mr. Cookson, No. 161, May 16, 1881.

‖ To British Suez Canal Directors, May 30, 1881.

¶ *Qy.* renounced.

** Mr. Cookson, No. 164, May 24, 1881.

†† British Suez Canal Directors, No. 21, June 16, 1881.

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Cairo and Ismaïlia, a condition which he said had never been fulfilled, and threatened legal proceedings in the event of the Egyptian Government opposing the formation of the Company. He also maintained that though the Egyptian Government might claim to carry out the work itself, it must be according to the plans and under the control of the Suez Canal Company after repayment of the sums expended on surveys.

That Lord Tenterden was directed by your Lordship to request that we would take the papers sent therewith into our consideration, and that we would favour your Lordship with our opinion as to the legal merits of M. de Lesseps' pretensions, whether the Award of the Emperor covered the case of the canal between Ismaïlia and Port Saïd, or only referred to the canal between Cairo and Ismaïlia and between the latter place and Suez, or whether the view taken by Her Majesty's Government, as set forth in the despatch to the Directors of the 30th May, was correct, and was one which was likely to be upheld if the matter were made the subject of public litigation in the International Law Courts of Egypt.

In obedience to your Lordship's commands we have the honour to report—

M. de Lesseps' pretensions not well founded.

That, in our opinion, the pretensions put forward by M. de Lesseps with reference to the rights alleged to exist under the Concessions of 1854 and 1856 are not well founded.

The claim to be entitled to the lands which may be brought into cultivation by the proposed canal between Ismaïlia and Port Saïd must rest upon Articles 10, 11, and 12 of the Concession of 1856. But the Award of the Emperor Napoleon appears clearly to extend to these provisions, and the Articles are expressly abrogated by the Convention of February 1866.

It is impossible to say with certainty what view the International Tribunals in Egypt may take, but we should certainly expect them to come to the same conclusion.

We would point out that the question of the right to make the canal is totally distinct from the question whether those making it would be entitled to the lands thereby brought into cultivation. But unless these rights follow, there will probably be no sufficient inducement for the suggested Company to make the canal.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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## France.

### No. 20.

*The Law Officers of the Crown to Earl Granville.*—(*Received August* 10.)

My Lord, *Temple, August* 9, 1881.

Stigand *v.* Stigand. Issue of order of attachment against Vice-Consul Stigand. Not a case for interference.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th ultimo, stating that he was directed to transmit to us therewith the correspondence which had taken place relative to certain proceedings instituted against Mr. Vice-Consul Stigand in the Divorce Division of the High Court of Justice.*

That it appeared that the President of the Court had issued an order of attachment against Mr. Stigand for contempt of Court, in not obeying an order directing him to send his two elder children to Mrs. Stigand.

That Messrs. Fladgate, Smith, and Fladgate, the solicitors representing Mrs. Stigand, stated that they were prepared to enforce the order of attachment against

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* Messrs. Fladgate, Smith, and Fladgate, June 11; ditto, June 18; ditto, June 28; Vice-Consul Stigand, June 21, 1881.

### No. 20*.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 2, 1882.)

My Lord, *Temple, December* 31, 1881.

Case of Mr. Pedley, a British subject, owner of an oak forest in Algeria, destroyed by fire.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 16th instant, stating that he was directed to transmit to us the accompanying despatch,* with its inclosure, from Her Majesty's Ambassador at Paris, asking instructions in the matter of a request for intervention with the French Government which had been preferred by a M. Delonpy on behalf of Mr. Joshua Pedley, Solicitor, of London, a British subject, who was stated to have been the owner of an oak forest called "Oued Soudan," in Algeria, destroyed by fire on the 23rd August last.

The facts of the case were set forth in the letter from M. Delonpy of which a copy was inclosed in the Ambassador's despatch; and Lord Tenterden was to request that we would take the papers into our consideration, and favour your Lordship with our opinion whether the circumstances were such as to warrant diplomatic intervention on the part of Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

He is only entitled to same treatment as French proprietors. No reason for diplomatic intervention.

That, in our opinion, Mr. Pedley is entitled to receive the same treatment from the French Government as French proprietors in Algeria who have suffered loss from the same alleged cause, and at present we see no reason for diplomatic interference on his behalf.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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* Viscount Lyons, No. 1093, December 7, 1881.

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Mr. Stigand if he should come over to this country, and they asked your Lordship to use your authority over Mr. Stigand with the view of obviating the necessity for that measure.

That no precedents existed in the Foreign Office of a similar application, and Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether your Lordship could properly interfere in the matter, or should leave the parties to seek such remedies as the law afforded in France or in this country.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the case is not one for your Lordship's interference, but that your Lordship should leave the parties to seek such remedies as the law affords.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## General.

### No. 21.

*Principal Secretary to the Lord Chancellor to Earl Granville.*—(*Received January* 28.)

Rule of domicile as applied to movable succession, and of wills abroad. What are Lord Granville's views as to Bill?

My Lord, *House of Lords, January* 25, 1881.

I AM directed by the Lord Chancellor to say, with reference to my letter to your Lordship of the 25th December, 1880, and the accompanying papers relating to the Law of Domicile, &c., that the Earl of Kimberley concurs generally in the principles embodied in the Bill, and the Lord Chancellor's suggestion that it should be referred to the Law Officers of the Crown, and that his Lordship would be glad to learn, at the earliest convenient time, what are your Lordship's views on the subject.

I am, &c.
(Signed) KENNETH MUIR MACKENZIE,
*Principal Secretary.*

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### No. 22.

*Mr. Westlake to Sir J. Pauncefote.*—(*Received January* 28.)

Wills, personal succession, and domicile abroad. Draft Bill with clause 7 modified.

Dear Sir, 2, *New Square, Lincoln's Inn, W.C., January* 28, 1881.

I HAVE the pleasure of inclosing a copy of the draft Bill on Wills, Personal Succession, and Domicile, in which Clause 7 is modified so as to meet the two suggestions made by you in our conversation yesterday.

First, it is now proposed that the residence required shall be for the year pending the deposit of the declaration mentioned in the Clause, instead of for the year preceding the date for which the domicile is to be determined. I had myself thought of this—see my pamphlet on "Domicile or Nationality," p. 8—as securing due time for reflection before the deposit of the declaration, but had not ventured in the draft Bill to depart from the lines on which the Statute 24 and 25 Vict., c. 121, was drawn, the year there being that preceding the death of the testator or intestate. And there is great weight in your observation that if the stress of proof had to bear on the year preceding the death there would be a strong inducement to contend that an absence from England not intended to be otherwise than temporary, but extending over a large part or perhaps the whole of that year, precluded the domicile from being British at the death, notwithstanding the deposit of the declaration and a previous British residence.

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Secondly, a proviso is added in order to make it clear that a British domicile, acquired by residence and the deposit of the declaration, may again be lost, just as a domicile acquired under the present law may be lost. It does not seem advisable to hamper the above document by any necessity of withdrawing the declaration, since that formality might easily be omitted from inadvertence, where there was no substantial ground for contending that the British domicile continued, and our law might then be brought into conflict with that of the country in which the new domicile was acquired.

I am, &c.
(Signed) J. WESTLAKE.

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### Inclosure in No. 22.

*Modified Clause.*

7. NO person *sui juris*, whether a British subject or an alien, shall, after the passing of this Act, be deemed to have acquired for any purpose a domicile in any of Her Majesty's dominions mentioned in the schedule hereto, unless he shall

(1.) Have signed a declaration in writing of his desire to become domiciled in the country or place in question, and deposited the same in the public office mentioned in the said schedule for such country or place; and

(2.) Have resided in such country or place during one year immediately preceding the deposit of such declaration.

Provided that nothing herein contained shall prejudice any domicile acquired before the passing of this Act, nor shall anything done in pursuance hereof be construed to confer a domicile which would not have been acquired if this Act had not been passed; also that any domicile acquired under this Act shall be subject to abandonment in the same manner as any domicile heretofore acquired.

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### No. 23.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 18.)*

My Lord, *Temple, April* 16, 1881.

Rule of domicile as applied to movable succession and to case of wills abroad.

Paper, Memorandum, and draft Bill drawn up by Mr. Westlake, Q.C.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Principal Secretary to the Lord Chancellor,* referring to the subject of the rule of domicile as applied to movable succession, and to the case of wills of real and personal estate made out of the United Kingdom, and inclosing a paper drawn by Mr. Westlake, Q.C., and a draft Bill and Memorandum, also prepared by him at the Lord Chancellor's request, dealing with that subject.

That it appeared to your Lordship from a perusal of the draft Bill that it might be expedient to insert a power of revocation of a declaration made under section 7, and that the condition of one year's residence immediately preceding death might prove inconvenient in some cases.

That Mr. Westlake, having been consulted on those points, had returned, with observations in a letter therewith inclosed, a further copy of the draft Bill,† containing modifications intended to meet the objections above referred to.

That, in accordance with the suggestion of the Lord Chancellor, Sir J. Pauncefote was directed by your Lordship to transmit the papers to us, and to request that we would favour your Lordship with our opinion on the draft Bill at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

That we approve generally the objects of the Bill, but we desire to submit for consideration the following observations:—

Observations on draft Bill.

We doubt whether the enactments proposed in the 4th and 6th sub-sections of section 2 rest upon a sound basis. Where a person has purported to make a will which has no validity either according to the law of the place where it was made or of the place of the testator's allegiance or domicile, it seems of questionable expediency

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* December 25, 1880; Confidential No. 4539, p. 56.

† January 28, 1881.

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## General.

### No. 22*.

[Colonial Office.]

*The Law Officers of the Crown and Dr. Deane to the Earl of Kimberley.—*
*(Received February .)*

My Lord, *Temple, February* 8, 1881.

WE were honoured with your Lordship's commands signified in Mr. Wingfield's letter of the 15th ultimo, stating that he was directed by your Lordship to transmit to us, for our consideration, a copy of a despatch from the Governor of Gibraltar, inclosing a Memorial from Mr. Lewes Culatto, praying that his sister, Mrs. Levrero, who was a native of Gibraltar, but was married to an Italian resident in Gibraltar on a special temporary permit, might not be included in the permit granted to her husband, and that the memorialist might be reimbursed the amount of a fine inflicted upon him, as the person on whose application Mr. Levrero was permitted to be in Gibraltar, by reason of Mrs. Levrero having been delivered of a child in that city.

Memorial from Mr. L. Culatto contending that Mrs. Levrero, his sister, the wife of an Italian resident in Gibraltar, is not an alien, and asking for remission of fine inflicted upon him.

2. That according to the statement in the Memorial, Mrs. Levrero had been allowed to reside in Gibraltar without a permit from the time of her marriage in 1859 until June last, when her husband having applied for a restoration of his permit, which had been withdrawn in consequence of her having been delivered of a child, the Governor made it a condition of such restoration that Mrs. Levrero should be included in the permit as the wife of an alien, and herself a "statutory alien."

Aliens Order in Council, Gibraltar, 1873.

3. That the Aliens Order in Council, Gibraltar, 1873, a copy of which was inclosed for reference, prohibited aliens from remaining in Gibraltar without a permit, and by the 2nd clause the word "alien" is to be construed as including a statutory alien. That Schedule (B), which by the 57th clause is made part of the Order, specified among the persons to whom a permit might be granted "the wife of an alien in the garrison," and that a note was added to the effect that such wife was to be included in her husband's permit.

Attorney (General), Gibraltar, of opinion that Mrs. Levrero became a statutory alien by "Naturalization Act, 1870."

4. That it would be seen that the Attorney (General), Gibraltar, was of opinion that by the effect of "The Naturalization Act, 1870," section 10, Mrs. Levrero, although married before the passing of that Act, ceased to be a British subject, and became a statutory alien.

5. That the memorialist, on the other hand, contended (1) that section 10 of "The Naturalization Act, 1870," did not apply to a woman married before the passing of the Act; and (2) that the Act did not apply to the Colonies, and that Mrs. Levrero was therefore not an alien, and was entitled to reside in Gibraltar without a permit.

6. That Mr. Wingfield was to request that we would be good enough to favour your Lordship with our opinion on the following questions:—

(1.) Whether section 10 (1) of "The Naturalization Act, 1870," applies to a woman married before the passing of the Act.

(2.) Whether the Act is in force in Gibraltar.

(3.) Whether a woman, being by birth a British subject and married to an alien before the passing of "The Naturalization Act, 1870," is an alien within the meaning of the Aliens Order in Council, Gibraltar, 1873.

(4.) Whether such a woman as described in question 3 is entitled to reside in Gibraltar without a permit.

In obedience to your Lordship's commands, we have the honour to report—

That we are of opinion that section 10 (1) of "The Naturalization Act, 1870," applies to a woman married before the passing of the Act. It seems clear from section 3 of the 35 & 36 Vict., c. 39, that this is the case.

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Are of opinion that Mrs. Levrero is an alien within meaning of O. in C., Gibraltar, 1873.

2. We think the Act is in force in Gibraltar.*

3 and 4. In our opinion, such a woman is an alien within the meaning of the Order in Council, Gibraltar, 1873, and is not entitled to reside in Gibraltar without a permit.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* (Note by Mr. Davidson, January 1891): "I think this must be read with reference particularly to section 10 (1) of the Act, and not to the *whole* Act, some of the machinery of which is only applicable to the United Kingdom, *e.g.*, section 7, section 10 (5), &c.

that such an instrument should be made valid by a subsequent change of domicile or allegiance adopted altogether *alio intuitu*, and where the testator may well have known that the instrument was invalid, and have had no intention of validating it.

The drafting of section 3 appears to need alteration.

We presume the change of domicile or allegiance referred to is a change subsequent to the making of the will or other testamentary instrument.

In section 6, we think that the word "adherent" requires some definition.

Although we think it would be of importance to enable a person to secure unequivocal proof of his acquisition of a domicile in the manner provided in section 7, we think it open to grave question whether it is expedient to enact that no person shall be deemed to have acquired a domicile unless he has signed and deposited the required declaration.

A person may have resided for years in a part of Her Majesty's dominions, intending to acquire a domicile there, and yet, either in ignorance or forgetfulness, have failed to make a declaration of his desire to do so. And if section 7 were to become law, the consequences, in such a case, might be most serious, affecting, it may be, the validity of marriage or divorce or the legitimacy of offspring.

In the Indian Act 10 of 1865, section 11, it is provided that "any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in India for one year immediately preceding the time of his making such declaration." We think a permissive provision of this description would be preferable to that contained in section 7.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Honduras.

### No. 24.

*Lord Tenterden to the Law Officers of the Crown and Dr. Deane.*

*Foreign Office, July* 18, 1881.

Claims on Honduras arising out of civil war. Effect of Article 22 of Constitution.

Gentlemen,

MR. GRAHAM, who is in temporary charge of British interests in Central America during the absence of Her Majesty's Minister, has called the attention of Her Majesty's Government to Article 22 of the Constitution which has been recently promulgated by the Republic of Honduras, by which it is decreed that neither natives nor foreigners in the State of Honduras can in any case claim compensation from the State for losses and injuries arising to their persons or properties out of a state of civil war.

The correspondence which has taken place upon the subject, as marked in the margin,* is inclosed herewith for your information, together with the draft of a reply which Lord Granville proposes to address to Mr. Graham,† and his Lordship would be glad to be informed whether it meets with your concurrence.

I have, &c.
(Signed) TENTERDEN.

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* Mr. Graham, No. 87 of 1880; to Mr. Graham, No. 1, 1881; Mr. Graham, Nos. 25, 31, 33, 35, 1881.

† To Mr. Graham, No. 25.

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*Report.**

*August* 2, 1881.

Approve draft to Mr. Graham.

That we concur with the draft reply which your Lordship proposes sending to Mr. Graham.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Italy.

### No. 25.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 29.)

*Temple, March* 29, 1881.

My Lord,

Mortgages and loans on real property for purposes of improvements.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 11th March instant, stating that he was directed by your Lordship to transmit to us a letter from the Italian Chargé d'Affaires in this country,† applying for certain information with respect to the state of the law in the country as regarded mortgages and loans on real property, for the purposes of improvements, together with a draft of the reply which your Lordship proposed to return to the Italian Ambassador on the subject; and Lord Tenterden was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether the proposed reply to General Menabrea met the requirements of the case.

In obedience to your Lordship's commands we have the honour to report—

Approving letter to Italian Ambassador as to English law.

That, in our opinion, the proposed letter meets the requirements of the case.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Letter to General Menabrea.*

*Foreign Office,* , 1881.

M. l'Ambassadeur,

I HAD the honour of receiving on the 2nd ultimo a letter from M. Ressman, asking, on behalf of your Government, for certain information with respect to the state of the law in this country as regards mortgages and loans on real property for the purposes of improvement, and I have now the honour to state to your Excellency, in reply, that no general law has been passed in this country giving special guarantees in the case of money advanced by private individuals on mortgage of real estate for purposes of improvement; but the improvement of Land Act, 1864 (27 & 28 Vict., cap. 114), makes provision for promoting the advance of private money for certain purposes connected with the improvement of land through the intervention of Public Commissioners, and various other Statutes provide for the advance of public moneys for similar purposes.

I beg further to inform your Excellency that all these Statutes will be found cited in the Chronological Table and Index to the Statutes published by authority of the Government under the direction of the Statute Law Committee, under the heading of "Improvement of Land Drainage," and other titles.

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* The Law Officers' Report upon this subject could not be found when this collection of Reports was made, and it was therefore necessary to obtain the original draft of the Report. The Law Officers, however, do not retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the Foreign Office letter to them is recapitulated. It has, therefore, been deemed advisable to print the Foreign Office letter in this instance, as the bare Report, without the usual preamble, would not be wholly intelligible.

† M. Ressman, March 2, 1881.

### No. 26.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June* 3.)

*Temple, June* 3, 1881.

My Lord,

Death of J. Pearce on Her Majesty's ship "Inflexible" at Naples. Proceedings of Pretore at San Ferdinando.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us the despatch from Her Majesty's Ambassador at Rome,* inclosing copies of correspondence between his Excellency and Her Majesty's Consul at Naples describing the proceedings of the Pretore of the district of San Ferdinando in Italy, respecting an inquest held by that official on the body of a seaman (John Pearce), accidentally killed by falling from aloft on board Her Majesty's ship "Invincible," in the port of Naples.

That it was stated in the Pretore's letter to Her Majesty's Consul (Inclosure 3) that the object of the inquiry was "to establish whether there was the least foul play or fault on any one's part," and that it concerned the penal Administration to know the particulars of the case.

That it appeared that for the purposes of the inquest the body of the deceased, which had been buried in the English cemetery, was disinterred, notwithstanding the certificate of the doctor of the "Invincible" respecting the accident.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether the proceedings of the Pretore afforded grounds for official remonstrance on the part of Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

Inquest on body, when within his jurisdiction, not contrary to international law; but an inquiry as to cause of death on British ship of war not justifiable.

That we do not think that the Pretore committed any violation of international right in the mere holding of the inquest. The body of the deceased was brought on shore and within the jurisdiction of the Pretore, and we think he was entitled to hold an inquest, even if the death took place outside his jurisdiction, for the purpose of ascertaining and obtaining proofs of that fact.

But the Pretore appears to have proceeded far beyond this, and though the fact was established that the deceased was a seaman serving in a British ship of war, and had met with his death on board that ship, he appears to have claimed and exercised the right to inquire whether the death resulted from foul play or fault on any one's part.

We think that if the death of a British seaman on board a British ship of war was occasioned by any fault or crime, that was a matter cognizable only by the British authorities, and that the Pretore exceeded his authority, and was not justified according to international law in entering upon such an inquiry.

Should remonstrate.

We think, therefore, that the proceedings of the Pretore in this respect afford grounds for remonstrance on the part of Her Majesty's Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

Remonstrance should cover whole of the proceedings.

I agree that the proceedings of the Pretore afford grounds for remonstrance on the part of Her Majesty's Government, but that remonstrance should, in my opinion, extend to the whole of the proceedings taken by the Pretore.

I have, &c.
(Signed) J. PARKER DEANE.

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### No. 27.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November* 26.)

*Temple, November* 25, 1881.

My Lord,

Death of J. Pearce on Her Majesty's ship "Invincible" at

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 1st instant, stating that on the 3rd June last we favoured your Lordship

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* Sir A. Paget, No. 172, May 4, 1881.

1881

Naples. Proceedings of the Pretore as to inquest.

with a Report respecting the proceedings of the Pretore of the district of San Ferdinando, in Italy, in regard to an inquest held by that official on the body of John Pearce, a seaman, accidentally killed by falling from aloft on board Her Majesty's ship "Invincible," in the port of Naples.

That Lord Tenterden was to transmit to us the draft of instruction[*] to Her Majesty's Ambassador at Rome, founded upon our Report, directing his Excellency to remonstrate against the proceedings of the Italian authorities in that matter, together with a despatch from Sir A. Paget,[†] containing the reply of the Italian Government, in which it was sought to justify the proceedings complained of, whilst it was denied that any certificate of death from the medical officer of the "Invincible" was produced.

That Lord Tenterden was to request that we would be good enough to take that further correspondence into our consideration, and that we would favour your Lordship with any observation which we might have to make thereupon, and with our opinion whether any, and, if so, what steps Her Majesty's Government should take in the matter.

That the previous papers[‡] were annexed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

That the Report of the Procureur-Général at the Court of Appeal of Naples materially alters the aspect of this case.

All intention to extend the jurisdiction of the Italian authorities over events that have taken place in foreign territory is disowned; and it appears to be admitted that a British man-of-war is to be considered as British territory.

The only claim put forward is, that a dead body, being within the territorial jurisdiction of the Pretore, he had a right to satisfy himself, before permitting the burial, that there was no ground for believing that a crime had been committed within the city.

It is stated that a certificate of the doctor of the ship certifying the cause of death was not shown to him before he held the inquiry.

This is in conflict with the statement contained in the despatch of Consul Grant, and the notice given by the Pretore to the Consul on the 2nd May, 1881, certainly seemed to claim a right to inquire into "the particulars of the case for the purpose of establishing whether there were the least foul play or fault on any one's part," even though the occurrence had taken place on a British man-of-war.

Report of the Procureur-Général renders further action unnecessary, but note should be taken of the disavowal of jurisdiction.

We think, however, that in view of the explanations furnished by the Report of the Procureur-Général, which accompanied the despatch of Signor Mancini of the 15th October, 1881, it is not necessary for Her Majesty's Government to take further action in the matter. But it would be well, in acknowledging that despatch, to take note of the fact that any claim of jurisdiction to inquire whether a death which has been caused by occurrences on board a British man-of-war is due to criminal conduct, has been distinctly disavowed.

We have &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] To Sir A. Paget, Nos. 243, June 14, 1881.

[†] Sir A. Paget. No 388, October 16, 1881.

[‡] Sir A. Paget, No. 172, May 4; No. 258, June 21; Law Officers, June 3, 1881.

# Japan.

## No. 28.

*Report, dated January 3, respecting Registration of Mortgages, Bills of Sale, and Co-Partnerships (China and Japan).*

[See *ante*, No. 8.]

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## No. 29.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 9.)*

*Temple, April* 8, 1881.

My Lord,

Alleged infringement of diplomatic privilege by Local Act, which renders their landlords liable for rates not recoverable from foreign Ministers. Complaint of Japanese Minister.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 17th March last, stating that he had to transmit to us, by your Lordship's direction, the accompanying papers, which were noted in the margin,[*] relating to a complaint by the Japanese Minister at this Court, that his diplomatic privileges were infringed by the operation of section 190 of the Local Act, 35 Geo. III, cap. 73, whereby rates and assessments imposed under that Act in the parish of St. Marylebone, in respect of houses inhabited by foreign Ambassadors, Ministers and others, not liable by law to pay the same, shall be recoverable from the landlord.

That the Japanese Minister's letter of the 12th January last, stating his complaint, was referred to the Secretary of State for the Home Department, whose reply was contained in the Home Office letter of the 21st January, and the substance of that reply was communicated to Mr. Mori in the Foreign Office letter of the 27th January.

That thereupon he addressed a further letter to your Lordship, dated the 8th February, expressing the hope that the decision arrived at would be reconsidered, as the effect of the enactment in question was indirectly to charge him with the payments of the rates from which he claimed immunity by international law, and, if not, that further information should be supplied to him to enable him to make an exhaustive Report to his Government on the subject.

That Sir Julian Pauncefote was to observe that a similar question arose in 1875 with respect to premises occupied in the same parish by Colonel Cheseborough, a Secretary to the United States' Legation, and he was to refer us to the views of the Home Office in that case, expressed in their letter of the 9th June, 1875.

That a similar question also arose in 1876 under the Chelsea Local Act, 4 Vict., cap 17, sec. 15, with respect to a coach-house and stables, occupied in that parish by the Spanish Minister, and Sir Julian Pauncefote was to refer us to the Home Office letter of the 18th March, 1876, on that case.

That it was not improbable that similar complaints would from time to time be made by the Representatives of other Governments similarly situated, and as it appeared important to your Lordship that no doubt should exist as to whether Her Majesty's Government were justified in declining to indemnify landlords on account of the payment of rates exacted from them under the enactments in question, Sir Julian Pauncefote was to request that we would take all the papers into our consideration, and favour your Lordship with our opinion as to the answer which should be returned to the Japanese Minister's letter of the 8th February.

We were also honoured with Sir Julian Pauncefote's letter of the 19th March last, transmitting further papers.[†]

In obedience to your Lordship's commands we have the honour to report—

This Act is not a breach of diplomatic privilege.

That the rule of international law is, we apprehend, correctly stated in Twiss' "Law of Nations: Rights and Duties in time of Peace," p. 308, that the house of an

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[*] Home Office, June 9, 1875; ditto, March 18, 1876; to Marquis de Casa Laiglesia, May 16, 1876; Mori Arinori, January 12; Home Office, January 21; to Mori Arinori, January 27, 1881; Local Act, 35 Geo. III, cap. 73; Mori Arinori, February 8, 1881.

[†] Mori Arinori, March 17, 1881.

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Ambassador is not exempt from local rates which are levied for the local benefit of the district. The practical difficulty of enforcing the liability to such rates, noticed in the note to that page of Sir Travers Twiss' work, has led, in all probability, to the introduction of the clauses in the Chelsea and St. Marylebone Acts.

If a foreign Minister takes on lease any premises at a rent higher than would be required of an ordinary tenant, in order to cover the expense of rates to which the premises are subject, and which the landlord will have to pay, we do not consider that any diplomatic immunity is broken in upon.

The impost is on the premises, not on the occupier, who is by privilege personally exempt, and the landlord, in such a case as the present, is made by Statute liable. The Foreign Minister has no power to protect his landlord from this Statutory liability, nor, in our opinion, can your Lordship properly interfere in any way with the terms of the lease, under which Mr. Mori holds his house from Lord Gainsborough.

The Oriental Bank as guarantors of the whole rent are, in our opinion, responsible for the payment of any part unpaid.

We suggest that Mr. Mori may properly be answered that no breach of diplomatic privilege has been committed so far as the demand for rates has been made upon Mr. Mori's landlord, who is clearly liable to pay those rates.

Also, that the landlord has no right to claim the amount so paid from Mr. Mori unless Mr. Mori has voluntarily bound himself by the covenants in his lease to pay any taxes rightfully imposed upon the landlord, and that the question of diplomatic privilege does not affect any private contract that an Ambassador or Foreign Minister may voluntarily make.

Mr. Mori should also be told that he personally and his property, and the property in the house occupied by him, are exempt from all legal process.

**Her Majesty's Government justified in declining to indemnify the landlord.**

Lastly, we think Her Majesty's Government are justified in declining, in any case, to indemnify landlords on account of the payment of rates, when their houses are let to privileged persons.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 30.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May* 18.)

*Temple*, *May* 17, 1881.

**Trial and conviction of J. M. Ross, British subject, before United States' Consul at Yokohama for murder of second mate of the "Bullion," an American vessel.**

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th ultimo, stating that, with reference to our Report of the 7th September last (a copy of which was inclosed), on the subject of the trial and conviction before the United States' Consul-General at Yokohama, Japan, of John Martin Ross, a British subject, on the articles of the American merchant-vessel "Bullion," on a charge of having murdered Robert Kelley, the second mate of the "Bullion," on board that vessel while lying in the port of Yokohama.

That Sir Julian Pauncefote was directed by your Lordship to transmit to us the despatches as marked in the margin,* which had been received from Sir E. Thornton, from the latter of which it would be seen that Ross (whose capital sentence had been commuted) was reported to have arrived at San Francisco in custody, to be conveyed from thence to Albany, in the State of New York, to serve a term of imprisonment.

That he (Sir Julian Pauncefote) was also to transmit, for convenience of reference, the papers forwarded to us in his (Sir Julian Pauncefote's) letter of the 23rd August last, together with a despatch of a later date which had been received from Her Majesty's Chargé d'Affaires in Japan.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether, under those circumstances, the United States' Government should be pressed to take the steps suggested in Mr. Evarts' note, inclosed in Sir E. Thornton's No. 72, for bringing the case of Ross before the United States' Courts, in order to try the question of the legality of his trial and conviction, and in case of their declining to do so, whether any steps should be taken by Her Majesty's Government for the same purpose.

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* Mr. Kennedy, Nos. 87, 88, 97, 98, 105, and 177 of 1880; Sir E. Thornton, Nos. 72 and 78 of 1881; Mr. Drummond, No. 279 of 1880.

We were also honoured with a further letter from Sir Julian Pauncefote of the 7th instant, stating that, with reference to his (Sir Julian Pauncefote's) letter of the 19th ultimo, he was directed by your Lordship to transmit to us a further despatch* from Her Majesty's Minister at Washington, together with its inclosures, from which it appeared that the friends of J. M. Ross, the British subject convicted of murder before the United States' Consular Court in Japan, had applied for a writ of *habeas corpus*, in order to raise the question of the legality of his trial and conviction. We were also honoured with a further letter from Sir Julian Pauncefote of the 10th instant, inclosing a further despatch,† contradicting report that a writ of *habeas corpus* had been moved for by the friends of J. M. Ross.

In obedience to your Lordship's commands we have the honour to report—

**Instructions for Sir E. Thornton.**

That, in the absence of any application for a writ of *habeas corpus* on behalf of the prisoner (J. M. Ross) personally, we think Sir Edward Thornton should be directed to take steps to cause such application to be made, in such manner and to such Court as he may be advised will raise in the most satisfactory manner the question of the legality of Ross' trial and detention.

We think Sir E. Thornton should be directed to inform the United States' Government that Her Majesty's Government are taking the step of obtaining a judicial determination upon the question involved by the Courts of the United States, partly as an act of justice to the prisoner, and also because advantage will be derived from the discussion and consideration of the different views of that question.

But we suggest that it would be advisable also to communicate to the United States' Government that, whilst concurring in the suggestion contained in Mr. Evarts' letter of the 7th March (No. 72), that "a judicial interpretation might be a valuable aid in the discussion," Her Majesty's Government is not prepared to accept any judicial decision arrived at as being binding or conclusive for diplomatic purposes.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 31.

*Report, dated August* 1, *respecting proposed Order in Council.*

[See *ante*, No. 13.]

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### No. 32.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 19.)

*Temple*, *October* 18, 1881.

**J. M. Ross. Sentenced by United States' Consul-General in Japan for murder. Protest against the jurisdiction of the United States' Consul sufficient.**

My Lord,

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 11th instant, stating that, with reference to our Reports of the 7th September, 1880, and of the 17th May last, on the case of John Martin Ross (copies of which were inclosed), he had the honour to transmit to us, by direction of your Lordship, the further correspondence which had taken place on the subject.‡ That there could be no doubt from the reports of the case that Ross was guilty of an outrageous murder, and that the only ground for the intervention of Her Majesty's Government rested on the disputed question of jurisdiction. That the sentence passed on Ross in Japan had been commuted to a term of imprisonment for life in the United States. That, if he should be liberated on the writ of *habeas corpus*, the difficulty and cost of bringing him to trial in a British Court would probably be very considerable, and that it would be deplorable that the perpetrator of such a crime should escape adequate

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* Sir E. Thornton, No. 122 of 1881.

† Sir E. Thornton, No. 130 of 1881.

‡ Law Officers, September 7, 1880; ditto, May 17; Sir E. Thornton, No. 173, June 6; ditto, No. 179, June 14; Mr. Drummond, No. 210, July 18; Treasury, August 26, 1881.

1881

punishment. That, under those circumstances, your Lordship would be glad to be favoured with our views as to whether the proposed proceedings should be instituted by Her Majesty's Government to obtain the liberation of Ross on a writ of *habeas corpus*, or whether it would suffice for the particular end, which Her Majesty's Government had in view, if a communication be addressed to the United States' Government maintaining the protest of Her Majesty's Government against the jurisdiction exercised by the American Consul-General in Japan in the case, and reserving all rights, but explaining, for the reasons above stated, Her Majesty's Government refrained from taking proceedings by *habeas corpus* to test the validity of the judgment and sentence in the Courts of the United States.

In obedience to your Lordship's commands we have the honour to report—

That we think the course suggested is one which may properly be taken under the circumstances.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 33.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 7.)

*Temple, November* 5, 1881.

J. M. Ross, condemned for murder on the American ship "Bullion."

My Lord,

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 28th ultimo, stating that with reference to our Report of the 18th October on the case of John Martin Ross (a copy of which was inclosed), Lord Tenterden transmitted to us, by your Lordship's direction, a draft of a despatch which your Lordship proposed to address to Her Majesty's Minister at Washington, informing him that Her Majesty's Government did not intend, for the reasons therein explained, to take proceedings by *habeas corpus* to test the validity of the judgment and sentence pronounced in the Courts of the United States against the prisoner, but that he should intimate to the Government of the United States that they maintained the opinion which Mr. Drummond was instructed in your Lordship's despatch No. 164 of the 18th September, 1880, to convey to the Cabinet of Washington, that Ross was not amenable to the jurisdiction of the United States' Consular Court in Japan for his crime.

That Lord Tenterden was to request that we would take that draft, together with the papers noted in the margin of his letter,[*] into our consideration, and favour your Lordship with our opinion whether it sufficiently met the object in view.

Approving draft to Mr. West as to jurisdiction of United States' Consul in Japan, and refusal to test validity of judgment.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the draft despatch submitted to us sufficiently meets the object in view.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch to Mr. West.*

(No. .)
Sir, *Foreign Office*, , 1881.

HER Majesty's Government have carefully considered Mr. Drummond's despatch No. 210 of the 20th July last, and the previous correspondence connected with the question which has arisen as to the jurisdiction of the United States' Consular Court at Yokohama in the case of John Martin Ross, who, being a British subject, has been tried and condemned for murder while serving on board the American vessel "Bullion," in Yokohama Harbour, on the 9th May, 1880.

In a letter to Sir Edward Thornton, dated the 7th March last,[†] Mr. Evarts expressed the opinion that, while the final decision upon this question should be reserved for the Administration shortly about to assume the reins of Government, it might be serviceable in the discussion then diplomatically pending between this country and the United States that a judicial interpretation should be obtained as to the meaning of the American Treaty with Japan, and it has been suggested that proceedings might be taken by Her Majesty's Government by *habeas corpus*, in order to test the validity of the judgment and sentence in the Courts of the United States.

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[*] List of Papers:—To Mr. Drummond, No. 164, September 18; Law Officers' Report, September 7, 1880; ditto, May 17; Sir E. Thornton, No. 173, June 6; ditto, No. 179, July 13; Treasury, August 26; Law Officers' Report, October 18; Mr. Drummond, No. 210, July 20, 1881.

[†] Sir E. Thornton, No. 72, March 8, 1881.

There can be no doubt from the reports of the case that have been received, and with which Her Majesty's Legation at Washington has been furnished, that Ross was guilty of an outrageous murder, and that the only ground for the intervention of Her Majesty's Government rests on the disputed question of jurisdiction.

The capital sentence passed on Ross has been commuted to imprisonment for life.[*] If he should be liberated on a writ of *habeas corpus*, the difficulty of bringing him to trial in a British Court would be very considerable, having regard to all the circumstances of the case, and it would be deplorable that the perpetrator of such a crime should escape adequate punishment.

For these reasons Her Majesty's Government consider it advisable to refrain from instituting proceedings by writ of *habeas corpus* to test the validity of the judgment and sentence passed on Ross, though they are still of opinion that he was not amenable to the jurisdiction of the Consular Court of the United States in Japan for his crime.

I have to request that you will inform the Government of the United States of the decision arrived at, and of the grounds on which it is founded, while maintaining and renewing the protest of Her Majesty's Government against the exercise of jurisdiction in the case by the United States' Consular Court in Japan, which Her Majesty's Chargé d'Affaires was instructed to address to the Government of the United States in my despatch No. 164 of the 18th September, 1880.

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# Madagascar.

## No. 34.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 30.)

*Temple, November* 30, 1881.

My Lord,

Protection of Mr. Pakenham against threats of Thomas Wilkinson. Powers of Her Majesty's Government by Treaty as to appointment of an officer to take proceedings.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us therewith a despatch received from Her Majesty's Consul at Madagascar,[†] together with its inclosures, from which we should perceive that Mr. Pakenham was apprehensive of some outrage on the part of a British subject named Thomas Wilkinson, a resident in that island, who had addressed a threatening letter to him, and was apparently labouring under some delusion.

That Mr. Pakenham applied for advice as to how he should act under the circumstances.

That there was no other British Consul in that country possessing criminal jurisdiction, and that Mr. Lister was to request that we would favour your Lordship with our opinion as to the reply which should be returned to Mr. Pakenham's inquiry. That copies of the Treaty of Peace, Friendship, and Commerce between this country and Madagascar of the 27th June, 1865, and of the Order in Council of the 4th February, 1869, were inclosed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

That it would not be possible for Mr. Pakenham to try Wilkinson for an offence in respect of which Mr. Pakenham would be himself the prosecutor.

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[*] Sir E. Thornton, No. 179, June 14.

[†] Consul Pakenham, No. 10, Confidential, September 19, 1881.

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If it should be necessary to take criminal proceedings against Wilkinson, the only course open would appear to be to give some other person authority to try such an offence.

By Article XI of the Treaty with the Queen of Madagascar jurisdiction may be conferred upon the British Consul "or other officer duly appointed for that purpose by Her Britannic Majesty."

We would suggest that Mr. Pakenham should be informed that whilst the power we have referred to rests in the Crown, Her Majesty's Government would be unwilling to exercise it unless a real necessity for doing so exists, and that it may be hoped that the precautionary measures taken for Mr. Pakenham's protection will, in his judgment, be deemed sufficient. But that should this not be the case, your Lordship will be willing to entertain any further communication he may have to make with reference to the necessity of taking other measures for his protection.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Morocco.

### No. 35.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 16.)

*Temple, December* 15, 1881.

My Lord,

Thornton *v.* Scott. Mortgage on landed property.

WE were honoured with your Lordship's commands signified in a letter from the Foreign Office, under date of the 5th December, transmitting to us the correspondence that was marked in the margin,* respecting a mortgage held by the Messrs. Thornton on certain landed property in Morocco, of which Mr. Scott was the owner and mortgagor.

That from the inclosed papers it would be seen that the Messrs. Thornton filed a petition in Her Majesty's Consular Court at Tangier for the foreclosure of the mortgage, but Mr. White, then Acting Consul-General, declined to exercise jurisdiction in the case, on the ground that the defendant was a naturalized subject of the United States, and further, that as the question related to landed property, he was of opinion that it should be determined by the competent Moorish Tribunal, and not by Her Majesty's Consular Court.

That Sir J. H. D. Hay, Her Majesty's Minister at Tangier, in his despatches Nos. 29 and 30 of the 3rd and 18th ultimo, expressed concurrence in Mr. White's decision, and transmitted the opinions of several of the foreign Representatives in Morocco whom he had consulted on the subject, and who considered that the Consular Courts had no jurisdiction in cases involving title to land in Morocco.

That the Messrs. Thornton, however, on the receipt of Mr. White's answer, forwarded a petition to the Foreign Office, stating that they were advised that the British Consular Court at Tangier was the only Court in which they could enforce their rights against Mr. Scott, in accordance with the provisions of the Treaty of 1856 with Morocco, and of Article XI of the Madrid Convention of the 3rd July, 1880, and praying that Her Majesty's Consul at Tangier might be instructed to adjudicate on the case.

That the grounds in support of their contention in favour of the jurisdiction and

the arguments against it would be found fully set out in the inclosed papers, and we were requested to favour your Lordship with our opinion as to whether Her Majesty's Consular Court in Morocco could properly exercise jurisdiction in the present case, or whether Messrs. Thornton should have recourse to the native Tribunals.

In obedience to your Lordship's commands we have the honour to report—

Consular Court has no jurisdiction in cases relating to land.

That we agree with the reasons and opinions of Mr. White and Sir J. H. D. Hay, that the Consular Courts have no jurisdiction in cases involving title to land in Morocco.

And, in our opinion, Her Majesty's Consular Court in that country cannot properly exercise jurisdiction in Messrs. Thornton's case.

The Treaty of 1856 no doubt gives exclusive jurisdiction to the British Consular Court as regards all causes of litigation between British subjects. But it must be remembered that, at the time this Treaty was negotiated, the right of foreigners to hold land in Morocco had not been recognized. The practice has been to deal specially in Treaties of this nature with litigation in respect to real property, where the Consular Courts are not in a position, in ordinary course, to give effect to their judgment. And when the language of the Treaty of Madrid, which first recognized the right of foreigners to hold land in Morocco, is examined, it appears to us that the terms of Article XI show that it was not intended that questions arising respecting such rights should be determined by the Consular Courts.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Muscat.

### No. 36.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 15.)

*Temple, January* , 1881.

My Lord,

Case of "Rokeby." Jurisdiction of Consular Court at Muscat; as to condemnation of vessels and seizure of slaves beyond limits of Muscat; and legality of seizure by British officers of slaves on British vessels in waters of a foreign State without consent of such State.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st ultimo, stating that on the 2nd January, 1880, he had the honour to refer to our predecessors, by direction of the Marquis of Salisbury, certain questions on which the Government of India desired to have the opinion of the Law Officers of the Crown.*

That those questions were stated in their despatch of the 6th November, 1879, to Viscount Cranbrook, which formed one of the inclosures in the letter of the India Office to that Department of the 18th December, 1879. That the Report of the Law Officers of the Crown thereon was transmitted therewith.

That Sir J. Pauncefote had then the honour to lay before us, by direction of your Lordship, a letter from the India Office, dated the 25th November last, with its inclosures, from which it appeared that the Government of India, to whom the Report of our predecessors was transmitted, desired a further reference to the Law Officers of the Crown on two points which they considered were left in uncertainty by that Report, viz., whether the Consular Court at Muscat had jurisdiction to condemn slaves properly seized beyond the limits of Muscat; and, further, whether, under section 3 of 36 and 37 Vict., cap. 88, a British officer was justified in seizing slaves on board a British vessel lying within the waters of a foreign State without the consent of such State, in cases where the vessel is "engaged in or fitted out for the Slave Trade."

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* List of Papers:—Petition from Messrs. Thornton, received June 25; to Sir J. Drummond Hay, Telegraphic, October 10; ditto, No. 9, Consular, October 13; Sir J. Drummond Hay, Telegraphic, October 12; to Sir J. Drummond Hay, No. 10, Consular, November 8; Sir J. Drummond Hay, No. 29, Consular, November 3; ditto, No. 30, Consular, November 18; to Messrs. Lound and Harrison, December 5, 1881; Treaty, Great Britain and Morocco, December 9, 1856, No. 416; Madrid Convention, July 3, 1880, No. 683 Order in Council, August 27, 1857, Confidential, No. 1516; ditto, February 4, 1875, Confidential, No. 2573.

* India Office, December 18, 1879; Law Officers, March 1; India Office, April 6 and November 25, 1880; Muscat Order in Council of November 4, 1867; Slave Trade (East African Courts) Act, 1873; ditto, 1879; Act 36 & 37 Vict., cap. 88.

1881

That the Government of India observed that, in the case of the "Rokeby," to which the Report of the Law Officers had reference, the vessel was not so engaged or fitted out.

That for a more detailed statement of the question then raised, Sir J. Pauncefote was to refer us to the despatch of the Government of India to the Marquis of Hartington of the 12th December,* 1880, inclosed in the letter from the India Office to the Foreign Office of the 25th November, 1880; and that Sir J. Pauncefote was to request that we would favour your Lordship with our opinion thereon.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, a British officer is not, under 36 and 37 Vict., cap. 88, sec. 3, justified in seizing slaves on board a British vessel within the waters of a foreign State without the consent by Treaty or otherwise of such State in cases where the vessel is "engaged in, or fitted out for, the Slave Trade."

The question raised by the Indian Government, whether the Consular Court at Muscat has jurisdiction as a Court of Admiralty to condemn vessels or slaves when brought within its jurisdiction, without regard to the place where they are captured, or whether the jurisdiction of that Court is limited to vessels and slaves suspected of being used and detained for the purpose of the Slave Trade within the dominions of Muscat, is one of considerable difficulty. If it rested only on the construction of the Slave Trade (East African Courts) Act, 1873, we think it would be held that the Consul at Muscat was entitled to exercise only the more limited jurisdiction. We think the definition of "East African Courts" contained in that Act, when read with section 3, limited the jurisdiction of the Consul to cases where he was acting within the powers conferred upon him by Order in Council.

But an Act has since been passed (the Slave Trade (East African Courts) Act, 1879), to which the attention of the Government of India does not appear to have been called, which materially alters the Act of 1873. By the late Act a new definition is substituted for the term "East African Court." And when this new definition is read with section 3 of the Act of 1873, we think, though the point is not free from doubt, that the jurisdiction of the Consul is no longer limited as it was before.

We write this on the assumption that this extended jurisdiction is consistent with the terms of the Treaty between this country and the Imaum of Muscat, which is not before us.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Netherlands.

### No. 37.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 23.)*

Fine on Consul Annesley for neglect to appear as witness in Court.

My Lord, *Temple, June* 22, 1881.

WE were honoured with your Lordship's commands signified in Sir Julian Paucefote's letter of the 11th instant, stating that, by your Lordship's direction, he transmitted to us the correspondence noted in the margin† which had taken place between the Foreign Office and Her Majesty's Consul at Surinam, relating to a fine of 60 guilders imposed by the local Tribunal upon Mr. Annesley, on account of his neglecting to appear as a witness in obedience to a summons of the Court. That we would observe from the inclosed correspondence that Mr. Annesley, having paid under

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* Qy. 12th October.

† Mr. Annesley, No. 5, January 21; ditto, No. 9, February 21; ditto, No. 15, May 2; to Mr. Annesley, No. 1, March 12, 1881

protest the fine in question, amounting to about 5*l.*, asked that Her Majesty's Government should take steps to carry on an appeal to a higher Court in Holland.

That Mr. Annesley was informed, in your Lordship's despatch No. 1 of the 12th March, that Consuls enjoyed no immunity from the process of the Courts of the country in which they exercised their functions, and that, if the summons was not duly served, that was a ground for showing cause against the infliction of the fine.

That, if that view be correct, it appeared to your Lordship that the case was not one in which Mr. Annesley could properly claim the assistance of Her Majesty's Government. That Sir Julian Pauncefote was to request that we would be good enough to inform your Lordship whether we concurred in the terms of your Lordship's despatch above referred to, and in the view taken by your Lordship of the matter.

In obedience to your Lordship's commands we have the honour to report—

Course he should have pursued.

That the proper course for Mr. Consul Annesley to have adopted (assuming the summons to have been informal or informally served) would have been to attend the Court and object to the summons on that ground, or, if he had been unable to attend, to have sought for a remission of the fine.

Consuls are liable to process of Court.

His position as Consul gave Mr. Annesley no immunity from the process of the Court; and we concur in the terms of your Lordship's despatch No. 1 of the 12th March, and in the view taken by your Lordship of Mr. Annesley's case.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Pacific Islands.

### No. 38.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November 10.)*

Mr. Davies' claim against Hawaiian Government for return of differential duties levied on British goods.

My Lord, *Temple, November* 10, 1881.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the correspondence* respecting the claim of Mr. T. H. Davies against the Government of Hawaii, for the return of duties levied by them on certain goods of British growth and manufacture, while similar goods, the growth or manufacture of the United States of America, were, at the time, exempted from duty under the Reciprocity Treaty between the United States and Hawaii of January 1855.

That the claim of Mr. Davies was based on the most-favoured-nation clause of the Anglo-Hawaiian Treaty of 1851 (Article IV).† That copies of both Treaties were inclosed for reference.

That we should observe that Article IV of the British Treaty granted in general terms most-favoured-nation rights, but that by Article III which preceded it, it was agreed that any favour, privilege, or immunity whatever in matters of commerce or navigation which either Contracting Party had actually granted, or might hereafter grant to the subjects or citizens of any other State, should be extended to the subjects or citizens of the other Contracting Party gratuitously, if the concession in favour of that other State should have been gratuitous, or in return for a compensation as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement if the concession should have been conditional.

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* Major Wodehouse, No. 3, Commercial, October 27; to ditto, No. 2, Commercial, December 9, 1879; from ditto, No. 24, August 23, 1880; No. 2, Commercial, February 14; No. 6, Commercial, June 4; No. 7, July 4, 1881.

† No. 366.

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That Article IV of the British Treaty was denounced by the Hawaiian Government, but that before the stipulated notice had expired, Mr. Davies was compelled to pay, and did pay, under protest, the duties in question.

That Sir J. Pauncefote was to refer us to the letter of Hawaiian Minister to Major Wodehouse, of the 2nd June, 1881 (Inclosure 9 in Major Wodehouse's No. 7) which contained a full statement of the facts, and of the arguments on which the Hawaiian Government based their refusal to entertain the claim of Mr. Davies.

That they contended that as the duty was taken off American goods in return for particular concessions, Her Majesty's Government were not entitled to claim a similar exemption in that particular case.

That Lord Clarendon in 1856 concurred in that view (see Hawaiian Treaty Papers, Printed Correspondence,* p. 10, Mr. Carter's Memorandum), but that Mr. Davies' claim had since been supported by Her Majesty's Government.

That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion as to whether, in view of the considerations urged by the Hawaiian Foreign Secretary in his letter of the 2nd June, Mr. Davies' claim was entitled to further support at the hands of Her Majesty's Government, and, if so, whether the Hawaiian Government were justified in their contention that Mr. Davies must prefer his claim before the local Tribunals.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government ought not, on account of previous policy of Great Britain, to support this claim.

That the terms of Article IV of the Treaty of 1851 are general and absolute, and, if they are to be read without qualification, the act of the Hawaiian Government in levying the duties upon Mr. Davies' goods was clearly a violation of the Treaty. But the question arises whether the terms of this Article are controlled by the provisions of Article III. Two constructions of these Articles are possible: the one that Article III must be read with, and as qualifying in the cases to which it applies, the general terms of Article IV; the other, that Article III applies only to cases in which the privilege granted would not involve the imposition of differential duties. Each of these views is well open to argument. Upon the whole, our opinion inclines somewhat to the latter.

It appears, however, that in 1855, when a Reciprocity Treaty with the United States similar to that recently entered into was in course of negotiation, Her Majesty's Representative in the Hawaiian Islands, under the instructions of Lord Clarendon, addressed to the Hawaiian Minister for Foreign Affairs a note, in which it was expressly admitted that if such a Treaty of Commerce were concluded by which concessions of Tariff were made in consideration of reciprocal advantages, Great Britain could not, as a matter of right, claim the same advantages for her trade under the strict letter of the Treaty of 1851. And it is manifest that this was the position then maintained by the Hawaiian Minister. We have therefore both the persons who negotiated the Treaty putting this construction upon it—a construction which, as we have said, it is well capable of bearing, and which, in view of the facts to which we have referred, there can be little doubt that it was intended to bear.

Under these circumstances it would seem hardly equitable that Her Majesty's Government should now insist upon another construction of the Treaty and require the Hawaiian Government to satisfy the claim of Mr. Davies, the more so as Article IV of the Treaty has been since 1858 open to denunciation at any time upon twelve months' notice; and it is possible that it would have been denounced at an earlier period than it was, had not Lord Clarendon acquiesced in the construction put upon the Treaty by the Hawaiian Government.

We are, therefore, of opinion that Her Majesty's Government cannot further support the claim of Mr. Davies.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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[*] Confidential Print, No. 3496.

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# Peru.

## No. 39.

*The Attorney- and Solicitor-General to Earl Granville.—(Received January 13.)*

January 13, 1881.

My Lord,

Suspected vessel fitting out at Newcastle-on-Tyne for Chilean Government.

THE Solicitor-General and I have received Sir Julian Pauncefote's letter of to-day's date, in which he requests us to advise your Lordship whether a vessel, suspected of being about to be dispatched from the Tyne, contrary to the provisions of the Foreign Enlistment Acts, should be seized and detained.

The urgency of the case has prevented us from affording more than a brief consideration to the question presented to us.

It appears to us that the information* before your Lordship leads to an almost certain conclusion that the vessel in question is intended to be used for the purposes of warfare; but the evidence to establish the fact that the vessel is to enter the service of Chile is at present very slight.

Should be detained, and steps taken to obtain further information.

We are, however, of opinion that there is sufficient evidence to justify action being taken, and that "the Local Authority" should be advised to seize and detain the vessel.

We suggest that immediate application should be made to the Peruvian Minister to furnish your Lordship with particulars of the information he refers to in his letter of the 8th instant. It will be well also to direct the Custom Officers at Newcastle to place before your Lordship any information they may possess as to the destination of the vessel.

When such information has been obtained, the release or further detention of the ship can be determined upon.

We are, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.

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## No. 40.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 18.)*

*Temple*, January 15, 1881.

My Lord,

Suspected vessel fitting out at Newcastle-on-Tyne for Chilean Government.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 14th instant, having reference to our Report of the 13th, and stating that he was directed by your Lordship to transmit to us a letter from the Peruvian Chargé d'Affaires at this Court,† containing further information of the grounds upon which he had reason to suspect that the vessel then fitting out in the Tyne was intended for the use of the Chilean Government.

That Lord Tenterden was also to transmit to us copies of a letter received through the Treasury that afternoon, and of its inclosure, from the Board of Customs.‡

That your Lordship would be glad to be furnished with any observations we might have to offer on those papers.

In obedience to your Lordship's commands we have the honour to report—

Steps to be taken.

That, in our opinion, efforts should be continued to obtain further information in relation to the destination of the vessel.

It would be important if the Peruvian Minister could furnish proof that Admiral Simpson or Captain Lynch were, when in this country, in communication with the ship-builders.

We are unaware whether the vessel is now under the control of Messrs. Mitchell or Messrs. Armstrong, but we see no objection to addressing, to whomsoever has that control, a communication to the effect that the vessel is being detained on the ground that the Government has reason to believe that she is intended to be employed in the service of Chile, and asking whether the person to whom the communication is addressed have any observations to make. No direct question should be put, as it may be said that the answer might lead to criminate the persons addressed.

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[*] Treasury, January 12; Board of Customs (communicated by Treasury), January 12, 1881.

[†] Colonel Almonte, January 14, 1881.

[‡] Customs to Treasury, January 14, 1881.

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We would also suggest that the officer in charge of the vessel should be directed to do nothing to interfere with her completion. Until further information be obtained we think the Secretary of State's warrant had better not be issued.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 41.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

(Very Pressing.)
Gentlemen, *Foreign Office, January* 17, 1881.

Detention of suspected vessel fitting out at Newcastle-on-Tyne for Chileans.

WITH reference to your Reports on the subject of the vessel of war suspected of being equipped in the Tyne for the naval service of Chile, and detained by the Collector of Customs at Newcastle under the provisions of the Foreign Enlistment Act, I am directed by Lord Granville to lay before you the further papers noted in the margin,* and to request that you will take the same into consideration, and favour his Lordship with your opinion as to whether Messrs. Armstrong should be invited to avail themselves of the provisions of section 8 of the Foreign Enlistment Act, and to give security to Her Majesty's Government for insuring that the vessel in question, or any other vessel of war under their control, which is being built or equipped for the Chilean Government, shall not be dispatched, delivered, or removed without the licence of Her Majesty's Government before the termination of the war; and, if so, as to the amount of the security to be demanded.

I am to state that this was the course followed in the case of the Turkish ironclad referred to in the Report of the Law Officers of the Crown of the 2nd May, 1877 (see collection for 1877, No. 69, p. 63).†

If you should think the above course inexpedient, I am to request that you will be good enough to advise Lord Granville what other steps should be taken under the circumstances, and also whether the vessel in question may be allowed to leave the slipway without prejudice to her safe custody in order not to interfere with the progress of her construction or equipments pending the further measures to be decided on.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

*Report.*‡

My Lord, *January* 17, 1881.§

Messrs. Armstrong should give security.

In reply to the letter of Sir Julian Pauncefote received late this evening, and which appears to require an immediate answer, we have to say that we are of opinion that Messrs. Armstrong should be invited to avail themselves of the provisions of section 8 of the Foreign Enlistment Act, and to give security to the effect mentioned in Sir Julian Pauncefote's letter.

The amount of security to be given depends upon considerations in relation to which we require further information.

Vessel may leave slipway.

In accordance with the opinion already expressed by us, that nothing should be done to prevent the completion of the vessel, we think she should be allowed to leave the slipway without prejudice to her safe custody pending the further measures to be decided on.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Treasury, January 17; Lord Lyons, No. 43, January 16; Messrs. Armstrong, January 15; Law Officers' Reports, vol. 1877; telegram to Messrs. Armstrong, January 17.

† Confidential, 4216.

‡ The Law Officers' Report upon this subject could not be found when this collection of Reports was made, and it was therefore necessary to obtain the original draft of the Report. The Law Officers, however, do not retain copies of their Reports in the exact form in which they are transmitted to the Foreign Office, that is to say, with the preamble in which the Foreign Office letter to them is recapitulated. It has, therefore, been deemed advisable to print the Foreign Office letter in this instance, as the bare Report, without the usual preamble, would not be wholly intelligible.

§ The original of this Report was dated the 18th January, 1881.

## No. 42.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 18.)

*Temple, January* 18, 1881.
My Lord,

Suspected vessel fitting out at Newcastle-on-Tyne for Chilean Government.

We were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th instant, stating that, with reference to our Report of the 13th instant respecting the vessel lying in the Tyne, and suspected of being equipped for the naval service of Chile, he was directed by your Lordship to transmit to us a letter from the Treasury dated the 15th instant, with its inclosures, from which we would perceive that the vessel in question was detained by the Collector of Customs at Wallsend, half-way between Newcastle and the sea, where she had been hauled into a slipway. An officer of Customs had been placed on board, and your Lordship had requested the Lords Commissioners of the Admiralty to take at once such measures as might be necessary to support the action of the Collector of Customs at Newcastle, and to prevent the possibility of the vessel escaping from his custody.

In obedience to your Lordship's commands we have the honour to report—

Steps to be taken.

That we think your Lordship has acted wisely in asking the Lords Commissioners of the Admiralty to support the action of the Collector of Customs at Newcastle.

The Report of the Inspector of the Water-guard confirms us in the opinion expressed in our Report of the 15th that an opportunity should at once be afforded to the builders, or those in charge of the vessel, to state for what service she is destined.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 43.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 19.)

*Temple, January* 18, 1881.
My Lord,

Suspected vessel fitting out at Newcastle-on-Tyne for Chilean Government.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 17th instant, stating that, with reference to our Reports of the 13th and 15th instant upon the subject of the vessel in the Tyne suspected of being intended for the naval service of Chile, Lord Tenterden was directed to transmit to us the accompanying letter from the Secretary to the Peruvian Legation,* making further statements in regard to the vessel in question, and contending that, under the Foreign Enlistment Act, Her Majesty's Government ought to have been fully informed of the proceedings in connection with her.

That Lord Tenterden was to request that we would favour your Lordship with our opinion as to the answer that should be returned to Colonel Almonte.

In obedience to your Lordship's commands we have the honour to report—

Answer to be returned to Peruvian Chargé d'Affaires.

That we think your Lordship may, in reply to the letter of the Peruvian Minister, state that the builders have not given any notice under section 8 of the Foreign Enlistment Act, and that no burthen of disproof is cast upon them under section 9 until it has been shown that a vessel has been built for the service of a foreign State at war with a friendly Power. It will also be desirable to inform the Peruvian Minister that he is entirely in error in stating that, "according to section 25, the Secretary of State must have been perfectly acquainted with all particulars of such vessels from the Admiralty Inspector." That section only empowers the Secretary of State to authorize a person to enter upon private ship-yards and inquire as to the destination of vessels, if he has information that they are to be employed in the naval service of a State at war with a friendly Power. No such authority was given in this case, as the vessel was in the river before any information reached the Secretary of State which would justify such interference, and no report of any kind was made by the Admiralty Inspectors. At the same time Colonel Almonte may be informed that

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* Colonel Almonte, January 14, 1881.

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every care will be taken to prevent the sailing of any vessel destined to be employed in the naval service of Chile.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 44.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 26.)

Suspected vessel fitting out at Newcastle-on-Tyne for Chilean Government.

My Lord, *Temple, January* 25, 1881.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 18th instant, stating that, with reference to Sir Julian Pauncefote's letter of the 17th instant, he was directed by your Lordship to inclose, for our consideration, further papers, as marked in the margin,* relative to the vessel being fitted in the Tyne for the Chilean Government.

In obedience to your Lordship's commands we have the honour to report—

Nothing to add to former Reports.

That we have perused the papers now sent, and have nothing to add to our former Reports.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 45.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 1.)

Suspected vessel fitting out at Newcastle-on-Tyne for Chilean Government.

My Lord, *Temple, February* 1, 1881.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, having reference to our Report of the 18th instant, and stating that he was directed to transmit to us, for our information, the papers noted in the margin,† containing further particulars respecting the vessel in the Tyne supposed to be fitting out for the Chilean Government; and Sir Julian Pauncefote was to request that we would inform your Lordship whether, in our opinion, Messrs. Armstrong's letter of the 18th called for any reply beyond a simple acknowledgment.

That your Lordship had informed Messrs. Armstrong, in reply to their letter of the 22nd January, that Her Majesty's Government had no objection to the vessel proceeding on her trial trip, provided the guard of Marines remained on board, and that she was taken to sea for that purpose, without prejudice to her custody.

In obedience to your Lordship's commands we have the honour to report—

Answer to be returned to Messrs. Armstrong.

That Messrs. Armstrong's letter, in our opinion, merely requires acknowledgment.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 46.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 31.)

Detention of suspected vessel fitting out at Newcastle-on-Tyne for Chileans.

My Lord, *Temple, March* 30, 1881.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to us a letter from the Treasury* upon the subject of the Chilean vessel lately detained in the Tyne under the Foreign Enlistment Act.

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* Treasury, January 17; ditto, January 18; Messrs. Mitchell (Telegraphic), January 18; to Messrs. Mitchell (Telegraphic), January 18, 1881.

† Admiralty, January 18; Messrs. Armstrong, January 18; Mr. Campbell, January 19; Messrs. Armstrong, January 22, 1881.

That we would see from that letter and its inclosures that Messrs. Armstrong and Co. had executed a bond for 10,000*l.* as security that the vessel in question should not, without the license of Her Majesty, be delivered to the Government of Chile, nor be permitted to leave the Tyne until the termination of the war between Chile and Peru, without prejudice to any measures which Her Majesty's Government might think proper to take to prevent the vessel being so delivered or dispatched. That Messrs. Armstrong and Co. had also given a written assurance that during the continuance of that war notice should be given to Her Majesty's Government of the intended departure from the Tyne, or transference from their control, of any war vessel under construction by them.

Precautions taken effectual.

That there seemed to be, therefore, no reason now to fear an infraction of the Foreign Enlistment Act in regard to the vessel in question, but that we would observe that in the Treasury letter, the question was raised with reference to future action, how far the Foreign Enlistment Act imposed an obligation upon Her Majesty's Government to originate surveillance over vessels of war building in this country, without waiting to be set in motion by the Representatives of the Powers against whom such vessels might be intended to act.

That your Lordship apprehended that such an obligation, apart from the prescriptions of the Act, devolved upon Her Majesty's Government by international law, and that if we should concur your Lordship proposed to reply to the Treasury to that effect, and to recommend that the proper officers be instructed to exercise due diligence in watching all vessels of war under construction in private building yards in this country, and to report at once every case in which they had reasonable cause to believe that any vessel was being built, equipped, or about to be dispatched in violation of the Foreign Enlistment Act, adding, that on receiving such intelligence the Secretary of State would at once request an explanation from the Representative of the belligerent State, for whose service it was believed the vessel was being built or equipped or intended to be dispatched.

That with regard to the fear implied in the concluding passage of the Treasury letter that the consequence of unnecessarily interfering with an important branch of private trade might be to drive that trade to other countries, Sir Julian was to inclose a copy of the Report of the Neutrality Laws Commissioners from which we would perceive that the apprehensions expressed in the Treasury letter were fully discussed by Sir William Vernon Harcourt in the observations appended by him to the Report of the Commission, in which he deprecated any interference by law with the mere building of ships of war as distinguished from their being armed or dispatched for the service of a belligerent State. That, nevertheless, the resolutions contained in the Report of the Commission on that point were adopted by Legislature.

That Sir Julian Pauncefote was to request that we would take the matter into our consideration and inform your Lordship whether we concur in the answer which your Lordship proposed to return to the Treasury, and, if so, that we would favour your Lordship with any suggestions that might occur to us as to any further precautions that might properly be taken to prevent infraction of sections 8 and 10 of the Foreign Enlistment Act without undue interference with legitimate trade.

In obedience to your Lordship's commands we have the honour to report—

Opinion as to obligations imposed by international law with regard to building and fitting out of vessels of war, and course to be pursued to carry out such obligation.

That in our opinion by international law Her Majesty's Government is under the obligation to take precaution that no ship be within Her Majesty's dominions built or equipped with the intent that it shall be employed in the military or naval service of any foreign Power against any foreign belligerent Power with whom Her Majesty shall not then be at war.

This obligation can be fulfilled only by a watch being kept over vessels of war building in this country, and the proper officers may be instructed to exercise this duty of watching and reporting upon the construction of all vessels of war in private yards within Her Majesty's dominions which there is any reason to suspect may be in course of building or equipment for any foreign Power which is at war.

No doubt the exercise of this obligation and duty might be vexatious, and possibly to some extent, and in a sense mischievous, to the trade of the country, and therefore directions should be given to the officers employed that they are not in any way to interfere with the building of ships, but to confine themselves to the making their reports to the proper quarter from time to time.

Reply to Treasury letter.

We therefore see no objection to your Lordship's informing the Treasury of the

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* Treasury, March 2, 1881.

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course which you propose to take, and adding, that on receiving any intelligence of an intended or suspected violation of the Foreign Enlistment Act you will request an explanation from the Representative of the belligerent State for whose service the vessel is believed to be in course of construction or equipment, or to be intended to be dispatched.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

## Portugal.

### No. 47.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 9.)

*Temple, April* 8, 1881.

My Lord,

Collision between "City of Mecca" and "Insulano."

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th February last, stating that on the 14th June, 1880, he had the honour to lay before us, by direction of your Lordship, a printed correspondence on the subject of the four suits instituted in Lisbon against the owners of the British steamer "City of Mecca," and arising out of her collision with the Portuguese steamer "Insulano" on the high seas in January 1875,* and to request that we would favour your Lordship with our opinion as to whether a note addressed by Her Majesty's Minister at Lisbon to the Portuguese Minister on the 30th January, 1880, protesting against the final Judgment on appeal of the Supreme Court of Justice of Portugal in the first suit, should receive the approval of Her Majesty's Government.

That in our Report on that reference, dated the 8th July, 1880 (which was printed at page 4 of the "Further Correspondence," Part II), while doubting the advisability of approving Mr. Morier's note in its entirety, we advised that the objection to the jurisdiction of the Portuguese Court might be maintained, and that an early answer from the Portuguese Government should be urged.

That that answer had now been received. That it was dated the 21st September, 1880, but owing to the time which had been occupied in translating so lengthy a document and in correcting the print, it had not been found possible to lay it before us at an earlier date.

That the Portuguese answer formed an inclosure in Mr. Morier's despatch No. 76, Commercial, of the 8th November, 1880 ("Further Correspondence," No. 31, p. 34).

That a detached copy of that despatch was now transmitted with Mr. Morier's notes thereon printed in the margin.

That Sir Julian Pauncefote was to state that the late Law Officers of the Crown, in their Report of the 4th December, 1879 ("Correspondence," No. 69, p. 118), advised that the intervention of Her Majesty's Government in the case was justified both on the point of jurisdiction and that of the meaning and application of the Sailing Rules, and that in view of the difference of opinion between our predecessors and ourselves as to the right of Her Majesty's Government to protest against the Judgment on the ground that it proceeded in disregard of the International Sailing Rules, the papers were laid before the Lord Chancellor ("Further Correspondence," No. 13, p. 12), who was requested to favour your Lordship with his views on the case, and especially on the point above mentioned.

That the findings of the jury in the first suit were contained in their answers to the forty-five queries put to them ("Correspondence," p. 99).

That the Portuguese text of the Sailing Rules referred to, with a translation, and the corresponding English and French Rules, had been printed in parallel columns, for convenience of reference, in a separate paper, which was transmitted.

That Sir Julian Pauncefote was to refer us to a Memorandum on the case by the Lord Chancellor, dated the 25th July, 1880, and printed at page 13 of the "Further Correspondence," No. 15.

That he (Sir Julian Pauncefote) would have the honour to address us in a separate letter of the same date on the subject of the second suit, arising out of the same collision (that instituted by the French underwriters), and also to lay before us, in connection therewith, a further Memorandum by the Lord Chancellor, dated the 30th November, 1880 ("Further Correspondence," No. 30, p. 32), to which he was to invite our attention in connection with the present reference.

That Sir Julian Pauncefote was to request that we would take the reply of the Portuguese Government to Mr. Morier's note of the 3th January, 1880, into our consideration, and that we would favour your Lordship with our opinion as to what further action, if any, Her Majesty's Government could properly take in relation to the Judgment of the Supreme Court of Justice in the first suit (Lloyd *v.* the "City of Mecca"), which became final on the 11th June, 1880, by the rejection of the "Embargos" or counter-allegations filed by the Counsel for the "City of Mecca" against the decision of that Court pronounced on the 21st June, 1879 (Mr. Vansittart's No. 53 of the 6th July, 1880: "Further Correspondence," No. 11, p. 6).

In obedience to your Lordship's commands we have the honour to report—

Objection as to jurisdiction cannot be maintained.

That the further information now before us we think shows that the objection taken that the Portuguese Courts had assumed a jurisdiction not justified by law (and which appeared to us well founded when we made our Report of the 8th July, 1880), cannot be maintained.

The opinion we then expressed was given upon the assumption that the Judgment of the Supreme Court was the decision of the Court of Final Jurisdiction, and that the reasons upon which that Judgment proceeded must be taken as laying down finally and conclusively the legal grounds upon which the jurisdiction claimed by the Portuguese Court rested.

It now appears, however, that the Court of Relação is really the Court of Last Instance for the trial of the cause, and that the Supreme Court of Justice "is a Court of Revision, the sole duty of which is to examine whether the Courts of First and Second Instance have complied with the laws of procedure, and have adhered to the provisions of the law;" and that the reasons given only express the opinion of the reporting Judge, and are not to be taken as a binding exposition of the law.

When the Judgments of the Courts of First Instance and of the Courts of Relação are examined, it appears that they do not base their claim of jurisdiction upon the extraordinary proposition put forward in the "consideranda" of the Supreme Court, but upon the construction they place upon certain provisions of the municipal law of Portugal, which they were clearly competent to interpret, and which, if correctly interpreted by them, establish their jurisdiction upon grounds which do not infringe any principle of international law.

Although the Portuguese Minister relies upon these facts as an answer to that part of Mr. Morier's despatch of the 30th January, 1880, which dealt with the question of jurisdiction, he does not distinctly repudiate the view which finds expression in the "consideranda" of the Supreme Court. On the contrary, he states that distinguished authorities on international law have expressed the same opinion as that adopted by the reporting Judge, and he proceeds to support their contention by various references.

Portuguese doctrine as to territorial waters ought to be disclaimed.

Under these circumstances, we think Her Majesty's Government will be justified in calling upon the Portuguese Government to disclaim in an authoritative manner the doctrine that the territorial waters of Portugal extend as far as sight can reach from her shores. The more so as this is distinctly made one of the grounds of the decision of the Commercial Court of First Instance in the suit brought by the owners of the "Insulano."

We have again carefully examined the Judgments delivered by the various Courts, and we are still of opinion that they are not based exclusively upon any misinterpretation or misapplication of the International Sailing Rules.

We have no doubt that the interpretation of some of those Rules which the Courts were disposed to adopt, or did adopt, was erroneous, but the decision seems to us to have proceeded alternatively, at all events, on grounds independent of such error. The reasoning of the Courts we take to be this: Conceding that the construction of Rule 14 (English) contended for on behalf of the "Insulano" was wrong, and that she pursued her course on the occasion in question in violation of that Rule, yet the

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* Further Correspondence, Confidential, No. 4633.

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"City of Mecca" might, by the exercise of due care and by a compliance on her part when the danger was imminent with the provisions of the subsequent Rules, have avoided the collision, and so prevented the original breach of Rule by the "Insulano" resulting in any mischief.

We do not say that in our opinion this view was well founded in point of fact. But it is a view of the evidence which might conceivably be taken, and it may well be that according to the law of Portugal the "City of Mecca" would in such circumstances properly be held liable for the damage done. Indeed, we incline to think that it would be in accord, in that case, with the rule of the common law in England, though such a case as the present has in this country been dwelt with by special legislation, it being provided that any vessel violating the Sailing Rules shall be deemed to be in fault.

Case only for strong remonstrance.

We think the case is one for strong diplomatic remonstrance for the purpose of securing that the translation of all the Rules which have, owing to mistranslation, been misinterpreted, should be set right, and the corrections made in such a public and authoritative manner as will prevent any question for the future.

We find it difficult to advise that Her Majesty's Government should go beyond remonstrance, and claim an indemnity for the owners of the "City of Mecca."

We quite feel that the false interpretation of the Sailing Rules may have influenced and very likely did bias the Judgments of the Courts. But apart from the consideration that our own Government is not altogether free from blame in relation to the mistranslation of the Rules, we are pressed by the fact that the Judgments appear to have a substantial basis independent of the misinterpretation of the Rules. And as our claim would necessarily be based upon this latter ground alone, we feel that our position even in demanding an arbitration would be a precarious one.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 48.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 9.)

*Temple, April* 8, 1881.

My Lord,

Collision between "City of Mecca" and "Insulano."

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th February last, stating that in continuation of his separate letter of that date respecting the case of the "City of Mecca," he was directed to lay before us, for our consideration and advice, the papers noted in the margin,* with reference to the second suit instituted at Lisbon against the owners of the "City of Mecca," namely, that of the French Insurers.

That at the date of our last Report in relation to the "City of Mecca" (8th July, 1880), the only one of the four suits instituted against her which had occupied our attention was the first one, namely, that of Lloyd's.

That the second suit, that of the French Insurers, was originally decided by the Court of First Instance in favour of the "City of Mecca" on the point of jurisdiction ("Correspondence," p. 101). That that decision was reversed by the Court of Relação, and the "City of Mecca" was held solely to blame, and condemned in all the damages and costs ("Correspondence," p. 40). That that last Judgment was confirmed by the Supreme Court of Justice on the 15th June, 1880 (Mr. Vansittart's No. 55 of the 9th July, 1880; "Further Correspondence," No. 12, p. 7).

That that suit, therefore, like the first, had then reached its final stage (with the exception of the formality of lodging "Embargos"), and Her Majesty's Minister at Lisbon had addressed a despatch to your Lordship (No. 67 of the 5th October, 1880; "Further Correspondence," No. 25, p. 20), containing an elaborate Memorandum on the three Judgments pronounced therein. That Mr. Morier in that despatch abandoned the point of jurisdiction, but contended that the Judgments in question called for diplomatic intervention, on the ground that they proceeded on a misconstruction of the International Sailing Rules, and by reason of their non-application or misapplication to the admitted facts of the case.

That in Sir Julian Pauncefote's separate letter of that date he referred us to a Memorandum by the Lord Chancellor of the 25th July, 1880 ("Further Correspondence," No. 15, p. 13), in which that point was dealt with by his Lordship in relation to the first suit in paragraphs 4 and 5.

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* Correspondence, No. 4243; Further Correspondence, No. 4633.

That on receipt of Mr. Morier's despatch No. 67 of the 5th October ("Further Correspondence," No. 25, p. 20), it was laid before the Lord Chancellor, with a request that he would favour your Lordship with his opinion whether, having regard to paragraphs 4 and 5 of his Memorandum of the 25th July, the Judgment in the second suit then under consideration would justify diplomatic representation on the grounds urged by Mr. Morier.

That the findings of the jury in the second suit would be found in their answers to the thirty-four counts placed before them ("Correspondence," p. 38).

That the Portuguese text of the Sailing Rules referred to in the case with a translation and the corresponding English and French Rules, had been printed in parallel columns for convenience of reference in a separate paper transmitted therewith.

That Sir Julian Pauncefote then referred us to the Lord Chancellor's further Memorandum of the 30th November, 1880, in reply to the question submitted by your Lordship ("Further Correspondence," No. 30*, p. 32*).

That Sir Julian Pauncefote was also to refer us to the answer of the Portuguese Government to the protest of Her Majesty's Government against the Judgment in the first suit, which formed the subject of the separate reference to us in his letter No 1 of that date, and he was to request that we would favour your Lordship with our opinion as to what action, if any, Her Majesty's Government could properly take in relation to the Judgment of the Supreme Court of Justice in the second suit.

In obedience to your Lordship's commands we have the honour to report—

Referring to Report on first suit, and repeating opinion given therein.

That we have, in answer to Sir Julian Pauncefote's letter, to refer your Lordship to our Report upon the first suit against the "City of Mecca," and to repeat the opinion there given as to the course which, in our opinion, Her Majesty's Government can now take.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 49.

*Note by the Lord Chancellor.*

Collision between "City of Mecca" and "Insulano. Approving Law Officers of the 8th April.

THE opinion of the Law Officers of the 8th April is, in my judgment, sound and correct as to all the questions of international law with which it deals, and also in its appreciation of the Portuguese Judgments in the several cases.

Ten-mile limit theory. Portuguese assurances.

I observe that the Portuguese Law Officers, though reasoning rather loosely as to the power of different nations to define for themselves the extent of their own territorial waters, give up, as untenable, the ten-mile theory. (Inclosure 2 in Mr. Morier's No. 76, Commercial, of 8th November, 1880, No. 31, pp. 74 and 75.)* On this point, therefore, I should expect that the Portuguese Government will give the assurances, which we are entitled to ask for, without any difficulty.

Revision of Portuguese version of Sailing Rules necessary.

But I see, with much surprise, in the same opinion of the Portuguese Law Officers, that they state the "City of Mecca" to have been condemned "on the ground of her non-compliance with Articles 17, 18, 20, and 21 (of the Decree embodying the Sailing Rules) *as to the meaning of which Articles no doubts have arisen.*" This makes it doubly necessary that we should require such a complete revision of the Portuguese translation of the Rules as will bring their sense for the future into conformity with the true intention of the international compact.

Opinion as to demand for compensation.

I continue to believe that, but for the misinterpretation of the Rules, the "City of Mecca" could never have been held *solely* to blame; and, therefore, that Her Majesty's Government would be justified (if they thought it expedient) in endeavouring to obtain some compensation for the owners of the "City of Mecca" *upon that ground alone.* But I agree with the Law Officers, that, as the matter stands upon the face of the Judgments, it cannot be so clearly demonstrated that they are *necessarily* founded upon any misinterpretation of the Rules as to make such a claim to compensation one which could be pressed to extremity; and I am not prepared to differ from their view, that "our position, even in demanding an arbitration, would be a precarious one." The case,

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* Confidential Print, Further Correspondence, No. 4633.

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nevertheless, leaves on my mind a very disagreeable impression of a substantial failure of justice.

It would be desirable (I think) that Her Majesty's Government should ascertain what have been the results (if any) of the actions founded on these Portuguese Judgments which have been brought against the owners of the "City of Mecca" in this country. My impression is, that some such actions are still pending.

(Signed) SELBORNE.

30, *Portland Place, April* 21, 1881.

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## No. 50.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September* 10.)

**Collision between the "City of Mecca" and the "Insulano." Approve proposed draft to Mr. Morier on subject of arbitration.**

My Lord, *Temple, September* 10, 1881.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th ultimo, stating that, with reference to the case of the "City of Mecca," and to our two Reports thereon of the 8th April last, he had the honour to transmit to us, by direction of your Lordship, the documents noted in the margin and comprising a further despatch from Her Majesty's Minister at Madrid (No. 76, Commercial), which, although dated the 21st December, 1880, was not received until the 23rd April last, and, consequently, after the date of our Reports above mentioned.

That in that despatch Mr. Morier strongly urged that an effort should be made to induce the Portuguese Government to submit the case to international arbitration, on the ground that the "City of Mecca" was held solely to blame and was mulcted in the whole of the damages and costs, whereas the evidence in the case and the findings of the jury showed that the master of the "Insulano," in the course he followed, proceeded on a misconstruction of Article 14 of the Sailing Rules, the true meaning of which was explained in an official notification issued by the Portuguese Government at the time of the litigation, on the representation of Mr. Morier.

That your Lordship had not failed to note that, in our opinion, the position of Her Majesty's Government, in demanding an arbitration, would be a precarious one. That, nevertheless, your Lordship could not divest yourself of the impression that a substantial failure of justice had occurred, and that the reasons advanced by Mr. Morier for pressing the Portuguese Government to refer the case to arbitration were of considerable weight. That they went beyond the mere question between the owners and underwriters of the "Insulano," and that your Lordship was disposed to think that Her Majesty's Government should do what was in their power to obtain redress for them, whatever might be the event. That your Lordship had accordingly caused the draft of a despatch to Mr. Morier to be prepared for our consideration, setting out the grounds on which Her Majesty's Government would invite the Portuguese Government to refer the case to international arbitration, and that Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether it was open to any objection in point of law, or might properly be communicated as proposed to the Portuguese Government by Mr. Morier.

That, in conclusion, Sir Julian Pauncefote was to draw our attention to the Report from the "Times" of the 5th May last (a copy of which was inclosed), from which we would perceive that the writ issued by the English underwriters in the Admiralty Division of the High Court of Justice, with a view to enforcing against the "City of Mecca" in this country the Judgment of the Portuguese Tribunal in their favour, had been set aside on appeal, it having been ascertained that the Portuguese Judgment was *in personam* and not *in rem*.

And that your Lordship would be glad to be favoured with our Report at our earliest convenience.

In compliance with the request contained in Sir Julian Pauncefote's letter, and in obedience to your Lordship's commands, we have the honour to report—

That we think the accompanying draft of a despatch to Mr. Morier is not open to any objection in point of law, and may properly be communicated as proposed to the Portuguese Government.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

1. Law Officers' Reports of April 8, 1881.
2. Correspondence respecting Collision, Confidential No. 4243.
3. Further Correspondence, No. 4633.
4. Extract from the "Times" of May 5, 1881. (Judgment of Court of Appeal in case of the "City of Mecca.")
5. Mr. Morier's No. 79, Commercial, of December 2, 1880.
6. Draft to Mr. Morier.

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## Annex.

*Draft of Despatch to Mr. Morier.*

Sir, *Foreign Office, September* , 1881.

HER Majesty's Government have carefully considered the reply of the Portuguese Minister for Foreign Affairs to the note which you addressed to his Excellency on the 30th January, 1880, on the subject of the Judgment pronounced by the Supreme Court of Justice of Portugal, in a suit instituted in Lisbon against the owners of the British steamer "City of Mecca," and arising out of a collision between that vessel with the Portuguese steamer "Insulano" on the high seas in January 1875.

The reply of the Portuguese Minister to your note is dated the 21st September, 1880, and was transmitted by you in your despatch No. 76, Commercial, of the 8th November, 1880; but owing to the time which has been occupied in the translation of documents, in the examination of the voluminous correspondence relating to the case, and in references to the Law Officers of the Crown, Her Majesty's Government have been unable until now to furnish you with further instructions on the subject.

There were two grounds on which Her Majesty's Government based their right of diplomatic intervention—the excess of jurisdiction by the Portuguese Tribunals, and their failure to give effect to the International Sailing Rules.

The first cause of complaint was the assumption of jurisdiction by the Portuguese Courts to deal with a suit *in personam* beyond the limit which could properly appertain to them, and the doctrine laid down by the Court of Final Appeal, that the territorial jurisdiction and the authority of the Civil and Criminal Laws of Portugal extend as against British subjects over ten miles or more of the sea visible from the Portuguese coast.

It now appears, however, from the note of Senhor Braamcamp, that the reasons upon which the Judgment of the Supreme Court proceeded must not be taken as laying down the legal grounds on which the jurisdiction claimed by the Portuguese Court rested. It is explained that the Supreme Court is a Court of Revision, the sole duty of which is to examine whether the Courts of First and Second Instance have complied with the Laws of Procedure, and have adhered to the provisions of the law; and that the reasons given only express the opinion of the reporting Judge, and are not to be taken as a binding exposition of the law.

When the Judgments of the Courts of First Instance and of Relação are examined, it appears that those Courts do not base their claim of jurisdiction upon the proposition put forward in the "consideranda" of the Supreme Court, but upon the construction they place upon certain provisions of the municipal law of Portugal, which they were clearly competent to interpret, and which, if correctly interpreted by them, establish their jurisdiction upon grounds which do not infringe any principle of international law.

But, although the Portuguese Minister relies upon these facts as an answer to that part of your note of the 30th January, 1880, which deals with the question of jurisdiction, he does not distinctly repudiate the view which finds expression in the "consideranda" of the Supreme Court. On the contrary, his Excellency states that distinguished authorities on international law have expressed the same opinion as that adopted by the reporting Judge, and he proceeds to support their contention by various references.

Under these circumstances, Her Majesty's Government feel justified in calling upon the Portuguese Government to disclaim in an authoritative manner the doctrine that the territorial waters of Portugal extend as far as sight can reach from her shores; the more so, as this is distinctly made one of the grounds of the decision of the Commercial Court of First Instance in the suit brought by the owners of the "Insulano."

The Portuguese Law Officers in their Report annexed to Senhor Braamcamp's

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note abandon that doctrine as untenable, and I conclude therefore that the Portuguese Government will have no difficulty in giving the assurances which Her Majesty's Government consider themselves entitled to ask on this point.

The second ground of remonstrance was that, in the view of Her Majesty's Government, a serious miscarriage of justice had taken place by reason of the misinterpretation and misapplication of the International Sailing Rules by the Portuguese Courts.

I regret to state that on this part of the case the arguments of the Portuguese Minister have entirely failed to dispose of the complaint of Her Majesty's Government.

According to the Report of the Portuguese Law Officers, the "City of Mecca" was condemned on the ground of her non-compliance with Articles 18, 19, 20, and 21 of the Sailing Rules (as numbered in the Portuguese Decree of the 12th March, 1863), and they state that no doubts have arisen as to the meaning of those Articles.

It is unnecessary for the present purpose to discuss the meaning of those Articles (which are numbered 17, 18, 19, and 20 in the British Rules), or to enter into an exposition of the grounds on which Her Majesty's Government consider that, owing to imperfect translation and for other reasons, those Articles have been misapprehended or misapplied by the Court; as, for example, in the case of Article 18 (17 British), which the Court applied to the present case of vessels crossing, whereas it has reference only to the case of one vessel overtaking another.

The fact which I am anxious that you should again bring prominently to the attention of the Portuguese Government is that, even conceding, for the sake of the argument, that the above Articles had been violated by the officer in command of the "City of Mecca," the Judgment takes no account of the fact that the primary cause of the collision was the violation by the Captain of the "Insulano" of Article 14 (15 Portuguese), which is as follows:—

"If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her starboard side shall keep out of the way of the other."

The two steamers had been in sight of each other for more than an hour, on a bright day, with a perfectly smooth sea, and they were "crossing" within the meaning of that Article. All doubt as to the proper construction of the Article was set at rest by the Royal Decree of the 3rd July, 1877, and it is admitted that it was the duty of the "Insulano" to keep out of the way of the "City of Mecca." It was abundantly proved by the evidence, and it is recorded in the findings of the jury, that the Captain of the "Insulano," instead of keeping out of the way, kept the same course until (as he himself admits) the collision was imminent; and that he might have avoided the collision if he had, at a proper distance, either stopped or gone astern, or had so steered as to pass astern of the "City of Mecca." (Answers of the jury, 30 and 31.)

This fatal error on the part of the Captain of the "Insulano" is explained by his admission that he was, at the time, under the mistaken impression that on the proper construction of Article 14 it was the duty of the "City of Mecca," and not of his own vessel, to keep out of the way.

Senhor Braamcamp in his note endeavours to exculpate him, on the ground that he conscientiously thought that it was his duty to keep his course until there was immediate or imminent danger. But the question is not whether he acted conscientiously, but whether he obeyed or violated Article 14.

As regards the officer in command of the "City of Mecca," he was clearly entitled to keep his course, and to expect that the Captain of the "Insulano" would obey Article 14. It may be that, when the peril occasioned by the faulty navigation of the "Insulano" became imminent, the catastrophe which ensued might have been avoided by some timely manœuvre on the part of the "City of Mecca," such as stopping and going astern. But any blame which may attach to that officer for his alleged want of skill or presence of mind at the moment of peril cannot exonerate the Captain of the "Insulano," whose violation of the sailing rule as to crossing steamers occasioned the peril, and was, as before stated, the primary cause of the collision.

Whatever blame, therefore, may attach to the officer in command of the "City of Mecca," the facts as found by the jury establish a case of contributory negligence on the part of the Captain of the "Insulano," who had first infringed Article 14, and it follows that each ought to bear his own loss, as laid down in Article 1568 of the Portuguese Commercial Code, which enacts that, "If a collision takes place through the fault of both captains or of both crews, each ship shall bear her own damage."

Nevertheless, the Supreme Court have mulcted the owners of the "City of Mecca" in the whole of the damages and costs.

It is with great regret that Her Majesty's Government find themselves compelled to adopt conclusions in relation to this case at variance with those arrived at by the eminent Judges who preside over that Tribunal, and whose decision they would not feel justified in questioning were it not that it involves international rights of the highest importance. But Her Majesty's Government are of opinion that in this case the Supreme Court has failed to give effect to the International Compact relating to Navigation, and that the responsibility for the miscarriage of justice resulting therefrom rests with the Portuguese Government.

The International Sailing Rules are binding on the Tribunals of every nation which has subscribed to them; and, in the present case, the highest Tribunal in Portugal has deliberately relieved the Captain of a Portuguese vessel from all responsibility for the violation by him of one of the most important of those rules to the serious detriment of British ship-owners, and to the prejudice of navigation in general. This constitutes, in the view of Her Majesty's Government, a clear miscarriage of justice, not only affecting Treaty rights, but, as you have already pointed out, calculated to increase the dangers of navigation, which it was the object of the International Sailing Rules to diminish.

Her Majesty's Government feel compelled, therefore, to exhaust all the means in their power, by way of friendly discussion and expostulation, to obtain the redress to which they consider themselves entitled; and, as the subject is one of international interest and importance, they are willing, in view of the grave differences of opinion which, unfortunately, prevail between the two Governments on some of the points involved, to refer the case to International Arbitration.

I have to instruct you, therefore, to hand a copy of this despatch to the Portuguese Minister for Foreign Affairs, and to request his Excellency to submit this friendly proposal to his Government for their favourable consideration.

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## Roumania.

### No. 51.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 27.)*

My Lord, *Temple, April* 26, 1881.

British Consular jurisdiction in Roumania.
Levant Order in Council no longer applicable.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th instant, stating that, by your Lordship's direction, he transmitted to us the printed Correspondence and documents, noted in the margin,* and relating to British Consular jurisdiction in Roumania.

That, before the date of the Treaty of Berlin, and until the 20th February last, when the independence of Roumania was formally recognized by Her Majesty's Government, in pursuance of Article XLIII of the Treaty, the exercise of Her Majesty's jurisdiction in that Principality was regulated by the general Order in Council for the Ottoman Dominions of the 12th December, 1873.

That the extent of Her Majesty's jurisdiction in Roumania was not precisely defined, and we would perceive from the printed Correspondence that the powers hitherto exercised there by Her Majesty's Consular officers under the Order in Council had been confined to the levying of certain fees and the trial of cases in which no Roumanian interest was involved. That, on that point, Sir Julian Paucefote was to refer us to the printed Correspondence, Nos. 1, 3, 6, and 9.

That Article XLIX of the Treaty of Berlin declared that "existing rights shall

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* Printed Correspondence, January 8, 1881 (Confidential Paper, No. ); Levant Order in Council, December 12, 1873, Confidential 2354; Treaty of Berlin, July 13, 1878, No. 623; Treaty with Roumania, April 5, 1880, No. 660; Treaty with Servia, February 7, 1880, No. 671.

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remain in force so long as they shall not have been modified by mutual consent of the Principality and the parties concerned."

That, in the meanwhile, Roumania having ceased to form part of the Ottoman dominions, the general Order in Council for the Levant had no longer any application in Roumania, and Her Majesty's Minister at Bucharest and Her Majesty's Consul at Galatz had urgently requested instructions for their guidance as regarded the exercise of their jurisdiction.

That, by Article VIII of the Treaty between Great Britain and Roumania of the 5th April last, the privileges of the "most favoured nation" were secured to British Consular officers, and Sir Julian Pauncefote was to invite our particular attention to Mr. White's despatch No. 18 of the 10th May, 1880 (Correspondence, p. 3), and Mr. Sanderson's despatch No. 50 of the 8th December, 1880 (Correspondence, p. 5) as showing the present state of the relations between the two countries on the subject of Consular jurisdiction.

Proposal for Order in Council.

That, in the state of things therein described, it was suggested that a short Order in Council should be passed declaring that, notwithstanding the recognition of the independence of Roumania by Her Majesty's Government, Her Majesty's Consuls should be deemed to have legally continued to exercise in Roumania the powers vested in them by the Order in Council for the Levant, so far as those powers were exercisable in Roumania at the date of the Treaty of Berlin, and were saved and continued by Article XLIX of that Treaty.

That Mr. F. S. Reilly was accordingly instructed to prepare the draft of an Order in Council to carry out that suggestion, but we would observe from his Reports of the 31st March, 1880, and 2nd August, 1880 (printed Correspondence, pp. 2 and 4), that he was of opinion that the course proposed was open to objections.

That your Lordship would be glad to be informed whether we were also of opinion that there were objections to the proposed Order, and if so, Sir Julian Pauncefote was to request that we would favour your Lordship with our advice as to the course which should be followed to remove the difficulties pointed out in the Correspondence.

In obedience to your Lordship's commands we have the honour to report—

Objections to proposed Order in Council.

That we agree with Mr. Reilly that the objections to the proposed Order in Council are such that the Order cannot properly be made.

There appears from the printed Correspondence to be no inconsiderable difficulty in ascertaining what were the existing rights of Consuls in the Principality at the time of the Treaty of Berlin, and in what manner and to what extent those rights could be exercised.

We apprehend, however, that such rights as were then in fact in existence, and are preserved by the XLIXth Article of the Treaty of Berlin, could acquire no additional validity from an Order in Council.

Course provided by Treaty of Berlin should be followed, and Consular Convention should be concluded.

The right course now to follow is, in our opinion, that provided by the XLIXth Article of the Treaty of Berlin, and that a Convention should be made with Roumania, "determining the privileges and attributes of Consuls in regard to protection" (and in other respects) "in Roumania."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 52.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 11.)

Consular jurisdiction in Roumania.

My Lord, *Temple, June* 8, 1881.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th ultimo, stating that he was directed to acknowledge the receipt of our Report of the 26th April on the subject of Consular jurisdiction in Roumania, and to request that we would favour your Lordship with our further opinion upon the following point:—

That in the above Report we observed that the proposed Order in Council would give no additional validity to the rights preserved by the XLIXth Article of the Treaty of Berlin. That Sir Julian Pauncefote was to explain that the object of the proposed Order was not to give additional validity to such rights (which were not disputed so far as concerned the levy of fees and the trial of cases in which no Roumanian interest was concerned), but to give legal power to Her Majesty's Consuls to exercise such rights, it being conceived that the Order in Council for the Levant, under which they had hitherto exercised those rights, had ceased to have effect in Roumania.

That your Lordship therefore desired to be informed whether, pending the making of a Convention, Her Majesty's Consular officers in Roumania were to be instructed to abstain from levying the fees, and from exercising the jurisdiction in question.

That the papers previously submitted to us were transmitted therewith, for convenience of reference.*

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, whatever rights existed at the time of the Treaty of Berlin, and are kept alive by Section 49 of that Treaty, may now lawfully be exercised by Her Majesty's Consuls without any fresh Order in Council. Although the Orders in Council under which those rights were exercised in terms applied only to the Ottoman dominions of which Roumania has ceased to form part, we think the effect of Section 49 of the Treaty is to preserve those rights in full force, and make them lawfully exerciseable just as if it had continued a part of the Ottoman Dominions until they are modified by mutual consent.

It was for this reason that we expressed the opinion in our former Report that such Consular rights as were in existence could acquire no additional validity from an Order in Council.

Under authority of XLIXth Article of Berlin Treaty Consuls may, pending the making of a Convention, exercise rights, jurisdiction, &c.

We do not think that Her Majesty's Consular officers in Roumania should be instructed to abstain from levying the fees and from exercising the jurisdiction in question pending the making of a Convention. Until a new Convention is arrived at they may, in our opinion, continue to exercise all such rights as they have heretofore lawfully exercised.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Russia.

### No. 53.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 12.)

My Lord, *Temple, March* 11, 1881.

Messrs. Oppenheimer and Co. Complaint against Judicial authorities in Russia.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, the papers relating to a complaint preferred by Messrs. David Oppenheimer and Co., British merchants, of Watling Street, London, against the Judicial authorities in Russia.†

That Messrs. Oppenheimer and Co. complained of a denial of justice by the Russian Tribunals, resulting in a loss to them of about 15,000*l.*, and they asked that Her Majesty's Government should insist on compensation being awarded to them.

Oppenheimer *v.* Abouloff, an Armenian trader of Tiflis.

That that firm had been engaged in litigation since 1876 with one Abouloff, an Armenian trader of Tiflis, in the Caucasus.

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* See Law Officers' Report of April 26, 1881.

† In Messrs. Emanuel and Simonds, January 25, 1881; Mr. Plunkett's No. 31, Consular; to Messrs. Oppenheimer and Co., July 4; Messrs. Oppenheimer and Co. (received) July 16; to Mr. Plunkett, No. 18, Consular; Mr. Plunkett, No. 40, Consular, 1879; Earl of Dufferin, No. 4, Consular; to Mr. Plunkett, No. 28, Consular; Mr. Plunkett, No. 26, Consular; Messrs. Oppenheimer and Co. (received) November 4, 1880.

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That one of the questions involved related to the ownership of certain goods entrusted by the firm to Abouloff, as their agent, for sale, on commission, under two contracts in writing. That the goods having been seized in execution in an action for debt brought by a third party, one Plusheffski, in the District Court at Tiflis, proceedings were instituted in the Courts at Tiflis on their behalf by their representative, Mr. Uloth, which resulted in a Decree of the Supreme Court of Tiflis, dated the 16th October, 1876, declaring the goods to be their absolute property.

That, in the meanwhile, Mr. Uloth had instituted criminal proceedings against Abouloff, and the Circuit Court of Tiflis gave a Judgment on the 17th November, 1876, whereby Abouloff was held criminally responsible, and was ordered by the Court to find bail for the full amount of Messrs. Oppenheimer and Co.'s claim (40,000 roubles), and to deliver possession to Mr. Uloth of the store in which the goods of Messrs. Oppenheimer and Co. [*sic*].

That, according to Messrs. Oppenheimer and Co.'s statement, an official named Toulaieff was the person charged with the execution of the above order, and he neglected to carry it out, acting, it was alleged, in fraudulent connivance with Abouloff. That he left Abouloff in possession of the store, and accepted bail which he knew to be worthless.

That thereupon fresh proceedings were instituted by Uloth, and, by a second Judgment of the same Court, given on the 21st December, 1876, Toulaieff was again directed to give possession to Uloth, and to take substantial bail. But that in the meanwhile part of the goods had been clandestinely removed, no further bail was taken, and Messrs. Oppenheimer and Co.'s first complaint was that they lost the benefit of the Judgments (Statement, pp. 3, 4).

That the case was represented to the Russian Government by Her Majesty's Ambassador at St. Petersburgh, and in reply a Report was furnished from the Government of the Caucasus (see Mr. Plunket's No. 31 of the 18th June, 1879), which was printed at p. 15 of the Statement.

That it appeared from that Report that on the 27th March, 1877, the Chief Court of Justice at Tiflis, on appeal brought by Abouloff, reversed the Judgment of the Circuit Court of the 21st December, 1876, with all its consequences, holding that Abouloff could not be proceeded against criminally until, not merely the question of the ownership of the goods, but certain other questions of civil right involved, had been decided.

That the Report further stated that the Chief Court of Justice had re-examined the case and had made a new Decree, setting forth that its Judgment of the 16th October, 1876, declaring the goods in question to be the property of Oppenheimer and Co., could not serve as a basis for a criminal prosecution against Abouloff, for the reasons above mentioned (Statement, p. 17).

That the Report also denied that there was any misconduct on the part of Toulaieff (who was described as a Judge of Instruction), or of any other public officer.

That a copy of the Report was communicated on the 4th July, 1879, to Messrs. Oppenheimer and Co., who, in a letter dated 16th July, 1879, commented thereon, and continued to urge their right to indemnity.

That a copy of their letter was transmitted to Mr. Plunkett, Her Majesty's Chargé d'Affaires at St. Petersburgh, in despatch No. 18 of the 8th September, 1879, and he was instructed to press for a further inquiry into that part of the case relating to the alleged misconduct of Toulaieff, but that that request, which was accordingly made by Mr. Plunkett (see his No. 40 of the 2nd October, 1879), was not acceded to by the Russian Government (see Lord Dufferin's No. 4 of the 15th May, 1880).

That, in the meanwhile, Abouloff had instituted a cross action in the Civil Court of Tiflis against Messrs. Oppenheimer and Co., and on the 2nd June, 1879, obtained Judgment against them for about 25,000 roubles.

That Messrs. Oppenheimer and Co. appealed to the Senate at St. Petersburgh, and it was in connection with that appeal that their second complaint arose.

That in their letter to your Lordship of the 4th November, 1880, they stated that the appeal had been heard *ex parte* and without notice to them, having been taken out of its turn in the Cause List, and had been decided against them.

That thereupon Mr. Plunkett was instructed (No. 28 of the 10th November, 1880), to consult the legal adviser of the Embassy as to what steps could be properly taken in the matter.

That the Report of that gentleman would be found in Mr. Plunkett's No. 26 of the 15th December, and was to the effect that, in his opinion, Her Majesty's Embassy could not interfere on behalf of Messrs. Oppenheimer and Co.

That that opinion having been communicated to Messrs. Oppenheimer and Co., the latter caused the accompanying printed Statement to be prepared, in the hope that some further action might be taken on their behalf.

That, as regarded the first complaint, Sir Julian Pauncefote was to observe that it was founded on the non-execution, by an officer of the Circuit Court of Tiflis, of the Decree of the 21st December, 1876.

But that as that Decree was subsequently reversed, "with all its consequences," by the Chief Court of Justice at Tiflis, on the 22nd March, 1877, your Lordship apprehended that the loss of the benefits which that Decree purported to confer could hardly constitute a valid ground for claiming indemnity, even if the charges against Toulaieff had been admitted.

That Sir Julian Pauncefote was to request, however, that we would take all the papers into our consideration, and favour your Lordship with our opinion as to whether Her Majesty's Government could properly take any further action on behalf of Messrs. Oppenheimer and Co.

In obedience to your Lordship's commands we have the honour to report—

That the complaint of Messrs. Oppenheimer, apart from their suggestions that the decisions against them were erroneous, appears to be limited to the allegations that Toulaieff, an officer of the Court at Tiflis, was guilty of corruption and misconduct resulting in mischief to them, and secondly, that the hearing of the final appeal by the Senate at St. Petersburgh was improperly and illegally brought on out of its due turn, and the Judgment consequently pronounced *ex parte*, without the appellants having the opportunity of being present and being heard.

As regards the charges relating to Toulaieff, it is important to bear in mind the nature of the several proceedings which have taken place in the Russian Courts.

On the 16th October the Chief Court of Justice at Tiflis decided that certain goods seized by one Plusheffski to answer a claim which he had against Abouloff, were the goods of Messrs. Oppenheimer and Co. as against Plusheffski.

Prior to this, on the 20th August, 1876, Uloth, on behalf of Oppenheimer and Co., commenced criminal proceedings against Abouloff.

In those proceedings Abouloff raised the defence that until the civil questions arising between him and Oppenheimer under the agreement of the 24th November had been determined the criminal proceedings were not well founded.

The Tiflis District Court, in its Judgments of the 17th November and 21st December, 1876, repelled this defence and decided in favour of Oppenheimer.

It is in relation to his alleged corrupt neglect to carry out these decisions that Toulaieff's conduct is impeached. But it appears that on Abouloff's appeal to the Chief Court of Justice at Tiflis, that Court, on the 23rd March, 1877, reversed the decision of the District Court of the 21st December, 1876, with all its consequences, holding that the defence of Abouloff was well founded.

It follows that Messrs. Oppenheimer cannot be said to have sustained any damage by the non-execution of Decrees which must be taken to have been erroneous in point of law, and such as, therefore, ought never to have been pronounced.

We accordingly concur in the view suggested that, even if there were misconduct on the part of Toulaieff, the claim of Messrs. Oppenheimer, on this ground, cannot, under the circumstances, be properly pressed upon the Russian Government.

After the decision of the Chief Court of Justice at Tiflis, which stayed the criminal proceedings against Abouloff, he commenced civil proceedings against Oppenheimer and Co., and, on the 2nd June, 1879, obtained a Judgment against them for 25,210 roubles. By this means, in the opinion of Mr. Melegi, Messrs. Oppenheimer's legal adviser, "the civil and criminal proceedings against Abouloff may be considered as terminated." But, on his advice, an appeal was presented to the Senate at St. Petersburgh, and it is with reference to this appeal that the second complaint is made.

The opinion of the legal adviser to the British Embassy at St. Petersburgh appears to us to establish that, however unfortunate in its results to Messrs. Oppenheimer, there was nothing illegal or improper in the mode in which the appeal was disposed of, or the time at which it was taken, and nothing certainly to afford evidence that it was corruptly obtained.

**Her Majesty's Government cannot properly prefer any claim against Russian Government.**

We think, therefore, that Her Majesty's Government cannot properly prefer any claim on this ground either against the Russian Government. It is impossible for a Government, on behalf of its subjects, to interfere with propriety in relation to the administration of justice in other countries unless corruption or unequal application of

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laws, or clear perversion of justice, can be shown, and we see no grounds on which to base either of such complaints in this case.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 54.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 12.)

My Lord, *Temple, March* 11, 1881.

Oppenheimer *v.* Abouloff. Petition to Emperor of Russia, praying for appeal to be reheard.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th instant, stating that, with reference to the letter from the Foreign Office of the 25th ultimo, he was directed by your Lordship to transmit to us therewith a further letter from Messrs. D. Oppenheimer and Co.,* inclosing a petition which they had addressed to the Emperor of Russia praying that the appeal recently heard before the Senate at St. Petersburgh, prematurely and *ex parte*, in regard to the Abouloff case, might be reheard; Messrs. Oppenheimer and Co. at the same time requesting that that petition might, if your Lordship saw no objection to such a course, be forwarded to its destination through Her Majesty's Embassy at St. Petersburgh.

That Sir Julian Pauncefote was accordingly to request that we would take those papers into our immediate consideration, together with those upon that subject then before us, and favour your Lordship with our opinion as to whether Messrs. Oppenheimer's request could properly be acceded to.

That your Lordship was informed that the matter was urgent in consequence of an action having been commenced against the petitioners on the Russian Judgment to which exception was taken, and that Sir Julian Pauncefote was therefore to request that we would be good enough to report on their proposed memorial at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

Petition should be sent through Russian Embassy, or through Messrs. Oppenheimer's agents at St. Petersburgh, if according to usage.

That since the petition is now addressed to the Emperor directly, Messrs. Oppenheimer should, we consider, send it through the Russian Embassy in this country, or present it through their own agents at St. Petersburgh.

This, however, is a question of diplomatic usage, and unless the usage is in favour of Messrs. Oppenheimer, it may be well not to make a precedent, which may hereafter lead to inconvenience.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 55.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 1.)

My Lord, *Temple, June* 30, 1881.

Expulsion of Mr. Lewisohn from St. Petersburgh.

WE were honoured with your Lordship's commands, signified in Sir Julian Pauncefote's letter of the 18th of June instant, stating that he was directed to lay before us the papers noted in the accompanying list† and relating to the case of Mr. Lewisohn, which had lately been the subject of discussion in Parliament.

That Mr. Lewisohn, who was a native of Hamburg, and belonged to the Jewish faith, was a naturalized British subject (under the Act of 1870), and carried on business as a merchant in London.

That, in his letter to your Lordship of the 26th of November last, he stated that in the previous month of August he had visited Russia for the purposes of his business, being furnished with a Foreign Office passport duly *visé* by the Russian Consul-General in London. After spending three weeks at the Nishny Novgorod Fair, he returned to St. Petersburgh, where the police authorities, having discovered that he was a Jew, ordered him to leave the capital within twenty-four hours, no other reason being assigned than that he was a Jew.

That, in consequence of the Report on the case, furnished by Mr. Plunkett, Her Majesty's Chargé d'Affaires at St. Petersburgh, in his despatch No. 612 of the 15th December, Mr. Lewisohn was informed that his expulsion from St. Petersburgh appeared to be warranted by Russian law. Her Majesty's Ambassador, however, was instructed to represent the case to the Russian Government, and to inquire whether there would be any objection to Mr. Lewisohn's return to Russia.

That, after a considerable delay and repeated applications, a reply was received to the effect that Mr. Lewisohn's request for permission to revisit St. Petersburgh had been submitted to the Department of Police, but the authorities in question had declined to acquiesce therein. (Lord Dufferin's No. 112 of the 22nd March, 1881.) That, the case having excited much public interest, and doubts having been raised whether the action of the Russian Government in that matter was consistent with their Treaty obligations and warranted by the Russian laws, your Lordship instructed Mr. Plunkett to procure a Report from the Legal Adviser of the Embassy on the laws of Russia applicable to native Jews and to foreign Jews, and Sir Julian Pauncefote was then to invite our attention to that Report at p. 1 of the inclosed Confidential Print of the 16th June, and to Mr. Wyndham's despatches Nos. 280 and 281 at pp. 4 and 5. A copy of the Treaty between Great Britain and Russia of the 12th January, 1859, was annexed, and Sir Julian Pauncefote was to refer in particular to Article XI; he was also to state that, on the 7th of June, 1860, a Russian Ukase was issued granting to foreigners generally in Russia the right to enter Russian commercial guilds and to enjoy all the commercial privileges attached thereto, subject nevertheless to certain reservations and restrictions in the case of foreign Jews.

That no objection was made by the British Government to that Ukase; and a notice respecting it was inserted in the "London Gazette" of the 7th August, 1860, of which a copy was annexed.

That the Ukase of the 20th June, 1860, referred to at p. 3 of M. Cieszkowski's Report, dealt with the admission of foreign Jews into Russian guilds and with their trading rights in general.

That the Report showed that native Jews as regarded their right of settlement and residence were restricted to certain provinces, and that the privileges accorded by Russian law to foreign Jews under certain conditions, were far in excess of those enjoyed by native Jews.

That we would observe that M. Cieszkowski in his Report expressed no opinion on the case of Mr. Lewisohn, but in his letter to Mr. Wyndham of the 8th June (p. 4 in the print) he stated that, as Mr. Lewisohn was furnished with a passport *visé* by the Russian Consul-General in London, his expulsion on the mere fact of his belonging to the Jewish persuasion was not in accordance with the existing laws of the Empire.

That the last paragraph of his letter, however, pointed to the obligation which devolved on Mr. Lewisohn to have obtained special permission before engaging in trade, and Mr. Wyndham in his despatch No. 281 (p. 6 in the print) suggested that he might have been expelled as an alien having committed an offence against the laws. That a letter had been addressed to Mr. Lewisohn in accordance with Mr. Wyndham's suggestion, inquiring whether he was provided with a licence to trade, as required by the Ukase of the 20th June, 1860.

In the meanwhile Sir Julian Pauncefote was to request that we would take all the papers in that case into consideration, and that we would favour your Lordship with our opinion as to whether, having regard to the Treaty between the two Powers, and to the provisions of Russian law as explained in M. Cieszkowski's Report, the expulsion of Mr. Lewisohn from St. Petersburgh, or the refusal of the Russian Government to permit him to return to Russia, under the circumstances above stated, afforded legitimate grounds of remonstrance on the part of Her Majesty's Government.

We were also honoured with Sir Julian Pauncefote's letter of the 20th instant, calling our attention to the accompanying despatches from Her Majesty's Chargé d'Affaires at St. Petersburgh,* showing that a question had arisen between the Russian

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* Messrs. Oppenheimer and Co., February 25, 1881.

† Treaty, January 12, 1859, No. 427; Mr. Lewisohn, November 26; Mr. Lewisohn's passport, &c., 1880; Mr. Plunkett, No. 612, December 15, 1880; Mr, Lewisohn, January 11; ditto, February 3; Lord Dufferin, No. 81; ditto, No. 112, March 22; "Times," May 23; "Jewish Chronicle" (two), May 27, 1881; Confidential Print, No. ; Mr. Plunkett, No. ; Confidential Print, No. , p. 1; Mr. Wyndham, Nos. 279, 280, and 281, Confidential Print, No. 4634; "London Gazette;" Hertslet's Treaties, vol. xii; Ukase, June 7, 1860; Hertslet's Treaties, vol. xii, p. 766.

* Mr. Wyndham, Nos. 293 and 296 of the 10th June; No. 302 of the 14th June, 1881.

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Government and that of the United States as to the expulsion of a Jew named Pinkos, from Russia.

And we were also honoured with Sir Julian Pauncefote's further communication of the 24th instant, transmitting additional correspondence in the matter.

In obedience to your Lordship's commands we have the honour to report—

That the Treaty of 1859 applies to all Her Majesty's subjects alike without making any distinction of creed.

The expulsion of Mr. Lewisohn therefore appears *primâ facie* to be a violation of the stipulations contained in Articles I and XI of the Treaty.

But by the terms of Article I the stipulations of the Treaty are not to affect the Laws, Decrees, and special Regulations regarding commerce, industry, and police in vigour in each of the two countries and generally applicable to foreigners.

The question, which is one of fact, therefore arises whether there is any Law, Decree, or special Regulation regarding commerce, industry, or police generally applicable to foreigners in vigour in Russia by virtue of which Mr. Lewisohn's expulsion can be justified.

Disposed to accept M. Cieszkowski's opinion as to violation of Treaty rights.

We hesitate to express any positive opinion upon the question whether Laws, Decrees, or Regulations made after the Treaty of 1859 can alter the effect of the general rights secured to British subjects, or whether the provisions of the Ukases of March 1859 and June 1860, entitling foreign Jews to engage in trade on obtaining special permission from the Minister of the Interior, apply to the case of a person travelling in Russia for commercial purposes in connection with a business founded elsewhere, but we are disposed to accept M. Cieszkowski's opinion which appears to be that there was no violation by Mr. Lewisohn of any Law or police Regulation which would justify his expulsion.

Case of Mr. Pinkos differs on account of the existence of martial law at the time of his expulsion.

We would observe that in the case of Mr. Pinkos, the United States' citizen, the point appears to be taken by the Russian Government that St. Petersburgh being under martial law, the expulsion was justifiable. Of course if the Russian Government are entitled where martial law prevails to expel any suspected person, foreigners sojourning there would be subject to the same liability and the Governments of such foreigners would not be entitled to complain of their expulsion in those circumstances. But in the present case no such position has so far been taken up, and there seems no doubt that Mr. Lewisohn was expelled the country only on the ground that he was a Jew.

Should require an explanation of Russian Government, and then further action may be taken.

Under these circumstances Her Majesty's Government may, we think, properly call the attention of the Russian Government to the matter and require an explanation of what is apparently a violation of the Treaty rights accorded to Her Majesty.

The consideration of the question whether any further action be taken should be postponed until the answer and explanation of the Russian Government have been received and a full opportunity afforded for considering their sufficiency.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 56.

*The Solicitor-General to Lord Tenterden.—(Received August 26.)*

My dear Lord Tenterden, *August* 25, 1881.

Expulsion of Mr. Lewisohn (a Jew) from Russia. Leave should be obtained for his temporary sojourn in Russia.

AS the Attorney-General has written you, Baron de Worms informed him to-day that Mr. Lewisohn had started, or was starting, for Russia. We think it would be desirable that Her Majesty's Minister should officially request from the Minister of the Interior permission for Mr. Lewisohn to sojourn temporarily in Russia without prejudice to the question of his right to do so under the Treaty between the two countries, and pending the discussion of the subject by the two Governments. If Mr. Lewisohn has already started this should be done without delay.

Suggest answer to Mr. Lewisohn.

We think Mr. Lewisohn may be answered that Her Majesty's Government have been in communication with the Russian Government on the question of his expulsion, that the Russian Government contend that it did not constitute any violation of the Treaty between the two countries, as Mr. Lewisohn was under the terms of the Treaty subject to the laws and ordinances of the Empire, in accordance with which his expulsion took place. That Her Majesty's Government are sending an answer to their despatch which has been lately received. That Her Majesty's Government will render Mr. Lewisohn such assistance as they properly can pending the discussion of the matter between the two Governments. If it is decided to make the application to the Russian Government suggested above, he might be informed of it.

Russian Government should be asked for information as to laws violated by Mr. Lewisohn.

In answer to M. Giers' despatch, we think Her Majesty's Minister at St. Petersburgh should be directed to ask for specific information as to what are the laws or ordinances the violation of which justified Mr. Lewisohn's expulsion, and that this should be done in such a way as to afford no admission that a British subject of the Jewish religion can properly be subjected to different treatment from any other British subject.

Our formal opinion will follow.

Yours, &c.
(Signed) F. HERSCHELL.

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## No. 57.

*The Law Officer of the Crown and Dr. Deane to Earl Granville.—(Received September 10.)*

My Lord, *Temple, September* 10, 1881.

Expulsion of Mr. Lewisohn (a Jew) from Russia.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that he had the honour to transmit to us a despatch[*] which, in consequence of our Report of the 30th June, was addressed by your Lordship to Her Majesty's Chargé d'Affaires at St. Petersburgh respecting the case of Mr. Lewisohn, a naturalized British subject, who was expelled from St. Petersburgh last year, and whom the Russian authorities refused to allow to return to Russia; that Sir Julian was also to inclose the note[†] which on receipt of that instruction Mr. Wyndham addressed to the Russian Government, and despatch[‡] from him forwarding the reply of M. de Giers which stated that Jews in Russia were subject to special treatment ("régime particulier"), and that there had been no infraction of Treaty stipulations in the case of Mr. Lewisohn.

Russian note with regard to law authorizing the expulsion and respecting infraction of Treaty rights.

That Mr. Lewisohn had written to your Lordship a letter (which was inclosed),[§] stating that business requiring his presence at the Nishni-Novgorod Fair, he had presented his passport at the Russian Consulate-General, where it had been *visé*, and he begged to be informed whether, if he proceeded to Russia, Her Majesty's Government could and would grant him such protection as to prevent a recurrence of the treatment to which he was subjected on his last visit to that country.

That on the receipt of this letter your Lordship communicated with the Russian Chargé d'Affaires in this country, and was informed by him that the *visa* had been granted with the distinct warning to Mr. Lewisohn, by the Russian Consul-General, that he must be subject to the laws of Russia upon entering that Empire, and that the Imperial Government had not withdrawn or suspended the prohibition to Mr. Lewisohn to visit Russia.

That Sir Julian Pauncefote was directed by your Lordship to request that we would favour your Lordship with our opinion as to the answer which should be returned to Mr. Lewisohn's letter, and as to what further action should be taken on the note from the Russian Government.

That for convenience of reference the previous papers and our Report of the 30th June last were also sent.[‖]

In obedience to your Lordship's commands we have the honour to report—

Should ask Russian Government for information as to laws violated by Mr. Lewisohn.

That we think Her Majesty's Ambassador at St. Petersburgh should be directed to require specific information what was the law, decree, or special regulation regarding commerce, industry, or police which has been violated by Mr. Lewisohn, and in accordance with which he was expelled from St. Petersburgh.

Care should be taken not to admit that any law, decree, or regulation which was not applicable to foreigners generally, but in terms applied only to Russian subjects professing the Jewish religion, could warrant the action of the Russian Government in treating differently from other British subjects one who professed that religion.

Answer to Mr. Lewisohn.

In reply to Mr. Lewisohn's letter, we think he should be informed that Her

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[*] To Mr. Wyndham, No. 265, July 11, 1881, Confidential Print No. , p. 24.

[†] Inclosure in Mr. Wyndham's No. 372, July 19, 1881, Confidential Print No. , p. 25.

[‡] Mr. Wyndham, No. 427, August 16, 1881, Confidential Print No. , p. 31.

[§] Mr. Lewisohn, August 11, 1881, Confidential Print No. , p. 29.

[‖] Confidential Print No. .

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Majesty's Government have made representations to the Russian Government, in answer to which that Government insist that the expulsion of Mr. Lewisohn was not an infraction of the Treaty between the two countries, and that Her Majesty's Government are still in communication with the Government of Russia on the subject.

Should follow course adopted by France in case of French Jews.

We think it would be expedient that the course which is taken by the French Ambassador in the case of French Jewish subjects (see Mr. Wyndham's despatch of the 26th July, 1881) should be followed, and that special permission should be officially requested from the Russian Government for Mr. Lewisohn to pass through and sojourn in Russia for the purposes of his business without prejudice to the question of his right to do so, which is now under discussion between the two Governments.

Should this course be determined upon, it would be well to inform Mr. Lewisohn of it.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 58.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 7.)

My Lord,
*Temple, November* 5, 1881.

Expulsion of Mr. Lewisohn from Russia. Sending correspondence of 1862 on exemption of British Jews from disabilities in Russia.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 7th October last, stating that he had to transmit to us, by direction of your Lordship, and with reference to our last Report on the case of Mr. Lewisohn, an important correspondence* which took place in 1862 on the construction of the Treaty of 1859 between Great Britain and Russia, with respect to the question which had arisen in Mr. Lewisohn's case, whether Her Majesty's Government were entitled, under that Treaty, to claim exemption for British Jews in Russia from the disabilities to which Russian Jews were there liable.

That that correspondence, which had only been found since the date of our last Report, contained a very full examination of the subject by Lord Napier (then Her Majesty's Ambassador to Russia) in his despatch No. 179 of the 6th May, 1862.

That that despatch was laid at the time before the Law Officers of the Crown, who reported thereon, and advised that Her Majesty's Government were not entitled to claim for British Jews in Russia such immunity as above mentioned. That Lord Tenterden was to refer us, for the grounds of that opinion, to their Report dated the 6th May, 1862, and to the instructions which were sent in conformity therewith to Lord Napier in the Foreign Office despatch No. 105 of the 15th May, 1862.

That Lord Tenterden was to request that we would inform your Lordship whether we concurred in the conclusions therein expressed.

In obedience to your Lordship's commands we have the honour to report—

View taken in 1862 with regard to status of British Jews under Treaty of 1859 was incorrect.

That we have now before us, in the despatch of Lord Napier of the 16th April, 1862, fuller information than we have hitherto had with reference to the status of Jews in Russia at the time that the Treaty of the 12th January, 1859, was negotiated, and showing the considerations which may be supposed to have influenced the parties to that Treaty.

It would seem that Prince Gortchakoff selected the terms of Article I of the Treaty with the view of rendering the Jewish subjects of Great Britain liable to the same disabilities as the Jews of Russia, but it does not appear that, in agreeing to those terms, Sir John Crampton contemplated such a result. The presumed intention of the parties must, therefore, be deduced alone from the language used, keeping in view, however, the surrounding circumstances, which may be taken to have been in the contemplation of the Contracting Parties.

The Treaty is, no doubt, open to two possible constructions: the one, that it only assures to British subjects of any particular creed the same privileges as are enjoyed by Russian subjects of the same creed; the other, that the privileges accorded to British subjects are accorded to all alike without regard to the religious body to which they may belong.

The arguments in support of these conflicting constructions are well and fully stated in the despatch of Lord Napier. We certainly agree with him that, construing it strictly, the language of the Treaty appears decidedly to favour the latter view. But to construe the Treaty thus would, no doubt, involve the supposition that Russia had agreed to create a state of things inconsistent with the traditions of her Government, and which could not fail to be a source of embarrassment to her. In all probability Prince Gortchakoff was anxious not to define matters too clearly, and designedly permitted the terms of the Treaty to be somewhat ambiguous.

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* 1. Treaty of January 12, 1859; 2. Law Officers' Report, September 10, 1881; 3. Lord Napier, No. 179, April 16; 4. to Law Officers, April 26; 5. Law Officers' Report, May 6; 6. to Lord Napier, No. 105, May 15, 1862.

Under all the circumstances, we are not prepared to express a confident dissent from the conclusion at which the Law Officers arrived in their Report of the 6th May, 1862.

At the same time, when we consider the consequences which such a construction of the Treaty involves, we cannot say that we are satisfied that it is the correct one. It is clear that the "laws, decrees, and special regulations regarding commerce, industry, and police," which are to be unaffected by the stipulations of the Treaty, are the laws, decrees, and regulations which may be for the time being in force, and not merely those which were in force when the Treaty was made. Supposing, then, that the laws of Russia were to impose commercial disabilities antagonistic to the privileges conferred by the Treaty upon all persons not belonging to the Orthodox Greek Church (a case not altogether impossible), the result would be that all British subjects, with an exception quite inconsiderable, would be deprived of the benefits of the Treaty, whilst Russia would still be in a position to demand that her subjects should remain in full possession of the benefits accorded to them by Great Britain.

British Government must adhere to construction placed upon Treaty by both Governments in 1862.

We think, however, it is hardly open now to Her Majesty's Government to insist upon a construction of the Treaty at variance with that placed upon it in 1862.

The very question now under discussion was raised at that time. The Russian Government took up the position that Her Majesty's Government were not entitled to claim, under the Treaty, that British subjects of the Jewish religion should enjoy the same privileges as other British subjects, and this view was, we gather, acquiesced in by Her Majesty's Ambassador at St. Petersburgh, by the instructions of his Government, after the question had thus been distinctly raised between the two Governments.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 59.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 16.)

My Lord,
*Temple, December* 15, 1881.

Expulsion of Mr. Lewisohn (a Jew) from Russia.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 19th ultimo, stating that, with reference to our previous Reports upon the case of Mr. Lewisohn, he had the honour to transmit to us, by direction of your Lordship, a copy of a despatch from Her Majesty's Ambassador at St. Petersburgh,* inclosing the reply of the Russian Government to the question which was put to them, at our suggestion, as to the law which had been violated by Mr. Lewisohn, and in accordance with which he was expelled from St. Petersburgh.

That it would be seen from M. de Giers' note of the 27th October that by the Russian Code relating to passports the right of finally dealing with the application of foreign Jews on this subject was vested in the Minister of the Interior. That Lord Tenterden was to request that we would take that explanation into our consideration, and favour your Lordship with our opinion as to whether, in view of the fact that Mr. Lewisohn failed through ignorance of the law to apply for the authority of the Minister of the Interior to remain in St. Petersburgh, the Russian Government were acting strictly within their legal right in expelling him, although that right might appear to Her Majesty's Government to have been exercised with unnecessary harshness upon the subject of a friendly Power.

That Lord Tenterden was also to transmit a printed copy of the correspondence, including our Reports, on the question.†

In obedience to your Lordship's commands we have the honour to report—

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* Sir E. Thornton, No. 529, October 31, 1881.

† Printed Correspondence, Confidential, No.

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Remarks on conduct of Russian Government. Their reply is not satisfactory.

That the provisions of section 2 of the Supplement to Article 486 of the Passport Code, quoted by M. de Giers, are not couched in very definite terms. But inasmuch as all petitions by foreign Jews for permission to remain in Russia are to be dealt with in the last resort by the Minister of the Interior, we think that the right of refusing the prayer of any such petition, and therefore of compelling the departure from Russia of a foreign Jew, is by implication vested in him. This is of course subject to the question discussed in our last Report, whether British Jews are entitled to the same treatment as other British subjects.

In the present case, however, we do not gather that the matter was ever submitted to the Minister of the Interior. Mr. Lewisohn being armed with a passport, and objection being taken to its sufficiency on the ground of his Jewish religion, it appears to be M. Cieszkowski's opinion (see his Report of the $\frac{\text{26th May}}{\text{8th June}}$, 1881, p. 17) that Mr. Lewisohn was entitled to the opportunity of making application to the Minister of the Interior for permission to remain in Russia. In this view we are disposed to concur. And we certainly agree with M. Cieszkowski that twenty-four hours was less than a reasonable time for obtaining the consent of the Minister of the Interior.

Moreover, M. Cieszkowski expresses the opinion that the action of the local authorities in expelling Mr. Lewisohn on the ground of his being a Jew was in direct contravention of Article 2 of the "Regulations for the issue of Passports," and in opposition to Article 16 of the same Regulations. And in his opinion, even supposing Mr. Lewisohn was to be regarded as a person not supplied with a passport, he ought, if a person of peaceful and inoffensive life, to have been supplied with a temporary passport for six months by the Prefect of the capital, and ought not to have been expelled thence by administrative process. We agree in thinking that no sufficient opportunity was allowed him of obtaining this temporary passport.

Should obtain further report on points of law raised.

We think that, in view of the opinion given by M. Cieszkowski, the explanation of M. de Giers cannot, without further consideration, be accepted as satisfactory. And we venture to suggest that a somewhat fuller report on the specific points which appear to be now raised should be obtained from M. Cieszkowski, or some other expert in Russian law, so as to enable Her Majesty's Government to put the matter in the best shape before the Russian Ministers.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 60.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 30.)

My Lord,
*Temple, December* 30, 1881.

Erection by Russia of fortifications at Batoum.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th instant, stating that he had the honour to transmit to us, by direction of your Lordship, a copy of a despatch from Her Majesty's Ambassador at Constantinople,* from which we should see that the Porte had called the attention of Her Majesty's Government to the fortifications which were being constructed by the Russian Government within a short distance of the town of Batoum, a proceeding which the Turkish Government maintained was contrary to the spirit of the Treaty of Berlin and of the Protocols of the Congress.

That the text of the LIXth Article of the Treaty was as follows:—

"Sa Majesté l'Empereur de Russie déclare que son intention est d'ériger Batoum en port franc essentiellement commercial."

That in order fully to appreciate the extent of that undertaking on the part of His Majesty the Emperor of Russia, it was necessary to refer to the discussions in Congress, which resulted in the Article of the Treaty above quoted.

That we should find at pp. 207–210 and 239 of the accompanying Parliamentary Paper the portions of the Protocols bearing on that subject.

That at the sitting of the Congress on the 6th July (see Protocol 14), Prince Gortchacow stated that he was authorized to declare that the Emperor exercising his right of sovereignty would declare Batoum a free port. Prince Bismarck called attention to the fact that that formed a considerable modification of the Treaty of San Stefano; that it facilitated the evacuation of Batoum and its exchange for Erzeroum.

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* The Earl of Dufferin, No. 972, November 8, 1881.

That the Earl of Beaconsfield, in accepting the proposal, spoke of it as the transformation of a disputed fortress into a free port and a commercial depôt for all nations; and that in the subsequent discussion as to the passage of the Straits, the Marquis of Salisbury declared that if the acquisition of Batoum by Russia had been maintained under conditions which would menace the liberty of the Black Sea, England could not have taken the engagement towards the other European Powers to interdict to herself the entry to that sea. But Batoum having been declared a free and commercial port, the English Government would not decline to renew their engagements as to the Straits.

That in the remarks which Count Schouvaloff made in reply to the observations of the Marquis of Salisbury, his Excellency said that "it would be very easy to prove that Batoum constitutes a menace for no one, and that the possession of that port is only necessary to us for the purpose of securing our communications with the large territory which Russia already possesses on that portion of the Black Sea and of securing her commerce; and that the declaration of the freedom of the port must have removed the last doubts. The port will become an important point for the commerce of the whole world; it could not be a menace to the Straits," &c.

That the Marquis of Salisbury thereupon stated that, understanding that Batoum was to be only a commercial port, he therefore accepted in principle the *status quo ante* for the Straits.

That to the interpretation thus given by the Second British Plenipotentiary to the declarations of the Russian Representatives no exception was taken at the time, and the declaration read by Prince Gortchacow, at a subsequent sitting of the Congress, was as follows:—

"The Plenipotentiaries of Russia have already announced to the Congress that the Emperor, their august Master, intends to convert Batoum into a free port. They are authorized to add that His Majesty further proposes to make of this port a port essentially commercial." (Protocol No. 16.)

That the Porte stated that "not only are the old fortifications of Batoum left standing, but new ones are being constructed within a short distance of the town." (Lord Dufferin No. 972 of the 8th November, 1881.)

That that was confirmed by the Reports of Her Majesty's Consuls, and in the latest Report it was stated that much heavy artillery was being landed at Batoum for the fortifications there, which was placed in store, while earthworks and batteries were constructed at commanding points, and communications between them established by tramways.

That Lord Tenterden was to request that we would take the matter into our consideration, and favour your Lordship with our opinion as to whether the facts above stated, as to the military works now proceeding at Batoum, constituted a violation of the LIXth Article of the Treaty of Berlin, and of the assurances given by the Russian Plenipotentiaries at the Congress, and would justify, without awaiting more detailed reports on the subject, the parties to the Treaty of Berlin in addressing any representations to the Government of Russia.

In obedience to your Lordship's commands we have the honour to report—

Such fortifications not clearly a violation of Treaty of Berlin and of Russian assurances at the Congress.

That we do not think the facts above stated as to the military works proceeding at Batoum so clearly constitute a violation of the LIXth Article of the Treaty of Berlin and of the assurances given by the Russian Plenipotentiaries as to justify, without awaiting more detailed reports on the subject, the parties to the Treaty of Berlin in addressing any remonstrances to the Government of Russia.

The question is, whether the undertaking of Russia that Batoum should be a free and essentially commercial port, coupled with the assurances given in the course of the discussion, excludes the right to erect any fortifications there. No definite assurances were given or required with reference to the construction of fortifications. It appears not improbable that the Plenipotentiaries of Russia and Great Britain purposely avoided any definite discussion of this point. If, then, the right of Russia to construct the fortifications is excluded, it must be because this is involved in the undertaking given by Russia, read in the light of the discussions which preceded it.

But it does not appear to us perfectly clear that it is so excluded. Though the port may be essentially or indeed exclusively commercial, it does not seem to follow that fortifications may not be erected for its defence. It could hardly be contended that Russia, having created a great commercial emporium, was bound to leave it

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defenceless and at the mercy of Turkish cruizers, should any conflict arise between the two countries.

It would not be to the interest of the nations who may trade there that this should be the case.

And if the fortifications are defensive only it would not be (in the words of Count Schouvaloff) "a menace to the Straits."

We think that Russia probably did undertake that Batoum should not be converted into an arsenal as a basis for offensive operations.

Further information necessary.

But we see no evidence that the fortifications go beyond what may be fairly necessary for the defence of an important commercial centre, and it therefore seems to us that more detailed information is necessary before we are in a position to assert that there has been a violation of the LIXth Article of the Treaty.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# Tunis.

## No. 61.

*Memorandum by the Lord Chancellor.*

Mr. Levy's claim to the Enfida estate. Course to be adopted.

NO mistake seems to me to have been, as yet, committed on our side in this matter; the principle being undoubtedly right (on which alone we seem to have, so far, insisted) that the question, being one as to private rights of property, should be decided, according to the *lex loci*, by the Tribunals which may properly have cognizance of it, and not by political interference. It is enough, therefore, for the present, that each Government should pledge itself to the other against the use of political pressure, at all events unless there should be some interference, by the Tunisian authorities, with the ordinary course of law in the case, whatever that may be. As to the naval demonstration, the French Government seems to have already withdrawn its ships, so no more need be said about that.

2. Consul Reade seems to me to have assumed, with a greater degree of confidence than I can entirely share, that Mr. Levy's claim of pre-emption is well founded, and that the question will be attended with no difficulty if left to be settled in the ordinary course of Tunisian law. What that course may be he does not at all clearly indicate, and all I can do is to point out the questions, and the difficulties, which occur to me, upon the very imperfect materials which this correspondence supplies.

Merits of Mr. Levy's claim of pre-emption.

3. First, as to the merits of Mr. Levy's claim. If it is preferred, *bonâ fide*, for his own sole benefit as an adjoining proprietor, it ought to prevail, if, under the same circumstances, it could have been maintained (according to the true construction and effect of the law of pre-emption or "scheffa"), by a native Tunisian proprietor, my information as to this part of the Tunisian law is not sufficient to enable me to form an opinion as to the conditions under which it is applicable, *e.g.*, whether it is excluded by the reservation, unsold, of a certain space of land by Khaireddin Pasha, between the Enfida estate and the land of Mr. Levy; or, on the other hand, whether this reservation, if otherwise valid, is defeated by the possession by Mr. Levy of certain "enclaves" of land within the body of the Enfida estate. These are, evidently, mixed questions of fact and law, fit only for a competent Court to determine. In like manner, it must be for such a Court to determine whether the steps taken by Mr. Levy to assert his claim upon the spot were proper and sufficient, and whether they were rendered nugatory, or not, by the subsequent dispossession of his agents by the French Company. As far as I can judge, from general principles, I should say that, if these steps were properly taken on Mr. Levy's part, he cannot be any further, or otherwise, prejudiced by what the French Company afterwards did to displace his formal possession, than that it may make it necessary *for him* now to take active proceedings, *as plaintiff*, to assert the title which he claims.

4. Again, it must (after all) be a question of local law, whether Mr. Levy, as adjoining proprietor, can assert this claim, if he does so (in substance and effect, and either with, or without, a commission, or money consideration) for the benefit, wholly or in part, of others (Tunisians or Italians, or anybody else), and not for the *bonâ fide* object of incorporating this land with his adjoining estate. But I should say that, on this point, *all reasonable presumptions* are against such a construction, and use, of the right of pre-emption, as would enable it to be asserted in the interests (wholly or in part), not of the adjoining proprietor, but of strangers, to whom the law gives no such right. That a *bonâ fide* title, acquired by the French Company by purchase from Khaireddin, should be defeated by an adjoining proprietor, who in substance lends or sells the use of his name to persons who have no right of pre-emption, would not be in accordance with sound equitable principles; and, if the name of Mr. Levy is really used in this transaction to enable the Italian Government, or any Italian or Tunisian intriguers or speculators, to exclude the French Company, I think Her Majesty's Government will do well to abstain from giving any countenance to such a transaction, whether it is capable of succeeding, by Tunisian law, or not. Consul Reade seems to think this a matter of no importance; but, on that point, I cannot agree with him.

Mr. Levy should not obtain support of Her Majesty's Government if he has acted on behalf of others who have not rights of pre-emption, whatever the Tunisian law may be.

Mr. Levy ought to establish his right against the French Company.

5. As to legal proceedings. What I collect from the papers is that the French Company have *purchased*, and *paid for*, Khaireddin's title; so that Khaireddin has no longer any interest in the Enfida estate; and, it may be assumed (if the Conventions between Tunis and France are like those between Tunis and this country—see Article I of the Convention of the 10th October, 1863) that, but for this claim of Mr. Levy, the French Company would now be entitled to proceed to the verification of their title-deeds, and to obtain a transfer into their name, before the "Ecclesiastical and other legal Courts and authorities" of Tunis. Mr. Levy, having no contract of purchase, but claiming a right by law to the benefit of the French Company's purchase, on paying what may be deemed to be the part of the purchase-money applicable to this property, cannot, I conceive, go before the "Ecclesiastical or other legal authorities," for any verification of title-deeds, or for any transfer into his name, till he has established his right against the French Company. This, I think, it must be for him to do, by instituting a suit, as plaintiff, against that Company, in whatever may be the proper *forum*; and, as the suit will be entirely between French and English subjects (no Tunisian being a necessary party to it), the IVth Article of the Convention of the 10th October, 1863, will not apply; but the XXIVth Article of the Convention of the 19th July, 1875, will apparently come into play. The dispute, therefore, must be decided "solely in the Tribunals of the Foreign Consuls," according to the established usage, "without the interference of the Tunisian Courts or Government." Whether the "established usage" would give jurisdiction to the Consular Court of the *plaintiff*, or to the Consular Court of the *defendants*, is more than I know.

Should do so before Tribunals of Foreign Consuls, but whether in English or French is not certain.

(Signed) SELBORNE.

30, *Portland Place, W., February* 9, 1881.

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## No. 62.

*Memorandum by the Lord Chancellor.*

Enfida estate. Opinion as to the Consular Court by which the case is to be decided.

THESE papers* furnish additional grounds for caution. My own Memorandum will show that M. Barthélemy St. Hilaire's objection to commit himself to the principle, that the question is to be decided by a *Tunisian Tribunal*, may be a well-founded one; my own conclusion (upon the materials which the Foreign Office was able to supply) having been that the proper forum would be *primâ facie* either the French or the British Consular Court.

I fully expected that the first contest would be, Who ought *to begin? i.e.*, to be plaintiff; the forum (as I presume) being that of the *defendant*. Mr. Reade insists that Mr. Levy is to be regarded as having a *possession*, which the French Company

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* Lord Lyons, No. 130, 1881.

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must displace, as plaintiffs. But, if general principles are to go for anything in such a matter, I should think otherwise. His right of pre-emption is the matter in dispute, and cannot, therefore (antecedently to litigation), be *assumed* in his favour. The former title and possession of Khaireddin were indisputable; and (subject to Mr. Levy's claim) the rights of Khaireddin are now vested in the French Company who have bought and paid for them, and will (I assume) obtain registration from the proper Tunisian authorities. The possession assumed by Mr. Levy was merely (as I understand) to fulfil some condition of the law of pre-emption, and it has been treated as that of a trespasser by the French Company. What is Mr. Reade's ground for saying, that it has not been wholly displaced, I do not know. But one thing seems to me to be certain, that Mr. Levy would be *able*, if he chose, to sue as plaintiff, according to the analogy of any system of jurisprudence with which I am acquainted, and that it would be unreasonable (according to any such analogy) to *require* the French Company to do so, if they deny his right of pre-emption, and think they can secure their own ends, practically, by simply resting on the defensive. The whole is, evidently, a game of chess; and it is not clear to me that M. Roustan, on the one side, is a more zealous partizan in it than Mr. Reade on the other.

(Signed) SELBORNE.

*February* 11, 1881.

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## No. 63.

*Memorandum by the Lord Chancellor.*

Enfida estate. Her Majesty's Government should not act on Mr. Reade's assumptions as to jurisdiction.

IT is clear that there may be many questions in this case, both as to the Mahommedan law and as to forum and procedure, which Her Majesty's Government should not be in any haste to take for granted, and on which Mr. Reade's views may be incorrect.

He assumes that the jurisdiction is *Tunisian*, and that Mr. Levy can assert his claims effectually without coming into Court as plaintiff, on both which points, I think, his assumptions ought not to be made the foundation of any diplomatic action by Her Majesty's Government.

As to his present statements, that the two local Courts administer two different laws (or views of the law) of pre-emption, and that Mr. Levy has a string to each bow, they do certainly seem strange. Of course, I cannot say what the local law really is, either on the partnership or on the other view; but Mr. Levy's claims have nothing equitable in them (that I can see) unless they can be established in strict law.

(Signed) SELBORNE.

30, *Portland Place, W., February* 23, 1881.

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## No. 64.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 3.)

Enfida estate. Case should be settled in accordance with Tunisian law before a Consular Court, either French or English. Suggesting arbitration.

My Lord, *Temple, March* 3, 1881.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th February ultimo, stating that he was directed by your Lordship to transmit to us, for our consideration and advice, the papers noted in the margin,* and relating to the conflicting claims of Mr. Joseph Levy, a British subject, on the one part, and a French Company, called the "Société Marseillaise," on the other, to an important landed property in the Regency of Tunis, known as the "Enfida Estate."

That the British and French Governments had been appealed to by the claimants respectively, and the settlement of the question presented some difficulties.

That the Enfida estate was purchased by the French Company of Kheredine Pasha, but Mr. Levy, who owned some adjoining land, claimed the right of pre-emption under Tunisian law. A general statement of the facts of the case and of the position of the question up to the 5th ultimo would be found in the Foreign Office Memorandum of that date, marked A.

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* (A), Memorandum; (B), Printed Correspondence; (C), Archives Diplomatiques, vol. iv; (D), British Convention, 1863 (Real Estate); (E), British Convention, 1875; (F), Lord Lyons, No. 156, February 16; (G), Mr. Reade, No. 14, February 8.

That the printed correspondence, marked B, contained all the information in the possession of the Foreign Office up to the 18th February.

That it commenced with a despatch from Mr. Reade, Her Majesty's Agent and Consul-General at Tunis to your Lordship (No. 34 of the 6th December, 1880), transmitting a petition from Mr. Levy, in reply to which Mr. Reade was instructed to support Mr. Levy in vindicating his legal rights if he was satisfied that Mr. Levy had a *bonâ fide* claim, and that his proceedings were not simply vexatious (Correspondence, p. 3, No. 2).

That Sir Julian Pauncefote was to invite our attention to the whole of the correspondence which ensued, from which we would perceive that the principal difficulty which remained was in regard to the Tribunal which should adjudicate upon the claims of the contending parties.

That on that point, Sir Julian was to refer us, in the first place, to your Lordship's despatch to Lord Lyons, No. 120 of the 5th February (Correspondence, p. 29), No. 41, citing the Organic Laws of the Regency, and the British Convention of 1863. Also to Articles V and XXIV of the British Convention of 1875.

That Mr. Reade, in his telegram of the 10th February (Correspondence, p. 53, No. 82), stated that the Société Marseillaise would be the plaintiffs in the case, which must be tried in the Tribunal of the Cadi.

That that view was apparently based on the assumption, that Mr. Levy was the first in possession of the estate (see his telegram of the 8th February, Correspondence, p. 42, No. 60).

That we would observe, however, that whether Mr. Reade's view be correct or not, the French Government demurred to entrusting the decisions of the question to any native Tribunal (see Lord Lyons' No. 130, Correspondence, p. 50, No. 77); and in a despatch which had just then been received from Lord Lyons,* your Lordship was informed that, in their opinion, "the fairest and most expedient plan would be to refer the matter to the joint arbitration of a French and English Arbitrator."

That Sir Julian Pauncefote was to request that we would favour your Lordship with our views on the case so far as we were able to do so from the papers then laid before us, and especially with reference to the practicability, under the circumstances, of disposing of the case by arbitration.

We were also honoured with Sir Julian Pauncefote's further communications of the 19th, 23rd, and the 24th February, and the 1st March, inclosing papers for our consideration in conjunction with the papers transmitted with his letter of the 18th ultimo.

In obedience to your Lordship's commands we have the honour to report—

That the rights of Mr. Levy and the Société Marseillaise in the controversy which has arisen between them must be governed by, and decided in accordance with, the law of Tunis.

Under the Convention of 1863, Mr. Levy appears to be entitled to the same rights in relation to his claim as if he were a Tunisian subject.

It seems clear that by the law of Tunis the right of "shoofâ" or pre-emption can, under certain conditions, be enforced.

We express no opinion upon the strength or merits of Mr. Levy's claim, beyond saying that it certainly appears to be sufficiently well-founded to entitle Mr. Levy to have it determined by the proper Tribunal.

The important question then arises, by what Tribunals are the rights of the parties to be decided? In order to express a positive opinion on this question, we ought to be informed whether the original vendor, Kheredine, would, according to Tunisian law and procedure, be regarded as having any interest in the controversy that has arisen, or, employing English terms, would he have such an interest as would render it necessary to make him a party to any suit that might be instituted in relation to the dispute? But as it appears that the purchase-money of the estate has been paid by the purchasers to Kheredine, we shall assume his interests to be entirely eliminated from the controversy, and treat the dispute as one existing between English and French subjects.

In such case we are of opinion that the difference is one which must be determined by the Consular Court of Great Britain or France, and not by the Tunisian Courts.

By the IVth Article of the Convention of 1863, all cases of litigation in relation to land between British and Tunisian subjects were to be adjudicated upon by the Tribunals of Tunis; the Convention, however, is silent as to the Tribunal to determine

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* Lord Lyons, No. 156, February 16.

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disputes relating to land which may arise between a British subject and a foreigner. But the Convention of 1875 (which by Article V confirms all the stipulations of the Convention of 1863) is general in its terms, and provides in Article XXIV that all civil differences, disputes, or litigations between British subjects and those of any foreign country should be decided solely in the Tribunals of the foreign Consuls without the interference of the Tunisian Courts. These general words appear to include differences having relation to land.

We think, therefore, that the Court to determine the dispute which has arisen is either the English or French Consular Court.

It seems to be accepted that the plaintiff or prosecutor in a suit or proceeding must resort to the Court of the defendant's nationality, and cannot proceed in the Court of his own nation. Whether Mr. Levy or the Marseillaise Company will initiate proceedings must be left to their own will and to circumstances as they arise, but is not a matter with which Her Majesty's Government is in any way concerned.

The result, therefore, appears to be that both the parties to the dispute are exempt from the jurisdiction of the Tunisian Courts, and that if litigation is resorted to to enforce any right of property, the proceedings must be taken in the Consular Court of the defendant's nationality.

As it will probably be felt that advantage will be secured to the defendant in such proceedings by appearing in the Consular Court of his own nation, it is probable that neither party to the dispute will be disposed to commence litigation. In such event it may be to the advantage both of Mr. Levy and the Marseillaise Company that the differences should be determined by means of an independent arbitration. But whilst Her Majesty's Government would doubtless be glad to exercise its influence and good offices to bring the dispute which has arisen to a final determination, it has no power to compel Mr. Levy to consent to an arbitration, and can do no more than offer him advice.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 65.

*Note by the Lord Chancellor.—(Received March 8.)*

Enfida estate. Question as to nationality of firm

THE Report of the Law Officers is in accordance with the views which I had myself formed; and I have no further observation to make upon the present position of this case, unless it be to notice that in one of the late telegrams from Mr. Reade it appeared that Mr. Levy was a partner in this business with seven or eight other persons, who were, I think, stated to be Tunisians.

Benefits of British nationality should not be invoked for non-British subjects.

This state of the interests concerned in Mr. Levy's claim raises a very important question, which would require to be most carefully considered before those interests could receive any special or exceptional protection from Her Majesty's Government on the ground of Mr. Levy's British nationality. He is, *primâ facie*, a trustee of his claim (whatever its worth) for a partnership at Tunis, essentially Tunisian, and not British. Is British nationality to be invoked in such a case for the benefit (in the main) of those who are *not* British subjects? I should say not.

(Signed) SELBORNE.

30, *Portland Place, W., March* 5, 1881.

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### No. 66.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 7.)*

My Lord,
*Temple, March* 7, 1881.

Enfida estate. Jurisdiction of Consular or Tunisian Courts depends upon position of Mr. Levy's partners.

WE were honoured with your Lordship's commands signified in Lord Tenderden's letter of the 5th instant, stating that, with reference to our Report of the 3rd instant on the Enfida case, he transmitted to us, by your Lordship's direction, the inclosed telegram from Her Majesty's Consul-General at Tunis, dated the 1st March, for our perusal, and for such observations, if any, as we might have to offer thereon.

The former papers relating to the case were inclosed therewith for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

That the contents of Mr. Reade's despatch of the 1st March present a new state of facts upon which it is difficult to express an absolute opinion.

In our Report of the 3rd instant we pointed out that if a dispute as to rights connected with land arose between a British and a Tunisian subject the local Tribunals alone had jurisdiction. Reading Mr. Reade's despatch technically, it may be that the whole legal right of "shoofâ" or pre-emption is in Mr. Levy, and that he has Tunisian partners only in the profits which will be derived from exercising the right, in which case the jurisdiction to determine the dispute would still be in the Consular Courts.

On the other hand, if Tunisian subjects are part owners of the estate, by virtue of which the right of "shoofâ" is claimed, the jurisdiction of the local Courts would prevail.

The indefinite nature of Mr. Reade's telegram prevents us from determining positively what is the technical position of the partners.

Case should not be governed by technical considerations.

But we presume that the Bey of Tunis is not likely to enter upon such technical considerations, and if in the substance of the dispute his subjects have an interest, Tunisian authorities will probably be unwilling to permit the rights of native subjects to be determined by Consular Courts. Whilst it will probably be thought advisable to maintain all the rights of the English Consular Court, it will not be unreasonable to regard the position of the parties as being governed by broad and not technical considerations, and—if it be that the rights of Tunisian subjects are involved in the anticipated litigation—to listen to any representation that may be made by the Government of Tunis in support of the jurisdiction of the local Tribunals.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 67.

*The Lord Chancellor to Earl Granville.—(Received March 10.)*

My dear Granville,
*House of Lords, March* 9, 1881.

I WRITE by my Secretary's hand, my own arm being disabled.

Enfida estate. Tenour of reply to Mr. Reade as to jurisdiction.

I agree substantially both with the Law Officers and with Sir Julian Pauncefote, except that I cannot (with Sir Julian) think anything clear in this case. The despatch to Mr. Reade should, I think, be to this effect: That, if the right claimed is to be regarded as in Mr. Levy only, the case would appear to fall (in the absence of any Treaty between France and Tunis to the contrary) within Article XXIV of the British Treaty of 1875, and should apparently be decided in the Consular Court of whichever of the two claimants is first sued by the other, and thus made the defendant; but that, if the Tunisian partners of Mr. Levy have such an interest in his claim as to make them competent parties to a suit for the assertion or defence of it, then it may be that the Tunisian Courts might have jurisdiction over the matter. But, in that case, the claim must be regarded as substantially that of Tunisian subjects, and it cannot be recognized as entitled to any special favour or protection from Her Majesty's Government on account of Mr. Levy's British nationality. The rest of Sir Julian Pauncefote's recommendation (viz., that before taking further action Lord Granville will await, &c.) seems quite right.

I am, &c.
(Signed) SELBORNE.

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## No. 68.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 8.)

*Temple, April* 8, 1881.

Enfida estate. Turkish law does not apply to Mr. Levy's case, which ought to be decided by the Consular Court of defendant.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, further correspondence* which had taken place in relation to the Enfida case at Tunis since the date of your Report thereon of the 7th ultimo.

That Sir Julian Pauncefote was to refer us, in the first place, to your Lordship's telegram to Mr. Reade (Her Majesty's Consul-General at Tunis) No. 12 of the 14th March, and to Mr. Reade's telegram in reply No. 14 of the 16th March, followed by his despatch No. 27 of the 16th March and No. 29 of the 18th March.

That in those communications Mr. Reade cited the Ottoman Law of Real Property of 1867, and the Protocol of 1868 relating thereto (see "Hertslet's Treaties on Trade," Turkey, pp. 73-75), as being in force in Tunis, and applicable to the present case.

That on that point, however, Sir J. Pauncefote was to invite our attention to a Memorandum by Sir E. Hertslet, and to the documents annexed thereto, from which it would seem that the Regency of Tunis, though an eyalet of the Turkish Empire, held an exceptional position of independence with respect to its powers of internal legislation, and its relations with foreign States was not generally bound by the laws and Treaties of the Porte. That as regarded the conditions under which foreigners might hold land, it was to be observed that the British Treaty with Tunis of 1875 confirmed the Agreement with the Bey of 1863 concerning real property, and that that Agreement was expressly founded on the Organic Law of the Regency, and ignored altogether the more recent Turkish Law of 1867, appealed to by Mr. Reade.

That Sir Julian Pauncefote was, in the next place, to refer us to a translation, forwarded by Mr. Reade in his despatch No. 29, of the Bey's "amra," granting to French subjects the same rights in respect of real property in the Regency as were accorded by Treaty to British and Italian subjects.

That the British Treaty of 1863 made no provision to meet the case of a dispute concerning land between a British subject and a foreigner of another nationality, but, by Article XXII of the Italian Treaty (59 State Papers, p. 1289), it was provided that in case of a dispute between an Italian and the subject of a third Power, the party summoned before the local magistrate should have the right to have the case taken before the Consular authority of his nation, and, subject as therein mentioned, with respect to questions of personal status and other matters, the case was to be governed by the Law of Tunis.

That, accordingly, Mr. Reade, in a letter to Sir Charles Dilke, dated the 10th March, stated that Mr. Levy continued to cultivate the estate on a large scale, and that he had already spent nearly 1,000*l.* on it, and that the legality of his position having been formally recognized by the competent authorities, "he is determined to stick to the property until he is driven out of it by a Cadi's Decree or actual violence."

That Sir J. Pauncefote was to request that we would take the papers transmitted therewith into consideration, and favour your Lordship with such further observations on the case as they might suggest. That your Lordship would be glad to be informed, at the same time, whether, in our opinion, the Turkish Law of 1867, appealed to by Mr. Reade, had any application to the case.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the Turkish Law of 1867 does not apply to the present case. In matters of internal government, as distinguished from external and foreign relations, the Bey of Tunis acts and has long acted independently of the Porte; and the present case is—from the French and Tunisian point of view, so far as the right to the Enfida is concerned—a subject of internal, and not external, concern. The British Government is held to this view by the Conventions of 1863 and of 1875; and France appears, for a long time past, to have maintained, to a greater extent even than Great Britain, the independence of the Bey of Tunis.

We may observe that the "amra" by which French subjects acquired the right to hold land in Tunis gives them authority to possess it "d'après les Traités conclus dans le même but" between the Government of Tunis and those of England and Italy.

And the Treaty between Tunis and Italy contains an express provision that in case a dispute should arise with reference to immovable property "between an Italian and the subject of a third Power, the party summoned before the local magistrate shall have the right to have the case taken before the respective Consular authority, to be tried there in the ordinary way."

This strongly confirms the view taken by us in our Report of the 3rd March, that such a dispute as the present one, between Mr. Levy and French subjects, must, unless both parties are willing to submit to the local Tribunals, be determined, not by those Tribunals, but by the Consular Court of the party against whom the proceedings are taken.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] Law Officers' Reports, March 3 and 7, 1881; Confidential Print (4431), Nos. 131, 136, 137, 139, 145, 147, 148, and 149; Mr Reade, No. 27, March 16, and No. 29, March 18; Mr. Broadley, March 25; Lord Lyons, No. 230, March 8, with French Mémoire, and No. 238, March 11, 1881; Hertslet's "Treaties on Trade" (Turkey); "State Papers," vol. lix; "Archives Diplomatiques," vol. iv, 1861; Treaties between Great Britain and Tunis of October 10, 1863, and July 19, 1875; Memorandum (Sir E. Hertslet), April 2, 1881.

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## No. 69.

*The Lord Chancellor to Sir J. Pauncefote.*—(*Received April* 13.)

*House of Lords, April* 12, 1881.

Enfida estate. Approving instructions to Consul Reade.

Dear Sir Julian,

I ENTIRELY agree with the last Report of the Law Officers, and with the propriety of the instructions proposed to be sent by Lord Granville to Consul Reade, and of the communication proposed to be made to the French Government.*

Believe me, &c.
(Signed) SELBORNE.

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## No. 70.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 19.)

*Temple, July* , 1881.

Enfida estate.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 4th instant, stating that he had the honour to lay before us, by direction of your Lordship, the inclosed copies of telegrams which had passed between your Lordship and Mr. Reade, Her Majesty's Agent and Consul-General in Tunis, respecting the Enfida case. That that case, which had been the subject of previous references to us, was dealt with in our Reports of the 3rd March and 8th April last, printed copies of which were transmitted therewith, together with the other papers.

That in February last the French Government maintained that the administration of justice in Tunis was so open to suspicion that it was impossible for them to consent to leave the Enfida affair to the decision of the Tunisian Tribunals ("Tunis No. 4," No. 30, p. 33, and No. 40, p. 41.)

That in our Report of the 3rd March, after reviewing the Conventions between Great Britain of 1863 and 1875, we expressed the opinion that both the parties to the dispute were exempt from the jurisdiction of the Tunisian Courts, and that if litigation should be resorted to, the proceedings must be taken in the Consular Court of the defendant's nationality.

That in our Reports of the 8th April last, after referring to the Treaty between Tunis and Italy, we confirmed the view previously expressed by us, that such a dispute as the present one between Mr. Levy and French subjects must, unless both parties are willing to submit to the local Tribunals, be determined, not by those Tribunals, but by the Consular Court of the party against whom the proceedings are taken.

That Her Majesty's Ambassador in Paris was accordingly instructed by your Lordship to inform the French Government that in the position in which the matter then stood Her Majesty's Government did not feel called upon to interfere in the dispute ("Tunis No. 4," No. 53, p. 53).

That a copy of the note addressed by Lord Lyons to the French Government in

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[*] See list of papers annexed to Law Officers' Report of April 8, 1881.

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pursuance of the above instructions was contained in his despatch No. 426 of the 4th May last.

That no reply had been received to that communication.

That the correspondence respecting the affairs of Tunis recently laid before Parliament ("Tunis No. 6, 1881") contained full particulars of the change effected in the situation of affairs in the Regency by the military operations carried on by France in that country, which resulted in the Treaty of the 12th May last between the French Republic and the Bey.

That Lord Tenterden was to invite our attention to Article IV of that Treaty (which was printed at p. 52 of the Parliamentary Paper), and to the assurances given by the French Minister for Foreign Affairs to Her Majesty's Government, that all existing Conventions between Tunis and foreign Powers would be maintained and respected. (Lord Lyons to your Lordship, the 16th May, "Tunis No. 6," p. 42; your Lordship to M. Challemel-Lacour, the 20th May, *ibid.*, p. 55.)

That it appeared from Mr. Reade's telegrams (Nos. 67 and 68) that the Sheikh-ul-Islam and Hanafy Tribunal were prohibited by an Edict of the Bey from adjudicating upon the Enfida case, and that the Meliky Court was directed by another Edict of His Highness to try and pronounce judgment upon the suit against Levy.

That Mr. Reade added that the interference of the Bey in the present instance was contrary to all precedent, and, as he had been assured by the Bey himself and his Prime Minister, so irregular and improper, that, on being appealed to by M. Roustan, they had on repeated occasions been obliged to decline all interference in the matter; and that, in answer to a telegram to Mr. Reade instructing him to report whether legal proceedings had been instituted against Mr. Levy, and, if so, in what Court, he had replied that legal proceedings had not, as yet, been instituted against Mr. Levy; and that, if cited to appear before the Meliky Court, he would refuse to attend, and would protest against the illegality of the proceedings.

That, whether the Meliky Court be the proper native Tribunal for the trial of such cases or not, it was conceived that, under existing Conventions, proper legal proceedings should be instituted against Mr. Levy by the French claimants to the estate before he could be dispossessed of it, and that, under the provisions of Article XXII of the Convention between Italy and Tunis of the 8th September, 1868, the benefit of which was extended to British subjects by Article V of the Convention between Great Britain and Tunis of 1875, and to French subjects by the Bey's Amra of the 6th July, 1871 ("Tunis No. 4," p. 52), Mr. Levy was entitled to have the case removed from the native Tribunal to the British Consular Court.

That Lord Tenterden was to request that we would take the papers* transmitted therewith into consideration, and favour your Lordship with our opinion as to the rights of Mr. Levy under the circumstances, and as to whether any, and, if so, what action should be taken by Her Majesty's Government in the present position of the case.

We are also honoured with a further letter from Lord Tenterden, dated the 13th instant, stating that, with reference to the letter from the Foreign Office of the 4th instant, he was directed by your Lordship to transmit to us a copy of a telegram which had been received from Her Majesty's Agent and Consul-General in Tunis,† from which it appeared that Mr. Levy had then been summoned to appear before the Meliky Court, although, as stated by Mr. Reade, the Cadis of that Court had already signed a formal certificate delaring their incompetency to try the Enfida case, which, he says, they assert pertains exclusively to the Hanafy Court, and which document Mr. Reade believed to be in Mr. Levy's possession.

That Lord Tenterden was to request that we would take that telegram into our consideration, together with the papers then before us, and that we would favour your Lordship, at our earliest convenience, with our Report on that case.

In obedience to your Lordship's commands we have the honour to report—

Jurisdiction of Tunisian Courts and question as to legality of Bey's action.

That if the Tunisian partners of Mr. Levy have such an interest in his claim as to make them competent parties to a suit for the assertion or defence of it, it may be (as pointed out in your Lordship's despatch to Mr. Reade of the 14th March, 1881) that the Tunisian Courts have jurisdiction over the matter. And if so, the question would be whether the Bey had authority, according to the law of Tunis, by Edict, to prohibit the Sheikh-ul-Islam and Hanafy Tribunal from adjudicating upon it, and to direct the Meliky Court to do so.

We have not before us the information necessary to enable us to express any opinion on these points.

Rights of Mr. Levy, under Treaties, lately confirmed by France, to bring his case before Consular Court.

Assuming that the interest in the claim is substantially that of Mr. Levy, to the exclusion of the interests of Tunisian subjects, we are of opinion that he is not bound to leave the determination of a question of legal right between him and French subjects to any of the native local Tribunals, and that, if summoned before the local magistrate, he would have the right to insist that the case should be taken before the Consular Court, to be tried there in the ordinary way.

We have already expressed our opinion, in former Reports, that, previous to the recent events in Tunis, this would be the right of Mr. Levy under the existing Treaties; and the Treaty between the Bey and the French Government lately concluded preserves all the rights created by existing Treaties. We think, therefore, that, if cited to appear before the Meliky Court, Mr. Levy would be entitled to take the course suggested above. Whether any steps should be taken by Her Majesty's Government must depend on the proceedings which may be adopted.

Action of Government depends upon proceedings adopted.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 71.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July 22.*)

*Temple, July* 20, 1881.

My Lord,

Grant of concession for a bank or pawning establishment to M. Daninos.

WE were honoured with your Lordship's letter of the 27th June last, stating that Her Majesty's Agent and Consul-General in Tunis reported* that a concession had been granted to a French subject, named Daninos, for a bank or pawning establishment, with exclusive privileges, for a term of fifty years. That Mr. Reade stated that those exclusive privileges consisted chiefly in the fact that M. Daninos was guaranteed against competition, and that no concession would have been necessary had the business been open to all the world. That the concession appeared to him to be opposed to Articles V and XVI of the Treaty between the Governments of Great Britain and Tunis of the 19th July, 1875. Your Lordship drew our attention to Article IX of the same Treaty, respecting the abolition of all monopolies of agricultural produce or of any other article whatsoever save as therein excepted. Your Lordship requested that we would favour you with our opinion as to whether the provisions of the Treaty precluded the granting by the Tunisian Government of the concession to M. Daninos referred to by Mr. Reade. A copy of the Treaty was inclosed with your Lordship's letter.†

In obedience to your Lordship's commands we have the honour to report—

Question as to such concession being contrary to Anglo-Tunisian Treaty of 1875.

That, in our opinion, the IXth clause of the Treaty cannot be relied on as opposed to the concession made to M. Daninos. This clause is limited to monopolies of a particular description, and would not extend to a bank or pawning establishment.

But the Vth, XVIth, and XVIIth clauses appear to preclude the granting by the Tunisian Government of the concession, with exclusive privileges, to M. Daninos. This opinion, however, is expressed with a very imperfect knowledge of the exact nature of that concession.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr. Reade, Telegraphic, No. 67; to Mr. Reade, Telegraphic, No. 34; Mr. Reade, Telegraphic, No. 68; Law Officers' Report, March 3; ditto, April 8, 1881; "Tunis No. 4 (1881)." No. 2410; Tunis No. 6 (1881)," No. 2415; Lord Lyons, No. 426, May 4, 1881. Conventions: Great Britain and Tunis, October 10, 1863, No. 474; Great Britain and Tunis, July 19, 1875, No. 586; Italy and Tunis, September 8, 1868 (State Papers, vol. lix, p. 1280). The Bey's "Amra," "Tunis No. 4 (1881)," p. 52, No. 2410.

† Mr. Reade, Telegraphic, No. 74, July 12, 1881.

* Mr. Reade (Telegraphic), No. 61, June 15; No. 62, June 17; and No. 65, June 24, 1881.

† Treaty between Great Britain and Tunis of July 19, 1875, No. 586.

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## No. 72.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 22.)

*Temple, July* 21, 1881.

My Lord,

Tunisian question (M. Roustan's position).

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 18th instant, stating that he was directed to transmit to us the accompanying *note verbale* which was communicated by the Italian Ambassador on the 12th instant, and which contained observations on the consequences of the Treaty of the 12th May, 1881, between France and the Bey of Tunis, and on the Bey's Decree of the 8th June, 1881, and Mr. Lister was to request that we would take that paper into our consideration, together with the correspondence upon the Enfida case, which was submitted to us on the 4th instant.

In obedience to your Lordship's commands we have the honour to report—

*Note verbale* of Italian Ambassador anticipated by despatch to Lord Lyons.

That your Lordship's despatch of the 22nd June to Lord Lyons has anticipated the greater part of the contents of this *note verbale*, which does not appear to us to call for any special observation.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 73.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 23.)

*Temple, July* 22, 1881.

My Lord,

Enfida estate.

WE are honoured with your Lordship's commands signified in Lord Tenterden's Memorandum of the 16th instant, stating that he was directed by your Lordship to transmit to us a communication from Mr. Broadley,* to be taken into our consideration, together with the other papers relating to the Enfida case, which were then before us.

In obedience to your Lordship's commands we have the honour to report—

Mr. Levy's resort to the Hanafy Court.

That it now appears from Mr. Broadley's last statement that Mr. Levy has himself resorted to a local Court, "the Hanafy Court" (see Articles 20 and 21 of Petition), and has not waited for any proceedings to be taken in the Consular Courts.

Cannot advise further action without more accurate information.

This being so, we, with our present information as to the law of Tunis with reference to the jurisdiction of its local Courts, are unable to advise your Lordship that any further steps can be, at present, taken on behalf of Mr. Levy. The determination of this must depend upon more accurate information with reference to the exact nature of Mr. Levy's legal proceedings, the jurisdiction of the several local Courts, and the powers of the Bey of Tunis, especially as to removal of proceedings.

Not aware how Treaty has been violated.

We are unaware in what respect Mr. Broadley suggests the course taken constitutes a violation of the Treaty of 1863.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 74.

*Note by the Lord Chancellor.*

Enfida estate. Agrees with Law Officers. Opinion as to drafts (A) and (B) to Mr. Adams, and private letter as to offer to Mr. Levy.

I AGREE, as I have done throughout, with the Law Officers in this case.

The two drafts (A) and (B) appear to me very proper to be sent.

But I share Lord Granville's doubts as to the private letter to Mr. Adams, marked (C).

It seems to me that it would be very inconvenient if, after suggesting the mode of settlement there mentioned (if Mr. Adams should be led by this letter to suggest it to the French Government), the French Government should make such an offer as is suggested, and if Mr. Levy should then refuse it, saying that he does not wish to sell his property, and insisting upon his legal rights.

What I would myself prefer is to tell Mr. Adams that Her Majesty's Government have received some private information which leads them to think it probable that, if a lump sum were offered to Mr. Levy to retire, he might be found accessible to such an offer, assuming it (of course) to be a substantial one, *but that their information does not go so far as to satisfy them that it has proceeded, directly or indirectly, from Mr. Levy himself.* If M. B. St. Hilaire should appear to be willing to find an expedient, as suggested in draft (B), he might be confidentially told as much as this.

(Signed) SELBORNE.

*July* 23, 1881.

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### Annexes.

### Draft (A).

*Earl Granville to Mr. Adams.*

(No. 695 A.)

*Foreign Office, July* 22, 1881.

Sir,

I INCLOSE an extract, taken from the "Times" of yesterday's date, and referring to a statement alleged to have been published yesterday in the "Tunis Official Gazette," to the effect that the Meliki Court have declared that Mr. Levy has no right of pre-emption in the Enfida case, and that, consequently, the Marseillaise Company are the rightful owners of the estate, and I have to request you to draw the attention of M. Barthélemy St. Hilaire to this extract, and to ask for information as to the present position of the case.

I am, &c.
(Signed) GRANVILLE.

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### Draft (B).

(No. . Very Confidential.)

*Foreign Office, July* , 1881.

Sir,

WITH reference to my despatch of yesterday's date, it may be as well that the French Government should know that Her Majesty's Government are advised by the Law Officers of the Crown that Mr. Levy is entitled, under the provision of the existing Treaties to which Lord Lyons was instructed to call the attention of the French Government in my despatch No. 379 of the 21st April (recently laid before Parliament), to have the case taken from the local Court, whether Hanafi or Meliki, before the Consular Court, to be tried there in the ordinary way.

Her Majesty's Government have not informed Mr. Levy of this opinion, nor will they present to Parliament the opinion of the Law Officers, as this would be contrary to established practice. They cannot, however, ignore the fact that the case is approaching a point at which it may become difficult to avoid a question arising between the two Governments of a very complicated, and, possibly, serious character.

Under these circumstances, they think it advisable that the two Governments should anticipate any such question by a friendly interchange of views. They therefore wish you to sound M. Barthélemy St. Hilaire, in an entirely confidential manner, whether he has any suggestion to offer by which the case might be settled between the contending parties.

I am, &c.
(Signed) GRANVILLE.

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* Mr. Broadley, July 10, 1881.

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Draft (C), as submitted to the Lord Chancellor.

*Lord Tenterden to Mr. Adams.*

*Foreign Office, July* , 1881.

Dear Adams,

WITH reference to Lord Granville's despatch No. of to-day respecting the Enfida estate, probably the easiest solution would be that the French Company should be induced to pay Levy a lump sum to retire.

You might give a hint to this effect as from yourself.

Draft (C), as amended in accordance with the Lord Chancellor's recommendation.

*Lord Tenterden to Mr. Adams.*

(Private.) *Foreign Office, July* , 1881.

My dear Adams,

LORD GRANVILLE did at one time receive some private information which leads him to think it probable that if a lump sum were offered to Mr. Levy to retire he might be found accessible to such an offer, assuming it, of course, to be a substantial one; but this information does not go so far as to satisfy him that it has proceeded directly or indirectly from Mr. Levy himself. If M. Barthélemy St. Hilaire should appear to be willing to find an expedient, as suggested in Lord Granville's despatch of to-day, he might be told confidentially as much as this.

Yours sincerely,
(Signed) TENTERDEN.

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## No 75.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 11.)

*Temple, August* 8, 1881.

My Lord,

Mr. Perkins charged with fighting against French and killing an officer.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 1st instant, stating that he was to transmit to us papers relative to an accusation brought against Mr. Perkins, a British subject, by the General in command of the French forces operating in Tunis against the Kroumirs, of having fought in the ranks of the enemy and having killed a French officer.

That the circumstances under which that charge had been brought were detailed in Mr. Reade's further despatch No. 61 of the 2nd May last.

Charge withdrawn.

That we should perceive from Mr. Reade's further despatch No. 78 of the 24th June, and from Lord Lyons' despatch No. 652 of the 6th July, that that charge had since been withdrawn.

Claim for indemnity.

That, nevertheless, Mr. Perkins had addressed a letter to Mr. Reade (Inclosure 3 in No. 78), in which he expressed himself dissatisfied at the terms in which the charge had been withdrawn, and claimed to be entitled to a substantial indemnity for the calumnious accusation, which, he stated, compelled him to abandon his duties in the interior, and had otherwise damaged his present position and future prospects in the Regency of Tunis. That there was no evidence whatever in support of those allegations.

That Lord Tenterden was to request that we would favour your Lordship with our opinion as to the reply which should be returned to Mr. Perkins' application for further redress.

In obedience to your Lordship's commands we have the honour to report—

It cannot be supported.

That, in our opinion, Mr. Perkins may properly be informed that the circumstances are not such as would entitle Her Majesty's Government to make a pecuniary claim upon the French Government in respect of the mistaken charge against Mr. Perkins, now withdrawn, of having taken part in the warlike operations against the French army.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 76.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 11.)

*Temple, August* 11, 1881.

My Lord,

Insurrection at Sfax.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 4th instant, stating that, in a despatch dated the 6th ultimo, Her Majesty's Agent and Consul-General at Tunis forwarded a Report by Mr. Vice-Consul Galea of the occurrences in connection with the insurrection at Sfax, and a copy of a protest which he had addressed to the Bey, holding His Highness' Government responsible for any losses sustained by British subjects owing to the insufficiency of the measures taken by the local authorities for the protection of their persons and property.*

Proposed draft to Mr. Reade as to liability of foreign Governments for losses of British subjects, and presentation of protest.

That Lord Tenterden transmitted therewith Mr. Reade's despatch and its inclosures, and he was directed by your Lordship to request that we would report at our early convenience whether the terms of the accompanying draft instruction which your Lordship proposed to address to Mr. Reade, as to the liability of a foreign Government for losses sustained in such cases, and the presenting of a protest without reference to Her Majesty's Government, were right and proper.

That we would observe that the draft instruction referred only to losses from the insurrection, and not from the subsequent bombardment by the French fleet, as to which the rights of Her Majesty's Government were reserved.

That the proposed draft was founded on a Report furnished by the Law Officers of the Crown in 1861 on certain claims of the same nature against the Government of Venezuela,† a copy of which Report was also transmitted therewith.

In obedience to your Lordship's commands we have the honour to report—

Approve draft.

That, in our opinion, the terms of the accompanying draft instruction which your Lordship proposes to address to Mr. Reade are right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Draft of Despatch from Earl Granville to Mr. Reade.*

(No. .) *Foreign Office, August* , 1881.

Sir,

IN your despatch No. 80 of the 6th ultimo you inclose copy of a protest addressed to the Bey on behalf of the British subjects who have suffered by the recent insurrection at Sfax, in which you hold the Government of His Highness responsible for the losses they have incurred on account of the insufficiency of the measures taken by the local authorities for the protection of their persons and property. I have to inform you that Her Majesty's Government have always held the opinion that a foreign Power cannot, as a matter of international right, be made responsible generally for injuries inflicted on the persons or property of British subjects resident in the country by insurgents engaged in open and armed hostility to its Government, which injuries the Government had not the power to prevent. In such a case, foreigners cannot claim to be placed in a better situation than the natural-born subjects of the country. If a foreigner's property is injured by an invading army he has no title to compensation, and injury caused by insurgents or rebels is subject to the same rule. If, indeed, the Government, having the power to do so, neglects or wilfully omits to restrain or put down the insurgents, it may be regarded as an accomplice in the act complained of, and there would be a right in the foreigner to demand compensation. It is possible that you may have reasonable ground for supposing that in the present instance the injuries complained of would not have occurred but for gross neglect on the part of the Bey's Government, although, so far as Her Majesty's Government are informed, this does not appear to have been the case. But, under any circumstances, it is desirable that protests of this nature should not be presented without previous communication with Her Majesty's Government, and I have accordingly to instruct you

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* Mr. Reade, No. 80, July 6, 1881.

† Law Officers, February 25, 1861.

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to refer home in the first instance if it should on any future occasion appear necessary to present a similar protest.

You will understand that this despatch refers only to losses by the rising of the population, and not to any losses which may be caused by the bombardment, as to which Her Majesty's Government reserve their rights.

I am, &c.

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### No. 77.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received August* 27.)

*Temple, August* 27, 1881.

My Lord,

Enfida estate. Mr. Levy summoned before the Meliky Court.

WE were honoured with Sir Julian Pauncefote's letter of the 16th instant, stating that, with reference to our Report of the 8th August, and to previous correspondence respecting the Enfida case, he was directed by your Lordship to transmit to us a copy of a telegram from Her Majesty's Agent and Consul-General in Tunis,* from which it appeared that Mr. Levy had again been summoned to appear before the Meliky Court, which had been directed to proceed with case, and if Mr. Levy should not appear, to pass judgment in default, although, according to Mahommedan law, as stated by Mr. Reade, judgment cannot be pronounced in the absence of the defendant. That Mr. Reade stated that Mr. Levy had protested against the procedure now adopted, insisting on his right, as defendant in the suit, to demand that it should be tried by the British Consular Court, conformably with Article XXIV of the Treaty of 1875. That Mr. Reade pointed out that, as neither of the litigants is Tunisian or subject to the Bey's jurisdiction, his interference was all the more irregular.

That Sir Julian Pauncefote was to inclose a copy of our Report on the case of the 8th April last, and of the following documents, namely, the Convention between this country and Tunis of the 10th October, 1863;† the General Convention of the 19th July, 1875;‡ the Bey's Amra§ declaring the conditions under which French subjects might hold real property in the Regency; the Treaty between Italy and Tunis of 1868;‖ and the Printed Correspondence, "Tunis No. 4."¶

That a later telegram from Mr. Reade** was also annexed, stating that no reply to his protest had been received; that the trial before the Meliky Court had been deferred in consequence of the absence of Mr. Levy, who had been again summoned to attend. That, in his previous telegram, Mr. Reade reported that a French military force had gone in the direction of the Enfida estate, accompanied by agents of the Marseilles Company.

That Mr. Reade had been instructed to report at once by telegram the result of Mr. Levy's demand for the transfer of the case to the British Consular Court.

That Sir Julian was to add that to the other papers sent therewith a despatch which had just been received from Mr. Reade,†† containing a copy of a protest addressed to him by Mr. Levy; and he (Sir Julian Pauncefote) was to request that we would favour your Lordship with our opinion as to whether any action was called for on the part of Her Majesty's Government under the present circumstances of the case.

We were also favoured with a note from Sir Julian Pauncefote, dated the 23rd August, inclosing despatches from Her Majesty's Agent and Consul-General in Tunis.‡‡

In obedience to your Lordship's commands we have the honour to report—

Mr. Levy's action renders difficult the maintenance of his right to be heard only before a Consular Court.

Cannot give any opinion as to removal of case to Meliky Court.

No steps to be taken unless the Meliky Court has no jurisdiction.

That, inasmuch as Mr. Levy himself instituted proceedings in one of the local Tunisian Courts, it appears to us that he has rendered it difficult on the part of the Government to maintain his right to have the case heard only in the British Consular Court. Whether the removal of the case from the Hanafy to the Meliky Court was beyond the lawful power of the Bey is a matter on which we are unable to express an opinion, as it depends on the Constitution of Tunis and the procedure of its Courts.

We do not think, therefore, that Her Majesty's Government is in a position at present to take any action in the matter.

We have written the above on the assumption that there has been a transfer to the Meliky Court of an existing cause pending in the Hanafy Court, and not the commencement of new and independent proceedings in the former Court.

If it should hereafter appear that this assumption is not well founded, or that the Meliky Court is acting with entire absence of jurisdiction, it may become your Lordship's duty to make representations on the subject.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Telegram from Mr. Reade, No. 83, , 1881.

† No. 474.

‡ No. 586.

§ Confidential Print No. 4431, p. 95.

‖ Treaty of the 8th September, 1868, State Papers, vol. lix, p. 1280.

¶ Parliamentary No. 2410.

** Telegram from Mr. Reade, No. 84, , 1881.

†† Mr. Reade, No. 88, August 10, 1881.

‡‡ Mr. Reade, Nos. 89 and 90 of 1881.

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### No. 78.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October* 28.)

*Temple, October* 27, 1881.

My Lord,

Enfida estate.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 12th instant, stating that, with reference to the claim of Mr. Levy to the Enfida estate, in the Regency of Tunis, and to our last Report in relation thereto of the 27th August last (a copy of which would be found at p. 25 of the accompanying printed papers, marked A), he had the honour to transmit to us, by your Lordship's direction, further correspondence which had taken place on the subject.

Proceedings of the Meliky Court.

That on the 31st August Her Majesty's Consul-General at Tunis reported by telegram that the Meliky Court had issued a Decree directing the authorities to put the Marseilles Company into possession of the Enfida estate. (Print A, p. 26, No. 63, and Extender, p. 28, No. 68.)

That, in reply, Mr. Reade was instructed to answer the inquiry suggested in our Report of the 27th August (*ibid.*, p. 25), viz.: "Whether there had been a transfer of the cause pending in the Hanafy Court to the Meliky Court, or whether a new and independent proceeding had been commenced in the Meliky Court." (*Ibid.*, p. 27, No. 65, and Extender, No. 66.)

That Mr. Reade's reply (*ibid.*, p. 27, No. 67, and p. 28, No. 68) was somewhat obscure. That the next document to which Lord Tenterden was to call our attention was a short petition from Mr. Levy, transmitted by Mr. Reade to the Foreign Office on the 30th August. (*Ibid.*, p. 28, No. 69.)

That, in the meanwhile, Dr. Arpa, Her Majesty's Legal Vice-Consul at Tunis, who had been absent on leave, had been instructed to return to his post, and to draw up a Report on the case. (*Ibid.*, p. 18, No. 43.)

That that Report would be found at pp. 38-48, *ibid.*

That, before its receipt at the Foreign Office, Mr. Reade had telegraphed a request to your Lordship to suspend all action upon it until receipt of fuller explanations. (*Ibid.*, p. 29, No. 71, and Extender, p. 51, No. 75.)

That those explanations were contained in his despatch of the 1st September (*ibid.*, p. 49, No. 73), and in a further despatch of the 8th September (*ibid.*, p. 51, No. 76), and a Supplementary and Confidential despatch of the same date. (*Ibid.*, p. 58, No. 77.)

That the next document to which our attention was invited was a letter from Mr. Levy of the 14th September, stating that he had instructed Mr. David Santillana, ex-Secretary of the International Commission at Tunis, and Chief Interpreter of His Highness the Bey, to proceed to London and place his original documents and his services at the disposal of the Foreign Office, in the event of their being required.

That Mr. Santillana had arrived in London, and had addressed two letters to your Lordship. That the first, dated the 22nd September (print B), contained translations of the Arabic documents relating to Mr. Levy's claim, with a summary of their contents, "as illustrating the legal part of the claim according to Moslem law." That the second letter, October the 1st (print C), contained a brief summary of the Mahommedan law of pre-emption, under which Mr. Levy had preferred his claim. That we should observe that Mr. Reade, in his telegram of the 5th September (print A, p. 27, No. 67), reported that "in consequence of Mr. Levy's opposition, or some other cause, the trial has not been proceeded with;" whereas, in his immediately preceding telegram of the 31st August (*ibid.*, p. 26, No. 63), he had reported that the Meliky had actually issued a Decree directing the local authorities to put the Marseilles Company into possession.

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That the latest Report on the subject was contained in his telegram No. 95 of the 24th September, from which it appeared that, notwithstanding "the illegal sentence" of the Meliky Court, Mr. Levy's possession was still undisturbed.

That it would seem from those communications that the Decree referred to in Mr. Reade's telegram of the 31st August (*ibid.*, p. 26, No. 63) was an arbitrary order made by the Meliky Court without previous trial. Such being the position of affairs, Lord Tenterden was to request that we would take all the papers transmitted therewith into consideration, and favour your Lordship with our opinion as to whether any further action was called for at present on the part of Her Majesty's Government in relation to the case.

In obedience to your Lordship's commands we have the honour to report—

**Remarks on the transfer by Bey of case to the Meliky Court, and the action of that Court.**

That it appears, from the information now before us, that the pending case was transferred, by order of the Bey, from the Hanafy to the Meliky Court, and that the latter Court has made an order annulling the attachment of rent granted by the Hanafy Court. It would seem, too, that it has directed that the Marseilles Company should be put in possession of the estate, but that no steps have been taken to carry out this order.

But upon the important question how far it was within the constitutional power of the Bey to transfer the case, and authorize the Meliky Court to adjudicate upon it, our information is still imperfect, and the matter is left very obscure.

Mr. Reade states (No. 76) that the Bey of Tunis at one time informed him "distinctly and emphatically that he had no jurisdiction whatever over the local Court," and he adds that "it is notorious that in Mahommedan countries the religious Tribunals are entirely independent of the Sovereign Power."

Dr. Arpa (No. 72, p. 39) states, in relation to the Decree directing the Meliky Court to adjudicate on the Enfida case, and to another Decree of the Bey, interdicting the Hanafy Court from doing so: "I have not been able to see these two Decrees. I am unable, therefore, to say whether they are *ultra vires*, constituting a violation of the Treaty right, but by the very fact of their being *ex parte* orders, if they were intended to decide a question of jurisdiction by a judicial authority, they are illegal, as Mr. Levy had no opportunity of defending himself. If they were intended to create a new order of things by a legislative measure, they could only be prospective, and cannot affect Mr. Levy's case."

The meaning of this is not very clear, and we do not know whether it is intended to lay down as a general principle of law that prospective legislation of the nature in question could not affect pending litigation (which would seem open to doubt), or whether this observation has special reference to the powers of the Bey of Tunis.

But however this may be, it does not appear that Dr. Arpa agrees with Mr. Reade's view that the Courts are entirely independent of the power of the Bey, inasmuch as, if he did, it is not easy to understand why he should be unable, without seeing the Decrees, to say whether they are *ultra vires* or not.

But, further, in Mr. Santillana's letter of the 22nd September, 1881, written on behalf of Mr. Levy (see para. 14), he urges, as the first of the reasons why Mr. Levy is not bound to appear before the Meliky Court, that, according to a Decree of the Bey (which he hopes to be able shortly to submit) that Court is debarred from judging of suits relating to "shoofâ" or pre-emption by right of contiguity.

If such a Decree exists, it certainly seems inconsistent with the idea that the Bey has no power to confer jurisdiction upon the Tribunals, or to deprive them of it. And the existence of such a Decree would sufficiently explain why the Meliky Court should have declared itself competent in a case of "shoofâ," which is urged by Mr. Santillana as the second reason why Mr. Levy is not bound to submit himself to that Tribunal.

**Course to be adopted.**

Under these circumstances, we feel ourselves incompetent to pronounce an opinion whether the Meliky Court is acting without jurisdiction. If further information should prove that this is so, it may be your Lordship's duty, as we pointed out in our former Report, to make representations upon the subject.

Even if it should turn out that the Bey was in a position lawfully to transfer the case to the Meliky Court, still, if your Lordship should be satisfied that this act of the Bey, though strictly within his powers, was an arbitrary exercise of those powers due to the action taken by the French authorities with a view of obtaining an advantage for the Marseillaise Company to the prejudice of a British subject, we think your Lordship would be warranted in taking action in the matter.

**Suggesting independent arbitration.**

We need hardly say that if the French Government could obtain the consent of the Marseillaise Company to refer the case to independent arbitration, and should be

willing to do so, such a course would be the best solution of the difficulties which have arisen.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

(A.) Part II, "Further Correspondence respecting Mr. Levy's Claim," pp. 26–59, Confidential Print No. 4623.
(B.) Mr. Santillana, September 22, 1881, with inclosures.
(C.) Mr. Santillana, October 1, 1881.
(D.) Mr. Levy, September 14, 1881.
(E.) Telegram from Mr. Reade, No. 95, September 24, 1881.

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## No. 79.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 27.)

*Temple, December* 24, 1881.

My Lord,

**Liability of foreigners contracting for French troops in Tunis to French criminal jurisdiction.**

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 15th instant, stating that by your Lordship's direction he inclosed a copy of a despatch from Her Majesty's Agent at Tunis,* calling attention to a notice (also inclosed) which had been circulated in that city by the French military authorities, advertising for tenders for the supply of their troops.

That Mr. Reade pointed out that by the 12th paragraph of that notice tenders could only be accepted from foreigners on condition of their submitting to French jurisdiction, both criminal and civil, and as British subjects could not submit to the jurisdiction of a foreign Power in Tunis without the assent of the British Representative, Lord Tenterden was to request that we would favour your Lordship with our opinion whether it would be advisable to warn either them or the French authorities that no such assent would be given as regarded criminal jurisdiction.

In obedience to your Lordship's commands we have the honour to report—

**Consul may warn British subjects against submitting to such jurisdiction.**

Although there is no obligation to do so we see no objection to Her Majesty's Consul warning British subjects, whom he may think likely to enter into contracts with the French Government, that consent will not be given to their submitting to French criminal jurisdiction.

**Should inform French authorities of such warning.**

If such notices be given it probably will be well, as an act of courtesy, to inform the French authorities that such course has been adopted.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# Turkey.

## No. 80.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 19.)

*Temple, January* 19, 1881.

My Lord,

**Failure of Messrs. Hanson and Co.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th instant, stating that he was directed by your Lordship

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* Mr. Reade, No. 114, November 24, 1881.

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to transmit to us the papers, as marked in the margin,* and to request that we would take the same into our consideration, and favour your Lordship with our opinion on the questions raised by Her Majesty's Judge and Consul-General at Constantinople in his telegram of the 11th instant.

That Messrs. Hanson and Co., English bankers at Constantinople, recently suspended payment, and that a meeting of the creditors was to take place on the 22nd instant.

That it was presumed that Mr. Fawcett's question referred to public moneys due by the bankers at the time of their suspension to the various Departments of Her Majesty's Government which he mentioned. That Bonham's case to which he referred was one of those cited in the letter of the Secretary of the Post Office of the 1st January, 1881, and was reported in "Law Reports, Chancery Division," vol. x, pp. 595-604.

That Mr. Fawcett desired to know also whether he had power to issue a writ of extent, and whether that course was expedient in the interest of the Crown.

That Sir Julian was to inclose a copy of the Order in Council for the Levant, and to refer us more particularly to sections 6 and 87.

In obedience to your Lordship's commands we have the honour to report—

Issue of writ of extent necessary.

That we think Mr. Fawcett has the power to issue a writ of extent, and that such a course is expedient and necessary in the interest of the Crown, for the purpose of securing the sums due by Messrs. Hanson at the time of their suspension to the various Departments of Her Majesty's Government.

That we write this on the assumption that Messrs. Hanson did not carry on business under any licence from the Ottoman Government comprising conditions which would be violated by an administration of their estate in the British Consular Court, according to the English law.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 81.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 21.)*

*Temple, February* 19, 1881.

My Lord,

Regina *v.* Zarb.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th instant with reference to our Report of the 12th November last, on the case of "Regina *v.* Zarb," and stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Her Majesty's Consul-General and Judge at Constantinople,† which contained the views of Her Majesty's Consul and Judge in Egypt, in regard to the crime committed by the prisoner, and Sir Julian Pauncefote was to request that we would take the same into our consideration, and favour your Lordship with our opinion as to the punishment which should be actually imposed upon the prisoner Zarb.

That the papers previously submitted to us, and a copy of our Report thereon, were transmitted therewith for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Punishment to be inflicted.

That the proper punishment to be actually imposed should be of imprisonment for seven years with hard labour.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Post Office, January 1; to Mr. Fawcett, No. 1, January 1; Mr. Fawcett, Telegraphic, January 11, 1881 Levant Order in Council, Confidential, No. 2873.

† Consul-General Fawcett, No. 11, January 15, 1881.

## No. 82.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 11.)*

*Temple, March* 10, 1881.

My Lord,

The swearing of affidavits before Secretary of Embassy at Constantinople.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us a despatch, and its inclosures, which had been received from Her Majesty's Chargé d'Affaires at Constantinople* on the subject of the validity of an affidavit sworn before a Secretary of Embassy at Constantinople, for the purposes for which an affidavit was required in certain bankruptcy proceedings pending before Her Britannic Majesty's Supreme Consular Court there, it being contended that such affidavit should have been sworn before the proper officer of the Court.

That by section 1 of the Act 18 & 19 Vict., cap. 42, an affidavit sworn as therein mentioned was as valid, to all intents and purposes, as if sworn before a Justice of the Peace or Notary Public in the United Kingdom, and the question of validity of affidavits so sworn in proceedings pending before the Supreme Consular Court in cases where affidavits were required seemed to be a question of law for the decision of that Court when it should arise; but the power to administer oaths given to Diplomatic officers under the Act was discretionary; and, in view of the opinion expressed by Mr. Fawcett, the Judge of the Supreme Consular Court, in his letter to Mr. St. John, Sir Julian Pauncefote was to request that we would take those papers under our consideration, and favour your Lordship with our opinion as to whether instructions should be sent to Her Majesty's Embassy at Constantinople to decline in future to swear persons to affidavits required to be used in proceedings pending before the Supreme Consular Court.

In obedience to your Lordship's commands we have the honour to report—

That the object of the 18 & 19 Vict., cap. 42, generally was to enable the persons there named to administer oaths and do notarial acts in the absence of those usually performing such acts, and the words "whenever he shall see necessary" in the first section make the exercise of the power entirely discretionary.

Should be done only under exceptional circumstances.

Since there is at Constantinople no difficulty in swearing affidavits in bankruptcy and other proceedings in the Consular Court before the officer duly appointed for the purpose, instructions may, in our opinion, properly be sent to Her Majesty's Embassy at Constantinople to decline in future (unless under exceptional circumstances of emergency) to swear persons to affidavits to be used in proceedings pending before the Supreme Consular Court there.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 83.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 26.)*

*Temple, April* 25, 1881.

My Lord,

Case of V. Farrugia. Petition for remission of sentence passed by Consular Court at Constantinople.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us therewith a letter from the Colonial Office,† forwarding a petition from Vincenzo Farrugia, a Consular prisoner in the Corradino Prison at Malta, praying for a remission of sentence that he was then undergoing at that place.

That Sir J. Pauncefote was further to inclose us Reports on that case from Her Majesty's Acting Judge of the Supreme Consular Court at Constantinople, and from Mr. Fawcett, Her Majesty's Consul-General and Judge, who was then in this country;‡ and that he (Sir J. Pauncefote) was to request that we would be so good as to take those documents into our consideration, and favour your Lordship with our opinion as to whether any, and if so, what, portion of the sentence passed on Farrugia could properly be remitted.

In obedience to your Lordship's commands we have the honour to report—

That, in imposing the sentence of twenty years' imprisonment upon Vincenzo

* Mr St. John, No. 64, January 24, 1881

† Colonial Office, February 1, 1881.

† Acting Judge Burrell (No. 32), March 24; Consul-General Fawcett, April 8, 1881.

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Farrugia, Sir Philip Francis was no doubt influenced by the laudable desire to prevent the knife being used as a weapon of attack; but still the sentence appears to us to be very severe, and one that may well be, in part, remitted.

A perusal of the depositions and notes of evidence leads us to the conclusion that the prisoner was probably subjected to considerable provocation before inflicting the wound.

In the preliminary examination, Antonio Bailas states: "I heard cracks of glass broken; but I did not see how. I saw stools broken. I went to the prisoner's room, and saw marks about his face and head."

This evidence was not given on the trial; but Demetrio Sereno did prove that the prosecutor struck the convicted man on the back with a stool before the wound was inflicted.

Prayer of petition may be granted, and prisoner released.

As the prisoner has now suffered an imprisonment of five years and five months, which, we presume, would, if he has been well-conducted, represent a sentence of seven years' imprisonment, we are of opinion that justice will be sufficiently effected and reflection upon the original sentence avoided if the convict be set at liberty upon the 1st July next, and that he be so informed forthwith.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 84.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 3.)*

*Temple, May* 2, 1881.

My Lord,

Writ of extent in case of Hanson and Co.'s failure.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st March last, stating that, with reference to our Report of the 19th January, of which a printed copy was inclosed, relative to the issue of a writ of extent by Her Majesty's Consul-General at Constantinople for the protection of the interests of the Crown affected by the failure of Messrs. Hanson and Co., he was directed by your Lordship to transmit to us a further despatch and its inclosures from the Acting British Judge at Constantinople,* and to state that the writ of extent was issued immediately on affidavits of urgency, but that no inquiry had been subsequently instituted to establish the Crown debt.

That Consul-General and Judge Fawcett's previous despatch on the subject was also inclosed,† and Sir Julian Pauncefote was to request that we would take the papers submitted to us into our consideration, and favour your Lordship with our opinion as to what further steps, if any, should be taken to protect the rights of the Crown.

In obedience to your Lordship's commands we have the honour to report—

Form of writ not correct, and proceedings perhaps irregular. Should let matter drop.

That the form of the writ is not correct, and it is not clear that the proceedings connected with it are regular. But it is, we apprehend, too late now to commence the proceedings *ab initio*. And inasmuch as it is not improbable that the matter may not be litigated, we think it would be prudent to take no further steps at present.

The form of the writ can possibly be amended if steps be taken to question the proceedings, and this could be as effectually done then as it could now.

We are. &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 85.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 19.)*

*Temple, May* 18, 1881.

My Lord,

John Johnston, imprisoned at Malta.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us therewith a correspondence, as marked in the margin,* which had passed between the Colonial Office, the Foreign Office, and Her Majesty's Acting Judge at Constantinople, relative to a petition addressed to Her Majesty's Government by a British subject named John Johnston, praying for a remission of the sentence he is now undergoing in the Corradino Prison at Malta; and Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether, under the circumstances of the case, the unexpired term of the prisoner's sentence, or any part thereof, should be remitted.

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* Mr. Burrell, No. 28, February 21, 1881.

† Consul-General Fawcett, No. 14, January 25, 1881.

That Sir Julian Pauncefote was to request that the inclosed correspondence, which was sent in original, might be returned to the Foreign Office together with our reply.

In obedience to your Lordship's commands we have the honour to Report—

Unexpired term of sentence may be remitted.

That, considering all the circumstances of the case and that the prisoner has already undergone imprisonment for three and a-half years, we think the unexpired term of the prisoner's sentence may properly be remitted.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 86.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 1.)*

*Temple, June* 30, 1881.

My Lord,

Revenue of Cyprus. Application of surplus to the Loan of 1855.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 15th instant stating that, with reference to our Report of the 6th of January last relative to the question of the retention by Her Majesty's Government of so much of the surplus revenue of Cyprus as might be sufficient to satisfy the arrears due by the Ottoman Government to the Porte on account of the 1855 Loan, he was directed by your Lordship to lay before us the accompanying correspondence on the subject, which had taken place since the date of our Report.

That that correspondence referred, as we would observe, to two distinct points.

1. The offer made by the Porte, and accepted by Her Majesty's Government, to apply the surplus revenue of Cyprus for 1879-80 to the 1855 Loan, on the understanding that the surplus for that year was to be converted at the rate of 120 piastres to the £ T.; and,

2. To the appropriation in subsequent years of the surplus, or of such portion of it as might be required, to the payment of the arrears and interest due on the Loan.

That the communication suggested in our Report calling upon the Porte to give the Guaranteeing Governments the benefit of the special security to which they were entitled under Article III of the Convention of 1855, by which the Customs of Smyrna were specially charged with the interest and sinking fund of the loan, had been made by the British and French Ambassadors; no reply to that communication had been received from the Porte.

That Lord Tenterden was to call our special attention to Mr. Goschen's despatch No. 374 of the 10th May and to the note from the Porte inclosed in it; to the letter to the Treasury of the 27th May and to their reply of the 4th June; and Lord Tenterden was to request us to take into our consideration the annexed draft of a despatch which your Lordship proposed to address to Her Majesty's Ambassador at Constantinople instructing him to call the attention of the Porte to Lord Salisbury's despatch of the 23rd December, 1879, and to inform them that Her Majesty's Government do not recognize the assignment of the Cyprus revenues to the Administration of the Six Contributions, and that, in order to maintain the prior claim of the Governments, they had decided to instruct the High Commissioner of Cyprus to suspend any further payments on account of the surplus revenue.

That your Lordship would be glad to be informed at our early convenience whether we concurred in the terms of the draft.

We were also honoured with Lord Tenterden's communication of the 28th instant.

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* From Colonial Office, March 3, 1881; to Acting Judge Burrell, No. 24, Judicial, March 12; from Acting Judge Burrell, No. 44, April 21, 1881.

1881

In obedience to your Lordship's commands we have the honour to report—

Approve of draft to the Earl of Dufferin.

That we concur in the terms of the draft.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*Draft of Despatch from Earl Granville to the Earl of Dufferin.*

(No. .)
*Foreign Office, July* , 1881.

My Lord,

HER Majesty's Government have had under their consideration Mr. Goschen's despatch No. 374 of the 10th May last, forwarding a note from the Porte relative to the question of the application of the Cyprus surplus for 1879-80 to the payment of the arrears due on the Ottoman Guaranteed Loan of 1855. The note states:—

1. That the Ottoman Government do not consider the sum of 85,000*l.* as the whole of the surplus revenue of Cyprus for that year.

2. That the revenues of Cyprus having been pledged to the Administration of the Six Indirect Contributions by the Convention of the 22nd November, 1879, that portion only of the revenues which preceded the conclusion of the said Convention can be affected to the 1855 Loan.

3. That for the future the Turkish Government will insist on the concession of the surplus at the rate of 100 piastres to the £T.

I will deal first with the second point, which refers to the assignment of the tribute to the Administration of the Six Contributions. Her Majesty's Government are advised that they are entitled to treat the surplus revenues of Cyprus as part of the revenues of Turkey, which are charged, by Article III of the Convention of 1855, with the payment of the interest and sinking fund of the 1855 Loan; and they cannot admit the right of the Porte to assign them to later creditors. A despatch was addressed by my predecessor to Sir H. Layard on the 23rd December, 1879, in which he stated that Her Majesty's Government could not accept or recognize the transfer to any other person of the Sultan's right to receive this payment, nor could they admit any liability, immediate or contingent, to pay it to any person except the Sultan. Further, that any debt owing by the Porte to Her Majesty's Government must of necessity stand as a first charge against the said surplus.

I have to instruct your Excellency to address a note to the Porte calling their attention to the communication in this sense made by Sir H. Layard in January 1880, and to state that Her Majesty's Government do not recognize the assignment of the Cyprus revenues to the Administration of the Six Contributions.

With reference to the first and second points raised in Assim Pasha's note, I may refer your Excellency for a statement of the views of Her Majesty's Government to the letter from the Board of Treasury of the 16th February last. You will see that the Board, after a careful consideration of the subject, consider that the accounts of the Government of Cyprus previous to the transfer were fairly and impartially examined by Sir R. Biddulph, that the claims for deductions made by him were reasonable, and they assumed, until better informed, that the annual payment was properly fixed by him at 11,121,951 piastres, subject to a temporary deduction of 29,574 piastres on account of the Forced Loan of 1877.

With regard to the rate of exchange, the Board were of opinion that the payment to the Porte for the years subsequent to 1879-80 should be made at the average rate which prevailed during the five years preceding occupation.

If the Ottoman Government wish to reopen the discussion of these points, Her Majesty's Government will be prepared to do so at a fitting opportunity; but, in view of the claim which has been put forward to ignore the rights of the Guaranteeing Governments under the Convention of the 27th June, 1855, and to transfer part of their security to the parties to the Convention of the 22nd November, 1879, Her Majesty's Government have decided, in order to maintain the prior claim of the Guaranteeing Governments, to instruct the High Commissioner of Cyprus to suspend any further payments on account of the surplus revenue. Mr. Goschen's proposal to continue to press for the immediate remittance of as large a portion as possible of the 85,000*l.*, which the Porte offered to pay on account of the interest due on the 1855 Loan, is approved, and I have to request your Excellency to take action accordingly.

I am, &c.
(Signed) GRANVILLE.

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*List of Papers.*

1. To Treasury, January 15, 1881.
2. Treasury, February 16, 1881.
3. To Colonial Office, February 21, 1881.
4. Colonial Office, March 3, 1881.
5. To Mr. Goschen, No. 147, March 3, 1881.
6. Ditto, No. 148, March 3, 1881.
7. To Lord Lyons, No. 224, March 3, 1881.
8. Ditto, No. 225, March 3, 1881.
9. To Musurus Pasha, March 10, 1881.
10. Lord Lyons, No. 231, March 10, 1881.
11. Ditto, No. 300, April 1, 1881.
12. To Mr. Goschen, No. 257, April 6, 1881.
13. To Lord Lyons, No. 341, April 11, 1881.
14. Colonial Office, April 16, 1881.
15. Mr. Goschen, No. 285, April 12, 1881.
16. Treasury, April 16, 1881.
17. Lord Lyons, No. 365, April 19, 1881.
18. To Lord Lyons, No. 365, April 20, 1881.
19. Treasury, April 21, 1881.
20. To Treasury, May 2, 1881.
21. Mr. Goschen, No. 330, April 29, 1881.
22. To Mr. Goschen, No. 381, May 21, 1881.
23. To Treasury, May 21, 1881,
24. Mr. Goschen, No. 374, May 10, 1881.
25. To Treasury, May 27, 1881
26. Musurus Pasha, May 24, 1881.
27. Colonial Office, May 25, 1881.
28. To Musurus Pasha, May 31, 1881.
29. To Colonial Office, June 6, 1881.
30. Treasury, June 4, 1881.

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## No. 87.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 4.)*

*Temple, July* 2, 1881.

My Lord,

Abcaris *v.* Solas. Power of British Consular Courts in Levant to order service on British subjects out of their jurisdiction.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us a despatch that had been addressed to your Lordship by Her Majesty's Acting Judge at Constantinople,* forwarding a despatch, together with its inclosures, from Her Majesty's Consul-General at Tripoli, and requesting to be informed whether, having regard to the provisions of clause 6 of Her Majesty's Order in Council for the Levant, a British Consular Court in the Ottoman dominions had the power to order service on a British subject in England in the same way as the High Court of Justice in this country had power in certain cases to order service out of the jurisdiction.

That Mr. Lister was to request that we would be so good as to take those papers into our consideration, and favour your Lordship with our opinion on the question submitted by Mr. Burrell.

That a copy of Her Majesty's Order in Council of the 12th December, 1873,† was transmitted therewith.

In obedience to your Lordship's commands we have the honour to report—

They do not possess such power.

That, in our opinion, a British Consular Court in the Ottoman dominions has not, under the provisions of clause 6 (see also clause 53, iv) the power to order service on a British subject resident in England.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 88.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 6.)*

*Temple, July* 6, 1881.

My Lord,

Piracy in the Persian Gulf. Adoption of protective measures, being necessary, are justifiable.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 20th May last, stating that he had the honour to lay before us, by direction of your Lordship, papers‡ which related to the recent increase of piracy in the Persian Gulf and to the measures which should be taken for its repression.

That Lord Tenterden was to refer us, in the first place, to the Reports of our predecessors on the subject (dated the 2nd December, 1879, and the 5th January, 1880, respectively), in which the facts of the case are fully detailed.

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* Acting Judge Burrell, No. 60, June 2, 1881.

† Confidential No. 2354.

‡ India Office, September 17; Law Officers, December 2, 1879; ditto, January 5; to Sir H. Layard, Nos. 12 and 13, January 5; Sir H. Layard, No. 106, January 22; Mr. Goschen, No. 136, July 12; ditto, No. 160, July 19; ditto, No. 254, August 17; to India Office, August 14; India Office, August 30; to Mr. Goschen, No. 461, September 15; to India Office, September 25; India Office, October 8; to ditto, October 26; to Mr. Goschen, No. 635, October 26; Mr. Goschen, No. 643, December 6; to ditto, No. 737, December 8, 1880; Mr. St. John, No. 109, February 9; to India Office, March 9; India Office, March 24, 1881.

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That since the date of those Reports negotiations have continued with the Porte to obtain their assent to the arrangement proposed in a note addressed by Her Majesty's Ambassador to Abédine Pasha on the 7th July, 1880 (Inclosure No. 1 in No. 136 of the 12th July, 1880), whereby Her Majesty's Government should be allowed to co-operate with the Turkish authorities, and to act in Turkish waters for the suppression of piracy, as suggested in the Law Officers Report of the 5th January, 1880.

That the result of those negotiations had been unsuccessful, and that Lord Tenterden was to call our attention to the letter of the Foreign Office to the India Office of the 9th March last, communicating the final reply of the Porte on the subject, also to the India Office letter of the 24th March, suggesting that Her Majesty's Naval Commanders in the Persian Gulf should be authorized to act along the Arab coast in such wise as might be necessary for the capture and punishment of marauders, collision with Turkish cruizers or troops being scrupulously avoided.

That your Lordship was disposed to instruct Her Majesty's Ambassador at Constantinople to notify distinctly to the Porte that, under the circumstances, Her Majesty's Government found themselves compelled to authorize the British Naval Commanders in the Gulf, in case of need, to take such measures as they might think fit for the protection of British commerce without reference to the claims of the Sultan to territorial jurisdiction in those waters; and that Lord Tenterden was to submit, for our consideration, the accompanying draft of a proposed letter to the Admiralty, requesting that instructions be given to Her Majesty's Naval Commanders in the Gulf in the sense proposed by the India Office.

That before adopting that course, however, your Lordship would be glad to be favoured with our opinion as to whether, having regard to the doctrines of international jurisprudence on the subject, the circumstances of the case were such as to justify a resort to the measures proposed; and, if so, whether the terms of the draft letter to the Admiralty met with our concurrence.

In obedience to your Lordship's commands we have the honour to report—

Approve of proposed steps for its repression.

That in our opinion it has now become evident that the Porte is wanting either in the power or the will to protect British and general commerce in the Persian Gulf.

The constant representations of the English Government protesting against the continuance of unrestrained and unpunished piracy, have produced no result.

We therefore think that, having full regard to the principles of international jurisprudence, the circumstances of the case are such as to justify a resort to the measures mentioned in Lord Tenterden's letter to us.

We do not regard the proposed measures as "reprisals," but simply as necessary for the protection of life and property, in the continued absence of the maintenance of authority by the Power on which that duty would more naturally devolve.

Notice of such action should be given to the Porte.

Notwithstanding the various communications that have already been made to the Turkish Government, we agree with your Lordship in the view that Her Majesty's Ambassador at Constantinople should notify distinctly to the Porte the course of action determined upon by Her Majesty's Government.

Noting that the word "private" is probably intended for "piratical," we concur in the draft proposed letter.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Annex.

*Draft of Letter from Sir J. Pauncefote to the Secretary to the Admiralty.*

*Foreign Office, July* , 1881.

Sir,

THE prevalence of piracy in the Persian Gulf has occupied the attention of Her Majesty's Government for some time past, and it has been their object to co-operate with the Turkish Government for its suppression, and to obtain their permission for the Commanders of Her Majesty's ships to pursue piratical craft within the limits of Turkish waters in those parts where the Sultan's authority is not sufficiently established to afford the necessary protection to commerce from the attacks of the marauders.

In May 1879 Her Majesty's Ambassador at Constantinople warned the Porte that Her Majesty's Government could not permit the state of things complained of to continue; that it was a danger to British commerce, and that they would be compelled to interpose to put an end to it unless the Turkish Government took measures to do so.

These and further representations have only resulted in a denial by the Porte of any necessity for the measures proposed.

I am accordingly directed by Earl Granville to request that you will move the Lords Commissioners of the Admiralty to modify the instructions issued in May 1879 by which the Naval Officers in the Gulf were prohibited under certain conditions from taking hostile action within Turkish territory or its waters, and to instruct them not to allow themselves for the future to be too much hampered by the 3-mile limit in pursuing and capturing pirates, especially as the Turkish authority on the coast is at many points of a very shadowy description.

They will scrupulously avoid any collision with Turkish cruizers or troops, and they will hand over to the Turkish officials all offenders captured in Turkish jurisdiction. They will report all cases where operations have been undertaken within the 3-mile limit, to Her Majesty's Consul-General at Bagdad for communication to Her Majesty's Ambassador at Constantinople.

I am to add that Earl Granville proposes to instruct Her Majesty's Ambassador at Constantinople distinctly to notify to the Turkish Government that their neglect or inability to suppress piracy on those parts of the coast over which they claim sovereignty is a constant source of peril to British commerce and shipping in the Gulf, and that under those circumstances Her Majesty's Government find themselves compelled to authorize the British Naval Commanders, in case of need, to take such measures as they may think fit for its protection when necessary, without reference to the claims of the Sultan to territorial jurisdiction in those waters.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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## No. 89.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received August 2.)*

*Temple, August* 1, 1881.

My Lord,

Claims of British subjects on Porte. Protest against surrender of Cyprus revenue to bondholders.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th instant, stating that he was directed by your Lordship to submit to us a despatch from Her Majesty's Ambassador at Constantinople, forwarding a letter from certain British subjects having claims against the Ottoman Government for various sums of money due on account of work done, goods supplied, and services rendered, in which they called attention to a rumour that the Porte intended to surrender the surplus revenues of Cyprus for the benefit of the bondholders, and that they protested against the assignment of the surplus by the Porte to any persons, or body of persons, until the debts due to them by the Imperial Ottoman Government had been paid or satisfactorily provided for.

That the claims in question had formed the subject of frequent correspondence between Her Majesty's Embassy and the Porte. That they had in whole, or in part, as would be seen from the annexed despatches from Sir H. Layard and Mr. Goschen, been admitted by the Turkish Government, which had made various proposals for their settlement, but had hitherto failed to carry those proposals into effect. That our Report of the 6th January last relative to the appropriation of the Cyprus revenue to the payment of the arrears and interest of the Guaranteed Loan of 1855 was sent therewith for convenience of reference, together with a despatch which, with our concurrence, had been addressed to the Earl of Dufferin,* renewing the protest of Her Majesty's Government against the assignment of the Cyprus revenues to the Administration of the Six Contributions. That with reference to the last paragraph but one of the inclosed letter from the British creditors of the Porte, your Lordship presumed that, apart from any question of previous lien under the Convention of 1855, the surplus revenue of Cyprus could not legally be attached in the hands of Her Majesty's Government by private creditors of the Porte. That Lord Tenterden was to request that we would favour your Lordship with our opinion as to whether that view be correct; and, if so, whether Her Majesty's Ambassador at Constantinople might properly be instructed to inform the British creditors, in reply to their letter, that Her Majesty's Government claimed to retain the surplus revenue of Cyprus in satisfaction of debts due to them by the Porte, and could not admit the right of any other creditors to attach that surplus in their hands, or the right of the Porte to dispose of the same until its pecuniary obligations towards Great Britain had been liquidated.

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* To the Earl of Dufferin, No. 485, July 14, 1881.

That Lord Tenterden was to inclose, for our information, a further despatch from Lord Dufferin, relative to representations which he had made to the Porte as to the claims of British subjects on the Ottoman Government.

In obedience to your Lordship's commands we have the honour to report—

Surplus Cyprus revenue cannot be attached by creditors of Porte. British Government entitled to such surplus.

That, in our opinion, the surplus revenue of Cyprus could not legally be attached in the hands of Her Majesty's Government by private creditors of the Porte.

And Her Majesty's Ambassador at Constantinople, we consider, may properly be instructed to inform the British creditors of the Porte that Her Majesty's Government claim to be entitled to retain such surplus revenue, and cannot admit the right of any other creditors of the Porte to attach that surplus in their hands, or the right of the Turkish Government to dispose of the same until its pecuniary obligations towards Great Britain have been liquidated.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

List of papers:—Sir H. Layard, No. 496, May 10; to Mr. Goschen, No. 32, June 2; Mr. Goschen, No. 42, June 14; to Mr. Goschen, No. 185, June 30; Mr. Goschen, No. 585, November 19; ditto, No. 660, December 8, 1880; the Earl of Dufferin, Nos. 496 and 533, of 1881. See also Law Officers' Report of June 30, 1881, and draft annexed thereto.

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## No. 90.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 21.)

*Temple, September* 20, 1881.

My Lord,

Tax on machinery in Mr. Hadkinson's oil-mill.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he was directed by your Lordship to submit for our consideration a despatch, and its inclosures, from Her Majesty's Ambassador at Constantinople,[*] relating to the case of a British subject named Hadkinson, who disputed the right of the Turkish Government to levy a tax on machinery which he had erected in his house in Mitylene. That it would be seen that the Turkish authorities insisted upon their right to assess as real property some machinery which Mr. Hadkinson had imported and affixed to an oil-mill, and maintained that Ottoman subjects were similarly taxed, whereas it was contended on behalf of Mr. Hadkinson that machinery which was removable could not be treated as part of the building; that, having paid duty on its importation into Turkey, it could not by Treaty be subjected to any further taxation, and that to impose such a charge upon Ottoman subjects who were similarly situated was equally illegal. That the question seemed to be one of Turkish law, for the decision of the Turkish Tribunals, which, as we were aware, had exclusive jurisdiction in matters relative to land held by foreigners in Turkey.

That Sir Julian Pauncefote was to inclose Hertslet's "Treaties on Trade: Turkey," which contained, at pp. 73-75, the Turkish Law of 1867, enabling foreigners to hold real property in Turkey, and the Protocol relating thereto between Great Britain and the Porte.

And that Sir Julian Pauncefote had the honour to request that we would favour your Lordship with our opinion as to the instructions which should be sent to Her Majesty's Ambassador at Constantinople for his guidance in the matter.

In obedience to your Lordship's commands we have the honour to report—

Question controlled by Turkish law. Tax on importation of goods does not exempt them from further payments.

That the question involved is controlled by Turkish law.

It does not follow that because the tax on importation has been paid in respect of the machinery it may not be treated as enhancing, for the purposes of taxation, the value of the real property to which it is affixed.

This would not, we think, be a violation of the Article of the Treaty between Great Britain and Turkey which provides that if goods have paid the import duty the buyer shall not be charged with any further duty in respect of them. It appears to us that it would be desirable to obtain further information with regard to the nature of the tax, the mode in which it is assessed, and the Turkish law in relation to it, before definitely determining the course which should be adopted.

Further information desirable.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] The Earl of Dufferin, No. 684, August 14, 1881.

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## No. 91.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 22.)

*Temple, September* 21, 1881.

My Lord,

Pitts *v.* Lafontaine. Proceedings as to decisions of Judicial Committee.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th July last, stating that he had the honour to transmit to us, by your Lordship's direction, the papers noted in the accompanying list,[*] and relating to the application of Mr. Joseph Pitts, a British subject, resident at Constantinople, for the assistance of Her Majesty's Government in recovering possession of some landed property on the Island of Prinkipo, in the Sea of Marmora, of which he complained that he had been unjustly deprived by the action of Her Britannic Majesty's Supreme Consular Court at Constantinople.

That Sir Julian Pauncefote was, in the first place, to invite our attention to a letter from the Privy Council Office to your Lordship's Department of the 8th December, 1880, transmitting a copy of an Order in Council of Her Majesty on the appeal of Pitts *v.* Lafontaine, and other documents therein mentioned, and to the copies (which were inclosed), marked A and B, of two Judgments delivered by the Lords of the Judicial Committee in that suit.

That the first Judgment (A) contained a statement of the facts which gave rise to the litigation, and to Mr. Pitts' present application. That, on the 18th December last, a copy of the letter from the Privy Council Office, and duplicates of the inclosures, were forwarded to Her Majesty's Embassy at Constantinople for communication to Consul-General Fawcett, the Judge of Her Britannic Majesty's Supreme Consular Court.

That we would observe that in the first Judgment (A, p. 18) their Lordships stated that it was unhappily impossible for them, owing to the peculiar circumstances of the case, to give Mr. Pitts full and adequate relief, and (after setting aside certain orders of the Court of the 18th July, 1874, and the 27th March, 1878, and all subsequent orders in the suit under appeal), they declared that Mr. Pitts, or his wife, as trustee for him, ought to be restored to the possession of the property claimed by him, but without prejudice to any questions between him and third parties. That they further ordered that the Consular Court do take all such proceedings as were within its jurisdiction, in order to effect such restoration of possession, and they declared that Mr. Pitts was to be at liberty to take such proceedings as he might be advised against the respondent, or any other person, to obtain restoration of his property.

That on the 26th February Mr. Goschen, in his despatch No. 7, transmitted a letter from Dr. Mizzi, the legal adviser of Mr. Pitts, in which he solicited the intervention of Her Majesty's Embassy, by diplomatic or other means, to secure the execution of that part of the Judgment of the Judicial Committee "by which it is directed that possession of his property be restored to his client." That Sir Julian Pauncefote was to observe, however, that this statement of the effect of the Judgment was hardly accurate, as their Lordships distinctly stated that they could not absolutely direct a restoration of possession for the reasons explained at p. 18 of the Judgment (A), though they declared the rights of Mr. Pitts thereto as between him and the respondent in the appeal.

That, on receipt of Mr. Goschen's despatch No. 7, a correspondence took place between your Lordship's Office and Mr. Fawcett, who was then in this country on leave, to which Sir Julian was to direct our attention (see Foreign Office to

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[*] Record of Proceedings on Appeal. Hertslet's "Treaties with Turkey" (see Ottoman Law of Real Property, p. 73, and Protocol, p. 75). From Privy Council Office, December 8, 1880, Judgments (A) and (B); to Mr. St. John, No. 55, December 18, 1880; Mr. Goschen, No. 7, February 26; to Mr. Fawcett, March 28; Mr. Fawcett, March 30; to Mr. Goschen, No. 23, April 8; Mr. Goschen, No. 29, May 12, 1881; shorthand notes on Mr. Pitts' motion for restoration of property.

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Mr. Fawcett, [28th March, 1881, and Mr. Fawcett to Foreign Office, 30th March, 1881).

That, with reference to Mr. Fawcett's reply to the Foreign Office letter, Sir Julian was to state that, so far as your Lordship's Department had been able to ascertain, no steps whatever had been taken, up to the date of Sir Julian Pauncefote's letter to us, by Her Majesty's Supreme Consular Court at Constantinople to assist Mr. Pitts in recovering possession of his property, or even to inform the Turkish authorities who carried out the order of that Court of the 13th June, 1878, by ejecting Mr. Pitts from the property, and putting M. Constantinides (a Greek subject) in possession, that the above order had been reversed on appeal. That copies of the letter from the Foreign Office to Mr. Fawcett, and of his reply, were transmitted to Mr. Goschen (see draft of the 8th April, 1881), with instructions to inform Dr. Mizzi that every assistance which could properly be given by Her Majesty's Embassy or Consulate to Mr. Pitts to obtain restitution of his land through the proper Turkish Court would be readily afforded him, and that his Excellency was further instructed to inquire why Mr. Pitts had taken no proceedings in the Turkish Courts to vindicate his rights in the manner indicated by the Judgment of the Judicial Committee. That on the 12th May Mr. Goschen, in reply to the above instruction, transmitted (despatch No. 29) a further communication from Dr. Mizzi, in which that gentleman argued at great length that the Judicial Committee, by their Judgment of the 19th May, 1880 (A), ordered the restoration of the property to Mr. Pitts, and that the British authorities were bound to carry out that order, by diplomatic or other means, independently of any questions in dispute between Mr. Pitts and M. Constantinides.

That Sir Julian Pauncefote was to request us to take the accompanying papers into our consideration, and favour your Lordship with our opinion as to whether the course indicated in your Lordship's despatch to Mr. Goschen No. 23 of the 8th April was proper under the circumstances, and, if not, as to what other course should followed, and as to the reply which should be returned to the application of Mr. P and his advocate, Dr. Mizzi.

In obedience to your Lordship's commands we have the honour to report—

Approval of instructions to Mr. Goschen.

That the course indicated in your Lordship's despatch to Mr. Goschen No. 23 of the 8th April was proper in the circumstances.

It seems that since that despatch some further communication has passed between Mr. Goschen and Dr. Mizzi, Mr. Pitts' counsel (No. 29, Consular, of the 12th May), and that the effect of the Privy Council Judgment and Order in Council has not been correctly understood by Mr. Pitt's adviser.

Mr. Fawcett's illegal orders should be rescinded, and Turkish authorities urged to restore the property to Mr. Pitts.

It appears to us that the proper course now to be pursued is to direct Mr. Fawcett to take immediate steps to rescind the orders which the Judicial Committee have decided to have been wrongfully made.

That the Turkish authorities should be informed by Mr. Fawcett that the orders made by him were illegal, and have been rescinded by the highest Court of Appeal, and are of no effect, and that he should request the Turkish authorities, who, at his instance, acted upon the orders made by him, and dispossessed Mr. Pitts, to replace him in possession of the property.

And we think Her Majesty's Ambassador should urge the Turkish authorities to take that course.

Inform Mr. Pitts. If these steps prove ineffectual, Mr. Pitts should be assisted in gaining remedy through Turkish Courts.

Mr. Pitts should be informed that these steps are being taken.

In case they should prove ineffectual, he must seek a remedy through the Turkish Courts, and Her Majesty's Ambassador should render him, in so doing, all the assistance which he properly can.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 92.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September 22.)*

My Lord, *Temple, September* 21, 1881.

Pitts *v.* Lafontaine. Action against Mr. Fawcett.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th July last, stating that, with reference to his letter

No. 1 of the same date, relating to the suit of Pitts *v.* Lafontaine, he had the honour to submit to us, by your Lordship's direction, for our consideration and advice, the following application from Consul-General Fawcett, Judge of Her Majesty's Supreme Consular Court at Constantinople:—

That Mr. Pitts, the plaintiff in the above suit, had commenced an action for damages against Mr. Fawcett in this country, founded on the allegations contained in the statement of claim, a copy of which was transmitted.

That, as regards the cause of action set out in paragraph 9, he was to refer us to Mr. Fawcett's letter of the 8th January, 1879, printed at p. 5 of the Memorandum which accompanied a reference to the Law Officers of the Crown of the 17th March, 1879; also to the Report of our predecessors thereon of the 18th April, 1879, vol. , p. 73, of which a copy was annexed, together with the Memorandum above referred to

That Mr. Fawcett, in his letter of the 4th April last, and in his Memorandum on the case inclosed in his letter of the 3rd July, asked for the support of Her Majesty's Government in defending the action; or, as your Lordship understood the application, Mr. Fawcett submitted that the action should be defended on his behalf by Her Majesty's Government and at the public expense.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether, under all the circumstances of the case, Mr. Fawcett's application should be acceded to.

That he was to transmit to us therewith the papers noted in the accompanying list,* in addition to those transmitted with his letter No. 1 of the same date.

That he (Sir Julian Pauncefote) was to add, in conclusion that, as it was believed that both Mr. Fawcett and Mr. Pitts had been in this country on several occasions, and at the same time, since the causes of action arose, the attention of Mr. Fawcett would be drawn to section 7 of the Foreign Jurisdiction Act, 1843, and section 8 of the Foreign Jurisdiction Act, 1878, respecting the limitation of such actions, in case any defence should be available thereunder.

In obedience to your Lordship's commands we have the honour to report—

No reason to defend action for Mr. Fawcett.

That, in our opinion, there are no special circumstances in this case which should lead Her Majesty's Government to defend the action on behalf of Mr. Fawcett, or to support him in defending the action.

As to grant of relief to him on conclusion of case.

But we think that when the case is concluded it may be further considered whether any relief should be afforded to Mr. Fawcett.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 93.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September 22.)*

My Lord, *Temple, September* 21, 1881.

Capture of Mr. Suter by brigands at Isvor.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that he had the honour, by direction of your Lordship, to submit the following case for our opinion and advice:—

That, in April last, a Mr. Suter, a British subject, residing at Isvor, in Macedonia, and engaged in mining operations, was captured by a band of brigands, notwithstanding that the village was guarded by Turkish troops, who had been provided by the Government in consequence of the disturbed state of the country.

That a sum of 15,000*l.* was demanded by the brigands for Mr. Suter's release, and Her Majesty's Ambassador at Constantinople was instructed to inform the Turkish Government that they would be held responsible by Her Majesty's Government for Mr. Suter's safety, and for the payment of any ransom that might be necessary for his recovery.

Advance of ransom by Her Majesty's Government.

That the Turkish Government, however, declined to admit their responsibility in the matter. That in the meantime, it was reported that his life might be endangered by further delay, and Her Majesty's Government accordingly undertook to advance

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* Mr. Fawcett, No. 67, of October 21, 1880; April 4, 1881; to Mr. Fawcett, April 9; Mr. Fawcett, April 12; July 3, 1881. Mr. Fawcett to Governor of Prinkipos, December 31, 1878; Report by Law Officers, April 18, 1879; and Memorandum therein referred to.

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the sum required for his release. That the correspondence which had passed upon the subject was inclosed,* and that Sir Julian Pauncefote was to call our particular attention to the instructions addressed to Her Majesty's Ambassador at Constantinople to his Excellency's conversations with the Turkish Minister for Foreign Affairs, and to the notes from Assim Pasha to Mr. Goschen and to the Turkish Ambassador in this country, refusing to admit the responsibility of the Turkish Government. That it would be seen that the attack on Mr. Suter's house took place on the night of the 7th April by "three united bands of brigands, chiefly Greek." That full particulars of the attack were given in Mr. Blunt's despatch No. 45 of the 10th April.

Turkish Government deny their liability.

That the substance of the defence of the Turkish Government was contained in the telegram to Musurus Pasha of the 23rd April, the first paragraph of which admitted the general principle determining the liability of Governments in such cases. That they urged:—

1. That they had a sufficient force posted in the village to repel the banditti, and to ensure Mr. Suter's safety had he not imprudently chosen to stay at some distance outside the village.

2. That the forces would or might have prevented the capture of Mr. Suter had he not entreated them not to act against the banditti for fear of the danger to himself and his family.

3. That this outbreak of brigandage was connected with the agitation in Greece for war with Turkey, and was not of Turkish origin.

That the second and third allegations appeared to be supported by the statements in Mr Suter's letter to Mr. Blunt of the 10th April, and that the third was confirmed by Mr. Blunt in his telegram of the 8th April and his despatch No. 45 of the 10th April.

That, but the first allegation did not appear to be in accordance with the facts, as Mr. Suter's house was not at a distance from, but was in the village of Isvor, where the Turkish soldiers were quartered, and that the latter did nothing to frustrate the attack, until the brigands were virtually in possession of the house. (See Mr. Suter's letter of the 10th April.)

That Sir Julian Pauncefote was to inclose the despatches noted in the margin from Mr. Blunt,† and to which he was to invite our particular attention, as showing all the circumstances attendant on the incident in question, the condition of the country, the proceedings of Mr. Suter, and the action of the Turkish authorities prior to the attack.

That Sir Julian Pauncefote was also to inclose a printed Foreign Office Memorandum containing an account of brigandage cases, and of the circumstances under which indemnities had been paid.‡

That Sir Julian Pauncefote was to request that we would take those papers into our consideration and favour your Lordship with our opinion whether, under the circumstances, Her Majesty's Government might properly insist on their demand for the repayment by the Porte of the ranson advanced for Mr. Suter's release.

That, if our reply should be in the affirmative, he was further to request that we would inform your Lordship whether the draft (which was inclosed) of a proposed instruction to Her Majesty's Ambassador at Constantinople on the subject met with our approval.

In obedience to your Lordship's commands we have the honour to report—

Difficulty in giving definite opinion.

That, under the peculiar circumstances submitted to us, we have difficulty in expressing a definite opinion for the guidance of your Lordship.

On the one hand, we fully recognize the desirability of not receding from the position which your Lordship has thought right to assume towards the Porte, and the evil precedent which will be created by the British Government consenting to pay ransoms which may be demanded by brigands in Turkey without having ultimate recourse to the Turkish Government, and these considerations certainly render it very desirable, as a matter of policy, to obtain from the Porte a recognition of the justice of the claim that has been made upon it.

We must, however, point out that the liability of the Turkish Government to make repayment must rest upon its having culpably permitted a state of brigandage to exist without having taken the necessary steps for the protection of the inhabitants of the disturbed district.

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* See Print, Confidential No. 4454, and Parliamentary "Turkey No. 11 (1881)," No. 2488.

† Mr. Blunt, No. 83, July; Nos. 117 and 118 October, 1880; No. 14, January; No. 30, February; No. 39, March, 1881.

‡ Confidential No. 4471.

Doubtless, in this case unrestrained brigandage resulted in Mr. Suter's capture, and the military force in the neighbourhood did not prove effectual to prevent it.

But we think that due consideration should be given to the fact that the brigandage which existed seems not to have been of an ordinary character arising from the disturbed state of the country internally, for it appears to have been connected with the hostile feeling of the Greek population towards Turkey, which is shown by the hope displayed by the brigands that the ransom would be paid and loss borne by the Turkish Government.

It appears also that there was a sufficient force of soldiers in the neighbourhood of Mr. Suter's house to protect it against the ordinary attacks of brigands of the country, and whilst it may be contended that the military force should have been sufficient to have prevented the house being entered at all, yet Mr. Suter's own action interfered with the soldiers making any effort to prevent his being carried off from his house.

We lay, however, but little stress upon Mr. Suter's conduct in this respect, as he probably saved the lives of himself, wife, and child, by deprecating any attack by the soldiers on the brigands.

Claim for repayment of ransom should not be abandoned.

The above considerations would have caused us to hesitate before advising your Lordship in the first instance to prefer the claims that have been made on the Turkish Government; but, as we have pointed out, very grave evils may result from now falling back from the position that Mr. Goschen was directed to take up on behalf of the British Government, and as we think the arguments stated in the draft despatch can fairly be maintained, we do not feel justified in advising your Lordship to abandon the claim that has been preferred.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 94.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 18.)

*Temple, October* 17, 1881.

Paolo Muscat convicted of murder.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 5th instant, stating, that with reference to sections 268 and 269 of the Levant Order in Council, he was directed by your Lordship to transmit to us a despatch and its inclosures which had been received from Her Majesty's Consul-General and Judge at Constantinople, reporting the trial for murder and conviction of Paulo Muscat at Smyrna,* and that he was to request that, in favouring your Lordship with our opinion as to the punishment which should be imposed on that offender, we would at the same time report on Mr. Fawcett's recommendation, that the law of evidence should be altered, so that the depositions of persons, who had been proved to the satisfaction of the Court to have been kept out of the way, should be admissible in evidence.

In obedience to your Lordship's commands we have the honour to report—

Punishment to be awarded.

That we think this is a case in which the maximum punishment of twenty years' imprisonment with hard labour should be imposed.

No case made out for altering law of evidence with regard to depositions.

That we do not think any case is made out for exceptionally altering the law of evidence in Her Majesty's Courts in the Levant.

Moreover, it is obvious that it would be unjust to the prisoner to permit the depositions of persons kept out of the way to be used against him unless it were proved that they were kept by his act, which could rarely, if ever, be established.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr. Fawcett, No. 84, September 23, 1881.

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## No. 95.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October 24.)*

My Lord, *Temple, October 24,* 1881.

Russian war indemnity. Russia claims Bulgarian tribute as guarantee.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 14th instant, stating that he had the honour to transmit to us copy of a telegram from Her Majesty's Ambassador at Constantinople,* reporting that the Russian Ambassador had laid claim to Bulgarian tribute as a guarantee for the war indemnity which was imposed on Turkey by the XIXth Article of the Treaty of San Stefano, a copy of which Treaty was inclosed.

That in the last paragraph but one of Article XIX, it was stipulated that the guarantee for the indemnity should be settled by an understanding between Russia and the Porte.

That the question of that indemnity formed the subject of discussion in the Congress of Berlin, as recorded in Protocol No. 11. That we should find the remarks and reserves made by the various Plenipotentiaries at pp. 162-165 of the inclosed Parliamentary Paper,† and that we should observe that Prince Gortchakow, the First Russian Plenipotentiary, gave an assurance (p. 162) that the guarantee referred to implied no territorial acquisition whatever, and would be settled between the two Governments *en dehors* of all such acquisition, and, further (p. 165), that the war indemnity should not affect the interests of the creditors of the Porte. That the Second Russian Plenipotentiary (Count Schouvaloff) made similar declarations, and stated that the situation of the loans guaranteed by Great Britain and France would remain the same as before the war.

In reply to Count Corti, the First Italian Plenipotentiary, his Excellency observed that the intention of Russia was to respect legal rights, that is to say, all prior hypothecations (p. 164). That the President, at the close of the discussion, observed that the rights of the Turkish bondholders having been upheld by Great Britain and France, the declaration of Russia relative to the priority of hypothecations appeared satisfactory (p. 165).

That by Article IX of the Treaty of Berlin, it was stipulated "that the amount of annual tribute which the Principality of Bulgaria shall pay to the suzerain Court—such amount being paid into whatever bank the Porte may designate—shall be fixed by an agreement between the Powers signatory of the present Treaty at the close of the first year of the working of the new organization.

"This tribute shall be calculated on the mean revenue of the territory of the Principality.

"As Bulgaria is to bear a portion of the Public Debt of the Empire, when the Powers fix the tribute, they shall take into consideration what portion of that debt can, on the basis of a fair proportion, be assigned to the Principality."

That Lord Tenterden transmitted a copy of the Treaty of Berlin.‡

That owing to the delay of the Porte in giving its formal sanction to the final acts of the International Boundary Commission, which drew the line at the Bulgarian frontier, as laid down in the IInd and XLVIth Articles of the Treaty, the formal recognition of the boundaries of the Principality was not complete till quite recently, and that it was only on the 31st August last that Her Majesty's Government was in a position to authorize Lord Dufferin to join with the Representatives of the other Great Powers at the Porte in the consideration of the subject of the financial obligations of Bulgaria with regard to tribute and the Ottoman Debt.

That no charge or lien on the Ottoman revenues was created by the Treaty of San Stefano as a guarantee for the payment of the war indemnity. That the Russian Government stated that they admitted the prior claims of the Turkish bondholders to the securities which were already pledged to them, but that they contended that Russia had taken a position in order of date among the creditors of Turkey, and that they could not recognize the right of the Porte to hypothecate revenues which did not exist or were not pledged at the date of the Treaty of Berlin, so long as there had been no arrangement as to the securities to be given for the payment of the war indemnity.

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* The Earl of Dufferin (Telegraphic), No. 388, October 5, 1881.

† "Turkey No. 39 (1878)," No. 2062.

‡ "Turkey No. 44 (1878)," Treaty, No. 623.

That it would appear therefore that the Russian Government did not consider that the charge created on the entire revenues of Turkey, from whatever source they might be derived, in favour of certain bondholders, as expressly stated on the back of the bonds themselves, and in favour of Great Britain and France, under the Convention* relative to the Turkish Loan of 1855 attached to the Bulgarian tribute, because such tribute did not exist, and formed no part of the Ottoman revenues, at the time when such charge was created.

That Lord Tenterden was to request that we would favour your Lordship with our opinion as to the validity of the preferential claim put forward by Russia to the Bulgarian tribute.

We are also honoured with a further letter from Lord Tenterden of the 19th instant, stating that he was directed by your Lordship to state that our Report on the reference that was made to us by your Lordship's direction on the 14th instant as to the validity of the preferential claim of Russia to the Bulgarian tribute might, your Lordship presumed, be framed on the hypothesis that the bonds of certain Turkish loans, anterior to the date of the Treaty of San Stefano, constituted a charge on the whole revenues of Turkey, for such appeared to be the case with regard to the Loan of 1858, as shown by the Firman of the 26th November of that year, and by the Firman respecting the Loan of 1862, as well as from the terms of the bond for that loan.

That copies of the Firmans and bond would be found at the pages marked in the accompanying volume.

In obedience to your Lordship's commands we have the honour to report—

No ground for preferential claim put forward by Russia.

That we are of opinion that there is no ground for the preferential claim put forward by Russia to the Bulgarian tribute, and that such claim cannot be maintained.

When the creditors of Turkey lent money to that country, they did so on the security of its general revenue, and even, in the absence of express words, such an hypothecation would include the then present and future revenues. We have not before us the terms of hypothecation of revenue in respect of all the loans, but the security given for that of 1862 was the "whole of the revenues of the Exchequer of my Imperial Government, present and future."

It is also to be observed that the Bulgarian tribute must be regarded as being received by the Turkish Government in substitution of the revenue received from Bulgaria at the time the loans were contracted, and therefore it cannot be said that this payment of tribute is a new source of revenue, although, even if it were, Russia would have no right to claim it.

Russia has no right to the Bulgarian tribute, as it is not a new source of revenue.

We therefore think that Russia has no greater claim to appropriate the Bulgarian tribute than any other portion of the revenue of Turkey.

Beyond these considerations, the express declarations of the Russian Representatives at the Congress of Berlin form a complete answer to the claim now made. Consent was given at the Congress to that portion of the Treaty of San Stefano which made Turkey liable to a money indemnity of 300,000,000 roubles, only after statements by Count Schouvaloff "that Russia proposed to respect every anterior hypothecation," and by Prince Gortchacow, "that the indemnity of war will not affect the interests of the creditors of the Porte."

Both of which pledges would be broken if the claim now preferred by Russia be maintained.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Treaty, No. 392.

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## No. 96.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 19.)

*Temple, November* 18, 1881.

My Lord,

Navigation of Tigris and Euphrates.

WE were honoured with your Lordship's commands signified in Sir Charles Dilke's letter of the 17th September last, stating that he had to transmit to us, by your Lordship's direction, the papers,* noted in the margin of his letter, respecting the navigation of the Rivers Tigris and Euphrates by British vessels.

That the first question which arose had reference to a claim put forward by the Euphrates and Tigris Steam Navigation Company to tow barges on those rivers as a matter of right, a proceeding which had from time to time met with opposition on the part of the local authorities at Bagdad.

That the second question was of a more general character, and had reference to the right of foreign vessels to navigate those rivers, alleged to have been conceded in 1846, in pursuance of an arrangement entered into between Sir S. Canning and the Porte, which resulted in a Vizierial letter addressed to the Pasha of Bagdad, instructing him to carry out the same.

That document No. 1 transmitted therewith contained a full exposition of the question and a résumé of the correspondence on the subject.

That document No. 2 contained a Memorandum on the question by Mr. Plowden, Her Majesty's Consul-General at Bagdad.

That document No. 3 contained a copy of a despatch from your Lordship to Mr. Goschen No. 44 of the 16th May, 1881, instructing his Excellency to remind the Porte of the arrangement entered into in 1846 with Sir S. Canning, and copies of a correspondence between Mr. Plowden and the Governor-General of Bagdad.

That document No. 4 contained copies of the Firmans and Vizierial letters referred to in the other inclosures.

That among the papers transmitted therewith we would find (Nos. 6 and 7) Mr. St. John's despatch No. 44 of the 29th December, 1880, and the letter of the Company to the Foreign Office of the 20th May, 1880, referred to in your Lordship's despatch to Mr. Goschen (Inclosure No. 3, p. 1), and (No. 5) a recent despatch from Her Majesty's Ambassador at Constantinople (No. 68 of the 25th July last), in which Lord Dufferin held out some hope that those questions might be satisfactorily adjusted. That a copy of the capitulations and of the British Treaty of 1861, referred to in Mr. Plowden's Memorandum (document No. 2), was likewise transmitted therewith.

Questions as to—
1st. Rights of navigation by British vessels under arrangement of 1846.
2nd. Right of the Tigris and Euphrates Steam Navigation Company to tow barges.

That Sir Charles Dilke was to request that we would take those papers into our consideration, and favour your Lordship with our opinion—Firstly, as to how far the general right to navigate the Euphrates and Tigris could be claimed for British vessels under the arrangement of 1846; secondly, whether the right claimed by the Euphrates and Tigris Steam Navigation Company to tow barges on those rivers could properly be maintained.

In obedience to your Lordship's commands we have the honour to report—

Review of evidence as to first question.

That the evidence of the arrangement made by Sir Stratford Canning in 1846, and of the nature of the rights which it confers, consists almost exclusively of his despatch of the 18th March, 1846, in which he informs Her Majesty's Government that the arrangement has been arrived at. The only document under the hand of any Representative of the Turkish Government on which reliance can be placed as affording against them evidence of the arrangement is, so far as we are aware, the despatch of Réouf Pasha to the Governor of Bagdad of the 2nd April, 1846. That despatch appears to be chiefly concerned with questions of Tariff, and of the duties to be levied on foreign as compared with Turkish vessels. It is not an announcement of an arrangement conceding to British vessels the right to navigate the Rivers Tigris and Euphrates under their own flag, though it certainly by inference seems to recognize the fact that vessels under the English flag have been navigating, and will continue to navigate, those rivers for the purpose of internal commerce. And if, subsequent to that despatch, British commercial steamers, in continuance of prior usage, had navigated the rivers with no warrant beyond what is contained in it, and without objection by the Turkish authorities, these facts, coupled with the despatch of Réouf Pasha, would afford cogent evidence against the Turkish authorities, that an arrangement rendering this course legitimate had been entered into.

It appears, however, that no British steamer was placed upon either the Tigris or Euphrates prior to the year 1862 except the two vessels which had been navigating them before 1846, under the authority of the Firman of the 29th December, 1834.

It is necessary, therefore, carefully to examine the circumstances which intervene between the date of the arrangement in question and the year 1862.

It appears that in 1859 Messrs. Lynch and Co., having in view the establishing a line of steamers on the Tigris and Euphrates, entered into communication with Sir H. Bulwer, at that time Her Majesty's Ambassador at Constantinople. Sir H. Bulwer (whether from having overlooked the Agreement of 1846, or from some other cause, does not appear) expressed the view that Messrs. Lynch could not, without further authority from the Turkish Government, claim the right permanently to navigate the river with steamers carrying the British flag. But the Ottoman Minister for Foreign Affairs informed Sir H. Bulwer, in answer to his inquiries, that if Messrs. Lynch were to apply to the Porte for a Firman of Concession to establish a line of steamers to run between Bagdad and Busrah, the Porte would, he thought, not be averse to an arrangement of that nature. Upon this Messrs. Lynch submitted to Sir H. Bulwer an application for a Firman, "granting them the requisite sanction to navigate the rivers of the country with British registered steam-vessels." No answer was received to this application until 1861. In January of that year Sir H. Bulwer transmitted a Vizierial letter to the Pasha of Bagdad. The terms of that document are important. It begins by reciting that the British Embassy had made communications for the purpose of obtaining a renewal of the orders sent concerning "the British steamers and boats authorized by His Majesty to ply on the Rivers Tigris and Euphrates;" it then recites the Firman of 1834 and the Report of 1846 with reference to the duties to be levied on British vessels, and the despatch of Réouf Pasha of the 2nd April, 1846, founded upon it; and it concludes by instructing the Pasha "to act according to these rules." It is to be observed that this despatch treats as in full force the Firman of 1834, authorizing the British Government to station two steamers on the River Euphrates at Bagdad, and to run them by turns for the purpose of facilitating trade, and that the part of the despatch which is more general in its terms, and has reference to the Vizierial letter of 1846, deals with the financial question only.

This seems hardly consistent with the idea that the arrangement announced by Sir Stratford Canning was treated as being then in force, and having the effect to be gathered from his despatch; for that arrangement, which permitted British merchant-steamers, without limit of number to ply on the rivers, would override the extremely limited authority given by the Firman of 1834. And the various applications made by Sir H. Bulwer to the Porte, resulting in his receiving from them the Vizierial instructions of January 1861, were wholly unnecessary, if such an arrangement, as was communicated to Her Majesty's Government in 1846, was still in force.

In 1862 Messrs. Lynch and Co. placed their first steamer on the rivers. Their second followed in the year 1864, and as early as that date the Turkish authorities distinctly asserted that, under existing Firmans, only two British steamers were permitted to navigate the Tigris. From that time to the present the Government of Turkey has persistently adhered to that position. The use of more than two steamers has, during all this period, been only exceptional, and has never been permitted without remonstrance and the assertion that it could not be claimed as a right. These remonstrances appear to have been acquiesced in from time to time, and notably in the Memorandum of the English Embassy (if it be correctly quoted by Aali Pasha) in 1864. And the British Ambassador has on various occasions sought permission for acts, the title to do which would have been clear under the reported arrangement of 1846.

1. Rights of navigation under arrangement of 1846 cannot now be claimed.

Considering, therefore, the unsatisfactory nature of the evidence of that arrangement so far as Turkish documents are concerned, and that the authority alleged to have been given appears not to have been acted upon, that for nearly twenty years the Turkish Government have practically denied its existence, and that Her Majesty's Representatives at the Porte, so far from insisting that it existed and relying upon it, have sought permission which would have been needless if it were in force, we think

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* List of papers:—
1. Memorandum by Sir E. Hertslet, No. 4439, March 27, 1881.
2. Consul-General Plowden, No. 2, March 28, 1881.
3. To Mr. Goschen, No. 44, May 16, 1881; Consul-General Plowden's Nos. 3 and 4.
4. Firman of 1834 and Vizierial letters of 1846 and 1861: Confidential No. 2460.
5. Lord Dufferin's No. 68, July 25, 1881.
6. Mr. St. John's No. 44 of December 29, 1880.
7. Euphrates and Tigris Steam Navigation Company, May 20, 1880.
8. British Treaty with Turkey of 1861, and Capitulations, "Hertslet's Treaties relative to Trade" (Turkey), pp. 8 and 41.

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the general right to navigate the Tigris and Euphrates cannot now be claimed by British vessels under the arrangement of 1846.

2. The authority granted to Company to navigate the rivers would include towage of barges.

As regards the second question submitted to us, we think the Company are entitled to employ steamers having authority to ply upon the Rivers Tigris and Euphrates for all commercial purposes for which such vessels are ordinarily employed, and we think this would probably include the towing of barges laden with merchandize.

The permission under the Firman of 1834 liable to revocation.

But we would observe that, if the only authority for British steamers to run on these rivers is derived from the Firman of 1834, as appears to have been insisted upon on the one hand, and acquiesced in on the other, it may be expedient to remember, in pressing the matter upon the Turkish Government, that the Firman of 1834 is, as was pointed out by Sir H. Bulwer, a permission open to revocation by the Turkish Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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Dr. Deane agrees in answer to first question, but of opinion that Firman of 1834 does not concede right to tow barges.

I agree with the Attorney and Solicitor General in the answer to the first question. With respect to the second question, I regret to differ.

I think the permission given to a limited number of steamers to navigate the rivers does not include the leave to tow barges laden with merchandize.

At the time of the Firman in 1834 towing was not, I consider, in the view of the Turkish Government. No extension of the leave given in the Firman has since been conceded.

The towing of barges would obviously, to a very great extent, add to the carrying power of the steamers, and such use of the steamers, in my opinion, is not within the intention, and certainly not within the letter, of the permission given by the Turkish Government.

I am therefore of opinion that the right claimed by the Euphrates and Tigris Steam Navigation Company to barges on those rivers cannot properly be maintained.

I have, &c.
(Signed) J. PARKER DEANE.

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## No. 97.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 23.)

My Lord,
*Temple, November* 22, 1881.

Mr. A. O. Arsenian.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 28th ultimo, stating that with reference to the Report of our predecessors of the 8th April, 1880, and our Report of the 9th June, 1880, respecting the case of Mr. A. O. Arsenian, he had the honour to transmit therewith, by direction of your Lordship, a letter which had been received from Mr. Pears, the legal adviser of Mr. Arsenian, calling for a reconsideration of the decision at which Her Majesty's Government had arrived in that matter; also a copy of the answer which your Lordship caused to be returned to that gentleman, to the effect that your Lordship did not consider a further reference to the Law Officers of the Crown was necessary.[*]

That Lord Tenterden was also to inclose a Memorial signed by Messrs. Cunliffe, Brookes, and Co., and other merchants of Manchester, respecting certain goods which they represented had been consigned by them to Mr. Arsenian on credit, and had been sold by order of the Persian Ambassador, together with the reply which was returned thereto.

That your Lordship had received a further despatch which Lord Tenterden was likewise to inclose from Her Majesty's Ambassador at Constantinople, forwarding copies of two letters he had received from Mr. Arsenian, setting forth the grounds on which he considered the decision of the Law Officers with regard to his nationality to be erroneous, and asking that an officer from Her Majesty's Embassy or Consulate might attend at the Court of the Persian Ambassador when the case should come before his Excellency on appeal from the Consular Court.

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[*] List of Papers:—Law Office, April 8; ditto, June 9; Sir H. Layard, No. 500, May 11; Mr. Pears, November 23; to Mr. Pears, December 13, 1880; Manchester Petition, received August 2; Reply to ditto, August 16; Lord Dufferin, No. 902, October 11, 1881.

That Lord Tenterden was to request that we would take those papers into our consideration, and that we would favour your Lordship with our opinion as to whether they contained anything to affect the conclusions already arrived at by ourselves and by our predecessors in regard to the case.

That Lord Tenterden had the honour to inclose the two previous Reports of the late Law Officers and ourselves above referred to; also Sir H. Layard, No. 500, of the 11th May, 1880, containing the Convention between Turkey and Persia (Inclosure 12), and Wheaton's International Law, edition 1866, containing (at p. 146, notes to section 86) the precedents referred to in the letters of Mr. Arsenian and his legal adviser, Mr. Pears.

That Mr. Arsenian obtained British naturalization in 1868 under the Act 7 and 8 Vict., cap. 66, and again in 1877 under the Act of 1870.

We are also honoured with a letter from Sir Julian Pauncefote, dated the 10th instant, stating that he forwarded therewith Lord Dufferin's despatch No. 902 in regard to Arsenian, which was accidentally omitted in the previous papers.

In obedience to your Lordship's commands we have the honour to report—

Not exempt from Persian Consular jurisdiction.

That we see no reason to modify the opinion we have expressed, that Mr. Arsenian is not exempt from the jurisdiction of the Persian Consular Court at Constantinople in a civil suit.

Her Majesty's Ambassador might afford his good offices.

But that as Mr. Arsenian is a naturalized British subject, and as the goods, the title to which is in question, are the produce of his trading in this country, and he is liable in respect of them to English creditors, we would suggest that Her Majesty's Ambassador should afford his good offices to Mr. Arsenian, and should comply with his request, if it can be done without diplomatic impropriety.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 98.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 5.)

*Temple, December* 3, 1881.
My Lord,

Russian war indemnity

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 19th November last, stating that, with reference to our Report of the 24th October, he was directed to transmit to us the accompanying copy of a telegram[*] from Her Majesty's Ambassador at Constantinople relative to the preferential claim raised by Russia to certain Turkish revenues, as a guarantee for the war indemnity; he was also to inclose copy of a previous telegram[†] from Lord Dufferin bearing on the question; and he was to request that we would favour your Lordship with any observations we might have to make thereon, especially as regarded the argument of the Russian Ambassador at Constantinople, that the term "hypothecation," as used by Count Schouvaloff at the Congress of Berlin, had reference only to "special hypothecations," and that Russia could not recognize hypothecations of the whole of the Turkish revenues *en bloc*, as nothing would then be left to satisfy the claims of Russia.

That the papers which accompanied the last reference to us on the subject were sent therewith, together with a copy of our Report thereon.

In obedience to your Lordship's commands we have the honour to report—

Russian preferential claim to Bulgarian tribute or other sources of revenue not well grounded.

That we have carefully considered the words used by Count Schouvaloff (p. 164) and of Prince Gortchacow (p. 165) in the Blue Book, "Turkey No. 39 (1878);" and, in our opinion, they amount to an admission that the war indemnity is not to affect the rights of the then creditors of the Porte.

In our former Report we expressed our opinion that the Bulgarian tribute must be regarded as being received by the Turkish Government in substitution for the revenue received by that Government from Bulgaria at the time the loans were contracted, and that the tribute was not a new source of revenue; and we are still of that opinion.

We beg to submit, for your Lordship's consideration, that, in whatever sense Count Schouvaloff at the Congress may have intended to use the particular word

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[*] No. 419.

[†] No. 418.

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"hypothecation," the context in which the words are found, and the discussion on the subject of the position of the creditors of the Porte, show clearly that the prior and existing rights of those creditors, including those who are not secured by the hypothecation of any special revenues, were not to be postponed to the payment of the war indemnity.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 99.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 14.)

*Temple, December* 13, 1881.

My Lord,

Russian war indemnity. Claims to Bulgarian tribute or other revenues.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 2nd instant, stating that he had the honour to submit, by your Lordship's direction, a despatch from Her Majesty's Ambassador at St. Petersburgh,* inclosing copy of a note from M. de Giers, stating the arguments upon which the Russian Government based their preferential claim, either to the Bulgarian tribute or to other revenues of Turkey, as a guarantee for the war indemnity; and that he was to request that we would take that note into our consideration with reference to his letter of the 19th ultimo.

In obedience to your Lordship's commands we have the honour to report—

Grounds for Russian claims.

That M. de Giers, in his despatch of the $\frac{14}{26}$th November, 1881, bases his argument on three propositions:—

1. That the Plenipotentiaries of Russia at the Berlin Congress, in recognizing the right of priority of the European creditors of Turkey in respect of all anterior hypothecations, referred only to the case of hypothecations of some specific revenue, and not to that of general hypothecations of the revenues of the Empire.

2. That Russia is entitled to the same right over all revenues not the subject of such anterior specific hypothecation as is possessed in respect of revenues specifically hypothecated by those who enjoy the benefit of such hypothecations.

3. That the Bulgarian tribute falls within the category of revenues not specifically hypothecated, and that Russia has, therefore, this right over it.

Contrary to Russian declarations made at Congress of Berlin.

The second of these propositions appears to be in direct conflict with the express declarations of Prince Gortchacow, to be found in Protocol 11 of the 12th July, 1878 (p. 164).†

Lord Salisbury having declared, in the name of his Government, that he could not admit that Russia, a creditor in virtue of the Treaty of San Stefano, could take a rank preferential to that of any of the creditors of Turkey whose claims bore a date anterior to the war, Prince Gortchacow replied "that he only meant to speak of an analogous situation."

We are not prepared to admit the first proposition contended for by M. de Giers; but it is unnecessary at present further to discuss this or the third proposition. The declaration at the Congress of Berlin, to which we have called attention, seems to us to dispose of the arguments upon which the Russian Government base their preferential claim.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 100.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 14.)

*Temple, December* 13, 1881.

My Lord,

Turkish claim to 8 per cent. duty on goods shipped by Mr. Colokorino at Candia for Odessa, but disembarked at Varna.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 16th ultimo, stating that he had the honour to submit to us, by your Lordship's direction, papers‡ relating to the claim of the Turkish Customs authorities

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* Sir E. Thornton, No. 562.

† "Turkey No. 39 (1878)," No. 2062.

‡ Lord Dufferin, Nos. 864 and 910 of 1881.

to levy a duty of 8 per cent. upon merchandize exported by Mr. Colokorino, the British Vice-Consul at Candia, from that port to the port of Varna in Bulgaria.

That an export duty of 8 per cent. was properly chargeable on goods shipped from one Turkish port to another, or, as it was termed, "on goods for the interior;" but than an export duty of 1 per cent. only was chargeable on exports to foreign countries.

That that duty of 1 per cent. had been duly paid, as the merchandize was shipped ostensibly for Odessa, but that its destination was changed, and it was disembarked at Varna.

Varna claimed as a non-Turkish port.

That the question therefore arose whother the port of Varna, in the Principality of Bulgaria, was to be considered for Customs purposes, as forming part of Ottoman territory, as maintained by the Turkish authorities in their note of the 15th September (Inclosure 1 in No. 864), or as the port of a foreign country, according to the claim of Mr. Colokorino, and of the Bulgarian Agent at Constantinople in his note to Lord Dufferin of the 3rd October (Inclosure 3 in No. 864).

That by Article I of the Treaty of Berlin, Bulgaria was constituted an autonomous and tributary Principality, under the suzerainty of His Imperial Majesty the Sultan.

That by Article VIII it was declared that the Treaties of Commerce and Navigation between the Porte and foreign Powers were to remain in force in the Principality until modified, as regarded any Power, by mutual consent.

That it would be seen from Lord Dufferin's despatch No. 910 of the 10th October (Inclosure 3), that according to the practice in force before the date of the Treaty of Berlin, merchandize shipped from Candia to Varna, or *vice versâ*, would be charged with the export duty of 8 per cent., the shipper receiving a "teskére" or certificate of the payment of such duty, which would clear the goods at the port of destination. But that since the customs duties in Bulgaria had been collected solely for the benefit of the Bulgarian Exchequer, the Customs authorities at Bulgarian ports had ceased to acknowledge the above-mentioned certificate of the Turkish Customs, and *vice versâ*. That it followed, therefore, that the shipper of goods from Candia to Varna, who had paid the export duty of 8 per cent. "for the interior," found that his goods on arrival at Varna, instead of being cleared on the mere production of the Turkish certificate, were charged by the Varna Customs with the usual import duty of 8 per cent. That the shipper of goods from Varna to Candia experienced the same treatment, and thus paid 16 per cent. instead of 8 per cent., a result entirely at variance with the provisions of Article VIII of the Treaty of Berlin.

That Lord Tenterden was to call our attention to the instruction issued by the Turkish Government to their Customs officials in December 1879 (Inclosure 2 in No. 910), according to which, and in apparent opposition to, their present contention, foreign goods arriving at Constantinople for transmission by sea to Bulgaria were to be treated as goods intended for a foreign country, and charged a duty of only 1 per cent. accordingly.

That Lord Tenterden was to inclose a copy of the Treaty of Berlin, and a Memorandum referring to the Articles of the Commercial Treaty between this country and Turkey which bore upon the question; also to the articles of the Treaty of Berlin which regulated the position of Bulgaria, and to the Treaty arrangements which were made with regard to the payment of duty on goods imported into, or exported from, Moldavia, Wallachia, and Servia, before those Principalities obtained their independence, and were tributary Principalities forming part of the Ottoman dominions.

That it appeared to your Lordship that Her Majesty's Government and the other foreign Powers were entitled to demand that arrangements be made between the Porte and Bulgaria, which would relieve foreign shippers of goods between Bulgarian ports and Turkish ports from the payment of any other or higher duties than were chargeable at the date of the Treaty of Berlin, in conformity with Article VIII of that Treaty, and that pending the adjustment of that question, Mr. Colokorino should be supported in his refusal to pay the additional 7 per cent. duty claimed of him by the Customs authorities of Candia.

That Lord Tenterden was to request that we would favour your Lordship with our opinion on this question, and on the course which should be pursued under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

The fiscal independence of Bulgaria controlled by previous Treaties with Turkey.

That there can be no doubt that, in a sense, the port of Varna is still a part of the Ottoman dominions. But it is equally clear that Bulgaria is made, for fiscal purposes, independent of the Porte, and may make her own Treaties with foreign Powers with

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reference to import and export duties. Until any such Treaty is concluded, however, all existing Treaties with the Porte are, by the Treaty of Berlin, to remain in force in Bulgaria as completely as if it were still, in all respects, a part of the Ottoman Empire.

The effect of this, we take to be, that no British subject, for example, is to be liable to any greater duties on exporting from, or importing into, Bulgaria than he would have been prior to the Treaty of Berlin.

But we do not gather very clearly, from the information before us, what provisions in the existing Treaty of Commerce between this country and the Porte govern the duties to be paid by British subjects in the case of goods exported by them from a Turkish port to another part of the Ottoman dominions.

The only Article of the Treaty which appears, in terms, to deal with the export of goods purchased in Turkey by British subjects is Article IV; but Sir E. Hertslet states, in his Memorandum, that the provision in that Article for the gradual reduction of the duty from 8 per cent. to 1 per cent., "has reference only to goods exported from the Turkish dominions to British ports, and not to goods exported from one Turkish port to another."

If this be so, it is not easy to see how the earlier part of the Article, which provides for the 8 per cent. export duty, could be held to have a wider application.

Relief from payment of such duties should be demanded.

Assuming, however, that by virtue of our Commercial Treaty there was a right to insist on the continuance of the practice which prevailed prior to the Treaty of Berlin, viz., that the payment of an export duty of 8 per cent. at a Turkish port should clear the goods on their arrival at any other Turkish port, we think that the same right exists in the case of the export of goods from a Turkish to a Bulgarian port, and *vice versâ.* And in that case we think Her Majesty's Government and the other foreign Powers having like Treaty rights are entitled to demand that arrangements should be made between the Porte and Bulgaria, which would relieve foreign shippers of goods between Bulgarian and Turkish ports from the payment of any other or higher duties than were chargeable at the date of the Treaty of Berlin, in conformity with Article VIII of that Treaty, and that, pending the adjustment of this question, Mr. Colokorino should be supported in his refusal to pay the 7 per cent. duty claimed of him by the Customs authorities of Candia.

Mr. Colokorino should be supported in his refusal to pay the duty claimed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 101.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December* 30.)

*Temple, December* 30, 1881.

My Lord,

Russian war indemnity. Russian *pro-memoriâ*.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 17th instant, stating that he had the honour to transmit to us a *pro-memoriâ*[*] communicated to your Lordship by the Russian Ambassador, stating the views of the Russian Government with regard to their claim on the Bulgarian tribute as security for the payment of the Russian war indemnity, and the position in which Russia stood as regards the other creditors of the Porte, as set forth in the 11th Protocol of the Congress of Berlin.

That Lord Tenterden was directed by your Lordship to request that we would have the goodness to inform you, at our earliest convenience, whether the arguments contained in Prince Lobanow's *pro-memoriâ* in any way altered the opinion given by us in our Report on that subject of the 13th instant, which was returned therewith with the previous papers.

That, as we were aware, the question of the fixing of the Bulgarian tribute payable to the Porte, and of the proportion of Ottoman debt to be borne by the Principality, formed the subject of the IXth Article of the Treaty of Berlin,[†] and the discussions[‡] thereon in Congress were contained in the 7th Protocol, pp. 83-85, of the accompanying papers, and at pp. 162, 164, 165, Protocol 11, were recorded the proceedings and declarations with regard to the Russian war indemnity.

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[*] Prince Lobanow, December 15, 1881.

[†] "Turkey No. 44 (1878)," Treaty, No. 623.

[‡] "Turkey No. 39 (1878)," No. 2062.

We are also honoured with a further letter from Lord Tenterden, stating that the Russian Ambassador desired the following paragraph to be added between the last paragraph and the last but one of the *pro-memoriâ*:—

"Ce droit est pourtant clairement déterminé par le Traité de Constantinople conclu entre la Russie et la Turquie en 1879 postérieurement au Traité de Berlin."

In obedience to your Lordship's commands we have the honour to report—

That the arguments contained in Prince Lobanow's *pro-memoriâ* in no way alter the opinion given by us in our Report of the 13th instant.

Russian claim for specific revenues as security is excluded; but question as to postponement of payment of indemnity to that o other creditors admits of rgument.

We would desire to point out, however, that the claim by Russia to have assigned to her as security for the war indemnity specific revenues belonging to the Turkish Government is quite distinct from the question (which is also dealt with in the *pro-memoriâ*), whether the payment of this indemnity is to be postponed to the payment of prior creditors, who had only a general hypothecation of the whole of the Turkish revenues. The former claim appears, as we have pointed out, to be excluded, in express terms, by the Protocols of the Berlin Conference. The position that Russia is not to be postponed to creditors having no specific hypothecation, but may rank *pari passu* with them, is open to more argument. We have already drawn attention to the fact, that from the language used by the Plenipotentiaries at Berlin, taken as a whole, the fair conclusion appears to be that it was agreed that the prior creditors were not to be prejudiced by Russia's claim to the war indemnity. But the Russian view on this point may be supported by some plausible arguments, and we would suggest that in any discussion of the question this distinction should be borne in mind.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 102.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 2, 1882.)

*Temple, December* 31, 1881.

My Lord,

Export of copper coins from Bagdad.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th instant, stating that, by direction of your Lordship, he had the honour to transmit to us a despatch from Her Majesty's Ambassador at Constantinople,[*] from which we should perceive that Her Majesty's Consul-General at Bagdad had been requested by the Vali of that city to prevent the exportation in Messrs. Lynch and Co.'s steamers of the small copper currency, on the ground of the inconvenience thereby caused to the native community.

That Sir J. Pauncefote also inclosed a Memorandum, drawn up in the Foreign Office,[†] on the provisions of the Treaties between the various foreign Powers and the Porte which bore upon the matter.

That it appeared to your Lordship to be doubtful whether the copper or other current coin of Turkey could properly be deemed a "manufacture" within the meaning of Article II of the Treaty of 1861 between Great Britain and the Porte.[‡]

That Sir J. Pauncefote was to request us to take the papers into our consideration, and to favour your Lordship with our opinion as to the reply which should be returned to Lord Dufferin's inquiry.

In obedience to your Lordship's commands we have the honour to report—

Copper coinage not a manufacture.

That, in our opinion, the copper coinage of the country is not a "manufacture" within the meaning of Article II of the Treaty of 1861.

Article II of Treaty of 1861 does not apply to currency.

That Article cannot, we think, have been intended to apply to the currency of the respective countries.

The right of regulating the currency is in this country amongst the prerogatives of the Crown. It is conceivable that it might be deemed expedient in Turkey, as well as in this country, for reasons of State, to prohibit the exportation of some species of currency, and we do not think that such an Article in a Commercial Treaty as that in question could properly be construed as involving an abandonment of the right to do so.

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[*] The Earl of Dufferin, No. 110 A, November 18, 1881.

[†] Memorandum by Sir E. Hertslet, November 30, 1881.

[‡] Treaty, Great Britain and Turkey, April 29, 1861, No. 453.

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It does not appear to us to be material that the exportation of coinage from Turkey has hitherto been permitted. This does not show that there is no right to prohibit.

We think that the reply to Lord Dufferin should be in the sense we have indicated.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## United States.

### No. 103.

*Memorandum by the Lord Chancellor on British Claims on United States since April 9, 1865.*

British claims on United States. Those comprehended within the Treaty of Washington, whether made at the time of the award or not, cannot now be preferred.

I THINK it clear that the XIIth Article of the Treaty of Washington, and the award made under it, must be taken as conclusive, not only against all claims which were made under it and disallowed, but also against all claims comprehended within it, according to its true and proper construction, whether made or not, and (if made) whether wholly or partly withdrawn, or not judged by the claimants upon any erroneous view of the construction and effect of the Article (see Article XVII).

2. In my opinion, "claims *arising out of* acts committed during the period between the 13th April, 1861, and the 9th April, 1865," included all claims for the continuance, prolongation, or other consequences *after* the 9th April, 1865, *of acts committed before* that date. And it is distinctly stated in Mr. Howard's Memorandum that one claim by a person named Hoskins was expressly allowed (as to some time later than the 9th April, 1865) upon this principle. I cannot, therefore, think it advisable for Her Majesty's Government to propose to the United States that an opportunity should now be given for the revival of any claims of this nature which ought to have been presented and adjudicated upon by the Commissioners under Article XII of the Treaty of Washington.

The other claims, wholly subsequent to the 9th April, 1865, have now been practically waived, and cannot be brought forward.

3. As to claims wholly subsequent (*i.e*, subsequent in their origin as well as in their continuance), it is important to observe that the Treaty of Washington was negotiated in 1871, and bears date the 8th May in that year. All the unsettled claims mentioned in the list which accompanies Mr. Howard's Memorandum appear to be of a much earlier date, ranging between April 1865 and the early part of 1866. They do not appear (*if arising out of acts committed after* the 9th April, 1865, and having had no earlier commencement) to be, like those provided for by Article XII, expressly barred by Article XVII of the Treaty; but I think that, if they were now brought forward and pressed as claims requiring settlement upon the Government of the United States, it would be for Her Majesty's Government to explain why they were not brought forward and treated in the same manner in 1871. All but *four* of them appear, from Mr. Howard's list, to have been notified by the claimants to the British Embassy at Washington *long before* that time. The four exceptions are: No. 70 (notified 11*th February*, 1871), No. 64 (notified 12*th April*, 1871), No. 74 (notified 6*th December*, 1873), and No. 26 (notified 11*th March*, 1879). Of these, the first seems to have been submitted to, and disallowed by, the Mixed Commission. The second is of very trifling amount, and was known before the signature of the Treaty. As to the two others, no reason is given why they were not sooner brought forward by the claimants, and No. 26 is evidently a claim of a very doubtful character. I do not know whether, when the 9th April, 1865, was fixed as the limit of time under Article XII, anything passed which could be referred to in favour of or against any proposition which Her Majesty's Government might now make for the recognition and settlement of claims of later date which were known at the time of the Treaty, but, if nothing did pass which would be *favourable* to the entertainment at the present time of such a proposition, and if no such claims have been (in fact) pressed by Her Majesty's Government upon the Government of the United States during the interval between the Treaty and the present time, it seems to me that any such claims would now be brought forward under a very great disadvantage, and with no prospect of success, unless the United States had some object to gain by the reciprocal investigation of other claims on their part against this country. The circumstance that the French have lately concluded such a Convention as that of the 15th January, 1880, with the United States, seems to me to be no reason why Her Majesty's Government should now press, or why the United States should now entertain, claims which have been practically waived, and suffered to go to sleep for fourteen years (if the time is reckoned from the date at which they originated), and for nearly ten years (if the time is reckoned from the date of the Treaty).

4. Besides the objection from *laches*, and from the deliberate adoption (for whatever reason) of the 9th April, 1865, as the limit of claims under Article XII of the Treaty, there is also to be considered the difficulty (on our part) of proposing or agreeing to any settlement of later claims, which should *exclude*, and (on the part of the United States) of entertaining or agreeing to any proposal for such a settlement which should *include*, the claims arising out of the Fenian raids upon Canada. If the 9th April, 1865, was a date deliberately fixed in order that *those claims* should be excluded from the XIIth Article, I think the United States will be fairly entitled to hold us now to the consequences of our bargain, not in that only, but in other respects.

(Signed) SELBORNE.

*January* 19, 1881.

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### No. 104.

*Further Memorandum by the Lord Chancellor as to British Claims on the United States.*

British claims on United States. The further papers do not diminish objections to revival of.

I CANNOT perceive that there is anything in the papers now sent to diminish the force of the objections suggested in my former Memorandum to the proposal to take up now, and press upon the United States' Government, the claims noted in Mr. Howard's list, or any of them.

The *dates* in Article XII of the Treaty of Washington appear to have been deliberately adopted, in preference to a wider and more general form of expression on the propositions of the British Commissioners. The reasons now suggested do not diminish the force of this fact. It is plain, from Sir E. Thornton's letter at p. 33 of the correspondence (C), that the question was, how to formulate a reference of "*all* other *claims*, . . . . *arising out of acts committed during the recent civil war*." Of all the claims now in question (except two, which need not be dwelt upon), Her Majesty's Government had notice, when the British Commissioners fixed the date, by which they were (as I assume) excluded.

The diplomacy of the United States is habitually and characteristically *forensic*, not to say *litigious*. As between private persons in a Court of Equity, an attempt (after ten years) to bring forward, as a new category of claims requiring settlement, some which, at the time when a previous general settlement was taking place, were already known, and were deliberately kept out of it, would not be regarded with any favour; and I cannot doubt how such a proposition, as between this country and the United States, would be received by a lawyer like Mr. Evarts, unless the United States had some object of their own to be answered by entertaining it, which is hardly probable.

I confess that, to my mind, it has *no merits*.

As for the other claims, which really *were* within Articles XII and XVII of the Treaty of Washington, it is beyond controversy that they are absolutely barred, and that to attempt to revive them would be against the faith of the Treaty.

(Signed) SELBORNE.

*February* 2, 1881.

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## Annex.

### British Claims on United States.

Lord Chancellor,

I SEND you some papers bearing on the remarks in your Memorandum.

(A.) Memorandum showing the opinion of the Law Officers in 1866 as to claims for damage to property and course claimants should be advised to pursue.

(B.) Memorandum showing why dates were adopted to avoid use of "rebellion" or "civil war." I may add that, as will be seen from (C), p. 163, the objection came from the British Commissioners from fear that "rebellion," as originally drafted, might damage controversy as to belligerent rights.

(C.) Reports from the Commissioners as to this Treaty Article and waiver of Fenian raid claims.

(D.) List of shipping cases prepared at Washington in 1869. This shows that only two cases (and these doubtful) arose *after* the 9th April, 1865.

(Signed) TENTERDEN.

*January* 31, 1881.

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## No. 105.

### *Further Memorandum by the Lord Chancellor.*

Fortune Bay Fishery question. Approving offer of sum of money in settlement.

THE course which commends itself to Lord Granville, of offering "a moderate and reasonable sum," without any joint inquiry, and without going into the particular items of the claim made by the United States' Government, would certainly not involve any prejudice to the Treaty rights of this country, if those rights were (as is proposed) expressly reserved; and I should think it a very good course to take, if it is likely to be accepted, and assuming no great importance to be attached to the question, whether what may be so paid can or cannot afterwards be recovered from the Newfoundland Treasury.

But I am far from sanguine as to the chance of an agreement on this footing. The tone of Mr. Evarts' despatch of the 4th February* seems to me very unpromising. It is full of the spirit which (I regret to say) seems to me to be characteristic of American diplomacy when international claims (especially money claims) are in question. There is never any "give and take" with them. Whatever is conceded is accepted, and everything beyond is then pressed more tenaciously (if possible) than before. It is inconceivable to me that the writer of that despatch should accept in this case, as sufficient, any amount which we could possibly offer as "moderate and reasonable."

I see no reason to modify any part of the opinions which I expressed in my two Memoranda of the 21st July and 7th October, 1880.

"Strand fishing" excluded by Articles XVIII and XXXII of Treaty of Washington; therefore, United States' fishermen, when engaged in it, are subject to local law.

With respect to the "strand fishing" in particular, the terms of the Convention of 1818, and of the Articles XVIII and XXXII of the Treaty of Washington (quoted in Lord Salisbury's despatch of the 3rd April) seem to me to define the *land* rights granted by the Treaty in a manner which distinctly *excludes* it; and the *decision* of the Halifax Commission (in accordance with the argument maintained at the time by the United States' Agent) proceeded upon a principle which, though the strand fishing may not have been then principally or immediately in question, clearly covered it. The importance of this point is, that when the Americans fish (as they have done, not only without objection, but with aid from the Newfoundlanders) with seines, or otherwise, *from the shore*, they do so, not in exercise of the *rights* which they have acquired by Treaty, but by the courtesy and hospitality of the people of Newfoundland voluntarily admitting them to a participation in their own use of the shore. In this the American fishermen neither do nor suffer wrong; but it appears to me, on very plain principles, that in what they do, *without Treaty right* upon and from the *terra firma* of Newfoundland, they are subject, and ought to be obedient, to the local law.

Ought to consult Newfoundland Government before compromising their rights by settlement of the question.

I cannot close this Memorandum without saying that, however desirable a speedy settlement of this matter may be, I should not think it expedient to purchase such a settlement upon any terms which would either compromise the permanent rights and

interests of the Colony of Newfoundland and its fishermen, without giving the Government of that Colony the fullest opportunity of being heard in support of their own rights and interests, or concede (even in appearance) the principles contended for in Lord Granville's despatch of the 27th October. If the amount of compensation insisted upon by the United States' Government should be such as cannot reasonably be entertained on these principles, it would, I think, be more satisfactory to have it settled by an arbitrator on each side, with an impartial umpire (if an impartial umpire is possible), than to rely on any solution being come to by the two Governments, after appointing a referee on each side, and finding that the referees cannot agree.

Suggests appointment of an umpire.

(Signed) SELBORNE.

*February* 21, 1881.

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## No. 106.

### *Memorandum by Lord Chancellor.*

### *Fortune Bay.*

Fortune Bay, &c., Fishery question. Advisable to give 16,000*l.*

IF the Government of the United States think it consistent with their honour and dignity to haggle for 1,000*l.* more, when they know that we have offered (for mere good-will's sake) four or five times as much as we believe to be fairly or justly due, and to enforce that demand, by declaring that they had rather *let the matter drift* than submit it to a fair and effective arbitration, I suppose it is not worth our while to keep the question open for the sake of 1,000*l.* more or less. A reference to Mr. Blaine and Sir E. Thornton, without umpirage, *means* (I suppose) merely the same thing as the demand for 16,000*l.*

Question as to ulterior claims.

Is there any possibility of ulterior claims for loss of fishing profits on account of the United States' fishermen being deterred from going to Newfoundland in respect of the time *since* the 4th March? I assume that there is not, but this sort of haggling suggests that any advantage which is *possible* might be hereafter taken of us.

Cannot expect any indemnity from Newfoundland.

If we settle with the United States on this footing (the case of the Newfoundlanders not having been so much as heard), we cannot expect Newfoundland to indemnify us.

Impolicy of repeated concessions.

Although I do not advise holding out (unless Lord Granville or Lord Kimberley should think it wise to do so), I have misgivings as to the effect, in the long run, of the policy of yielding to the screw whenever it is put upon us, even by the United States.

(Signed) SELBORNE.

*April* 14, 1881.

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*List of Papers sent to Lord Chancellor, April* 13, 1881.

Sir E. Thornton (Telegraphic), No. 21, April 4, 1881; Confidential Print, No. , pp. 109, 110, Nos. 106 and 107; Memorandum (H. C. J.), April 6; Colonial Office, April 11, 1881.

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## No. 107.

### *The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May* 10.)

*Temple, May* 9, 1881.

Murder of J. H. Tunstall. Claim for compensation.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd ultimo, stating that with reference to the letter from your Lordship's Office of the 24th May, and to our reply of the 2nd June last, relative to the claim of Mr. J. P. Tunstall, a British subject, for compensation for the loss sustained by himself through the murder in New Mexico of his son, Mr. J. H. Tunstall, and the plunder of his property, and that Sir Julian Pauncefote was directed by your Lordship to transmit to us the despatch from Her Majesty's Minister at Washington, together with its inclosures, stating that the United States' Government could not entertain Mr. Tunstall's claim,* and he (Sir Julian Pauncefote) was to request that we would take those papers into our consideration, and favour your

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* Communicated February 16, 1881.

* Sir E. Thornton, No. 70, March 7, 1881.

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Lordship with our opinion as to what further steps, if any, should be taken in the matter.

In obedience to your Lordship's commands we have the honour to report—

That Mr. Evarts' letter of the 7th March raises a question of very great importance, deserving of the most serious consideration.

Incorrectness of Mr. Evarts' arguments as to non-liability of State Governments in the United States;

The claim preferred by Her Majesty's Government was on account of the murder of a British subject, and a lawless abstraction of his property by those who were executing legal process in the territory of New Mexico. According to the opinion of Mr. Calderon Carlisle, the process there being executed would be that of the United States' Federal Government, and as New Mexico is a territory without a Legislature or State Government, it appears to us that Mr. Carlisle is probably correct. If this be so, Mr. Evarts' argument must fail, as he bases it upon the fact that New Mexico is in the same position as a State, having its separate Courts, and by its process enforcing the execution of the laws of the State and not of the Federal Government.

But the consequences resulting from an admission of the validity of Mr. Evarts' contention will be equally grave if the claim be regarded as if it had arisen in respect of occurrences within one of the States of the Union.

According to Mr. Evarts' argument, no English subject can obtain compensation for any injuries occasioned through the acts of any State Government. For the only Sovereign Power is the Government of the United States. With the individual States of the Union foreign Governments stand in no diplomatic relation, and they can only look for redress, and are entitled so to look, to the Sovereign Power of which the States are constituent parts. If Mr. Evarts' argument be well founded, the obligation resting upon the British Government to afford compensation will be far in excess of that borne by the United States' Government.

The citizens of the different States of the Union would be entitled to recover compensation here for lawless acts committed under the like circumstances to those that have occurred in New Mexico, but Mr. Evarts declines to afford any compensation for such injuries sustained in any portion of the United States.

and of British Colonial Governments.

By alleging that an American citizen is not entitled to be compensated for claims arising within our Colonies, Mr. Evarts appears to sustain the right of claim for unjustifiable acts in the United Kingdom, but his argument shows that such claim would be without any mutuality.

We much doubt whether Mr. Evarts is correct in saying that no claim can be made on Her Majesty's Government by an American citizen on account of lawless acts committed within our colonies. A Colonial subject of the Queen has the same right to compensation as a native of the United Kingdom against the American Government, and if Mr. Evarts' suggestion be admitted as corrrect, it will be a dangerous admission against the rights of Colonial subjects, for if their non-liability to make compensation be admitted, their right to claim it must be doubtful.

We must remind your Lordship that there is apparently no substantial dispute as to the murder of Mr. Tunstall and the seizure of his property being lawless acts committed by those who were executing legal process within the United States.

Should protest against principles of non-liability. Great Britain cannot admit right of compensation without mutuality.

We therefore think that your Lordship should cause strong protestation to be made to the American Government against the principles of non-liability contended for by Mr. Evarts, and point out that it would be impossible for the British Government to continue to admit the right to compensation of American citizens if similar rights be denied to those of Great Britain.

Future action must be governed by the result of such representation.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 108.

*Memorandum by the Lord Chancellor respecting the Tunstall Murder.*

Murder of J. H. Tunstall. Agrees with Law Officers as to Mr. Evarts' reply.

I AGREE entirely with the opinion of the Law Officers, and need add little to it.

The doctrine advanced by Mr. Evarts is absolutely inconsistent with the fact, that the relations of the United States to foreign Governments are exclusively through

the President, as the Representative of all the States united under the Federal Government.

What would the United States' Government say to any action on our part to enforce redress by reprisals against a particular State of the Union?

And, with respect to British Colonies, at the very time when Mr. Evarts was advancing this doctrine, he was claiming indemnification from the British Government for acts of violence committed in Newfoundland, by inhabitants of that Colony, against United States' fishermen.

He cannot have meant to say, that redress may be claimed against a State or a Colony for *such* acts of violence; but *not* for *murder and robbery*, committed by the representatives of the law, in the same State and Colony.

(Signed) SELBORNE.

*May* 21, 1881.

Press claim strongly.

P.S.—The claim should be strongly pressed.—S.

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## No. 109.

*Further Memorandum by the Lord Chancellor respecting the Tunstall Murder.*

Murder of J. H. Tunstall. Claim well founded. Remarks on Mr. Tunstall's letter.

I HAVE no observations to make on this letter* except that the claim seems to me to be just and well founded.

The writer refers to the "Alabama" claims and the Geneva Award. This reference is more pertinent than it might, at first sight, seem to be; because the compensation awarded to the United States, so far as relates to the "Shenandoah," was entirely for matters which occurred in one of the Australian Colonies; as to which, if Mr. Evarts' argument could be maintained, the United States' Government would not have been entitled to make any claim, because the authority which did the wrong, or, rather, which failed to prevent it, was Colonial and not Imperial.

(Signed) SELBORNE.

*May* 23, 1881.

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## No. 110.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 7.)

*Temple, June* , 1881.

Fortune Bay fishery claims. Proposal to prefer counter-claims.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th ultimo, stating that he had the honour to transmit to us, by your Lordship's direction, the printed correspondence noted in the margin,† together with two letters, dated the 28th and 11th April, from the Colonial Office, relative to certain counter-claims which the Newfoundland Government desired to prefer in reduction of the indemnity claimed by the United States' Government in respect of the incident at Fortune Bay, which was the subject of our Reports of the 15th July and 27th September last (Correspondence 1880-1, pp. 59 and 75).

That those counter-claims arose out of losses sustained by Newfoundland fishermen, who alleged that their nets were wantonly destroyed by American fishing vessels after the incident at Fortune Bay, by way of retaliation.

That the particulars of those counter-claims would be found in the affidavits transmitted in the Colonial Office letter of the 28th March last.

That, with reference to the charge of wanton destruction of those nets by way of retaliation, Sir Julian Pauncefote was to invite our attention to the affidavits of Saunders and Cluett, taken shortly after the date of the Fortune Bay incident, copies of which were furnished at the time to the United States' Government. That they would be found at pp. 25 and 31 of the print of 1878-79.

That Sir Julian Pauncefote was to refer us to the following papers on the subject:—Print, 1880-81, No. 89, p. 96; No. 90, p. 101; No. 93, p. 102; No. 96, p. 103; No. 118, p. 116; No. 174, p. 134.

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* Mr. Tunstall, May 17, 1881.

† List of Papers:—Print, 1878–79, Confidential, 3851; ditto, 1879–80, Confidential, 4234; ditto, 1880–81 (with omissions), Confidential, 4517; Colonial Office, March 28; ditto, April 11, 1881.

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That Sir Julian Pauncefote was to observe that in the letter addressed by your Lordship to Mr. Lowell, dated the 27th October last (Print No. 65, p. 81), in which your Lordship expressed the willingness of Her Majesty's Government to pay a reasonable indemnity in respect of the Fortune Bay claims, no mention was made of any counter-claims.

That Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion, at our earliest convenience, whether, looking at the evidence and considering all the circumstances, the counter-claims in question could properly be preferred by Her Majesty's Government.

That Sir Julian Pauncefote was to add that the Premier of Newfoundland (Sir William Whiteway, Attorney-General of the Colony) was expected in this country in course of the month.

In obedience to your Lordship's commands we have the honour to report—

Reasons against bringing forward counter-claims.

That we have considered these papers, and particularly with reference to Sir J. Glover's inclosure No. 118, Print, 1880-81, the affidavits of Saunders, p. 25, Print, 1878-79, and Cluet, 31, Print, 1878-79.

In our opinion the evidence of malicious intention on the part of the American fishermen is too weak to enable Her Majesty's Government properly to support the counter-claims of the Newfoundland fishermen.

And we are further of opinion that if the evidence had been more conclusive the small amount of damage done, and the delay in making the counter-claims, would be strong reasons against now bringing them forward in reduction of any compensation to which the United States' fishermen may ultimately be held entitled.

Await arrival of Premier of Newfoundland.

But we think it would be well to defer coming to a final determination until the views of the Premier of Newfoundland have been fully ascertained and considered.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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## No. 111.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December 14.*)

*Temple, December* , 1881.

My Lord,

Cotton deck cargoes of British vessels. Is it advisable for Consuls, in such cases, to inform Board of Trade or Lloyd's?

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 24th ultimo, stating that he had the honour, by direction of your Lordship, to transmit to us papers relating to a correspondence which had recently taken place between the Committee of Lloyd's and the Board of Trade, and between that Department and the Foreign Office, on the subject of the departure from certain ports in the United States of British vessels loaded with cotton on deck.*

That it would be perceived from Lloyd's letter of the 13th June (Inclosure 1 in the letter from the Board of Trade of 2nd September) that, in accordance with a suggestion made by the Board of Trade to Lloyd's, that the Underwriters should contribute some assistance in preventing vessels carrying cargo on deck by refusing to take insurance risks in such cases, the Committee of Lloyd's requested that Her Majesty's Consuls at the cotton ports of the United States should be allowed to telegraph information to Lloyd's with regard to vessels leaving an American port with cotton on deck, "with a view to the fact of cotton being loaded on deck being made known to the Underwriters interested." That in their letter of the 24th August (Inclosure 5 in the letter from the Board of Trade above-mentioned) the Committee of Lloyd's stated that they were prepared to pay the costs of procuring the required information, "in the event of the Board of Trade being able to make the necessary arrangements with Her Majesty's Secretary of State." That in that letter of the 12th October (Inclosure 2 in the Board of Trade letter of the 19th October) Lloyd's suggested that Her Majesty's Consuls at the ports mentioned should be instructed to communicate the information required to Lloyd's Agents at Baltimore, who would telegraph it direct to Lloyd's Committee, and in their letter of the 19th October (inclosed in the Board of Trade of the 25th October) the Committee informed the

Board of Trade that they would be happy to give some publicity of their intention to receive the intelligence referred to, provided that the Foreign Office saw no objection to the adoption of this course. That, as the Board of Trade concurred in Lloyd's suggestions, your Lordship was, at first, disposed to accede to the proposed arrangement, and that a Circular to Consuls had been prepared accordingly (Inclosure in letter to Board of Trade of the 13th September), but that, on further consideration, your Lordship felt some hesitation in giving effect to the proposal.

That your Lordship understood that the practice complained of was not illegal, except so far as it might, in some cases, render the ship unseaworthy. But that it was alleged to be dangerous, and it was said also to be a "fraudulent evasion of dues," payable for space of deck cargo.

That if, therefore, the proposed arrangement were limited to an instruction to Her Majesty's Consuls to telegraph to the Board of Trade the fact of any ship having left with bales of cotton on deck there would seem to be no objection to it, as the object would be to put the Board of Trade, on inquiry as to to whether the vessel had put to sea in an unseaworthy state (for which the master would be punishable), and also to prevent fraud in the payment of dues. That the Board of Trade might then, on the receipt of such information, communicate it, if they thought proper, to the Underwriters.

That your Lordship considered, however, that the proposal to instruct Her Majesty's Consuls to telegraph such information direct to Lloyd's for the benefit of the insurers was open to objection. That the Underwriters could procure their information from Lloyd's Agents at the ports where the practice complained of prevails, and that it appeared to your Lordship somewhat invidious to throw on Her Majesty's Consuls that new and inquisitorial duty for the furtherance of private interests. That your Lordship apprehended also that it might involve them in disagreeable relations with shipmasters and owners, if not in some legal responsibility, and that the public interest being only concerned in regard to the safety of life, and to a proper payment of dues, all official information which the Board of Trade thought necessary should be addressed to that Department.

That your Lordship was inclined to think that the task of telegraphing the information in question direct to Lloyd's was one which goes beyond the limit of the functions which could legitimately be imposed on Her Majesty's Consuls, and that Sir J. Pauncefote was therefore to request that we would inform your Lordship whether we concurred in that view, and favour your Lordship with such observations on the subject as we might think proper to make.

We are also honoured with a further letter from Sir J. Pauncefote, dated the 28th ultimo, inclosing a despatch from Her Majesty's Consul at Charleston* on the above subject.

In obedience to your Lordship's commands we have the honour to report—

Consuls should inform Board of Trade to avoid legal difficulties.

That we concur in your Lordship's view, and think that the official information, which the Board of Trade deem necessary, should be addressed to that Department.

Any other course would, we think, be likely to give rise to considerable embarrassment and difficulty, and might involve the Consuls in grave legal responsibility.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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* Board of Trade, September 2; To Board of Trade, September 13; Board of Trade, October 19 and October 25; Memorandum by Mr. Bidwell, October 27; Mr. Farrer, November 8, Inclosure; Memorandum by Mr. Bidwell, November 10, 1881.

* Consul Walker, No. 4, November 7, 1881.

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## Uruguay.

### No. 112.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 28.)

*Temple, October* 27, 1881.

My Lord,

Mr. Littlejohn's claim on Uruguayan Government for appropriation of gunpowder. That Government will only pay in depreciated bonds.

WE are honoured with your Lordship's commands, signified in Lord Tenterden's letter of the 12th instant, stating that he had the honour, by your Lordship's direction, to forward to us the correspondence* relative to a claim preferred by Mr. Robert Littlejohn, a British subject, against the Uruguayan Government, on account of some gunpowder belonging to him which had been appropriated by that Government in 1874, and for which an order on the Treasury for the estimated value, 891 dollars gold, was granted to Mr. Littlejohn by them.

That, on being pressed for the settlement of the claim, the Uruguayan Government had declined to satisfy it in any other way than by giving Mr. Littlejohn bonds of the new funded debt, or "deuda amortizable," which he declined to receive on the ground that those bonds were worth only 19 per cent. of their nominal value.

That, together with the above papers, were annexed a copy of the Treaty of Amity, Commerce, and Navigation between Her Majesty and the Oriental Republic of Uruguay of the 26th August, 1842, and of the Protocol respecting the renewal of diplomatic relations between Great Britain and the Republic, signed on the 29th April, 1879, to which was attached a despatch from Mr. Ford, defining the arrangements he had made for the payment of a certain class of British claims, and the investigation and settlement of others.

That, by a recent Law of the Republic, all debts owing by the State at the date of December 1880 were included in the "deuda amortizable," and that the Government declined to take into consideration the origin of Mr. Littlejohn's claim, but insisted on classing it in the same category as all other claims. That, in his despatch No. 69 of the 16th August, Mr. Monson stated that Mr. Littlejohn's powder was deposited as required by regulation in the Government magazine of the capital, and was appropriated by the Government for its own purposes.

That Lord Tenterden was to request that we would favour your Lordship with our opinion as to whether the seizure of Mr. Littlejohn's powder under those circumstances amounted to a military exaction or requisition within the meaning of Article IX of the Treaty of 1842, and, if so, whether the Government of Uruguay could refuse to pay to Mr. Littlejohn's claim of 891 dollars gold, for which an order was given to him on the Treasury at the time, on the ground that, by the Municipal law above referred to, all the debts of the State not satisfied at a particular date were to be paid off in the bonds issued thereunder, and then were only 19 per cent. of their nominal value.

That if we should be of opinion that Article IX of the Treaty did not apply to the case, your Lordship would be glad to be informed whether Mr. Littlejohn's claim could be supported on any other ground.

In obedience to your Lordship's commands we have the honour to report—

That we have not before us the exact circumstances under which the gunpowder belonging to Mr. Littlejohn was taken possession of by the Government of Uruguay.

If the appropriation was forcible, Mr. Littlejohn should be paid in full, and Her Majesty's Government are entitled to insist on full reparation.

But, assuming that it was appropriated by them without the consent of Mr. Littlejohn for their military purposes, we think that such forcible appropriation was a military exaction or requisition within the meaning of Article IX of the Treaty between this country and Uruguay, and, if so, we think that the Government of Uruguay are not justified in refusing to pay Mr. Littlejohn, except in bonds which represent only one-fifth of the value of the property expropriated, and that Her Majesty's Government may properly insist that he shall receive the entire value of his property.

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* Mr. Littlejohn, March 31; to Mr. Monson, No. 11, May 14; Mr. Monson, No. 56, of June 21; to Mr. Monson, No. 15, August 5; Mr. Monson, No. 61, August 2; to Mr. Monson, No. 18, September 5; Mr. Monson, No. 69, August 16, 1881; Treaty, August 26, 1842, No. 294. Uruguay, No. 1, of 1879, No. 638.

His claim (always supposing the assumption we have made to be correct), unlike an ordinary debt, does not arise from his having trusted the Government of Uruguay, but has its origin in the breach of an international obligation, and this being so, Her Majesty's Government are themselves entitled to prefer the claim, and to insist on full reparation.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DRANE.

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## Venezuela.

### No. 113.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 26.)

My Lord,

*Temple, January* 25, 1881.

Regulations respecting foreign vessels of war in British ports.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st ultimo, stating that he was directed to transmit to us a translation of a letter from the Venezuelan Minister at this Court,* asking on behalf of his Government for information on the following points:—

1. By what order or regulation of police, or any other kind, is it considered that foreign vessels of war which visit the ports of Great Britain are bound, and from which are they excluded; what number of vessels of war may enter, and how long are they allowed to remain in the ports?

2. What consequences are brought upon foreign vessels of war by inattention to the laws which are considered binding on them, and what is the mode of proceeding to enforce the responsibility they incur?

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to the reply which should be returned to the Venezuelan Minister.

In obedience to your Lordship's commands we have the honour to report—

Reply to questions of Venezuelan Minister.

That the Venezuelan Minister may properly be answered that the Laws of Great Britain in time of peace, and subject to any exceptional state of things, place no restriction upon the number of foreign ships of war which may come into any of the ports of the United Kingdom, nor any limit of time for their remaining in such ports.

That such ships of war are not under the orders or regulations of the police or other British authority in respect to matters occurring on board, but that they would be expected and required to conform to such port and harbour regulations as relate to safe navigation or to the public health, as, *e.g.*, Quarantine Regulations. Any infraction of these rules, however, would not be dealt with in the manner applicable to private ships, but would be the subject of representation or claim by the British Government, addressed to the State to which the offending vessel belonged.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Señor Rojas, December 16, 1880.

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### No. 114.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 31.)

*Temple, January* 29, 1881.

My Lord,

Claim of Venezuela to Patos or Goose Island.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter, received the 28th ultimo, stating that with reference to our Report of the 27th April last upon the subject of the claim of Venezuela to the Island of Patos, he was directed by your Lordship to transmit to us a letter from the Colonial Office* pointing out which of the papers submitted to us contained the evidence relied upon as showing that the island in question had been held and treated as a Dependency of Trinidad since the occupation of the Colony in 1797.

That the papers inclosed in the Foreign Office letter to us of the 4th February, 1880, were sent therewith for convenience of reference, and that our Report of the 27th April was also inclosed.†

In obedience to your Lordship's commands we have the honour to report—

Island may be regarded as dependency of Trinidad.

That we think it may be taken on the evidence before us that the Island of Patos was within the Government and jurisdiction of Trinidad prior to the cession of that island to Great Britain, and that Patos may properly be regarded as one of its dependencies.

British title, under Treaty of Amiens, is not clear;

This seems to be established by the grant made by the Governor and Captain-General of Trinidad to the Cabildo in 1791, whatever question there may be as to the extent of the rights thereby granted, or as to the necessity for its confirmation by the Crown of Spain. If therefore, by the Treaty of Amiens, the Island of Trinidad and its dependencies had been ceded to Great Britain, her right to the Island of Patos could hardly have been called in question. In the Treaty, however, the "Island of Trinidad" only is in express terms ceded. There are, nevertheless, strong grounds for contending that such language would suffice to carry, and must *primâ facie* be construed to carry, a cession of the dependencies of the island also, or, at all events, of such of them as are in its immediate neighbourhood. Grave inconvenience would certainly result from a contrary construction. But the terms of the Treaty render such a construction difficult in the present case, for in another part (Article VII) of the Treaty of Amiens when the case of Malta is dealt with "its dependencies" are expressly mentioned. And further, Patos appears to be considerably nearer the mainland than it is to Trinidad. If then the question had arisen immediately after the Treaty, and had rested only upon the construction of that instrument we think it doubtful whether the title of Great Britain to the Island of Patos could be clearly established.

It becomes important therefore to inquire how the parties to that Treaty have acted and how the island has been dealt with subsequently.

For nearly sixty years after the Treaty (viz., until 1850) no claim was made to the island either by Spain or by the Government of Venezuela, which, in 1845, succeeded to the Spanish dominions in that part of America. On the other hand acts of dominion were exercised over the island by the Government of Trinidad as far back as 1822, and such acts have been renewed at other periods subsequent to that date.

It is true that the leave given to Felix to occupy and cultivate the island in 1822 was not the exercise of a very definite act of sovereignty.

but may be sustained on account of acts of sovereignty exercised by British Government, though not free from doubt.

But it is clear, from the opinion of the Attorney-General, that it was regarded as an assertion of sovereignty, and it seems to have been intended as such by the Government of Trinidad. In addition to this there have, we gather, been undoubted acts of sovereignty exercised, without question down to the present time, over the Islands of Mouos and Huelons, which, like Patos, are separate islands and could only have passed to Great Britain as dependencies of Trinidad.

Under these circumstances we think that the title of Great Britain to the island in question may well be sustained, though we cannot say that the matter is free from doubt.

If the boundary negotiations be still going on, sufficient doubt exists to render it expedient to close the matter definitely, one way or the other, if the opportunity presents itself for so doing.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Colonial Office letter, May 19, 1880.

† Confidential No. 4539, p. 107.

### No. 115.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 19.)

*Temple, October* 18, 1881.

My Lord,

Venezuelan Law imposing additional duties on imports from West Indies is contrary to Article IV of Treaty with Great Britain of 1825.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us the correspondence* relative to a Law recently passed by the Venezuelan Government imposing an additional duty of 30 per cent. *ad valorem* upon all imports into that country from West Indian Islands or Colonies, which Law was to come into force on the 19th December, 1882, when the Treaty between Denmark and Venezuela would expire.

That Sir Julian Pauncefote was also to inclose copy of the Treaty of 1825† between this country and the United States of Colombia, and of the Convention of 1834‡ between this country and Venezuela, by which the Treaty of 1825 was adopted and confirmed as between Great Britain and Venezuela.

That Article IV of the Treaty of 1825 provided that "no higher or other duties should be imposed on the importation into the territories of Venezuela of any article of the growth, produce, or manufacture of Her Britannic Majesty's dominions than were or should be payable on the like article being the growth, produce, or manufacture of any other foreign country."

That, under the new Act, goods imported into Venezuela direct from British West Indian Colonies would be charged higher duties than the products of other countries, and that where such goods were the "growth, produce, or manufacture of Her Britannic Majesty's dominions," it appeared to your Lordship that the Law would be inconsistent with the provisions of Article IV of the Treaty of 1825.

That Sir Julian Pauncefote was to request that we would take that matter into our consideration, and favour your Lordship with our opinion thereon.

In obedience to your Lordship's commands we have the honour to report—

That if (as we gather will be the case), under the Law recently passed by the Government of Venezuela, articles of the growth, produce, or manufacture of Her Majesty's West Indian dominions would be charged, on importation, with higher duties than are imposed on the like articles being the growth, produce, or manufacture of other foreign countries, the enforcement of that Law will, in our opinion, be inconsistent with the provisions of Article IV of the Treaty of 1825.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

## Zanzibar.

### No. 116.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 4.)

*Temple, October* 3, 1881.

My Lord,

Ill-treatment of natives at Mombasa by Mr. Streeter, a British subject. Question as to power of British Consul to administer Indian Penal Code under Orders in Council of 1866 and 1877.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th ultimo, stating that he was directed by your Lordship to transmit to us the papers, as marked in the margin,§ relating to the proceedings of Mr. Streeter, a lay missionary at Mombasa, a town on the East Coast of Africa, and within the dominions of the Sultan of Zanzibar. That Mr. Streeter, who was a British

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* Colonel Mansfield, No. 13, March 8; to Colonel Mansfield, No. 2, May 20; ditto, No. 6, June 28; Colonel Mansfield, No. 8, July 2; to Colonial Office, August 18; Colonial Office, August 27, 1881.

† "State Papers," vol. xii, p. 661.

‡ Treaty No. 244.

§ Dr. Kirk, No. 85; No. 90 (Inclosure 5); No. 91 (Inclosure 2); No. 94 (Inclosure 2); Zanzibar Order in Council, 1866, and Rules, Confidential Nos. 1452 and 1452*; Order in Council, June 1, 1877, Confidential No. 3204; Law Officers, February 27, 1867.

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subject, appeared to have flogged and imprisoned natives over whom he had no power to exercise any jurisdiction, and that we would perceive that Her Majesty's Agent and Consul-General at Zanzibar stated in his despatch No. 65 of the 1st July that he considered Mr. Streeter to have thereby committed "a crime most seriously dealt with under the Indian Penal Code, which we administer here" (viz., in the British Consular Court at Zanzibar).

That Her Majesty's Order in Council of the 9th August, 1866, for the regulation of Her Majesty's jurisdiction in Zanzibar, contained no provision authorizing the Consular Court to administer the Indian Penal Code, but that section 27 empowered Her Majesty's Consul to establish "Rules of Practice," and that in 1867 Colonel Playfair, then Her Majesty's Consul in Zanzibar, drew up certain Rules and Regulations, of which Article 24 provided that the Indian Penal Code "shall be considered the *Criminal Law* to which British subjects at Zanzibar are amenable," with certain exceptions therein mentioned.

That those Rules and Regulations were submitted by him to Lord Stanley, at that time Secretary of State for Foreign Affairs, and were referred by his Lordship to the Law Officers of the Crown, who reported on the 21st February, 1867, that, with some slight alterations not affecting Article 24, the Rules were right and proper. That the Rules were issued accordingly.

That the attention of the Law Officers, however, was not directed to the fact that the power of Her Majesty's Consul to frame Regulations under section 27 of the Order in Council only extended to Rules of Practice, whereas the 24th Article of the Regulations issued by Colonel Playfair applied part of the Law of India to Zanzibar, and therefore seemed to be *ultra vires*.

That it appeared also to your Lordship that that provision could not be supported under section 3 of the Order in Council, as under that section the Consul could only make Rules the violation of which entailed no greater punishment than 500 dollars fine or three months' imprisonment.

That Sir Julian Pauncefote was to request that we would take his letter and the papers which accompanied same into our consideration, and favour your Lordship with our opinion, at our early convenience, as to whether Her Majesty's Consular Court in Zanzibar could lawfully administer the Indian Penal Code under the Order in Council of 1866 and the Rules and Regulations issued thereunder in 1867.

That Sir Julian Pauncefote was further to draw our attention to Her Majesty's Order in Council of the 1st June, 1877, and to request that we would advise your Lordship whether, under that Order, Her Majesty's Consular Court in Zanzibar could apply the provisions of sections 367, 370, and 371 of the Indian Penal Code to the offences therein defined and committed in Zanzibar by the persons mentioned in the Order, or whether such persons were justiciable only in British India under that Order.

In obedience to your Lordship's commands we have the honour to report—

That we think it clear that the rule which provides that the Indian Penal Code shall be considered the criminal law to which British subjects at Zanzibar are amenable could not properly be made under section 27 of the Order in Council, which relates to rules of practice only.

If the Consul had authority to make it at all, it could only be under section 1 of the Order in Council, as a rule "for the peace, order, and good government of Her Majesty's subjects being within the dominions of the Sultan of Zanzibar."

But, having regard to the terms of that section, and to the other provisions of the Order in Council, especially those contained in section 22, we do not think that it was competent for the Consul to make such a rule as that numbered 24.

Consular Court at Zanzibar cannot legally administer Indian Penal Code;

We are therefore of opinion that Her Majesty's Consular Court in Zanzibar cannot lawfully administer the Indian Penal Code under the Order in Council of 1866 and the Rules and Regulations issued thereunder in 1867.

offenders against sections 367, 370, and 371 are justiciable only in India.

We are of opinion that, under the Order in Council of the 1st June, 1877, Her Majesty's Consular Court in Zanzibar cannot apply the provisions of sections 367, 370, and 371 of the Indian Penal Code to the offences therein defined and committed in Zanzibar by the persons mentioned in the Order in Council, and that such persons are justiciable only in British India under that Order.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 117.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December 7.)*

My Lord,

*Temple, December* 6, 1881.

Ill-treatment of natives at Mombasa by Mr. Streeter.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th ultimo stating that your Lordship had had under further consideration the printed correspondence relating to the proceedings of Mr. Streeter, a lay missionary at Mombasa, in the dominions of the Sultan of Zanzibar, a copy of which was laid before us in the letter from the Foreign Office of the 9th September, referred to in our Report of the 3rd October last,* respecting the validity of a Rule issued in 1867, under section 27 of Her Majesty's Order in Council of the 9th August, 1866, and purporting to empower the British Consular Court at Zanzibar to administer the Indian Penal Code.

That, although the Indian Penal Code did not apply in Zanzibar, your Lordship considered it a matter of regret that the offences of aggravated assault and false imprisonment, of which Mr. Streeter appears to have been guilty, were not dealt with according to English law by the Consular Court.

That Mr. Streeter was, at the date of Sir Julian Pauncefote's letter, in this country, but that your Lordship understood that he could not be brought to justice here for the offences committed by him in Zanzibar, as the Courts in England had no jurisdiction over crimes committed by British subjects *on land* out of the British dominions, other than murder or manslaughter, or offences against the Slave Trade Acts.

That Sir Julian Pauncefote was therefore to state that, under those circumstances, your Lordship proposed to again address the Church Missionary Society, informing them that it was intended to lay the papers on the subject before Parliament, and adding that your Lordship would be glad to hear that the Society had resolved to relieve Mr. Streeter of his functions in Zanzibar, and will not give him any new employment in any responsible situation out of Her Majesty's dominions, where there was any possibility of a repetition of similar outrages.

That having, however, regard to the fact that the matter was one which would no doubt excite great public interest, before acting in the above sense, your Lordship would be glad to be informed whether we concurred in the view that Mr. Streeter could not be brought to justice in this country, and, if so, Sir Julian Pauncefote requested that we would favour your Lordship with our opinion as to whether the communication which he proposed to address to the Society was right and proper under the circumstances, and generally with such observations as we might have to offer on the case.

We are also honoured with a further letter from Sir Julian Pauncefote, dated the 29th ultimo, stating that, with reference to the letter of the 15th ultimo, he was to transmit to us, for our consideration, a further letter and its inclosures from the Church Missionary Society† respecting Mr. Streeter's proceedings at Mombasa.

In obedience to your Lordship's commands we have the honour to report—

Opinion as to trial of Mr. Streeter, and letter to Church Missionary Society on the subject.

That we concur in the view that Mr. Streeter cannot be brought to justice in this country, and that the communication which your Lordship proposes to address to the Society is, in our opinion, proper under the circumstances.

No further observations occur to us in relation to the case.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* See No. 116.

† Church Missionary Society, November 16, 1881.

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# APPENDIX.

## Turkey.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 6.)*

My Lord, *Temple, January* 6, 1881.

Cyprus revenue and Guaranteed Loan of 1855.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd December last, stating that he had to submit to us, by direction of your Lordship, the following questions for our consideration and advice:—

Conditions of guarantee.

That in 1855 a loan of 5,000,000*l.* was raised by Turkey under the guarantees agreed to by Great Britain and France, and recorded in a Convention with the Porte, dated the 27th June, 1855. On the same day a Declaration was signed by Great Britain and France relative to the mode in which their liability under the above guarantee, in case of default by the Porte, should be met. (Hertslet's "Map of Europe by Treaty," vol. ii, pp. 1235-1237.) Copies of the Convention and Declaration were annexed.

That by the Convention the interest on the loan, which was fixed at 4 per cent. per annum, was guaranteed by Great Britain and France jointly, and the Porte agreed to pay the further rate of 1 per cent. per annum by way of sinking fund.

That the interest and sinking fund were made a charge "on the whole revenues of the Ottoman Empire," and especially on the balance of the Egyptian tribute unappropriated to the previous Loan of 1854, and moreover on the customs of Smyrna and Syria.

That finally the Porte agreed to remit to the Bank of England, at stated half-yearly periods, the amounts payable in respect of that loan for interest and sinking fund, until the whole capital borrowed should be repaid.

Financial situation as regards loan.

That the financial situation as regarded that loan was as follows:—Turkey then owed on account of interest about 105,000*l.*, which sum had been wholly paid by England, France being liable to repay to her one moiety.

That the capital of the loan then stood at 3,815,000*l.*, the stipulated interest on which (4 per cent.) amounted to 152,600*l.* per annum. Towards the payment of that sum the balance of the Egyptian tribute, amounting to 72,000*l.* per annum, was paid to the Bank of England, leaving in addition to the then arrears 80,600*l.* per annum to be provided in future by England and France in case of default by the Porte. That the Porte had ceased to pay anything towards the sinking fund since 1876.

Proposed retention of surplus for payment of arrears of interest and sinking fund.

That in view of the risk which was apprehended of further defalcations by the Porte, the question had arisen whether, having regard to the terms of Article III of the Convention, whereby it was declared that the interest and sinking fund of the said loan "shall form a charge on the whole revenues of the Ottoman Empire," Her Majesty's Government would not be justified in retaining the surplus revenue of the Island of Cyprus, payable by them to the Porte under the Convention and Annex of the 4th June, 1878, hereinafter mentioned, in satisfaction of the arrears of interest and of sinking fund then due or thereafter accruing due by the Porte.

Conditions of occupation of Cyprus.

That the terms on which Great Britain proposed to the Porte to occupy and administer the Island of Cyprus, and the objects of that proposal, were fully explained in the despatch of the Marquis of Salisbury to Sir Henry Layard of the 30th May, 1878 (Parliamentary Paper, "Turkey No. 36, 1878," p. 1).

That in that despatch the following passage occurred:—"Her Majesty's Government do not wish to ask the Sultan to alienate territory from his sovereignty, or to diminish the receipts which now pass into his Treasury. They will therefore propose that while the administration and occupation of the island shall be assigned to Her Majesty, the territory shall still continue to be part of the Ottoman Empire,

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and that the excess of the revenue over the expenditure, whatever it may be, shall be paid over annually by the British Government to the Treasury of the Sultan."

That the intention would therefore seem to have been that the revenues of Cyprus should be received by Great Britain in a fiduciary character.

That Sir Julian Pauncefote was then to refer us to the Convention of Defensive Alliance between Great Britain and Turkey of the 4th June, 1878, and to the Annex thereto of the same date, (see Parliamentary Paper above cited, pp. 3-5), whereby the above proposal for the British occupation of Cyprus was carried out, and we would observe that by Article III of the Annex it was provided that "England will pay to the Porte whatever is the present excess of revenue over expenditure in the island," such excess to be determined as therein mentioned.

That that excess or surplus revenue of Cyprus payable by Great Britian, and which amounted to 90,000*l.* per annum, had been pledged by the Porte as part of the security given by her to carry out certain financial arrangements recently concluded.

That Her Majesty's Government were disposed to make a proposal to the Porte in relation to the Loan of 1855, which had lately been under consideration, and which was likely to be advantageous to all parties; but before doing so they desired to be advised as to their strict legal rights.

Questions as to appropriation of surplus revenue.

That Sir Julian Pauncefote was therefore to request that we would take the facts stated in his letter, and the documents above referred to, into our consideration, and favour your Lordship with our opinion on the following questions:—

1. Were Her Majesty's Government entitled to treat the surplus revenue of Cyprus as part of the revenues of the Ottoman Empire, which were charged by Article III of the Convention of 1855 with the payment of interest on the loan and sinking fund?

2. If so, was there anything opposed to international right or equity (apart from considerations of political expediency) in the retention by Her Majesty's Government of so much of the surplus revenue of Cyprus as might be sufficient to satisfy the arrears due by the Porte in respect of interest and sinking fund, or either of them, by way of enforcement for the joint benefit of Great Britain and France of the charge created on the "whole revenues of the Ottoman Empire" by Article III of the Convention of 1855.

3. If Her Majesty's Government were not entitled to retain the surplus revenue by way of enforcement of the said charge, were they entitled to retain the same by way of mutual credit and set-off, for the benefit of Great Britain only, and to the extent of her share of liability under the Convention of 1855, or generally on account of any pecuniary obligations of the Porte towards Great Britain?

That Sir Julian Pauncefote was to inclose (together with the other papers) a case laid before our predecessors in 1878 by the Treasury, in relation to the Loan of 1855, and to refer us to the questions submitted to them at p. 8, some of which were not irrelevant to the points then under consideration.

That the Report of the Law Officers of the Crown on those questions would be found at p. 161 of the "Further Correspondence respecting Ottoman Loans, 1876-78," Part II (Confidential No. 3849).

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government entitled to apply Cyprus surplus to loan.

1. That we are of opinion that Her Majesty's Government are entitled to treat the surplus revenues of Cyprus as part of the revenues of the Ottoman Empire which are charged by Article III of the Convention of 1855 with the payment of interest on the loan and sinking fund.

Such application not opposed to equity, subject to demand as to special securities.

2. We desire to point out to your Lordship that under Article III of the Convention of 1855 the customs of Smyrna and Syria, as well as the surplus tribute of Egypt, are specially charged with the interest and sinking fund of the loan. And we would suggest (if it has not already been done) that before seeking to apply any part of the general revenues of the Ottoman Empire to the payment of the interest and sinking fund, the Porte should be specially called upon by Her Majesty's Government to give them the benefit of the special security which they are entitled to by the Convention. Subject to this being done, and in the event of the demand not being complied with, we are of opinion that there is nothing opposed to international right or equity (apart from considerations of political expediency) in the retention by Her Majesty's Government of so much of the surplus revenue of Cyprus as may be sufficient to satisfy the arrears due by the Porte in respect of interest or sinking fund by way of enforcement, for the joint interest of Great Britain and France, of the charge created on the whole revenues of the Ottoman Empire by the Convention of 1855.

Right of Her Majesty's Government to retain surplus established by Convention of 1855 only.

As to power of Porte to assign surplus.

3. If Her Majesty's Government were not entitled to rely on the charge imposed on the surplus revenue of Turkey by the Convention, we think it would not be equitable or right to retain it by way of mutual credit or set-off, inasmuch as the special charge created upon it by the Porte, of which Her Majesty's Government have notice, gave a valid title to those to whom it was assigned, subject only to any pre-existing charge upon it.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

Convention of June 27, 1855, No. 392.
Declaration of July 27, 1855, No. 393.
"Turkey No. 36 (1878)." Parliamentary No. 2057.
Further Correspondence respecting Ottoman Loans, 1876–78, Part II. Confidential No. 3849.
Law Officers to Treasury, January 14, 1878. Confidential No. 3849, p. 161.

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*Printed for the use of the Foreign Office. April* 1883.

CONFIDENTIAL.

(4783.)

# REPORTS

BY THE

# LAW OFFICERS OF THE CROWN.

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| 2 | Law Officers .. | Received Sept. 19, 1882 | Exercise of jurisdiction by the Queen in territories granted to the North Borneo Company. Proposed Orders in Council. It is doubtful whether the transfer of the Company's jurisdiction to the Queen is in accordance with international law. Objections to such transfer, and to exercise of Queen's jurisdiction through officers of the Company. It would be better to leave the Company to deal with British subjects and foreigners alike .. .. .. | 4 |

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| 3 | Law Officers .. | May 19, 1882 | War between Chile and Peru. British and French Agreement as to appointment of a Commission of Inquiry into claims of neutrals arising out of. Subject to certain reservations, no objection to common action with France with regard to preliminary understanding on question of right to indemnity for losses occasioned by war .. .. | 5 |
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| 5 | Attorney-General (Memorandum) | Dec. 23, | Detention of the "Socrates" and "Diogenes." Their use against Chile should be prevented. Character of vessels suspicious. Warrant for seizure should be issued, but not executed unless they prepare to sail. Mr. Lambert should be informed that they must not be used against a friendly State .. .. .. .. .. .. | 8 |

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| 6 | Law Officers .. | Jan. 16, 1882 | Registration of public Companies. Remarks and proposals with regard to Reports by Mr. Reilly on draft Order in Council .. .. .. .. .. .. | |
| 7 | Law Officers .. | Feb. 3, | Confiscation of Mr. G. Harman's steam-launches at Foochow for navigating the inland waters of China as passenger steamers. As it is doubtful whether the confiscation is contrary to Treaty, the question as to the infraction of the Treaty should not be treated as of paramount importance. The confiscation, if warranted by Chinese, is not contrary to international law; but the circumstances of the case justify a very strong remonstrance .. .. .. | 10 |

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| 8 | Law Officers | May 16, 1882 | Export duty on tea from the Treaty ports. Memorial as to British right to reduction in export tea duty granted to Russia by Treaty of Kuldja. Difficulty of controverting Russian contention that land traffic should be more favourably treated than that by sea, but claim to reduction should be advanced | 12 |
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| 12 | Law Officers | June 8, | Moussa Orgi. Remainder of sentence for receiving stolen goods may be remitted at end of year | 21 |
| 13 | Law Officers | 17, | Chartering of vessels for reception of British refugees at Alexandria. Question respecting notice as to chartering of vessels must be decided by Her Majesty's Representatives in Egypt. Notice as to non-liability of Her Majesty's Government for losses of refugees not necessary | 22 |
| 14 | Law Officers | Aug. 2, | Claims for British losses caused by disturbances at Alexandria. Circumstances warrant claim on Egyptian Government for direct losses but not for indirect damages. Dr. Deane of opinion that Egyptian Government is not liable for the acts of the rebels | 26 |
| 15 | Attorney- and Solicitor-General | 14, | Landing of coals and munitions of war on coast of Egypt. Blockade should be avoided. Ports should be closed by Decree of Khedive, and British Admiral be empowered to enforce the Decree | 27 |
| 16 | Attorney- and Solicitor-General | 19, | Passage of British troops through Suez Canal. Liability of Company for delay caused by. Her Majesty's Government should not give guarantee to Company which is not liable for delay. Occupation should be sanctioned by Khedive | 28 |
| 17 | Law Officers | Received Sept. 1, | Prevention of landing of coal and munitions of war in Egypt. Proclamation of Khedive. Approve proposed instructions. | 29 |
| 18 | Law Officers | Sept. 2, | Neutrality of Suez Canal. Proposed counter-statement to resolution of Council of Administration. Detailed statement of views of Her Majesty's Government not advisable. Dissent from resolution should be recorded. Declaration should be general. Question as to stating that action taken under sanction of Khedive does not touch neutrality of Canal. Dr. Deane concurs in above, but of opinion that reasons for dissent should not be stated | 29 |
| 19 | Attorney- and Solicitor-General | Received Sept. 4, | Claims of Suez Canal Company on account of British operations on Canal. Neutrality of Canal not touched by recent events. Right of Khedive to use Canal during a revolt may be exercised under his authority by any Power. British Government not responsible to Company as shareholders | 30 |

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| 23 | Law Officers | Received Nov. 8, | Claim for demurrage on account of detention of the "Duke of Sutherland" and the "Cerigo" during the military occupation of the Suez Canal. Claim in similar case of the "Crimdon" rejected. These claims should be rejected, as the stoppage of the Canal was an act of State, and necessary | 36 |
| 24 | Law Officers | Nov. 15, | Payment of Suez Canal dues by British ships of war, transports, &c., forming part of late expedition cannot, in opinion of Egyptian Law Officers, be enforced. Approving proposed draft to Admiralty stating that Her Majesty's Government do not admit any legal obligation to pay these charges | 37 |
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| 26 | Law Officers | Dec. 7, | Murder of Mr. Palmer, Lieutenant Charrington, and Captain Gill. Question as to trial of murderers by British naval court-martial or by special Tribunal, created by Khedive's Decree, according to Egyptian law | 39 |

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| 29 | Law Officers | 15, | Marriage between a Frenchman and his deceased wife's sister, an Englishwoman. Rev. J. Orger's question as to its validity in England. Ought not to give an authoritative answer. Difference of opinion upon the point | 41 |

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| 33 | Law Officers | 29, | Marriage of the Duke of Albany. Approving draft Treaty and Separate Instrument | 45 |
| 34 | Law Officers | Apr. 27, | Collision between the "James Dale" and the "Salier." Complaint of German Government with reference to conduct of the master of the "James Dale." Proceedings of the Board of Trade, who are opposed to any further inquiry. Conduct of the master of the "James Dale" towards the crew of the "Salier" was unjustifiable. Inquiry into case expedient. Reply to German Government | 46 |
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| 36 | Law Officers | Received Sept. 4, 1882 | Assault by Mr. Reid on a French subject named Quasimodo at Marancetra. Consul Pakenham should not have refused to take action, but should have summoned Mr. Reid, or issued a warrant for his apprehension; he should not have made conditions as to attendance of witnesses, as he was not responsible for the results of their non-attendance | 50 |

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| 37 | Law Officers | Mar. 23, 1882 | North African and Soos Trading Company. Established independently of Sultan. Protest of Moorish Government. Company should not receive protection against Sultan. Consul Payton's notice in the "Times" justified, and Her Majesty's Government may accept responsibility for it. No objection to publication of Moorish Minister's letter | 51 |

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| 39 | Law Officers | June 6, | Import duties at Greytown. Claim of British merchants to a refund of duties levied since the publication of the Award under the Treaty of Managua. Nicaraguan Government admits justice of claim, but asks that it should not be pressed. Her Majesty's Government justified in demanding proof of losses before claiming the indemnity | 53 |

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| 44 | Law Officers | Sept. 21, | Collision between the "City of Mecca" and the "Insulano." Approving draft of reply to Portuguese note declining arbitration | 60 |

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*Printed for the use of the Foreign Office.* *April* 1883.

CONFIDENTIAL.

# REPORTS BY THE LAW OFFICERS OF THE CROWN: 1882.

## Africa (West Coast).

### No. 1.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 6.)

My Lord, *Temple, July* 5, 1882.

Orders to Naval Officers on West Coast.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th ultimo, stating that he was directed by your Lordship to transmit to us a letter (which was inclosed) from the Admiralty, dated the 8th April last, containing a copy of the Orders to Naval Officers relating to dealings with natives on the West Coast of Africa, drawn up by Commodore Sir Frederick Richards.

Capital punishment of natives on board Her Majesty's ships, &c.

That your Lordship observed that Article 1 of those Orders implied that capital punishment might be inflicted on natives in some cases on board of Her Majesty's ships, and by officers of Her Majesty's ships on shore.

That Sir Julian Pauncefote was to inclose the Parliamentary Papers relating to the execution of a native of Tanna on board in 1877, and also Reports of questions and answers, and of a debate which took place on the subject in the House of Commons on the 5th August, 1878.*

That in view of the conflict of opinion to which that case gave rise as to whether the execution of natives on board Her Majesty's ships for outrages committed on British subjects could be supported in law as "an act of war," or on any other ground, Sir Julian was to request that we would favour your Lordship with our opinion whether your Lordship could properly express your approval of the terms of Article 1 of the Orders in question.

That your Lordship would also be glad to be informed whether there was any objection in point of law to the terms of any of the other Articles of the Orders, or whether they might be approved generally.

In obedience to your Lordship's commands we have the honour to report—

It should not be sanctioned.

That we do not think your Lordship can properly express your approval of the terms of Article 1 of the Orders in question.

The implied authority which they involve was very strongly called in question in the debate which took place in 1878, and having regard to what was said on that occasion, we think it would be inexpedient to give fresh official sanction to it.

We see no objection to the terms of any of the other Articles.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* "Hansard's Debates," vol. ccxlii, p. 1183.

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# Borneo.

## No. 2.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

*Foreign Office, August* 21, 1882.

Gentlemen,

**Exercise of jurisdiction by the Queen in territories granted to the North Borneo Company.**

I HAVE the honour to transmit to you, by direction of Earl Granville, a letter (O) from the Chairman of the British North Borneo Company, recently incorporated by Royal Charter, asking for information as to the course which Her Majesty's Government propose to take with reference to the exercise of the Queen's exterritorial jurisdiction in North Borneo; and I am to inclose the other Papers on the subject noted in the margin.*

A Map will be found at p. 229 of the Parliamentary Papers (A), showing the territories ceded to the Company by the Sultans of Brunei and Sulu respectively, and which are comprised in the expression "North Borneo."

It is to be observed that in the Treaties and Orders in Council presently referred to the Sultan is styled "Sultan of Borneo;" but his more correct appellation is "Sultan of Brunei."

**Position of the Company.**

The sovereignty over the east coast of North Borneo is claimed both by him and by the Sultan of Sulu; but the Company derive their title to the east coast under separate grants from each Sultan.

No exterritorial jurisdiction over the east coast has been granted by the Sultan of Sulu to any foreign Power.

**Proposal of Company to establish civil and criminal Tribunals.**

The Company now propose to establish Tribunals in North Borneo for the exercise of civil and criminal jurisdiction under the general powers of government conferred on them by the Sultans, and subject to the Treaty rights of foreigners.

You will observe that by Article IX of the Charter of the Company (C) it is provided that "in case at any time Her Majesty should think fit to make provision by Order in her Council for the exercise and regulation of her extra-territorial jurisdiction and authority in Borneo, and to appoint any of the said Company's officers to discharge judicial or other functions thereunder in Her Majesty's name, then, and so long, the said Company shall provide all court-houses and establishments necessary or proper in that behalf, and bear all expenses of the exercise of the jurisdiction or authority which those officers are so appointed to exercise."

**Former British jurisdiction.**

The jurisdiction formerly enjoyed by the Queen in the dominions of the Sultan of Brunei was that conferred by the Additional Article of the Treaty of 1847 (D), which is as follows:—

"His Highness the Sultan of Borneo agrees that in all cases when a British subject shall be accused of any crime committed in any part of His Highness' dominions, the person so accused shall be exclusively tried and adjudged by the English Consul-General, or other officer duly appointed for that purpose by Her Britannic Majesty; and in all cases where disputes or differences shall arise between British subjects, or between British subjects and the subjects of His Highness, or between British subjects and the subjects of any other foreign Power, within the dominions of the Sultan of Borneo, Her Britannic Majesty's Consul-General, or other duly-appointed officer, shall have power to hear and decide the same, without any interference, molestation, or hindrance on the part of any authority of Borneo, either before, during, or after the litigation."

An Order in Council was passed in 1854 (F) to give effect to the above Article so far as relates to criminal jurisdiction; but it was repealed by another Order in Council passed the following year (G) for the reasons stated by Sir E. Hertslet in his Memorandum (I), and in 1856 a different Agreement as to jurisdiction was substituted for the Additional Article of the Treaty of 1847. (See Appendix to Sir E. Hertslet's Memorandum—I, p. 7 A.)

That Agreement is as follows:—

"His Highness the Sultan agrees that, in all cases where a British subject shall be accused of any crime, committed in any part of His Highness' dominions, the person so accused shall be tried and adjudged by the English Consul-General, or other officer duly appointed by Her Majesty, together with (and by) an officer chosen by His Highness; and in all cases where disputes and differences shall arise between British subjects, or between British subjects and the subjects of His Highness, or between British subjects and the subjects of any other foreign Power, within the dominions of the Sultan of Borneo, Her Majesty's Consul-General, or other officer duly appointed, together with an officer appointed by His Highness, will adjudge, according to the customs of Borneo, those who are in the wrong in these differences, and the Sultan will receive their sentences and carry them out. No other persons can interfere with English subjects, and no punishment can be inflicted on them heavier than accords with the customs of the English."

No Order in Council was passed to give effect to that Agreement, but it appears to have been in operation for some time, though of late years there has been no British Consular staff in Brunei, and in 1879 the difficulties and delays thereby occasioned were pointed out by Acting Consul-General Treacher, then stationed in Labuan. (I, p. 6.)

**Exterritorial jurisdiction of United States by Treaty of 1850.**

The United States are the only other Power which can claim exterritorial jurisdiction in the dominions of the Sultan of Brunei. (See the Treaty of 1850 between the Sultan and the United States—E.)

With reference to this Treaty, I am to refer you to the correspondence between Commodore Schufeldt and the Sultan of Brunei transmitted in Acting Consul-General Treacher's despatch No. 3, Consular, of the 8th March, 1880 (B, p. 16, No. 26), and to your Report of the 17th September, 1880 (B, p. 59).

The American Treaty contains nine Articles, of which the first eight are identic in their terms with the first eight Articles of the British Treaty, and Article IX is identic with the Additional Article of that Treaty relating to jurisdiction. Article II provides for most-favoured-nation treatment.

The regulation of civil and criminal jurisdiction over British subjects in the territories which still remain under the administration of the Sultan of Brunei will form the subject of a separate reference.

The question on which Lord Granville now desires to be favoured with your opinion and advice is that of the exercise of civil and criminal jurisdiction by the Queen in the territories granted to the Company.

**Proposed Order in Council as to jurisdiction over all foreigners except United States' citizens, and as to appeals.**

All foreigners in North Borneo (except British and Americans) are subject to the territorial jurisdiction which is vested in the Company under the general powers of government conferred on them by the Sultans. It is presumed that the Company can surrender to the Queen any part of its jurisdiction, and it has been suggested that, subject to the Treaty rights of the citizens of the United States (for which the United States' Government can make provision by the appointment of Consuls if they think fit), a general and uniform civil and criminal jurisdiction over all foreigners, throughout North Borneo, should be conferred on the officers of the Company, and regulated by an Order in Council, under the Foreign Jurisdiction Acts, whereby provision should be made for appeals to the Supreme Court of the Straits Settlements, and ultimately to the Judicial Committee of the Privy Council, and power should be given to send prisoners to Singapore for trial or punishment, or by way of deportation (J, K, and L).

This plan, if it can be carried out, would inspire confidence in the proper administration of justice over foreigners in North Borneo, and would be of great assistance to the Company at the commencement of its administration.

**Has Queen the power to issue proposed Order?**

The first question, therefore, which arises is whether, having regard to the general powers of government conferred on the Company by the Sultans (see Q, pp. 5 A and

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* List of Papers:—

(A.) Parliamentary Papers "Spain No. 1 (1882)," relating to Grant of Charter to the Company. Foreign Office No. 2514.
(B.) Foreign Office Confidential Print ("Sulu," Part IV), No. 4476.
(C.) Copy of Company's Charter. Foreign Office Confidential No. 4528.
(D.) Treaty of 1847 between the Sultan of Borneo and Great Britain. Foreign Office No. 334.
(E.) Treaty of June 23, 1850, between the Sultan of Borneo and the United States. "State Papers," vol. xxxviii, p 290.
(F.) Order in Council for Borneo of November 14, 1854. Confidential No. 544 A.
(G.) Order in Council repealing the same (August 13, 1855). State Papers, vol. xliv, p. 1111.
(H.) Provisional Agreement with the Sultan of Borneo of November 1856 (see I, p. 7 A).
(I.) Memorandum thereon by Sir E. Hertslet, August 4, 1882. Foreign Office Confidential No. 4654.
(J.) Foreign Jurisdiction Act (6 & 7 Vict., c. 94).
(K.) Foreign Jurisdiction Act Amendment Act (29 & 30 Vict., c. 87.)
(L.) Foreign Jurisdiction Act, 1875 (38 & 39 Vict., c. 85).
(M.) Foreign Jurisdiction Act, 1878 (41 & 42 Vict., c. 67).
(N.) Act 28 & 29 Vict., c. 63 (Colonial Laws Validity Act).
(O.) Letter of British North Borneo Company, July 5, 1882.
(P.) Draft Order in Council submitted by the Company.
(Q.) Translation of Title Deeds of the Company. Foreign Office Confidential No. 4528*.

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8 A), and looking at the terms of the Provisional Agreement of 1856, it is competent to Her Majesty, at the request of the Company, to issue such an Order as above suggested, saving the Treaty rights of citizens of the United States, and providing for their submission to the jurisdiction with the consent of their Government.

I am to observe that the administration of justice in Cyprus over all foreigners, irrespective of nationality, is carried on under an Ordinance of the local Legislature established by Order in Council under the Foreign Jurisdiction Act, and I am to refer to section 4 of "The Foreign Jurisdiction Act, 1878" (M), which extends the provisions of "The Colonial Laws Validity Act, 1865" (N), to Orders in Council passed under the Foreign Jurisdiction Act.

**If such jurisdiction is not assumed, what other plan should be adopted?**

If you should be of opinion that such an Order in Council as above suggested cannot properly be passed, or in case Her Majesty's Government, for reasons of policy, should be unwilling to assume the proposed jurisdiction, it will be necessary to consider what other mode of dealing with the question of jurisdiction in North Borneo should be adopted.

Although the Additional Article of the British Treaty was renounced and superseded by the Provisional Agreement of 1856, it is presumed that Her Majesty's Government may claim to revert to it under the most-favoured-nation clause of the British Treaty (Article II—D, p. 1), which entitles them to the benefit of Article IX of the American Treaty (E, p. 36), that Article being identic with the Additional Article of the British Treaty; and I am to inclose the draft of an Order in Council (P) prepared by Mr. R. S. Wright on behalf of the Company, and privately communicated by them for the consideration of the Foreign Office, which is based on the assumption that the Additional Article of the Treaty of 1847 and the Order in Council of 1854 are still in force.

**Proposal to vest Queen's jurisdiction in officers of Company, or to waive it and leave British subjects on same footing as foreigners.**

This draft (P) contemplates the vesting of the Queen's jurisdiction under the Additional Article in the officers of the Company, subject to appeal to the Judicial Committee of the Privy Council (see sections 3 and 10). The inconvenience of this plan would seem to be, that, as regards crimes and offences, British subjects would be tried under the Order in Council, whereas other foreigners would be tried under the territorial jurisdiction, and this might occasion confusion where the defendants were persons of different nationalities. Another alternative would be for Her Majesty's Government to waive altogether the Queen's exterritorial jurisdiction, and leave British subjects to be dealt with, like other foreigners, in the Courts established by the Company.

This plan is also open to the objection that there would be no appeal from the Courts of the Company, and that American citizens, being entitled by Treaty to exemption from the local jurisdiction, would not be so likely to submit to it as they would to the jurisdiction of the Queen exercised under such a general Order in Council as first suggested, giving powers of appeal to the Straits Settlements and to the Privy Council.

I am to request that you will take all the above suggestions into your consideration, and favour Lord Granville with your opinion as to the best mode of disposing of the question.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September* 19.)

IN obedience to your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st August, 1882, we have the honour to report—

**Doubtful whether transfer of Company's jurisdiction to Queen is in accordance with international law.**

That no doubt considerable advantages would be derived from the establishment of a uniform civil and criminal jurisdiction, extending alike to foreigners and British subjects throughout the territories of the North Borneo Company. Foreigners (excepting United States' citizens), like the natives of the country, are doubtless subject to the jurisdiction of the Company, to whom the sovereign rights of the Sultan have been transferred; but we are not aware of any precedent for the transfer by any Power of its civil and criminal jurisdiction over foreigners residing within its territory except to the States to which the foreigners respectively belong; and we think it very questionable whether such a transfer to the Queen of the Company's jurisdiction over foreigners as is proposed would be in accordance with international law. At all events it would seem open to grave objection, and the exercise of the transferred jurisdiction would be likely to be called in question by the States to which the foreigners belonged. The case of Cyprus is not a parallel one, as there the entire jurisdiction of the Sultan over the island and all its inhabitants is transferred to the British Crown.

**Objections to such transfer,**

**and to exercise of Queen's jurisdiction through officers of the Company.**

The exterritorial jurisdiction of Her Majesty over British subjects in North Borneo undoubtedly exists, and might, under the Charter, be exercised by the appointment for that purpose of one or more of the Company's officers. But we should like to know, before advising such a course, whether there is any precedent for the exercise by Her Majesty of her exterritorial jurisdiction in any country through the medium *of an official of that country* authorized to administer justice there for and in the name of Her Majesty. There appears to us to be some serious objections to such a course.

**Better to leave Company to deal with British subjects and foreigners alike.**

We defer expressing a final opinion upon the question submitted to us. But, as at present advised, the better course would seem to be to leave British subjects to be dealt with like other foreigners by the Courts established by the Company, open, as this course is, to the objection that there would then be no appeal by British subjects to the Queen in Council.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*Temple, September* 18, 1882.

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# Chile.

## No. 3.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May* 19.)

My Lord,
*Temple, May* 19, 1882.

**War between Chile and Peru. British and French agreement as to appointment of Commission of Inquiry into claims of neutrals arising out of.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 15th ultimo, stating that with reference to our Report of the 29th April, 1881, he had the honour to inform us, by direction of your Lordship, that in July last the British and French Governments agreed to instruct their Representatives at Santiago to urge upon the Chilean Government the appointment of a Mixed Commission to inquire into the claims of neutrals against that Government arising out of the war between Chile and Peru.

That the most material part of the correspondence relating to the proposed Commission was comprised in the following numbers of the accompanying print:* Nos. 51, 57, 77, 88, 89, 97, 120, 125, 130, and 137.

That an account of the excesses committed by the Chilean soldiery would be found in Sir Spenser St. John's despatches Nos. 38, 41, 86, 87.

That a schedule of the British claims formed Inclosure 3 in No. 86, but that the documents mentioned in the last column, and which appeared to contain a statement of the particular circumstances under which the losses and damages were inflicted on the claimants had not been transmitted to the Foreign Office.

That full particulars, however, of one of the principal claims, that of Captain Harris, were given in No. 105, p. 84.

**Assent of Chile to proposed Commission.**

That we should perceive from the correspondence that although the Chilean Government assented to the proposed Commission, it had not at that time been appointed.

**French views as to right to indemnity for losses occasioned by war.**

**Preliminary understanding proposed.**

That, in the meanwhile, the late French Ambassador addressed a note to your Lordship (p. 114, No. 134), to which our particular attention was invited. That, in that communication, M. Challemel-Lacour stated that his Government desired to maintain the principle which they had always upheld that individuals who had suffered losses occasioned by war had no right to indemnity, and that they invited Her Majesty's Government to join them in coming to a preliminary understanding with the Chilean Government as to the constitution of the proposed Commission and as to the nature of the questions which it would have to deal with.

That they intended only to appeal to the sentiments of equity of the Chilean nation in regard to the indemnification of their nationals, and to assert a right.

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* Confidential No. 4602.

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Question of right to indemnity not to be submitted to Commission.

That they deemed it essential that the Commission should not be considered as a Tribunal of Arbitration assembled to decide on the principle of indemnity, but simply as a Commission of Liquidation, charged with the duty of examining the complaints of the parties interested, and of collecting the elements necessary for the assessment and distribution of such compensation as might be accorded to them. That they urged that a preliminary declaration should be obtained from the Chilean Minister for Foreign Affairs, establishing that the question of the right to indemnity should not be put before the Commission.

That it would seem not improbable that the above communication from the French Government was prompted by the recent claims of compensation arising out of the bombardment of Sfax by the French troops, and as bearing on the question raised by the *note verbale*, Sir J. Pauncefote inclosed a Foreign Office Memorandum* and a copy of a letter from the Foreign Office to the Admiralty† containing suggestions for instructions to Captain Tryon, of Her Majesty's ship "Monarch," who acted as British Delegate on the Commission appointed by the French Government to inquire into the losses inflicted on neutrals by the bombardment above referred to. That your Lordship desired our opinion as to the reply which should be returned to the communication of the French Ambassador.

In obedience to your Lordship's commands we have the honour to report—

Subject to reservations, no objection to common action with France.

That the general principle which the French Government are desirous of maintaining, viz., that foreign subjects suffering from a war have no greater title to compensation than the natives of the country where it is carried on, appears to be in accord with the views which have been entertained by the Government of this country.

There may, however, be cases where a foreign Power would have a special claim to compensation on behalf of its subjects. As, for example, in case of the wanton violation of the premises of the Ambassador or Consular buildings protected by the national flag.

There may also be cases in which excesses on the part of soldiers may have arisen in consequence of the Government they serve not having exercised due care in restraining them or in keeping them under proper command.

Subject to these reservations (in case there should be such instances) there would not seem to be any objection to Her Majesty's Government taking common action with the French Government in the course suggested.

Indeed, it would seem in the interest of British subjects who have sustained losses that such a preliminary declaration as that suggested should be obtained from the Chilean Minister for Foreign Affairs.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 4.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 10.)

*Temple, August* 10, 1882.

My Lord,

Compensation to neutrals for injuries inflicted during war.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th ultimo, stating that on the receipt of our Report of the 19th May, your Lordship addressed a letter to the French Ambassador in London, stating, in reply to the *note verbale* communicated by M. Challemel-Lacour on the 24th January last, that, subject to certain reservations respecting exceptional cases, Her Majesty's Government acquiesced in the general principle laid down by the French Government that "foreign subjects suffering from a war have no greater title to compensation than the natives of the country where it is carried on."

That previously to the above correspondence a Memorandum, dated the 21st February last, had been left at the Foreign Office by the Italian Ambassador, in which it was stated that the views of the French Government on the question of the claims against Chile had also been communicated to the Italian Government; that the latter took exception to those views, and desired to be informed of the opinion of Her Majesty's Government.

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* Foreign Office Memorandum, December 7, 1875.
† To Admiralty, September 20, 1881.

That, accordingly, on the 17th June a letter was addressed to his Excellency by your Lordship, informing him that the general principle which the French Government were desirous of maintaining appeared to be in accord with the views which had been entertained by his Government subject to the reservations indicated in our Report of the 19th May.

That General Menabrea had forwarded to the Foreign Office a *pro-memoriá*, containing an exposition of the views of his Government.

Italian proposals and objections to British note.

That the Italian Government considered that the reservation of exceptional cases mentioned in your Lordship's note was far from complete, and that they maintained the proposition that a right to indemnity existed in all cases of injury and losses caused by a war to neutrals, which were not justified by *force majeure* or by military necessity.

That to that proposition they invited the adhesion of Her Majesty's Government, and intimated that, should it not receive the support of the other Powers, they would feel compelled to adopt such a line as would, according to their views, best protect Italian interests.

That Sir Julian Pauncefote observed that, in your Lordship's notes to M. Tissot and to General Menabrea, certain exceptional cases were mentioned *exempli gratia*, and that no attempt was made to define all the cases to which the reservation of Her Majesty's Government applied, and it appeared to your Lordship that it might be desirable not to commit Her Majesty's Government to any fixed rule on the subject, but to deal with those cases as they arose, according to their particular circumstances.

That, moreover, the rule laid down by the Italian Government would leave the question in a state of vagueness and uncertainty, as there would probably be not unfrequently a conflict of opinion as to whether the circumstances constituted a case of *force majeure* or military necessity.

That your Lordship requested our opinion as to whether Her Majesty's Government could properly express their adhesion to the proposition of law laid down in General Menabrea's *pro-memoriá* of the 3rd July, and in which the concurrence of Her Majesty's Government was invited by M. Mancini.

In obedience to your Lordship's commands we have the honour to report—

Italian and British views substantially similar.

That we think it probable that there is no substantial difference between the views of Her Majesty's Government and those entertained by the Government of Italy.

The exceptional cases referred to in the notes of your Lordship to M. Tissot and General Menabrea were given only by way of illustration, and not as an exhaustive statement of all such cases.

We think, too, that the rule suggested by the Italian Government would probably be found to cover the class of cases of which illustrations were given.

Rule proposed by Italy covers exceptional cases referred to, but is too vague.

But we quite concur with your Lordship in the view that it would not be desirable to commit Her Majesty's Government to any fixed rule on the subject, but that cases should be dealt with as they arise, according to their particular circumstances; and we agree, further, that the suggested rule is too vague and uncertain to be of any use in limiting international controversy with regard to matters such as those which have given rise to the present question.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

(A.) Law Officers' Report, May 19, 1882, p. 5, *ante*.
(B.) To M. Tissot, June 5, 1882.
(C.) *Note verbale* communicated by M. Challemel-Lacour, January 24, 1882.
(D.) Memorandum communicated by General Menabrea, February 21, 1882.
(E.) Earl Granville to General Menabrea, June 17, 1882.
(F.) *Pro-memoriâ* communicated by General Menabrea, July 3, 1882.

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## No. 5.

### *Memorandum by the Attorney-General respecting the Case of the "Socrates" and "Diogenes."*

"Socrates" and "Diogenes": their use against Chile should be prevented.

I THINK steps should be taken to prevent these vessels leaving English waters without some security being obtained that they will not be used against Chilean forces or commerce.

Suspicious character of vessels.

It seems almost certain that the original construction at Kiel was on Peruvian behalf. This appears to be established by the submission to the detention, on the suggestion of the Chilean Representatives, for eighteen months, without protest as far as is known.

The vessels are warlike in construction, and if employed for warlike purposes the only States likely at present to afford such employment are Peru or Chile. Some attention also must be given to the representations of the Chilean Minister.

Should issue, but not execute, warrant of seizure, except to prevent their sailing.

Therefore, on the whole, I think the Secretary of State's warrants should be issued and placed in the hands of the Custom-house officers at Southampton, but the vessels need not be absolutely seized until there is danger of their putting to sea.

Warn Mr. Lambert not to use them against friendly State.

Mr. Lambert should be communicated with and informed that the only object of Her Majesty's Government is to prevent the vessels being employed against a friendly State.

H. J.

*December* 23, 1882.

[For full Report, see January 1, 1883.]

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# China.

## No. 6.

### *The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 17.)

My Lord,

*Temple, January* 16, 1882.

Registration of Public Companies. Reports by Mr. Reilly on draft Order in Council.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 29th November last, stating that with reference to our Report of February last, of which a copy was inclosed, relative to the proposed issue of an Order in Council for the Registration of Public Companies in China, he was directed by your Lordship to transmit to us the further Reports* by Mr. F. S. Reilly, who was engaged in the preparation of the draft Order.

That Lord Tenterden requested that we would take those papers into our consideration, and favour your Lordship with our opinion on the sketch of a plan for limiting the proposed Order to British subjects contained in Mr. Reilly's letter of the 21st September.

That the papers sent to us with Lord Tenterden's letter of the 13th January† were returned therewith for convenience of reference, and that Lord Tenterden was to add an extract from the "Times" of the 24th November, in which various reasons were urged in favour of the immediate extension, to the British community in China, of the facilities which it was proposed to confer by the Order in Council under consideration.

In obedience to your Lordship's commands we have the honour to report:—

Remarks and proposals with regard to.

That, having given careful consideration to the further Reports by Mr. Reilly, which are now before us, we see no reason to modify the opinion expressed in our

former Report, and which was in conformity with the view taken in October 1868 by the then Law Officers.

Mr. Reilly appears to us to lose sight altogether of the distinction between the jurisdiction arising from territorial dominion and the limited jurisdiction which various foreign Powers possess, by Treaty, in China.

In the former case (subject to exceptions immaterial to the present question) the territorial law binds all within the territory, subjects and foreigners alike, and governs all contracts made there. In the latter case the subjects of Treaty Powers are excluded from the operation of the territorial law, and are made subject severally to the laws of their own country, which laws alone are competent to prescribe their rights and liabilities.

No doubt, in the case of a Company, created and having its domicile in Great Britain, the rights and liabilities of all its members, as well as of other persons dealing with it, would be regulated by British law; and we agree with Mr. Reilly that by the comity of nations, foreign Courts would give effect to this law. But just in the same way, and for the same reasons, British law would govern the rights and liabilities arising out of a contract of partnership, entered into by two foreigners in this country, for the purpose of carrying on business here. And yet Mr. Reilly would not, of course, suggest that British law would determine (for example) the rights and liabilities arising from a contract of partnership between two Frenchmen or two Germans, in China, for carrying on business there. He must, we presume, admit that these rights and liabilities would be determined by French or German law, as the case might be.

We quite agree with Mr. Reilly, that a French Court in China is as much bound to regard foreign law as a French Court in Paris. But we think that neither Court would be bound to recognize a foreign law, made with reference to China, as being competent to affect any but the subjects of the country which, in exercise of its Treaty powers, enacted it; and we are satisfied that British Courts would take the same view.

Supposing, for example, that two British subjects in China were to enter into a partnership in that country, purporting to act under the provisions, and to comply with the requirements, of a French law promulgated there, and that under that law the liability of a partner were limited to the amount of capital introduced by him:—We apprehend that no effect would be given to such a limitation of liability, either by a British Consular Court in China, or by the Courts of this country, if an action were brought by a creditor of the partnership. And the same principles are applicable to a trading Company, whether founded under British or any foreign law.

We are quite sensible of the practical difficulty of empowering the creation of Companies in China, and limiting the membership in such Companies to British subjects.

But this difficulty is, we think, inevitable, in view of the limited legislative powers which we possess in that country.

With regard to the sketch of the proposed scheme for limiting to British subjects the membership in Companies incorporated in China, we have to make the following observations:—

Par. 1 (A). We concur in this proposal.

Par. 1 (B). We do not think it necessary to require the Court to examine periodically the list of shareholders. We think it would suffice to enable any shareholder or creditor, in the event provided for, to require a liquidation.

Par. 1 (C). We think it undesirable to make any distinction as regards allowing a transfer to non-British subjects between stock and fully paid-up shares and shares not fully paid-up.

Par. 1 (D and E). We suggest that provision should be made to secure that the acceptance of shares, whether on allotment or transfer, should clearly amount, apart from enactments, to an agreement to pay any calls made in respect of them. If this be done, the calls could probably be enforced even though the holder should turn out to be a foreigner. There would still be the risk that he might be held responsible beyond the limit of liability provided for, but this responsibility he may well be left to bear, if he has falsely represented himself to be a British subject.

We do not think it will be necessary to introduce the action of the Court; it would suffice, we think, if the proof that the allottee or transferee was a British subject were required to be given to the satisfaction of the Directors.

Par. 2. We doubt the necessity for such a provision. The Directors, or some of them, would assuredly be shareholders, and therefore necessarily British subjects.

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* Mr. Reilly, June 30 and September 21, 1881.

† Law Officers, February 16, 1881, with papers submitted to Law Officers, January 13, 1881, No. 4637.

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Par. 3. We think this provision expedient.

Par. 4. We concur in the expediency of excluding Companies limited by guarantee, but we do not see why the power to form unlimited Companies should be excluded.

Provision should be made for the case of shares vesting, by operation of law, in non-British subjects.

Probably the best course would be to forfeit the shares, unless within a given time they were transferred to a British subject, and, in case of liquidation before this was done, to render the estate of the previous holder liable to the calls.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 7.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 4.)

*Temple, February* 3, 1882.

My Lord,

Confiscation of Mr. G. Harman's launches at Foochow for navigating the inland waters of China as passenger steamers.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 15th December last,* stating that he was to transmit to us papers relative to the seizure and confiscation by the Chinese authorities at Foochow of two steam launches, the property of Mr. George Harman, a British subject, engaged in business at that port, and that he was to request that we would favour your Lordship with our opinion as to whether the action taken by the Chinese in the matter was warranted by Treaty. That Lord Tenterden was to transmit to us at the same time copies of the Treaty of Tien-tsin between this country and China of 1858, of the Treaty between France and China of the same year, and of the "Rules" of 1868 referred to in the correspondence.

We are also honoured with a letter from Sir Julian Pauncefote, dated the 9th ultimo, stating that with reference to the letter from the Foreign Office of the 15th December, in which we were requested to favour your Lordship with our opinion as to the legality of the seizure of Mr. Harman's launches by the Chinese authorities at Foochow, he was directed to transmit to us further papers.†

That we should perceive from the inclosures to that letter (1 and 2), that the question of the right of British subjects, under existing Treaties, to use steam launches in the inland waters of China was raised in 1879, and that Sir Thomas Wade's view that no such right could be claimed was supported by the Foreign Office.

But that it was not admitted on that occasion by Her Majesty's Government or by Sir T. Wade that the unauthorized use by a British subject, in the inner waters of China, of a steam launch, carrying no cargo, would render such launch liable to confiscation under Article XLVII of the Treaty of Tien-tsin.

That Sir T. Wade now seemed to be of opinion that Article XLVII applied to such a case, and, therefore, that in the present instance our only ground of complaint was that no joint inquiry took place, as provided by the Regulations agreed to between the two Governments in 1868 (see Mayer's "Treaties," p. 216) for determining whether a British vessel had incurred the penalty of confiscation. That Article XLVII of the Treaty was as follows:—

"British merchant-vessels are not entitled to resort to other than the ports of trade declared open by this Treaty.

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* *List of Papers sent to Law Officers, December* 15, 1881.

Consul Sinclair, No. 4, January 26, 1881; ditto, No. 5, February 7, 1881.
Sir T. Wade, No. 10, March 19, 1881.
Mr. Harman, October 21, 1881.
Treaty of Tien-tsin (between Great Britain and China) of June 26, 1858, Confidential 1569.
Treaty between France and China of June 27, 1858, Confidential 1569.
Regulations of 1868 (see "Mayer's Treaties," Foreign Office Library, 8vo., 5862, p. 216).

† *List of Papers sent to Law Officers, January* 9, 1882.

1. Sir T. Wade, No. 77, September 5, 1879.
2. To Sir T. Wade, No. 136, November 8, 1879.
3. " " Telegraphic, December 14, 1881.
4. Sir T. Wade, Telegraphic, December 15, 1881.
5. " " Telegraphic, December 16, 1881.
6. Mr. Brockett to Mr. Cowen, M P., August 11, 1881.
7. Mr. Harman to Mr. Cowen, M.P., August 11, 1881.

"They are not unlawfully to enter other ports in China, or to carry on clandestine trade along the coasts thereof. Any vessel violating this provision shall, with her cargo, be subject to confiscation by the Chinese Government."

That Mr. Harman's launches carry no goods, and were used solely as tugs, or to carry passengers.

It appeared, therefore, to your Lordship that the case hardly came within the purview of Article XLVII of the Treaty, and if that view be correct, it followed that the Chinese authorities, while justified in stopping the launches, were not warranted in confiscating them, for, by Article XII of the French Treaty of Tien-tsin (Mayer's "Treaties," p. 62), the benefit of which could be claimed by Great Britain, under the most-favoured-nation clause, it was provided that—

"Les propriétés de toute nature appartenant à des Français dans l'Empire Chinois seront considérées par les Chinois comme inviolables et seront toujours respectées par eux."

That a similar provision existed in other Treaties between China and other foreign Powers (see Index Mayer's Treaties. Title, "Inviolability of Vessels and Property").

That the most-favoured-nation clause of the British Treaty of Tien-tsin was Article LIV.

That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion whether the confiscation of Mr. Harman's launches, by the Chinese authorities, was warranted, under Article XLVII of the Treaty of Tien-tsin, or otherwise, and, if not, whether, under the circumstances, Her Majesty's Government might properly demand their restoration and an indemnity to Mr. Harman for their seizure and detention.

In obedience to your Lordship's commands we have the honour to report—

Infraction of Treaty being doubtful, it should not be treated as a question of paramount importance.

That we entertain considerable doubt upon the point whether steam-launches employed for carrying passengers in inland waters are "merchant-vessels" within the meaning of Article XLVII of the Treaty of Tien-tsin. Whilst we incline to the opinion that they are not such merchant-vessels, yet so many considerations may be urged to support an opposite view that we think it will be well, in any representation made to the Chinese Government, to avoid treating this question as one of paramount importance.

But we can find no provision in the Treaty, which would entitle British vessels carrying passengers to navigate the inland waters of China, beyond the limits open to merchant-vessels.

Supposing, then, that there was no right to navigate the river with the steam-launches, and that Article XLVII is inapplicable, the question arises whether it is competent for the Chinese Government to confiscate vessels thus navigating in violation of the law, without an express provision to that effect in the Treaty.

Confiscation, if warranted by Chinese, not contrary to international law.

We apprehend that if the confiscation were warranted by Chinese law, there is nothing in international law to prevent the Chinese law being acted upon, unless the Chinese Government has by Treaty limited their rights in this respect.

It may be contended that such limitation may be found in Article XIII of the French Treaty, the benefit of which can be claimed by virtue of the most-favoured-nation clause in the Treaty of Tien-tsin. But we much doubt whether the 13th clause in the French Treaty applies to a case of infringement of the law in a direction beyond that contemplated by that clause, and we have to suggest that it probably will not be thought expedient strongly to base any representation to the Chinese Government upon any right to claim the benefits of the French Treaty. It also appears to us that the present case is not one of those provided for by the Rules of 1868: Nor do we think that Article XVII of the Treaty of Tien-tsin is applicable, for that Article seems to us to be directed to cases of personal controversy between British and Chinese subjects, and not to a complaint between a British subject and the Chinese Government.

Circumstances of case justify very strong remonstrance.

But assuming that there is an inherent right in the Chinese Government to confiscate British vessels navigating on inland waters, or even assuming that the XLVIIth Article of the Treaty of Tien-tsin applies, in its terms to passenger vessels navigating inland waters (which we do not admit), yet there are circumstances in this instance which, we think, will fully justify Her Majesty's Government in making remonstrances of a very strong character to the Chinese Government, to the extent of pointing out that the confiscation is a most arbitrary and unjust act.

Assuming Mr. Harman's statement to be correct, it may be represented to the Chinese Government that these launches have been permitted with the knowledge and apparent sanction of the Chinese authorities (shown by the carrying despatches and towing Government boats) to navigate the river for a long period.

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Also that other launches belonging to foreigners are still permitted to do so; that the launches in question were seized on the very day that the attention of the Consul was called to the matter, and before Mr. Harman had any opportunity of complying with the wishes of the Chinese authorities; and, lastly, that one of the launches has been appropriated to the personal use of one of the officials who seized them, showing apparently that the act of seizure proceeded from personal motives rather than from reasons of public policy.

We have only further to suggest that before making such representation it may be well to direct that inquiry should be made, in order to ascertain whether Mr. Harman's statements are accurate.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 8.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May* 17.)

*Temple, May* 16, 1882.

My Lord,

Export duty on tea from Treaty ports. Memorial as to British right to reduction granted to Russia under Treaty of Kuldja.

WE were favoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th March last, stating that he had the honour to transmit to us, by your Lordship's direction, a Memorial addressed to your Lordship by the London Chamber of Commerce, in which an important question was raised as to the right of Great Britain to claim the same reduction on the export duty on tea from the Treaty ports of China as was conceded to Russia under the Treaty of Kuldja, on the export duty on tea carried to Russia by land.

That the British Treaty with China contained the following clauses:—

"Article XXIV. It is agreed that British subjects shall pay on all merchandize imported or exported by them the duties prescribed by the Tariff, but in no case shall they be called upon to pay other or higher duties than are required of the subjects of any other foreign nation.

"Article XXV. Import duties shall be considered payable on the landing of the goods, and duties of export on the shipment of the same.

"Article LIV. The British Government and its subjects are hereby confirmed in all privileges, immunities, and advantages conferred on them by previous Treaties, and it is hereby expressly stipulated that the British Government and its subjects will be allowed free and equal participation in all privileges, immunities, and advantages that may have been, or may be hereafter, granted by His Majesty the Emperor of China to the Government or subjects of any other nation."

That the Treaty of Kuldja contained the following Article:—

"Article XVI. In future the Russian land trade will be more extensive than formerly. It would be better to fix upon a Tariff upon goods entering and leaving China, which would be done by Russia and China agreeing upon duties upon imports and exports at an average of about 5 per cent. on their value. But previous to the establishment of a Tariff, the duty on lower teas, now levied at the same rate as on higher teas, will be reduced, and the Chinese Tsung-li Yamen shall, in concert with the Russian Plenipotentiary at Peking, decide upon this reduction with one year after the exchange of ratifications."

That the contention of the memorialists was that the reduction of duty granted to Russian subjects exporting tea into Russia over the land frontier might be claimed under the most-favoured-nation clauses of the British Treaty for British subjects exporting tea from the Treaty ports of China.

Russ!a maintains principle of differential duty in favour of goods imported by land.

That from the despatch of Her Majesty's Ambassador (which was inclosed), it appeared that the Russian Government maintained that it was a recognized principle, that a different Tariff existed for goods imported by land and those imported by sea, and that that principle was not over-ridden by a most-favoured-nation clause.

That that principle, if true, would be equally applicable to export Tariffs. That Sir Julian Pauncefote was to refer us to a memorandum prepared in your Lordship's Department (which was inclosed), from the cases cited in which it would appear that although such a difference of Tariff treatment might sometimes exist, and although, special advantages might in some cases have been granted to land frontier trade, yet the principle of a different treatment of land and sea frontier trade had not been recognized, as the advantages in question were found to have been specially reserved and provided for by the Powers granting them to one Power wherever they had concluded most-favoured-nation Treaties with any third Powers.

That Her Majesty's Ambassador was instructed to inform the Russian Government that Her Majesty's Government did not recognize the principle put forward by them, and to add that, in the opinion of Her Majesty's Government, the advantages, when any granted to land frontier trade applied to local traffic only, and not to the general trade of the conterminous countries (see to Lord Dufferin, No. 22, Commercial, the 23rd August, 1880).

That it did not appear, however, whether that instruction was ever carried out, and that, at any rate, no reply to the views expressed in it had been received by Her Majesty's Government from that of Russia.

That Sir Julian Pauncefote transmitted with his letter—

1. Memorial of London Chamber of Commerce, 16th January, 1882.
2. Treaty of Tien-tsin, 26th June, 1858. No. 448.
3. Treaty of Kuldja, $\frac{12}{24}$th February, 1881. Confidential No. 4476*.
4. Lord Dufferin's despatch No. 37 of the 12th July, 1880.
5. Foreign Office Memorandum thereon, 3rd August, 1880 (Sir E. Hertslet). Confidential No. 4278.
6. Foreign Office despatch to Lord Dufferin No. 22, Commercial, the 23rd August, 1880.
7. Foreign Office despatch to Sir E. Thornton (Extract), No. 4, the 26th January, 1882.
8. Sir E. Thornton's No. 12 of the 15th February, 1882.

And that he was to request us to take the above-mentioned papers into our consideration, and to favour your Lordship with our opinion as to whether it was open to the Chinese Government to maintain that, under the most-favoured-nation Treaty clauses of the Treaty of Tien-tsin, British subjects could only claim to export teas *viâ* Russia on the same terms as those accorded to Russian subjects by Article XVI of the Treaty of Kuldja, or whether British subjects were entitled, as contended by the memorialists, to claim "the application of the *ad valorem* reduction on teas of the Treaty of Kuldja to British exports of tea from Chinese Treaty ports."

In obedience to your Lordship's commands we have the honour to report that the question submitted to us is one involving serious difficulties.

Difficulty of putting land and sea traffic on the same footing.

It would be highly prejudicial to the interests of this country to admit as a general principle that goods imported or exported over a land frontier could be imported or exported on more favourable terms than goods arriving or dispatched by sea without any breach of the most-favoured-nation clause. And we do not think such a contention could be maintained on a reasonable construction of the clause in our commercial Treaties. On the other hand, there are grave difficulties in the way of maintaining that when two countries have a land frontier, no exceptional provisions can be made respecting frontier traffic without a violation of the most-favoured-nation clause. It would obviously be very difficult to apply the ordinary fiscal laws in the case of such traffic, and it appears to have been a frequent practice to make a distinction in favour of frontier traffic.

We do not gather from Sir E. Hertslet's Memorandum that any Power has ever maintained the position, that under the most-favoured-nation clause it was entitled to claim the more favourable treatment accorded to frontier traffic.

The provisions in the Treaties to which Sir E. Hertslet refers, excluding from the operation of the most-favoured-nation clause the favours granted to frontier traffic, do not necessarily show that in the absence of such stipulations the more favourable treatment could be claimed for other imports and exports.

It is, of course, extremely difficult to determine what are the limits within which special exemptions may be allowed to traffic passing over a land frontier without establishing a claim on the part of a nation entitled to the benefit of the most-favoured-nation clause.

Probably it is impossible to lay down any general rule, and each case must be dealt with on its own special circumstances.

There are in the case submitted to us peculiar difficulties in the way of insisting on the claim contended for by the memorialists.

In November 1860 a Treaty was concluded between Russia and China containing the following provision (see page 10 Sir E. Hertslet's Memorandum):—

"Article 4. Sur toute la ligne-frontière établie par l'Article I$^{er}$ du présent Traité, un commerce d'échange, *libre et franc de droits*, est autorisé entre les sujets des deux pays.

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"Les chefs locaux des frontières doivent accorder une protection particulière à ce commerce et à ceux qui l'exercent."

At that time the Treaty of this country with China of the 26th June, 1858, was in force, which contained (Article LIV) a most-favoured-nation clause drawn in very broad terms, yet no claim appears to have been put forward by this country to the benefit of the stipulation contained in the Treaty with Russia.

The XVIth Article of the Kuldja Treaty is somewhat different to the Article quoted from the former Treaty; but having regard to what had previously taken place, we think this would not be a desirable case in which to raise the important question of the distinction between frontier and sea traffic, and in the circumstances we do not think Her Majesty's Government could successfully establish against the Chinese Government the claim put forward by the memorialists.

**Advisable to advance claim.**

It is a claim, in our opinion, which Her Majesty's Government would be well entitled to advance, and if it was thought probable that the Chinese Government would entertain it favourably, it might be well to seek to obtain the advantage of it. But this is a matter upon which we are of course unable to form any opinion.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

[See also No. 47, p. 67.]

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## No. 9.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

*Foreign Office, June 14, 1882.*

Gentlemen,

**Extradition from Hong Kong of fugitive criminals to Chinese Government.**

I AM directed by Earl Granville to request that you will favour him with your opinion on the following point:—*

By Article XXI of the Treaty of the 26th June between Great Britain and China, commonly known as the Treaty of Tien-tsin, it is provided that—

"If criminals, subjects of China, shall take refuge in Hong Kong, or on board the British ships there, they shall, upon due requisition by the Chinese authorities, be searched for, and, on proof of their guilt, be delivered up.

"In like manner, if Chinese offenders take refuge in the houses or on board the vessels of British subjects at the open ports, they shall not be harboured or concealed, but shall be delivered up, on due requisition by the Chinese authorities addressed to the British Consul." (Hertslet's "Treaties on Trade," China, p. 22.)

The Extradition Clause above cited is carried out in Hong Kong under Ordinance No. 2 of 1850 and Ordinance No. 2 of 1871.

The first case which attracted public attention to the subject was that of the surrender by the Government of Hong Kong of a fugitive described as the Mo-Wong in 1865, the particulars of which will be found in the Parliamentary Paper sent herewith.

In consequence of the apprehensions entertained that fugitives surrendered to the Chinese authorities might be subjected to torture, it has been the practice of the Government of Hong Kong, in pursuance of instructions from the Secretary of State for the Colonies, to decline to surrender any fugitive under the Treaty unless a promise in writing be previously given by the Viceroy of Canton to Her Majesty's Consul there, that no torture should be applied.

**Promise to refrain from torture of such criminals not now observed.**

This promise has invariably been given; and until recently there appeared no reason to believe that it has not been faithfully observed. Rumours, however, have been lately circulated in the public press of Hong Kong to the effect that the promise was habitually disregarded; and in August 1880 Mr. Hewlett, Her Majesty's Consul at Canton, was called on for a Report on the subject, and especially with reference to the case of thirteen prisoners who had been surrendered during the previous year, and who were alleged to have been tortured.

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* List of Papers transmitted with this Case:—
Treaty of Tien-tsin of June 26, 1858, No. 448.
Ordinances of Hong Kong (2 of 1850), Parliamentary No. 290.
Ordinance No 2 of May 29, 1871, State Papers, vol. lxiii, p. 1217.
Mo-Wong Case, Parliamentary Paper No. 995.
To Consul Hewlett, Confidential, August 25, 1880.
Consul Hewlett, No. 14 of April 29, 1881.
Colonial Office, March 2; Colonial Office, May 5; Colonial Office, May 8; Colonial Office, May 10; Colonial Office, May 19; Colonial Office, May, 27; to Colonial Office, April 18, 1882.

**Proceedings in recent extradition cases.**

You will perceive from Mr. Hewlett's Report, contained in his despatch No. 14 of the 29th April, 1881, that he entertains the conviction that, "in spite of the Viceroy's explicit promise to the contrary, torture in a horrible form was had recourse to in order to extort a confession from some of the thirteen criminals whom the Hong Kong Government had given up to the Canton authorities." In the meanwhile, a fresh demand had been made by the Viceroy to the Government of Hong Kong for the surrender of thirteen other fugitives charged with murder, and Consul Hewlett informed the Governor of Hong Kong that the sentence that must be passed on those accused persons, if they are convicted, is that of being put to death by the "slow and painful process," a form of Chinese torture better known in Europe under the name of "slicing into a thousand pieces." He also stated that the use of torture being prescribed by the Chinese Penal Code, no promise not to torture, even when given by so high an authority as a Viceroy, could be held to be binding. (Consul Hewlett, No. 14 of the 29th April, 1881; Colonial Office letter of the 2nd March, 1882, Inclosure, pp. 35 and 153.)

The Governor of Hong Kong then appealed to Her Majesty's Minister at Peking, and I am to invite your attention to Sir T. Wade's letter to Governor Sir J. Pope Hennessy of the 8th November, 1881 (Colonial Office letter of the 2nd March, 1882, Inclosure, p. 287), which is confirmatory of the opinion expressed by Consul Hewlett.

The thirteen prisoners were eventually released by the Supreme Court of Hong Kong on a writ of *habeas corpus*, by reason of some informalities in their committal by the magistrate, under Ordinance No. 2 of 1850, and in the return to the writ. (Ibid., pp. 301 and 347.)

It appears, however, that another case is now pending in Hong Kong, that of two fugitives whose surrender is claimed by the Chinese Officer Commanding at Kowloon, near Hong Kong, on a charge of piracy.

In the opinion of the Colonial Attorney-General, the piracy was committed in Chinese waters, and is not justiciable, therefore, by the Supreme Court of Hong Kong as piracy *jure gentium*. (Colonial Office letter of the 19th May, 1882, Inclosure, p. 37.)

The crime, therefore, is within the Treaty. (Attorney-General of Hong Kong *v.* Kwok-Asing, 5 Law Rep., Priv. Co., 198.) But Consul Hewlett has again reported, with reference to this particular case, that the prisoners, if surrendered, will certainly be tortured (Colonial Office, May 8, 1882), and it has become necessary to decide what action shall be taken with regard to the demand for their surrender of these fugitives, and also what course should be followed in future by Her Majesty's Government with respect to extradition under the Treaty of Tien-tsin.

In the despatch of the Secretary of State for the Colonies to the Acting Governor of Hong Kong of the 10th August, 1865 (Parliamentary Paper, p. 1), reference is made to a previous despatch, in which it had been laid down that the humane administration of justice was an indispensable condition of handing over captured pirates to the Chinese Government for trial and punishment, and, as before stated, it has been the invariable practice, since the "Mo-Wong" case, to require, as a condition of the surrender of a fugitive under the Treaty, an assurance in writing that no torture will be inflicted.

This promise, however, is not claimable as of right under the Treaty, and the Viceroy, in his letter of the 12th April, 1881, to Consul Hewlett, respecting the case of the thirteen fugitives (Inclosure in Colonial Office letter of the 2nd March, 1882, p. 207), observes that "British officials are bound by unmistakable Treaty provisions to take steps for delivering up Chinese criminals who have taken refuge in Hong Kong;" and that, "as regards the non-employment of torture at the trial and investigation held subsequently to their rendition, this form of procedure was first yielded by the former Viceroy, Jui, by way of concession, and in deference to the wishes of British officials."

The Viceroy, in a further letter, dated the 19th December last, to Her Majesty's Acting Consul at Canton (Colonial Office letter of the 19th May, 1882, Inclosure, p. 5), expressed his astonishment at the release of the thirteen prisoners by the Supreme Court of Hong Kong.

The reply to this communication will be found in the Colonial Office letter of the 27th May, 1882.

**Proposed suspension of Extradition Clause of Treaty of Tien-tsin.**

In view of Sir T. Wade's Report, and especially of the statement therein recorded of one of the Ministers of the Yamên, that he could not understand how a Governor-General (meaning the Viceroy) should have given a promise not to do what he must have known Chinese law would require him to do, Lord Granville is disposed to think

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that unless and until Her Majesty's Minister at Peking shall be able to announce the conclusion of a satisfactory arrangement with the Chinese Government which will relieve Her Majesty's Government from all apprehension as to the risk of fugitives who may be surrendered by the Hong Kong Government being subjected to torture for any purpose, whether of evidence, confession, or punishment, the Extradition Clause of the Treaty of Tien-tsin should be suspended in its operation, and Chinese criminals taking refuge in Hong Kong should be expelled from the island as persons dangerous to the peace and good order of the Colony. (See Foreign Office to Colonial Office of the 18th April, and reply of Colonial Office of the 5th May.)

But before sending instructions in this sense to Sir T. Wade, I am to state that Lord Granville would be glad to be favoured with your opinion as to whether a refusal on the part of Her Majesty's Government to carry out Article XXI of the Treaty of Tien-tsin, pending such an arrangement between the two Governments as above suggested, would give the Chinese Government the right to denounce the whole Treaty. On this point I am to refer you to the following passage in 1 Calvo, p. 734, § 613:—

> "En thèse générale, si l'on considère la Convention comme un ensemble indivisible, il faut admettre qu'un semblable refus, ne porta-t-il que sur un seul point, rend caduc le Traité tout entier, et cela en vertu de l'axiome que le principal emporte l'accessoire.
>
> "La non-exécution peut, d'ailleurs, ne porter que sur une clause relativement secondaire et ne pas impliquer l'intention de se soustraire des autres obligations qui découlent du Traité. Dans ce cas il n'y a pas nécessairement rupture complète et définitive, mais seulement matière à pourparlers et à négociations, en d'autres termes, un effet suspensif jusqu'à ce que les motifs de refus aient pu être appréciés en due forme."

In the event of your being of opinion that the proposed suspension of extradition under Article XXI would imperil the whole Treaty, I am to request that you will favour Lord Granville with any suggestions that may occur to you to meet the difficulty which has arisen in the present case, and as regards the course to be pursued in future with reference to this question.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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*Foreign Office, June 30, 1882.*

Gentlemen,

Sending further papers.

WITH reference to my letter of the 14th instant, respecting the Extradition Article of the Treaty of Tien-tsin, I have the honour to transmit to you, by direction of Lord Granville, a Report of the Law Officers of the Crown on the same subject, and a correspondence which has an important bearing on the question submitted to you.

You will perceive from these papers that in 1869 Her Majesty's Secretary of State for Foreign Affairs (Lord Derby, then Lord Stanley) decided, for the reasons stated in the correspondence, that Her Majesty's Government should be satisfied with the concession made by the Chinese Government that no torture should be resorted to in the execution of prisoners sentenced to death, where such prisoners had been surrendered by the British Government under the XXIst Article of the Treaty.

The Colonial Office, however, were dissatisfied with this solution of the question, and no fugitive is surrendered by the Governor of Hong Kong without a written assurance from the Viceroy of Canton to Her Majesty's Consul that no torture will be applied at all.

But, as stated in my letter of the 14th instant, doubts have lately arisen as to whether the promise is observed, either as regards the execution of prisoners or in their treatment during the trial for the purposes of evidence or confession.

The papers to which I am to invite your particular attention are—

1. Law Officers' Report of the 25th November, 1865.*
2. Foreign Office despatch to Sir R. Alcock of the 11th December, 1865.†
3. Sir R. Alcock's reply No. 85 of the 11th May, 1866 (first four pages MS. correspondence).

Inclosures in No. 85:—

4. Letter from Sir R. Alcock to Prince Kung.
5. Prince Kung's reply.

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* Confidential No. 1402, p. 72.

† Ibid., p. 76.

6. Memorandum on Prince Kung's reply.
7. Sir R. Alcock's despatch No. 122 of the 18th May, 1868.
8. Foreign Office Minute showing the position of the question in 1869.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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*Report by the Law Officers of the Crown and Dr. Deane.*

*July* 22, 1882.

IN obedience to your Lordship's commands we have the honour to report—

Suspension of Extradition Clause would imperil whole Treaty.

That, in our opinion, the proposed suspension of extradition under Article XXI would imperil the whole Treaty.

Assuming the view taken by the Attorney- and Solicitor-General in their Report of the 26th November, 1865, to be well founded, which we see no reason to doubt, in refusing to carry out the extradition provisions we should be refusing to perform an obligation we have contracted under the Treaty because we object to the consequences of fulfilling that obligation.

Under these circumstances, whatever be the abstract right of one Contracting Party to denounce the entire Treaty because the other Contracting Party refuses to comply with some of its stipulations, we think it would be impossible to maintain that the Chinese Government had not an equal right, with ourselves, to refuse compliance with any or all of the obligations which the Treaty imposes upon it.

Should come to arrangement with Chinese Government.

It is difficult to suggest any satisfactory course that can be pursued. But it would seem best to avoid, if possible, an absolute refusal to carry out Article XXI of the Treaty, and to continue the endeavour to come to some satisfactory arrangement with the Chinese Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# Colombia.

## No. 10.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

*Foreign Office, July* 10, 1882.

Gentlemen,

Neutrality of Panamá ship-canal.

WITH reference to your Report of the 15th August last, on the questions arising out of the Treaty between the United States and Colombia of 1846 (Paper A, p. 29) and the Clayton-Bulwer Treaty (Paper A, p. 37), in relation to the projected ship-canal across the Isthmus of Panamá, I have the honour to transmit to you, by direction of Earl Granville, the papers noted in the margin.*

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* List of Papers:—

(A.) Correspondence (Part I, 1880-81), Isthmus of Panamá. Foreign Office Confidential No. 4574.
(B.) Papers laid before Parliament ("United States No. 1 (1882)," Panamá Canal). Foreign Office No. 2496.
(C.) Mr. Frelinghuysen's despatch to Mr. Lowell of May 8, 1882 (and see I).
(D.) Memorandum thereon by Sir E. Hertslet, June 16, 1882. Confidential No. 4661.
(E.) Memorandum by Sir E. Hertslet with regard to Belize, November 29, 1881.
(F.) Memorandum by Sir E. Hertslet, June 9, 1871, on the Declaration respecting British Honduras of April 19, 1850. Confidential No. 2154.
(G.) Extract from "Southern Law Review," December 1880, January 1881, 8vo, 6402.
(H.) Mr. West's No. 249, of June 7, 1882.
(I.) Ibid., No. 252, of June 9, 1882.
(J.) Ibid., No. 253, of June 11, 1882.
(K.) Ibid., No. 254, of June 14, 1882.
(L.) Sir E. Thornton's No. 146, of April 19, 1869.
(M.) Woolsey on International Law, ed. 1879 (F. O. Lib., 5587).
(N.) Mr. West's No. 262 of June 24, 1882.

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In the last paragraph of your Report of the 15th August last (Correspondence, Part I, p. 75, Paper A), you dealt with the claim put forward by Mr. Blaine in his despatch of the 24th June, 1881 (*ibid.*, p. 63), to the exclusive right of the United States to guarantee the neutrality of the canal, and to determine the conditions of its use, and with his opposition to any concerted action of the European Powers for that purpose.

In accordance with the suggestion contained in your Report, Lord Granville, on the 10th November, addressed a letter to the United States' Chargé d'Affaires with reference to Mr. Blaine's despatch, pointing out that the position of Great Britain and the United States with reference to the canal, irrespective of the magnitude of the commercial relations of the former Power with countries to and from which, if completed, it will form the highway, is determined by the engagements entered into by them respectively in the Convention which was signed at Washington on the 19th April, 1850, commonly known as the Clayton-Bulwer Treaty; and adding that Her Majesty's Government relied with confidence upon the observance of all the engagements of that Treaty (Paper A, p. 96).

A further correspondence has since taken place between Her Majesty's Government and that of the United States, in consequence of a desire having been expressed by the Cabinet of Washington that certain modifications should be introduced into the Convention of 1850.

This correspondence, up to the 14th January, has been presented to Parliament, and is inclosed herewith (Paper B).

Views of United States as to their Continental policy and the Clayton-Bulwer Treaty.

A further despatch addressed by Mr. Frelinghuysen to Mr. Lowell has recently been communicated to Her Majesty's Government, in which the views of the Government of the United States, with regard to their Continental policy and the provisions of the Clayton-Bulwer Treaty, are argued in great detail (Papers C and I).

I am to invite your attention to a Memorandum thereon which has been drawn up by Sir E. Hertslet (Paper D), together with a Memorandum alluded to therein (Paper E); also to a Memorandum by Sir E. Hertslet on the "Declaration" respecting British Honduras made on the exchange of the ratifications of the Convention with the United States of the 19th April, 1850, respecting Central America (Paper F). In connection with the "Monroe Doctrine" I am to inclose an extract from the "Southern Law Review" (Paper G), and to refer to Professor Woolsey's exposition of that doctrine at pp. 54-57 of his work on International Law, of which a copy is sent herewith (M). In the Confidential Print, 1881, Part I, you will find at pp. 29-47 three Memoranda by Sir E. Hertslet, with their Annexes, which have already been before you, and which deal with some of the most important points discussed in Mr. Frelinghuysen's despatch.

You will observe that Mr. Frelinghuysen, at the close of his despatch, renews Mr. Blaine's contention, that the Clayton-Bulwer Treaty had reference only to the interoceanic route then in contemplation, and that Article VIII of that Treaty must be read subject to the provisions of the earlier Treaty of 1846 between the United States and New Grenada, which, as he alleges, secures to the United States the "sole Protectorate" of any transit by the Panamá route.

As regards this contention, I am to refer you to Sir E. Hertslet's Memorandum of the 6th May, 1881 (Correspondence, Part I, p. 29, Paper A), and to his Memorandum of the 28th January, 1879 (Annex B., *ibid*, p. 35); also to Mr. Drummond's despatch No. 326 of the 5th November, 1881 (Paper A, p. 102), transmitting an article published in the New York "Evening Post," in which Mr. Frelinghuysen's argument in support of the right of sole guarantee and Protectorate claimed by him for the United States is severely criticized.

It is also adversely criticized in an extract from the New York "Tribune" transmitted in Mr. West's despatches Nos. 252 and 262 of the 9th and 24th June last (Papers I and N); while it is supported in articles from the New York "Times" and "Herald" transmitted in his despatches Nos. 249 and 253 of the 7th and 11th June (Papers H and J).

Views of the United States in 1869 as to guarantee of the canal under Article VIII of the Clayton-Bulwer Treaty.

In conclusion, I am to draw your attention to the following incident which occurred in 1869. On the 14th January of that year the United States signed a Treaty with Colombia (unratified) providing for the survey and location of any interoceanic ship-canal anywhere within its territory, and the IIIrd Article of that Treaty appearing to be in conflict with the rights of Great Britain under Article VIII of the Clayton-Bulwer Treaty, Sir E. Thornton, then Her Majesty's Representative at Washington, was instructed to make a representation on the subject to the United States' Government.

In his despatch to the Earl of Clarendon No. 146 of the 19th April, 1869 (Paper L), Sir E. Thornton transmitted a Memorandum which had been handed to him unofficially by Mr. Hamilton Fish, and which had been drawn up by Mr. Peshine Smith, employed in the Department of State as Examiner of Claims. Mr. Fish stated that this Memorandum contained the general views of the United States' Government upon the matter.

On reference to this document it will be found that, far from claiming the right to an exclusive Protectorate over any ship-canal across the Isthmus of Panamá, the United States' Government, at that time, recognized the VIIIth Article of the Clayton-Bulwer Treaty as distinctly applicable to such a canal, and even maintained that, the obligations of that Article being reciprocal, they were entitled to call upon Great Britain to unite in guaranteeing its protection and neutrality.

Before replying to Mr. Frelinghuysen's communication of the 8th May last, Lord Granville would be glad to be favoured with your observations on the arguments therein contained.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 30, 1882.)

IN obedience to your Lordship's commands we have the honour to report—

That three questions are raised by the despatch of Mr. Frelinghuysen:—

(1.) As to the meaning and effect of Article VIII of the Clayton-Bulwer Treaty.

(2.) Whether acts have been done by Great Britain in violation of the Treaty so as to entitle the United States to avoid it.

(3.) With regard to the proposal made by Mr. Frelinghuysen, not only to retain and renew certain provisions of the Treaty, but to make a new Agreement defining the distance from each end of the Canal where captures may be made by a belligerent in time of war.

Meaning and effect of Article VIII of Clayton-Bulwer Treaty.

1. The points relating to Article VIII are dealt with by Sir E. Hertslet in his Memorandum of the 28th January, 1879. The meaning of the Article does not appear open to much real doubt. The Contracting Parties thereby "agree to extend their protection by Treaty stipulations to any other practicable communications, whether by canal or railway," across the Isthmus, and especially to interoceanic communication by way of Tehuantepec or Panamá.

This is in effect an Agreement that all the prior provisions of the Treaty with reference to the protection of the particular ship-canal then in contemplation shall, in principle, be applied to any ship-canal thereafter constructed. It is none the less an Agreement, because its application to any canal thereafter made is to be carried into effect by Treaty stipulations between the two Powers.

Article VIII not inconsistent with United States' Treaty with New Granada of 1846.

There is not, in our opinion, any force in the objection that the view contended for by Great Britain is inconsistent with the Treaty of 1846 between the United States and New Granada.

We fail to see any such inconsistency or anything in that Treaty to prevent the United States from carrying out the Agreement with Great Britain jointly to protect and guarantee the neutrality and security of the Canal when completed.

The point is fully discussed by Sir E. Hertslet in his Memorandum of the 6th May, 1881, and we concur in the views there expressed, which seem to be in complete accordance with the views of the United States' Government, contained in the Memorandum transmitted by Sir E. Thornton to Lord Clarendon in his despatch of the 19th April, 1869.

British exercise of sovereignty over British Honduras does not render the Treaty voidable by the United States.

2. The ground upon which it is alleged that the Treaty is voidable at the pleasure of the United States is that Great Britain has violated, and continues to violate, its provisions by exercising sovereignty over British Honduras, and treating that territory as a British Colony. This contention appears to us wholly untenable.

It is clear that neither of the negotiators of the Treaty intended, nor did the Government of this country, that the language of Article I describing the country not to be occupied should include British Honduras. This was put upon record at the time by Mr. Clayton, coupled with the statement that the Senate of the United States "perfectly understood that the Treaty did not include British Honduras."

And after this and what took place in 1853 (see Sir E. Hertslet's Memorandum of the 9th June, 1871), it seems opposed to all sound principle that the United States

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should now claim to abrogate the Treaty of 1850 by reason of the existence of a state of things which has prevailed, to their knowledge, ever since its ratification, to which the Treaty was never intended to apply, and notwithstanding the known existence of which they have more than once recognized the Treaty as subsisting.

It seems, indeed, to be suggested that, at the time the Clayton-Bulwer Treaty was made, Honduras was only a British settlement under Spanish-American sovereignty, and that it has since been converted into a British possession, and that to this the United States has never given its assent.

The facts set out in Mr. Scarlett's Memorandum of the 31st October, 1872, entirely dispose of this point. It is clear that the sovereignty of British Honduras was acquired by conquest, and was possessed by this country, long prior to the time of the Clayton-Bulwer Treaty; and the Postal Convention of the 11th August, 1869, shows that the United States recognized Honduras as a "Colony" of Great Britain.

From the information before us, we do not gather that there has been any change in the relation of this country to British Honduras since 1850.

The contention that "a settlement" has been converted into "a possession," and thereby a material change effected, in consequence of the employment of the word "possession" in the Treaty of 1859, seems to us entirely untenable.

**United States' proposal as to provisions of Treaty and capture of vessels using the Canal a question of policy.**

3. On the proposal made by Mr. Frelinghuysen, we have nothing to add to the Memorandum of Sir E. Hertslet of the 16th June, 1882. There would, no doubt, be advantages in defining by agreement the distance from each end of the Canal where captures may be made by belligerents; but whether an endeavour should be made to arrive at an agreement on the point is a question of policy upon which we do not feel called upon to express an opinion.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Egypt.

### No. 11.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 2.)

My Lord, *Temple, February* 1, 1882.

**New Egyptian Decree for control of press.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd instant, stating that he had the honour to inclose, by your Lordship's direction, three despatches* from Her Majesty's Agent and Consul-General at Cairo, relative to a new Decree for the control of the press in Egypt, which had lately been promulgated by the Khedive.

That Sir J. Pauncefote called our particular attention to Sir E. Malet's despatch No. 380, and to its inclosures, from Mr. Cookson and Mr. Philip, the proprietor of the "Egyptian Gazette," describing the manner in which the law might injuriously affect British subjects who were editors of newspapers in Egypt, and contesting the right of the Egyptian Government to enforce it in such cases until it had been accepted by Her Majesty's Government. That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion whether Her Majesty's Government would be justified in protesting against the application of that Decree to British subjects, or, whether they should content themselves with instructing Sir E. Malet to point out the objectionable character of some of the Articles, notably Articles 17, 20, and 21, and endeavour to obtain their modification.

That Sir J. Pauncefote inclosed, for convenience of reference, several printed Reports by the Law Officers and the Queen's Advocate between the years 1865–75 on questions of a supposed conflict between the Press Laws of Turkey and the privileges enjoyed by foreigners under the Capitulations.

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* Sir E. Malet, No. 364 of 3rd December, No. 380 of 19th December, and No. 387 of 22nd December, 1881.

In obedience to your Lordship's commands we have the honour to report—

**As to power of Khedive to issue such Decree.**

That we have not before us any information on the point, but we assume that the Decree of the Khedive for the control of the press was within his legislative powers, even though it should conflict with the general Ottoman Press Law.

If this assumption be well founded, we are of opinion that it is competent to the Egyptian Government either to prohibit absolutely the publication of any newspapers or other writings by a British subject, or to authorize their publication on any conditions it pleases, provided always that these conditions are not contrary to the rights secured to this country by Treaty (see Law Officers' Report of the 14th February, 1865).

It would not, of course, be competent to the Egyptian Government to prosecute a British subject for any criminal offence against this or any other law, except in accordance with the Capitulations.

But we think it is within the power of that Government to prohibit the publication of a newspaper, except on the terms that the proprietor should deposit a certain sum by way of security, and permit that sum or any part of it to be forfeited from time to time, in case, in the opinion of the Egyptian Ministers, the conditions imposed by law upon press publications in Egypt have not been complied with.

**Protest against it not justifiable, but modification of objectionable Articles should be obtained.**

We think, therefore, that Her Majesty's Government would not be justified in protesting against the application of this Decree to British subjects, but that they should content themselves with instructing Sir E. Malet to point out the objectionable character of some of the Articles, notably Articles 17, 20, and 21, and endeavour to obtain their modification.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 12.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 8.)

My Lord, *Temple, June* 8, 1882.

**Moussa Orgi sentenced to five years' penal servitude for receiving stolen goods.**

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 15th ultimo, stating that he was directed by your Lordship to transmit to us the correspondence* relating to the Petition for pardon presented by Moussa Orgi, who was then undergoing at Malta a sentence of five years' penal servitude, passed upon him by Her Majesty's Consular Court at Alexandria on the 18th June, 1880.

That the prisoner, who was at that time 18 years of age, was convicted of receiving stolen goods, and in 1874, when about 12 years of age, was sentenced to imprisonment for a month and a whipping for larceny.

That the depositions in the latter case were very incomplete.

That Mr. Lister was to request us to be so good as to take the Petition under our consideration, and to favour your Lordship with our opinion as to whether, having regard to the youth of the prisoner, or any other considerations, his punishment, or any part of it, could properly be remitted.

That Mr. Lister was also to request that the accompanying despatches might be returned to the Foreign Office, together with our reply.

In obedience to your Lordship's commands we have the honour to report—

**Remainder of sentence may be remitted at end of present year.**

That we think, under all the circumstances of the case, that at the end of the present year the remainder of the sentence might properly be remitted.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Colonial Office, February 21; Mr. Cookson, No. 3, March 28; to Mr. Cookson, No. 10, April 14; Mr. Cookson, No. 6, April 25, 1882.

## No. 13.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 17.)*

*Temple, June* 17, 1882.

My Lord,

Chartering of vessels by British Government for British refugees at Alexandria.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 15th instant, stating that the alarm caused by the recent disturbances at Alexandria among the foreign residents in Egypt was inducing a large number of British subjects to leave the country, and that it appeared from the latest accounts that they were crowding every available passenger-vessel and seeking shelter on board Her Majesty's ships.

That, in that emergency, Her Majesty's Government were chartering several large passenger-vessels in the Mediterranean, and had placed them at the disposal of Sir B. Seymour, the Admiral in command of the British squadron at Alexandria.

That that measure of precaution had been adopted in order to relieve the Admiral from the embarrassment caused to him by his inability to dispose of the numerous fugitives appealing to him for shelter.

That the presence of those vessels, however, might be interpreted by the British residents as an indication of the existence of peril, and as an invitation to leave.

That Sir J. Pauncefote was to request our opinion as to whether it was desirable that a public notification should be issued to the British community at Alexandria, informing them that in consequence of the over-crowding of the passenger-ships then available at Alexandria those vessels had been placed at the disposal of the Admiral, who would make such arrangements as he might think necessary, in concert with Her Majesty's Agent and Consul-General, to enable British subjects who might desire to leave the country to secure passengers. That your Lordship was apprehensive that, although, as your Lordship conceived, no liability could attach to Her Majesty's Government for any loss of property or other injury which might be sustained by British subjects by reason of their sudden departure from Egypt, under present circumstances a contrary impression might prevail among the British community there, and induce many to leave the country and abandon their property.

That your Lordship, therefore, desired our opinion as to whether it was desirable to issue any public notification on that or any other subject.

In obedience to your Lordship's commands we have the honour to report—

Notice as to vessels a question for British Representatives in Egypt.

That we think that the question to what extent, and in what form, a notification should be made to British subjects that the vessels have been chartered and placed at the disposal of the Admiral for the purpose of receiving British subjects desirous of leaving Egypt, must be solved by the Representatives of Her Majesty's Government in Alexandria.

Notice as to non-liability of Government for losses of refugees not necessary.

As far as we can judge, it appears to us that there is no necessity to give any intimation that Her Majesty's Government do not incur any liability to those who think it advisable, for the purpose of their own safety, to leave Egypt.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 14.

*Report by the Law Officers of the Crown and Dr. Deane on the Foreign Office Letters of June* 24 *and July* 13.—*(Received August* 2.)

### (No. 1.)

*Lord Tenterden to the Law Officers of the Crown and Dr. Deane.*

Gentlemen, *Foreign Office, June* 24, 1882.

Claims for British losses through disturbances at Alexandria. Claims of Mr. R. Dobson and Mr. J. Richardson.

I HAVE the honour to transmit herewith a letter from Mr. Joseph Richardson, and one from Mr. Robert Dobson,[*] each of them claiming 10,000*l.* from the Egyptian Government on account of the murder of his son during the recent disorders at Alexandria.

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[*] Mr. R. Dobson, June 13; Mr. J. Richardson, June 19, 1882.

Earl Granville informed the Turkish Ambassador on the 17th instant that Her Majesty's Government considered that the Porte, as the sovereign Power, was responsible in ultimate resort for the serious outrages and the loss of English life and property which had resulted from the riots, and that, considering the presence of Dervish Pasha in Egypt at the time as the Sultan's Special Commissioner, Her Majesty's Government must hold the Porte to be bound to see that proper redress was made, and on the same day Her Majesty's Agent and Consul-General in Egypt was instructed by telegraph to let it be clearly understood that the British Government would require full reparation and satisfaction for the outrages committed during the recent disorders.

On the 20th instant Lord Granville stated in the House of Lords that, with regard to outrages on British subjects and loss of their lives or property, Her Majesty's Government had not to address other countries, but had a right to judge themselves what satisfaction or reparation they wanted; that Sir E. Malet[*] had been instructed to make it clearly understood that Her Majesty's Government would require full reparation and satisfaction for the outrages committed during the late disorders at Alexandria; that notice would be given to all British subjects in Egypt to register at the Consulate the claims they might have to put forward, and a similar notice would be given to the relatives of those who had unfortunately been killed.

The instructions which were, as thus stated by Lord Granville, addressed to Her Majesty's Agent and Consul-General, were as follows:—

"Her Majesty's Government intend, when the proper moment arrives, to prefer a claim upon the Egyptian Government for damages and losses sustained by British subjects at Alexandria.

"Take such steps as may be necessary to call upon them to register their claims at the British Consulate, giving notice also to relatives of the killed of intention of Her Majesty's Government."

Her Majesty's Ambassador at Constantinople has also been instructed[†] to make an announcement to the Conference of the determination of Her Majesty's Government in this matter.

It is probable that numerous applications of the nature of the inclosed letters from Mr. J. Richardson and Mr. R. Dobson will be addressed to Her Majesty's Secretary of State for Foreign Affairs, and his Lordship directs me to state that he proposes to reply to such communications in the terms of the first paragraph of the above-quoted instructions to Sir E. Malet, viz., that "Her Majesty's Government intend, when the proper moment arrives, to prefer a claim upon the Egyptian Government for damages and losses sustained by British subjects at Alexandria during the recent disorders."

His Lordship proposes to insist on payment of money to the relatives of the eight British subjects who were killed and to those who were hurt, and of damages for the destruction of property, also on the execution of the guilty parties, and on a salute to the British flag at Alexandria and Cairo.

Lord Granville is also disposed to demand compensation for loss to those who fled from Egypt to avoid violence; but before taking any further action, his Lordship would be glad to be favoured with your opinion at your earliest convenience as to the terms of the proposed reply to the letters of Mr. Richardson and Mr. Dobson, and also with any observations you may desire to offer generally on this letter.

I have, &c.

(Signed) TENTERDEN.

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### (No. 2.)

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

(Confidential.)

Gentlemen, *Foreign Office, July* 13, 1882.

I HAVE the honour to transmit to you, by direction of Earl Granville, an Analysis by Lord Tenterden of the papers presented to Parliament respecting Egypt from the 9th September, 1881, to the 31st May, 1882, with a Summary Account of Events from 1840 to 1881; and a Memorandum in continuation of that Analysis,

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[*] To Sir E. Malet, No. 184, June 20, 1882.

[†] To the Earl of Dufferin, No. 322, June 17, 1882.

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carrying on the narrative of events up to the 30th ultimo. Also the Parliamentary Paper "Egypt No. 1 (1880)," and other documents noted in the accompanying List.*

Question as to liability of Egyptian Government.

The above papers are laid before you in connection with the question now under the consideration of Her Majesty's Government as to the extent of the liability incurred by the Egyptian Government towards foreigners for the loss of life and property occasioned by the recent disorders in Egypt.

You are aware that the political status and the order of succession to the Viceregal Throne of Egypt were settled by the Treaty for the Pacification of the Levant between Great Britain, Austria, Prussia, Russia, and Turkey of the 15th July, 1840, and by the Sultan's Firman of the 1st June, 1841.

As observed by Sir Travers Twiss ("Rights and Duties of Nations in Time of Peace," p. 92), "the condition of Egypt may be regarded as the result of an European international compact, as, although it has been in form settled by a Firman or Edict of the Padishah of the Ottomans, that settlement was the result of an agreement between the Porte and four of the Great European Powers, and has received the guarantee of those Powers under the Treaty concluded between them and the Porte."

The privileges secured to Egypt by that arrangement were extended from time to time by various Firmans; and among the most important are the Firman of 1866, which, in consideration of an increase in the tribute payable by Egypt to the Porte, sanctioned a modification in the order of succession to the Viceregal Throne; and that of 1879, under which Tewfik Pasha, the present Khedive, succeeded to power on the abdication of Ismaïl Pasha.

The last-mentioned Firman, before being issued, was communicated to the British and French Governments, and, after some discussion, received their formal assent. (See "Egypt No. 1, 1880," pp. 1 and 33, 34, 37 and 38, 40-45.)

Under the guarantees afforded by the system of government thus secured for Egypt, the influx of foreigners and of foreign capital has been of late years most extensive. The establishment of the International Tribunals, of the Commission of Liquidation, and of the Control, gave additional security for peace and good order, and the employment of foreigners in the service of the Administrative Departments of the Government inspired public confidence, and insured the proper collection of the revenue.

Large sums have been invested by British subjects in public loans and in private industries, which have contributed largely to the development of the resources of the country.

Summary of events.

Such was the general condition of affairs in Egypt when Arabi Bey appeared on the scene as the leader of the Military party. There had been a military disturbance on the 18th February, 1879. Another took place on the 1st February, 1881, when Arabi Bey refused to obey the Minister; and a third, headed by Arabi Bey, on the 9th September, 1881. The objects of the Military party, or so-called National party, under the leadership of Arabi Bey, were subversion of the existing Constitution and of institutions created under the sanction of international engagements, and the dismissal of foreigners from the public service.

This Military party ultimately gained the ascendency in the country, and produced a terrorism under which, in February last, the Khedive was compelled to change his Ministry and to appoint Arabi Bey Minister of War, with the title of Pasha. From that date the power passed from the Khedive into the hands of the army.

On the 12th April there was an alleged conspiracy to murder Arabi Pasha, for which a large number of persons were condemned, and the commutation of their sentences by the Khedive led to renewed discussions between His Highness and his Ministry.

In May last a military despotism had become the dominant power in Egypt; and this state of things being destructive of the national prosperity, and antagonistic to the fulfilment of international engagements, as well as menacing to the safety of foreigners, the British and French Governments determined to send a combined fleet to Alexandria; and in a Circular to their Representatives at the Courts of the Great Powers they explained and defined the reasons and objects of that measure. Arabi Pasha, as Minister for War, had been warned by the British and French Agents that if order should be disturbed he would be held personally responsible. On the 14th May he stated, in reply to this warning, that he would guarantee public order and the safety of the Khedive so long as he remained Minister, but that in the event of an Anglo-French squadron arriving he could not give such guarantee; but on the 16th both he and the President of the Council gave assurances to Her Majesty's Agent of the maintenance of public tranquillity on the arrival of the combined squadrons.

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* List of Papers.—Parliamentary Papers from September 9, 1881, to May 31, 1882 (Nos. 2523, 2552, 2560, and 2565); Analysis by Lord Tenterden (see pp. 3, 4, 8, 9, 11, 12, 13, 14, 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and Summary, p. 27). Confidential, Nos. 4643 and 4644; Memorandum by Lord Tenterden (see pp. 1, 2, 3, 7, 8, 9, 11, 12, 13); Accounts of Riot by various eye-witnesses; Mr. Cookson's despatch No. 16 of June 20; Sir H. Elliot's despatch No. 310; Memorandum by Sir E. Hertslet of June 30, 1882, as to case of French and German Consuls murdered at Salonica; Law Officers' Reports on indemnity claims.

On the approach of the fleets, however, Arabi Pasha, against the orders of the Khedive, commenced military preparations.

On the 25th May the British and French Agents presented a joint note to the President of the Council, formally advising the dismissal of the Ministry and the exile of Arabi Pasha and the military leaders of his party. The Khedive having assented to the course proposed, the Ministry resigned; but on the 27th the officers of the regiments and of the police force stationed at Alexandria telegraphed to the Khedive that they would not accept the resignation of Arabi Pasha. Violent discussions ensued, and the Khedive was compelled to yield to the threats of Arabi Pasha, and to reinstate him as Minister of War. Arabi Pasha was sole Minister of the Khedive from that date until the formation of Ragheb Pasha's Ministry on the 16th June. Upon his reinstatement he continued his military preparations, and the military leaders of his party, who had sedulously fostered a fanatical feeling against foreigners, had recourse to the following expedient:—

They circulated among the soldiers and officers of the army a false account of the purport and terms of the joint note of the British and French Agents of the 25th May, perverting it in a manner calculated to excite the greatest resentment and exasperation against Europeans.

The proceedings of Arabi Pasha as Minister of War, and of the military officers under his command, were therefore such as could hardly fail to bring about the catastrophe which shortly afterwards occurred at Alexandria on the 11th June; and though it may be difficult to prove that the outrages committed on that day against foreigners were secretly prompted by them, it is difficult to resist the inference to be drawn from the surrounding circumstances that such was the case.

On the 28th May Her Majesty's Consul at Alexandria telegraphed as follows: "All quiet here. Local authorities assure me no disorder to be apprehended. Troops have received reply from Cairo, in consequence of which they have engaged to remain quiet at present."

Nevertheless, such was the apprehension of a fanatical outbreak against foreigners, that the Swedish Consul-General, according to a telegram of Sir E. Malet to Mr. Cookson of the 11th June, had come from Alexandria to Cairo for the purpose of submitting to a meeting of the Representatives of the Great Powers a plan for a common defence of Europeans at Alexandria.

It was at 3 o'clock in the afternoon of that day (the 11th June) that the outbreak took place, in which Her Majesty's Consul was seriously injured, and many British subjects and Europeans were killed or wounded by the Arab mob, and European houses and shops were plundered. There is evidence to show that the riot was premeditated, and that the authorities must have had previous knowledge of the intended onslaught on foreigners. Notwithstanding the large military force at Arabi Pasha's command no proper and timely measures were taken for the immediate suppression of the threatened outbreak. The consequence was that no soldiers appeared on the scene until 7 o'clock in the evening, when the mischief had been done.

During the whole afternoon the foreigners had been abandoned to the fury of the mob, for the police force (whose officers, it should be remembered, had joined in the telegram to the Khedive of the 27th May demanding the restoration of Arabi Bey to power) displayed the most scandalous disregard of their duty, and did not interfere to protect the Europeans.

I am to inclose a despatch from Her Majesty's Consul-General at Alexandria, containing his Report of the riot, and a printed Memorandum containing various accounts of it from other eye-witnesses.

Instructions have been sent by telegram to the Governor of Malta and Her Majesty's High Commissioner for Cyprus to collect all the evidence on the subject which can be obtained from the foreign residents of Alexandria who have sought refuge in those islands.

Lord Granville is unable to concur in the view expressed by M. de Freycinet on

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the 12th June, that the events of the previous day arose out of a mere local riot, and agrees with Lord Lyons in the opinion that nothing of the kind would have occurred but for the military revolt and the animosity excited by its leaders against the foreign community.

The inclosed despatch from Sir H. Elliot (No. 310) shows the length of time during which disorder was allowed to prevail unchecked.

The Parliamentary Papers, and the evidence already collected, appear to establish the following conclusions of fact:—

1. That an attempt was made by Arabi Pasha, first as a military officer, and subsequently as a Minister of State, with the assistance of certain military leaders, to subvert the Constitution and the institutions of the country as established by international compact with the Sultan of Turkey and the Khedives of Egypt.

2. That Arabi Pasha, in his capacity of Minister of State, and through the instrumentality of the military leaders of his party being all Government officials, succeeded, by disseminating false reports, and by other means, in exciting and fostering among the army and among the people a fanatical hatred of foreigners.

3. That Arabi Pasha, though warned that he would be held responsible, as a Minister of State, for a breach of the public tranquility consequent on his revolutionary proceedings and the inflammatory utterances of his party, altogether failed to take proper measures for the immediate suppression of the threatened outbreak and the protection of the lives and property of foreigners, though he had ample means at his command for doing so.

4. That the police force of Alexandria was not only an insufficient protection for foreigners under the circumstances, but, being animated by feelings of hatred to the foreigner, excited among them by the machinations of Arabi Pasha and his party, and having joined in the demand on the Khedive for the restoration of Arabi Pasha to power, refused to do their duty on the occasion of the outbreak, and made no attempt to protect foreigners against the violence of the mob.

5. No complaint can be made against Tewfik Pasha of any connivance in the anti-foreign movement which led to the outbreak; but his authority as Chief of the State was completely paralyzed, and was merely nominal, the real government of the country having passed into the hands of Arabi Pasha, whose acts as a public Minister of State he was unable to control.

As regards the doctrine of international law applicable to claims of indemnity for losses and injuries sustained by foreigners in time of civil war, tumult, and revolt, I am to draw attention to the observations at pp. 413-424, vol. i, of Calvo's "International Law;" and I am to inclose a Memorandum by Sir E. Hertslet on the case of the murder of the French and German Consuls at Salonica in 1876, and various Reports of the Law Officers of the Crown on claims arising out of revolutionary outbreaks.

Lord Granville desires to be favoured with your opinion whether, in view of the particular facts of the present case, Her Majesty's Government are entitled, consistently with the principles of international law, to demand of the Egyptian Government compensation for the losses and injuries sustained by British subjects by the recent events in Egypt, and especially for the outrages committed on Her Majesty's Consul; and, if so, whether the liability of the Egyptian Government is limited to an indemnity for the injuries and losses directly occasioned to British subjects by the outbreak of the 11th June, or extends to indirect losses occasioned by the panic created by the revolutionary action of Arabi Pasha, resulting in the flight of British subjects, the abandonment of their property, and the ruin of their trade.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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*Report by the Law Officers of the Crown and Dr. Deane on the above References.*

In obedience to your Lordship's commands we have the honour to report—

That the general principle in cases like the one before us is that all States are bound to give reasonable protection to the persons and property of strangers resident within their territory, and are answerable to the parent State of those residents if that obligation be broken.

This principle is stated by Kent in his "Commentaries," in these words:—"That when foreigners are admitted into a State upon free and liberal terms, the public faith is pledged for their protection."

The measure of the protection to be afforded is, in our opinion, that which a Government, using all reasonable means, and exercising all reasonable diligence for the prevention and repression of outrage or violence to persons or property, is capable of affording.

If such means have been used and such diligence exercised, and, in spite of it, injury has been sustained by foreigners resident in a country, the Government of that country could not, in our opinion, properly be called upon to make compensation. Whether the injury in any particular case is due to the Government having failed to discharge its duties is a question of fact to be determined by the circumstance of that case.

Circumstances warrant claim for direct losses,

We have not yet before us in a complete form all the facts relating to the outrages which occasioned the deaths of Mr. Richardson and Mr. Dobson; but, so far as we can judge, there was a failure to discharge the duties incumbent upon the Government of Egypt, which led to these disastrous consequences, and which would justify a claim for compensation.

but not for indirect damages.

We do not think that Her Majesty's Government could properly put forward a claim for compensation to those who have sustained damage owing to their voluntary abandonment of the country, though such abandonment was caused by the fear not unnaturally engendered by the occurrences of the 11th June.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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Dr. Deane of opinion that Egyptian Government is not liable for acts of the rebels.

I agree with the general principle; but I believe, from all that appears to have happened before and since the massacre, that Alexandria was held by a military force which was in opposition to, and had *de facto* overpowered and was in rebellion against, the *de jure* Government.

I cannot therefore agree that any claim for compensation can properly be made.

(Signed) J. PARKER DEANE.

*Temple, August* 2, 1882.

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## No. 15.

*The Attorney- and Solicitor-General to Earl Granville.—(Received August* 14.)

*Temple, August* 14, 1882.

My Lord,

Landing of coals and munitions of war on coast of Egypt.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us a letter from the Board of Admiralty, inquiring whether Admiral Sir B. Seymour might be instructed to prevent munitions of war and coal from being landed at Damietta and other ports on the Egyptian coast in the possession of the rebels against the authority of the Khedive.

That your Lordship presumed that the Admiral's inquiry, whether he should establish a blockade, should be answered in the negative, as such a proceeding would raise the question "belligerent rights;" but that, under existing circumstances, the Khedive might issue a Decree closing any port in Egypt, or prohibiting the import therein of coal and munitions of war, under penalty of seizure and confiscation; and might empower the British Admiral to enforce it within Egyptian waters.

That Lord Tenterden was to inclose various Reports of Law Officers of the Crown, as noted in the accompanying list; and he was to request us to inform your Lordship, at our earliest convenience, whether we concurred in the views above expressed, and to favour your Lordship with any further advice or opinion which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Blockade not expedient. Ports should be closed by a Decree to be enforced by British Admiral.

That we concur in thinking that the course of notifying and establishing a blockade should be avoided, and that the most expedient course would be for the Khedive, as suggested, to issue a Decree closing, so far as may be necessary, any port or ports, or prohibiting the import therein of coal and munitions of war, under penalty

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of seizure and confiscation, and empowering the British Admiral to enforce it within Egyptian waters.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

*Note.*—Dr. Deane has agreed to the inclosed Report, but as his signature cannot be obtained to-day, the Attorney-General has directed the Report to be sent in signed only by the Attorney-General and Solicitor-General.

*New Court, Temple,*
*August* 14, 1882.

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*List of Papers sent to Law Officers, August* 10, 1882.

Law Officers, New Granada, July 18, 1861, Confidential No. 1123, p. 152, No. 172.
„ Spain, July 15, 1869, Confidential No. 2545, p. 107, No. 161.
„ Dominica, May 31, 1878, Confidential No. 4280, p. 24, No. 25.
„ Turkey, February 18, 1878, Confidential No. 4280, p. 64, No. 70.
„ Venezuela, April 18, 1879, Confidential No. 4328, p. 90, No. 94.
„ „ „ „ „ p. 91, No. 95.
Admiralty, August 9, 1882.

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## No. 16.

*The Attorney- and Solicitor-General to Earl Granville.*—(*Received August* 19.)

*Temple, August* 19, 1882.

Passage of British troops through Suez Canal. Liability of Company for delay caused by.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th instant, transmitting to us the following documents:—

1. Despatch of the British Directors of the Suez Canal Company (14th August, 1882).
2. Copies of two Proclamations issued by the Khedive of Egypt.*
3. Letter from the British Directors of the Suez Canal Company (No. 21 of 7th August, 1882).
4. Letter from same (No. 25 of 9th August, 1882).
5. Telegram from Lord Lyons (No. 186 of 16th August, 1882), and stating that the letter of the British Directors of the 9th August contained the text of the Articles of the Company's Concession under which the Canal was declared open to the commerce of the world as a neutral passage from sea to sea.

That we would perceive from Lord Lyons' telegram that the British Directors asked for authority to declare that Her Majesty's Government would hold the Company harmless against any claims that might be preferred by ship-owners or others on account of delay while British troops were passing through the Canal.

That if the above documents should be sufficient to enable us to arrive at a conclusion on the point, your Lordship would be glad to be favoured with our opinion whether any such claim could legally be made against the Company for delay so occasioned to merchant-vessels, or whether the passage of the British troops being a belligerent act performed with the assent of the Khedive constituted a case of *vis major* which relieved the Company from liability. Further, if the Company should, in our opinion, be liable for such delay, whether Her Majesty's Government should limit their guarantee of indemnity to such damages as might be recovered by the claimants against the Company in the competent Court.

In obedience to your Lordship's commands we have the honour to report—

British Government should not give guarantee to Company against claims.

That we are of opinion that no guarantee of the nature suggested should be given to the Suez Canal Company by Her Majesty's Government.

We cannot foresee that any legal claims can be made by any ship-owners or others on account of the traffic through the Canal being stopped in consequence of its occupation for military purposes. There is no contract on the part of the Company to keep the Canal open under all circumstances. For instance, if the passage were blocked by a sunken vessel (without negligence on the part of the Company's servants) no claim could be made against the Company by the owner of a ship which was delayed thereby.

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* In Sir E. Malet's telegram No. 396 of 15th August, 1882.

Company not liable for delay.

If now the Canal is taken possession of for military purposes by the presence of a Power which the Company cannot control or contend against, no liability will arise on the part of the Company on account of its inability to allow vessels to pass through the Canal.

If the suggested guarantee be given there will virtually be an admission made on the part of Her Majesty's Government that such claims can be enforced against the Company, an admission which certainly should be avoided.

Khedive should sanction occupation of Canal.

We would suggest that any occupation of the Canal which interferes with its ordinary traffic should be expressly sanctioned by the Khedive.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 17.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 1.)

*Temple, August* , 1882.

Prevention of landing of coal and munitions of war in Egypt.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st instant, stating that, with reference to our Report of the 14th instant, in regard to the steps to be taken to prevent the landing of munitions of war and coal at ports on the Egyptian coast in the possession of the rebels against the authority of the Khedive, he was directed by your Lordship to transmit to us a Proclamation on the subject, which, at the instance of Sir E. Malet,* had been issued by the Khedive, together with a letter from the Admiralty† inquiring whether any particular instructions should be given to the Commander-in-chief in the Mediterranean as to the manner in which he was to deal with ships attempting to land coal or munitions of war.

Proclamation of Khedive.

Proposed instructions.

That your Lordship proposed to inform the Admiralty, in reply, that the proper course to pursue would be to inspect the manifest of vessels entering the territorial waters, searching them, if necessary, for coal or munitions of war, and that those which carried any prohibited articles should be warned off, and, in the event of their persisting in making for an Egyptian port, that they should be seized while in the territorial waters and taken to Alexandria, there to be dealt with by the competent authorities.

That Sir Julian Pauncefote was to request us to report to your Lordship, at our earliest convenience, whether we concurred in the terms of the proposed instructions.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed instructions.

That we concur in the terms of the proposed instructions.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 18.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*‡—(*Received September* 2.)

*Temple, September* 2, 1882.

Neutrality of Suez Canal.

Resolution of Council of Administration.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd August, stating that he was directed by your Lordship to transmit to us two despatches§ from the British Suez Canal Directors reporting the proceedings at a meeting of the Council of Administration of the Suez Canal Company held on the 5th August, and forwarding a copy of a Resolution passed by the Council in regard to the neutrality of the Canal.

That Mr. Standen, the only British Director who was present, recorded his vote against the Resolution, and that Sir J. Stokes and Sir R. Wilson proposed in the despatch‖ (inclosed, dated the 14th August), that they should be authorized to make a

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* Sir E. Malet, telegram of 15th August, 1882.

† Admiralty, 18th August, 1882.

‡ A copy of this Report, signed by the Attorney- and Solicitor-General, but not by Dr. Deane, by whom it had not been seen, was received at the Foreign Office on the 31st August, 1882.

§ No. 22, Confidential, of 7th August, No. 24 of 7th August, 1882.

‖ No. 27 of 14th August, 1882.

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counter-statement of the views of Her Majesty's Government at the next meeting of the Council on the 5th September.

Proposed counter-statement of views of Her Majesty's Government.

That your Lordship having approved that suggestion, they had now submitted a draft of the proposed counter-statement in the despatch* sent therewith.

That Sir Julian Pauncefote was directed by your Lordship to request us to take the draft into our consideration, and to report whether we were of opinion that it should be made in the terms submitted, or whether it would be better not to pledge Her Majesty's Government to any detailed statement of their views in regard to the question of neutrality, and to instruct the Suez Canal Directors simply to state that Her Majesty's Government did not concur in the views held by M. de Lesseps and the Council on the subject of the neutrality of the Suez Canal as declared in the Resolution of the 5th August, and that they desired to record their dissent therefrom.

In obedience to your Lordship's commands we have the honour to report—

Detailed statement not advisable.

Dissent from Resolution should be recorded.

That we think it will be better not to pledge the Government to any detailed statement of their views in regard to the question of the neutrality, and to instruct the English Suez Canal Directors to state that Her Majesty's Government do not concur in the views held by M. de Lesseps and the Council, as declared in the Resolution of the 5th August, and that they desire to record their dissent therefrom.

Declaration should be general.

It would probably be better to make the declaration general with reference to the views declared in the Resolution, without using the words "on the subject of the neutrality of the Suez Canal."

As to stating that action taken under sanction of Khedive does not touch neutrality of Canal.

It is worth consideration, however, whether it would not be well to add an emphatic statement that steps taken by, and under the authority of, the Ruler of Egypt against his subjects who are in rebellion, and for the purpose of restoring order and his authority throughout his dominions, in no way touch or concern the question of the neutrality of the Canal.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

Should not state reasons for dissent.

Her Majesty's Government are not, in my opinion, called upon to give reasons for dissenting from the Resolution of the Council. To do so may lead to inconvenient discussion. I would therefore suggest the omission of the two last paragraphs of the above Report, with which, in other respects, I agree.

(Signed) J. PARKER DEANE.

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## No. 19.

*The Attorney- and Solicitor-General to Earl Granville.*—(*Received September* 4.)

*Temple, September* , 1882.

My Lord,

Claims of Suez Canal Company on account of British operations on Canal.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th ultimo, stating that he had the honour to transmit to us, by your Lordship's direction, a despatch† from the British Directors of the Suez Canal Company forwarding a copy of a legal opinion given by the "Conseil Judiciaire" of the Company on the claims which the Suez Canal Company might have against Her Majesty's Government on account of the military operations at present undertaken by Her Majesty's forces on the Canal and its neighbourhood, and to request that we would favour your Lordship with any remarks which we might have to offer thereon.

In obedience to your Lordship's commands we have the honour to report—

Neutrality of Canal not touched by recent events.

That as we have already pointed out in a former Report, the events which have taken place in Egypt have no relation to the question of the so-called neutrality of the Canal.

It seems undesirable and unnecessary, therefore, either to admit or to deny the alleged "neutrality" of the Canal, though we see no ground for supposing the contention of the Suez Canal Company with respect to it to be well founded.

Right of Khedive to use Canal during revolt.

It appears to us that even if there were nothing in the Convention recognizing such a title, there would be inherent in the Ruler of the country the right to do any acts within that country in time of rebellion which were reasonably necessary for the protection or restoration of his authority, and that it would be preposterous to maintain that such a right was either abrogated or diminished by the grant of a Concession authorizing the construction of a Canal, or any other public work.

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* No. 29 of 18th August, 1882.

† Suez Canal Directors, No. 37, Political, of 21st August, 1882.

But we think the Concession does expressly recognize this right as existing in the Khedive.

Any Power invoked by him may exercise his authority.

Nor do we think there is any ground for contending that the authority which the Khedive possesses to suppress a revolt may not, either according to municipal or international law, be validly exercised by any Power or any persons whose assistance he may invoke, or whose aid may be proffered to and accepted by him.

British Government not responsible as shareholders.

There seems to us to be no ground for contending that the English Government can be made responsible to the Company, in their capacity as shareholders, for the action which they have taken.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 20.

*The Attorney- and Solicitor-General to Earl Granville.*—(*Received September* 12.)

*Temple, September* 9, 1882.

My Lord,

Claim of Suez Canal Company to payment of charges for use of Canal by British forces.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, transmitting to us, by direction of your Lordship, the accompanying letter* from the English Directors of the Suez Canal Company, setting forth their views as to the liability of Her Majesty's Government to pay all the dues and charges imposed by the regulations of the Company on the ordinary traffic of the Canal in time of peace, in respect of the British ships of war, transports, soldiers, &c., forming part of the British Expedition which had entered and occupied the Canal as an act of war, performed with the authority and on behalf of the Khedive for the suppression of the military revolt in Egypt.

Sir Julian Pauncefote's letter stated that the British Commanders were acting as mandatories of the Sovereign of that country, which was in a state of civil war, and the question arose whether, as a matter of public law, the Khedive had not the right to seize and occupy the Suez Canal for the purposes of repelling hostile attacks from without, or of repressing rebellion within his territory, without incurring any legal liability towards the Company in respect of the duties, tolls, and charges which they were empowered to levy on the ordinary traffic in time of peace.

That it was conceived that the Suez Canal Company was in no better position than any other public Company in Egypt, whose lands and property might be temporarily occupied and seized as an act of State by the forces of the lawful Government for military purposes, and that there was no precedent to support the contention that Government troops in times of rebellion against the constituted authorities could not use roads or bridges belonging to public Companies, and which were required for strategical purposes without paying the tolls lawfully chargeable in time of peace on the ordinary passenger traffic.

That it was no doubt the practice of nations, after the restoration of order, to indemnify out of the public revenues all persons, whether subjects of the State or foreigners resident therein, who might have suffered losses during a rebellion, and especially those whose property might have been used for the purpose of suppressing it.

But such indemnity was not obligatory on the State, and when granted it was measured out in proportion to the injury actually suffered.

That the English Directors of the Canal Company, however, cite the Charter of the Company and its regulations as being applicable as well to an invading army in time of foreign or civil war as to the ordinary traffic in time of peace, and they supported the claim of the Company to levy their ordinary and extraordinary dues, not only on British vessels of war and transports forming part of the expedition by tonnage measurement, but on every soldier of the occupying British force at the rate of 10 francs per head.

That your Lordship doubted whether the contention could be supported. That it appeared to your Lordship that Her Majesty's Government should be prepared to make any voluntary payments to the Company to the extent of the promises which

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* Suez Canal Directors, No. 41, of 31st August, 1882.

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might already have been made to them, as well as any future payments which might seem equitable, but that to admit any legal obligation to pay those dues and charges under the circumstances of the case would weaken their position as regarded the right they had asserted to enter and occupy the Canal, with or without the consent of the Company, and forcibly, if necessary, as an act of war performed on behalf and with the authority of the Khedive, as lawful Sovereign of the country.

That Sir Julian Pauncefote was to inclose the Parliamentary Paper "Egypt No. 6 (1876),"* containing at page 4 the Charter of the Company, and a copy of the regulations of the Company, both of which documents were referred to in the letter of the English Directors; and Sir Julian was to request that we would favour your Lordship with our opinion, at our earliest convenience, as to whether Her Majesty's Government might properly decline to admit any legal liability on their part to pay the dues, tolls, and charges above-mentioned, and to insist on reserving for future consideration the question of any payments in respect thereof, as one of policy and equitable adjustment as between the Governments of Great Britain and Egypt and of the Canal Company.

In obedience to your Lordship's commands we have the honour to report—

Validity of claim depends on Egyptian law as to powers of Khedive.

That the question, whether the Suez Canal Company are entitled, in the circumstances which have arisen, to claim the ordinary dues from the transports and other vessels of Her Majesty, is one which it appears to us depends for its determination not on any principles of international law, but on the municipal law of Egypt.

If, according to that law, the Khedive would be empowered, for purposes of State such as the suppression of a rebellion, to make use of the Canal, with ships and troops, without the obligation to make payment of the dues, we think the same exemption can be claimed for the ships and troops of Her Majesty, which have occupied and used the Canal with the Khedive's assent, and for the purpose of rendering him assistance.

There can be no doubt that, according to the law of this country, Her Majesty would have a right to occupy and use a Canal or other public work, in time of rebellion, without paying the ordinary tolls.

Provisions of Charter consistent with his free use of Canal.

We have no information which affords a solution of the question, what the Egyptian law is in this respect. But judging by the light afforded by general principles of jurisprudence, we entertain little doubt that the Ruler of Egypt possesses the same general right. And if so, we think there is nothing in the Charter of the Suez Canal Company inconsistent with the existence and exercise of this general right in relation to that work.

Under all the circumstances, we think the best course will probably be not to admit any legal obligation to pay the dues, and to leave the whole question of what should be done, as far as possible, open for future determination.

Question as to jurisdiction of French Courts.

At the same time, we venture to suggest that it would be well in determining the question, what payments should be made, to bear in mind the fact that this country are shareholders in the Canal, and that consequently it is possible that, by stopping payment of the dividends upon these shares, the question of liability to the dues would be presented for determination by the French Courts.

We are not aware of the mode in which the dividends are paid, nor whether there is ground for real apprehension upon this point; but we think it well to call attention to it.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.

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## No. 21.

### *Memorandum by the Lord Chancellor.*

Suez Canal Company.

I HAVE carefully considered the papers relative to the constitution and Concessions of the Suez Canal Company, with a view to the questions:—

(1.) Of the territorial law to which the Company ought to be regarded as subject.

(2.) Of the mutual obligations, rights, and powers of the Company and the Khedive.

(3.) Of the attitude recently assumed by the Council of Administration of the

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* Parliamentary No. 1761.

Company, and the Messrs. de Lesseps as its representatives in Egypt, towards the Government of the Khedive, and Great Britain as his ally.

(4.) Of the measures which, when the time arrives for the settlement of Egyptian affairs, it may be (in principle) open to the Khedive (or to the British Government with his concurrence) to propose, for the purpose of preventing the recurrence of similar difficulties with the Company on any future occasion.

Subject to Egyptian territorial law.

1. On the first point, I am of opinion that the territorial law to which the Company ought to be regarded as properly subject is that of Egypt.

Not only would this subjection result from the general principles of international law (the Canal and its adjuncts being immovable property, locally situate in Egyptian territory, and all the rights and privileges of the Company, under its Concessions, being derived from Acts of State by the Khedive, ratified by the Sultan), but it results also from the nature and constitution of the Company, which is not French, but Egyptian, in its essential and fundamental character.

By the original Concession to M. de Lesseps of the 30th November, 1854 ("Egypt No. 6, 1876," No. 1)*, the then Viceroy of Egypt granted to him "the exclusive power to constitute and to direct a Company" (under the name, and subject to the provisions, there mentioned) for the purposes of this undertaking, of which the Statutes were to be submitted to, and approved by, His Highness. By the 3rd Article of the Statutes, as submitted and approved (*ibid.*, No. 4), it is provided that *La Société a son siège à Alexandrie, et son domicile administratif à Paris;* and, by Article 73, not that it is, or shall be, a *French* "Société anonyme," but that it is a "Société sous la forme anonyme, *par analogie aux Sociétés anonymes autorisées par le Gouvernement Français,*" by *the principles of which* it is to be governed. Then follows the sentence: "*quoique ayant son siège social à Alexandrie,* la Société *fait élection de domicile légal et attributif de juridiction à son domicile administratif à Paris.*" The next (74th) Article provides for the settlement of questions between the shareholders, and as to the Company's internal affairs, by arbitration, with an appeal to the Court of Appeal of Paris. It is, therefore, an Egyptian Company, having its "*siège social*" in Egypt, but electing to have its "domicil of administration" in Paris, and giving a conventional jurisdiction over its internal affairs to a French Tribunal. The intention appears to have been to make it, as far as possible, cosmopolitan, as is evident from the title "*universelle,*" and from several Articles (7, 8, 14, and 24) of the Statutes. But, this being legally impossible, the combination of an Egyptian "*siège social*" with a French "domicil of administration" was adopted, I suppose, as the nearest approach to it possible. And, in order to secure the supremacy of the territorial law under this arrangement, provision was made in the Concession of the 5th January, 1856 (Article 9), for the presence, at the seat of the administration of the Company, of an Egyptian Delegate, charged with the representation of the rights and interests of the Egyptian Government, with a view to the due execution of the terms agreed upon; and also, if that seat of administration should not be in Egypt, for the representation of the Company at Alexandria by an agent, with all powers necessary to fulfil its engagements with that Government, which agent, by Article 42 of the Statutes, was to represent the Company "*dans tous ses rapports avec le Gouvernement Égyptien et les tiers.*"

Mutual obligations, rights, and powers of the Company and the Khedive.

2. On the second point (as to the mutual obligations, rights, and powers of the Company and the Khedive), it is necessary to read together the two Concessions of the 30th November, 1854, and the 5th January, 1856, and the two subsequent Conventions of the 30th January and the 22nd February, 1866 ("Egypt No. 6, 1876," Nos. 1, 3, 10, and 11). That the Egyptian Government reserved to itself all rights and powers over the Canal and the lands granted to the Company which might be necessary for the purposes of internal administration and for the defence of the country, and that those reservations were essential terms of the Agreement is absolutely clear. The provision, in Article 4 of the original Concession (30th November, 1854), as to "the fortifications which the Government should consider it desirable to establish," and which were "not to be at the charge of the Company," shows that this was, from the beginning, contemplated; and it might, indeed, have been implied from the mere fact that there was no cession of any rights of territorial jurisdiction. But all room for dispute or controversy on that point is removed by the express stipulations of Articles I and II of the Convention of the 30th January, 1866, and IX, X, and XI of that of the 22nd February, 1866; the latter of which provide (Article IX): "*Le Canal Maritime et toutes ses dépendances restent soumis à la police Égyptienne, qui s'exercera librement comme sur tout autre point du territoire, de façon à assurer le bon ordre,*

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* Parliamentary Paper No. 1761.

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*la sécurité publique, et l'exécution des lois et règlements du pays;*" and "le Gouvernement Égyptien jouira de la servitude de passage à travers le Canal Maritime, sur les points qu'il jugera nécessaires, tant pour ses propres communications, que pour la libre circulation du commerce," &c.: (Article X) "*Le Gouvernement Égyptien occupera dans le périmètre des terrains réservés comme dependance du Canal Maritime toute position, ou tout point stratégique, qu'il jugera nécessaire à la défense du pays.* Cette occupation ne devra pas faire obstacle à la navigation, et respectera les servitudes attachées aux franc-bords du Canal."

The Government (it is to be observed), which reserved to itself these rights and powers (and also those contained, for ordinary administrative purposes, in Article XI), was bound, under the same Convention, itself to maintain the Sweet-water Canal, and the supply of water thereby to its Maritime Canal; and it is unquestionable that the rights and powers so reserved were available to it for the defence of the country against domestic as well as foreign enemies; and available, not for its own forces only, but for all forces of its allies, called in by it to take part in such defence. And those rights and powers were reserved, not to the *Turkish* Government, but to the *Egyptian*: the Turkish Government, by its ratification of the Concessions, &c., assenting to such reservation; and having also, by the Firmans under which the hereditary Government of the Khedive was established, placed in the hands of the Khedive the exercise of all necessary powers of territorial Government and internal defence.

The Concessions, therefore, to the Company, being conditional on these terms, or violation of these terms by the Company, must entitle the Egyptian Government, if not to revoke the Concessions and place the Administration of the Canal for the future upon a different footing, by its own sole authority, at all events to insist (in concert with the British and any other European Governments, whose interests may have been placed in peril by such violation) that either the terms of the Concessions, or the Regulations of the Company, shall be so modified as effectually to preclude any future use of the powers and privileges of the Company to prevent or obstruct the due exercise of the authority of the Khedive for the maintenance of his own Government, and the defence of his territory.

**Attitude of the Company towards the Khedive and Great Britain.**

3. As to the third point (which relates to the recent proceedings and pretensions of the Council of Administration of the Company at Paris, and of M. de Lesseps, their resident agent in Egypt, expressly appointed "to represent the Company in all its relations with the Egyptian Government and third parties"), the facts appear to be that M. de Lesseps has gone very far to identify himself with the usurpation of Arabi Pasha, while in open rebellion against the Khedive; that, knowing the British forces to be engaged in assisting the Khedive to put down the rebellion, both M. Ferdinand and M. Victor de Lesseps, on the 29th July, 1882,* set up the Regulations of the Company as a bar to all naval or military operations of those formes, in aid to the Khedive, within "the zone" of water and land included in the Concessions to the Company, and threatened to oppose their disembarkation on the Canal; and that, on the 3rd August, Count de Lesseps wrote to Admiral Hoskins that he "considered the Khedive a prisoner of England," and "would not consider as regular any foreign action in the Canal, unless on the invitation and under the authority of the Sultan, approved by France." Again, on the 4th August,† after having communicated to him by Admiral Hoskins a written authority, under the hand of the Khedive, for the steps which the Admiral was taking, M. Ferdinand de Lesseps replied that "the Canal was in no danger from Arabi, who had given him many proofs of his humanity;" and that he "had determined to oppose every act of war by the Canal;" and that, "having regard to the large amount of French capital engaged in the enterprise, he would submit to nothing but a decision of the French Government on an appeal by the Company's Council of Administration."

These proceedings of their agents in Egypt were adopted, and justified by the Council of Administration of the Company at Paris, notwithstanding the protest of the Representatives of this country on that Council. On the 5th August they passed a Resolution expressly denying the authority of the Khedive, without (or even with) the concurrence of the Sultan, to take any warlike measures upon the Canal; and again, on the 19th August (four days after the Khedive had issued a Proclamation, to the effect that the Admiral and Commander-in-chief of the forces of Her Britannic Majesty were charged by him to re-establish order in Egypt, and were authorized to occupy all points which they might deem useful for military operations to be undertaken against the rebels), their "Conseil Judiciaire" denied the right of the English Government, either in its own name or as mandatory of the Egyptian Government, to do any warlike act on the Canal or its dependencies, whether with or without the authorization of the Sultan; and protested "contre l'usage que le Gouvernement Égyptien ferait au profit d'un Gouvernement étranger de prétendus droits, qui, s'ils existent, n'appartiendraient qu'à lui-même personnellement, sans délégation possible;" concluding with the pretension that the British Government, as a shareholder in the Company, was bound to abstain from taking, in this matter, any course contrary to the Resolutions of the Company's representatives, and might be held liable to the Company in damages "par les voies de droit, devant la juridiction compétente."

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* Confidential No. 4717, p. 17.

† Ibid., p. 60.

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In effect, this Company, "purely commercial" (as it correctly styled itself), assumed the attitude of a political power, entitled to set at defiance the authority both of the Khedive and of the Sultan in Egypt; to obstruct the action taken by the Khedive and his allies for the defence of Egypt, within the limits of the land and water included in the Concessions, against an armed insurrection, and to treat the political action of the British Government, when acting as the mandatory of the Khedive for the defence of his territory, as a violation by a shareholder of the Company's Regulations.

For these preposterous pretensions the only ground alleged is Article 14 of the Concession of the 15th January, 1856, which merely declares that the Canal and its dependent ports shall "always be open, as neutral passages, to all merchant-vessels passing from one sea to the other, without any distinction, exclusion, or preference of persons or nations," subject to the payment of the Company's dues and to the observance of its Regulations. A stipulation more irrelevant to warlike measures, taken by the Khedive or his allies for the defence of the Government of Egypt against foreign or domestic enemies, cannot well be conceived. None of the measures taken, either by the Khedive or by Great Britain, have had for their object or for their effect the closing of the Canal or its ports against the merchant-vessels of any country passing from the one sea to the other; and the words "*comme passages neutres*" certainly do not contemplate or intend that the Canal should be neutral ground for the enemies of the Khedive, so as to transfer (in effect) his territorial authority to the Company and nullify the stipulations of Articles IX and X of the Convention of the 22nd February, 1866.

**Measures to prevent recurrence of difficulties with the Company.**

4. I think it is manifest that these pretensions and proceedings of the Council of Administration and agents in Egypt of the Company are inconsistent with the terms of the Concession, with the territorial authority of the Khedive (and with the sovereign rights of the Sultan also), and with the rights of Great Britain and all other nations interested, by reason of international engagements or otherwise, in maintaining a settled Government in Egypt, and in securing the safe and free navigation of the Canal. Such pretensions having been, in fact, advanced, and having been (so far) acted upon, no settlement of the affairs of Egypt can be entirely satisfactory which does not include some security against them for the future. This security might be obtained in various ways. The Company has power to alter its Statutes, with the approval of the Khedive; and if its domicil of administration were removed to Egypt (where it already has its "*siège social*"), there would be no danger of any repetition of the claim to an *extra-territorial* character. Or, without such removal, the danger might be obviated by a Supplementary Convention in proper terms. If the Company were unwilling to agree to any such change, or to any Supplementary Convention, I think the Khedive would, in principle, be justified in revising or modifying the terms of the Concession (with the concurrence, if that should be thought necessary by this country or other European Powers, of the Sultan) by means of the legislative authority which he possesses over the Company as an Egyptian corporation, and over the territory traversed by the Canal; it being impossible that the Concession can entitle the Company at once to claim its benefits and to repudiate, or act contrary to, the obligations and reservations with which these benefits are accompanied. It will, of course, be desirable, in such a matter, that whatever is done should be done in the *general* interest, and (as far as practicable) with the general approval of all the Great Maritime Powers.

(Signed) SELBORNE.

*September* 14, 1882.

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## No. 22.

*The Lord Chancellor to Earl Granville.*

*Blackmoor, West Liss, Hants,*
*October* 16, 1882.

Trial of Egyptian rebels. Opinion as to choice of counsel by prisoners and mode of conducting the trial.

Dear Lord Granville,

IT is one thing to allow a free choice of counsel (which I still think should be done), and another to allow a trial to be protracted by either prisoners or counsel, for purposes not germane to the real defence.

It does not seem to me to follow at all, that, because English counsel are allowed to the prisoners (as to which I see no reason for making a distinction between Arabi and others), those counsel are to have their own way in the conduct of the trial.

I should assume that the prisoners will be tried upon definite charges of fact, *e.g.* (1), armed rebellion and insurrection against the authority of the Khedive; (2), murders; (3), incendiarism at Alexandria; (4), illegal imprisonment and torture of subjects of the Khedive (or upon some such charges). If it should be proposed to call foreign witnesses (such as Lesseps or others), and if time should be requested for that purpose, the prisoner's counsel should be asked what facts he proposes to prove by such witnesses, and the request should be disallowed if it should appear that it is proposed to call them, not to prove any fact material to the charges, but to prove such and such political reasons or motives.

Believe, &c.
(Signed) SELBORNE.

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## No. 23.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 8.)

*Temple, November* , 1882.

Claim for demurrage for detention of "Duke of Sutherland" and "Cerigo," during the military occupation of Suez Canal.

My Lord,

WE are honoured with your Lordship's commands, signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he was to transmit to us a letter from the Board of Admiralty,* forwarding copies of claims received from the owners of the English merchant-ships "Duke of Sutherland" and "Cerigo" for demurrage, on account of the detention of those ships at the Suez Canal, during the temporary stoppage of the traffic rendered necessary at the time of the occupation of the Suez Canal by Her Majesty's forces.

Claim in similar case of the "Crimdon" rejected.

That a copy of the telegram directing the suspension of the traffic in the Canal was annexed to the Admiralty letter. That a similar claim had been addressed to the Foreign Office in September last by the owners of the steam-ship "Crimdon," but that your Lordship had declined to entertain it on the ground that the temporary stoppage of the Canal traffic was an act of State, and a measure rendered necessary by the naval and military operations undertaken by Her Majesty's Government with the assent of the Khedive of Egypt.

That our opinion was requested as to the terms of the reply which should be made to those and any other similar claims which might be made against Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

Claim should be rejected, as the stoppage of the Canal was an act of State and necessary.

That we think that in answer to these and any other similar claims against Her Majesty's Government, the applicants should be informed that the temporary stoppage of the Canal traffic was an act of State, and was a measure rendered necessary by the naval and military operations which were being carried on, and that Her Majesty's Government cannot entertain any claims in respect of the detention of ships caused by such operations.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Admiralty, October 26, 1882, with inclosures.

### Annex to Law Officers' Report of November 15 (No. 24), page 37.

*Draft Letter from Sir J. Pauncefote to the Secretary to the Admiralty.*

*Foreign Office, November* , 1882.

Sir,

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 26th ultimo, desiring to be informed whether, in his Lordship's opinion, payments should continue to be made to the Suez Canal Company on account of transports returning from or going to Ismaïlia without troops on board, after the opinion expressed by the Egyptian Law Officers, and which was communicated to you in my letter of the 21st ultimo, that Her Majesty's Government could not be subjected to any payment of this nature.

I am to transmit to you, for the information of the Lords Commissioners of the Admiralty, a copy of the full Report of the Law Officers of the Egyptian Government above referred to, which has been received through Her Majesty's Agent and Consul-General at Cairo,* and I am to request that you will state to their Lordships that Lord Granville is of opinion that, as the payment of Canal dues to a large amount has been sanctioned by the Board of Admiralty up to the present time, it would seem hardly worth while to raise the whole question of liability now with reference to the comparatively small amount referred to.

It may also be urged that, peace and order being restored, and the normal relations between the Khedive and the Company re-established, the Canal dues become payable now as before the military operations were undertaken.

Should the Board of Admiralty have doubts regarding the correctness of the charges, these might be verified by the British Suez Canal Directors at Paris, and Lord Granville is of opinion that the Directors should take that opportunity of stating to the Board that Her Majesty's Government decided to pay the Canal dues as a recognition of the great assistance to their military operations which has been derived from the use of the Canal, but that they do not admit any legal obligation to pay them under the circumstances of the military occupation for the suppression of the late rebellion, in which view they are supported by the Egyptian Government; and as regards the equitable claim of the Company to payment, consideration must be given to the fact that the presence of the British forces on the Canal alone prevented the suspension of the traffic, and the consequent cessation of the earnings of the Company for a long period.

I am, &c.
(Signed)

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* Inclosure 2 in Sir E. Malet's No. 715 of October 18, 1882.

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## No. 24.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 16.)

My Lord, *Temple, November* 15, 1882.

Payment of Suez Canal dues by British ships of war, transports, &c., during late rebellion.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 9th instant, stating that, with reference to our Report, dated the 9th September last, relative to the question of the liability of Her Majesty's Government to pay all the dues and charges imposed by the Regulations of the Suez Canal Company on the ordinary traffic of the Canal, in time of peace, in respect of the British ships of war, transports, &c., forming part of the British expedition dispatched to Egypt for the suppression of the late rebellion, he was to transmit to us correspondence* which had since taken place between the British Suez Canal Directors, the Board of Admiralty, and the Foreign Office on that subject.

Egyptian Law Officers of opinion that it could not be enforced.

That it would be seen from the Report† which had been received from Her Majesty's Agent and Consul-General at Cairo that the Law Officers of the Egyptian Government were of opinion that, under the circumstances, Her Majesty's Government could not be subjected to the payment of any tax on the part of, or in favour of, the Suez Canal Company.

That payment of Canal dues to a large amount had, however, already been sanctioned by the Lords Commissioners of the Admiralty as a matter of policy, but that their Lordships had inquired whether, after the opinion given by the Egyptian Law Officers above referred to, your Lordship considered that the payments should continue to be made on account of transports returning from or going to Ismaïlia without troops.

Proposed draft to Admiralty. Her Majesty's Government do not admit obligation to pay.

That Sir J. Pauncefote transmitted to us draft of the answer which your Lordship proposed to return to that communication, and requested our opinion as to whether we considered the terms of it to be right and proper, especially with regard to the declaration which it was proposed should be made to the Suez Canal Company by the British Directors, to the effect that Her Majesty's Government do not admit any legal obligation to pay the charges in question under the circumstances of the military occupation of the Canal for the suppression of the rebellion.

In obedience to your Lordship's commands we have the honour to report—

Approve draft.

That we consider the terms of the proposed answer to be right and proper.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 25.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 29.)

My Lord, *Temple, November* 28, 1882.

British Military occupation of Egypt.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th instant, stating that he had the honour to transmit to us, by direction of your Lordship, a printed collection of Firmans‡ granted by the Sultan of Turkey to the Viceroy of Egypt, and to refer us more particularly to the Firman of the 2nd August, 1879 (p. 27), granted to the present Khedive, and to the notes appended thereto, with reference to the following question:—

That by a Decree of the Khedive, dated the 20th September last,§ the Egyptian army had been disbanded, and Her Majesty's Government, on whom had devolved the task of reorganizing the Government of Egypt, had decided not to withdraw the whole of the British forces at once from that country, but to maintain a sufficient force there for the maintenance of order until the Egyptian army had been reconstituted, and a body of Egyptian police had been raised.

Draft of Convention as to payment of extraordinary expenses caused by.

That Her Majesty's Government considered that the additional cost entailed by the retention of the contingent of British troops in Egypt for that purpose, over and above the ordinary cost of their maintenance, should be a charge on the Egyptian

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* Admiralty, October 9; to Suez Canal Directors, October 16; Suez Canal Directors, No. 47, October 17; Admiralty, October 26, 1882.

† Sir E. Malet, No. 715, October 15, 1882.

‡ Confidential No. 2301.

§ Confidential No. 4724, p. 7.

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revenue, and with that view they proposed to invite the Egyptian Government to enter into a Convention with Her Majesty's Government, of which Sir Julian was to inclose a draft.

That a question had, however, been raised as to whether, under the terms of the Firman of 1879, above referred to, it was competent to the Khedive to enter into such a Convention, and, if so, whether such Convention was of such a nature as to require its communication to the Sultan of Turkey before being promulgated.

That on that point Sir Julian Pauncefote was to refer us to the paragraphs of the Firman relating to "Conventions" and "Finances" at p. 2, and to the note of Sawas Pasha to Sir A. Layard of the 29th July, 1879, at p. 3.

That it would seem that inasmuch as the military occupation of Egypt by the British forces was an accomplished fact, and as the proposed agreement only related to a financial matter, namely, the payment of extraordinary expenses occasioned by the further maintenance in Egypt of a contingent of British troops to insure the preservation of order in the absence of Egyptian troops, the object in view might be obtained by a mere exchange of notes; and that, though put in the form of a Convention, the transaction was within the purview of the Article of the Firman which reserved to the Khedive "la disposition complète et entière des affaires financières du pays."

Power of Khedive to conclude Convention questioned by Turkey.

That it was contended, however, by the Turkish Ambassador, that the Khedive had not power to permit or recognize the military occupation of Egypt by a foreign Power without the consent of the Sultan, and that it was with the Sultan alone that the proposed Convention could be negotiated.

That your Lordship would be glad to be favoured with our opinion, at our earliest convenience, as to whether the proposed Convention would, under the circumstances, be within or beyond the competence of the Khedive, having regard to the terms of the Firman of 1879.

In obedience to your Lordship's commands we have the honour to report—

Objections to Convention.
Agreement as to expenses should be made by notes.

That it appears to us that there are many reasons why it will be preferable to avoid making the formal statement which must appear in a Convention, and to allow the object in view to be arrived at by means of notes between Her Majesty's Government and the Khedive.

By taking this course all recitals may be avoided, and if the contents of the notes be confined to an undertaking on the part of the Khedive to bear the extra expense of maintaining the British troops in Egypt so long as they remain there, we think the power of the Khedive so to contract will clearly come within the financial powers exclusively vested in him by the Firman of 1879 (see p. 28).

Undertaking limiting number of British troops not necessary.

We see no reason why any undertaking should be given by Her Majesty's Government as to the number of troops to be retained in Egypt, or as to the term during which they should remain there.

It would seem sufficient to answer the purpose if it were provided that the payments should not exceed a certain sum per month, and should not continue beyond a certain time, unless an extension were agreed on.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Annex to No. 25.

### *Draft Convention.*

HER Majesty, the Queen of the United Kingdom of Great Britain and Ireland, having by the success of her arms effectually suppressed the late rebellion in Egypt, and the Government of Her Majesty, and the Government of His Highness the Khedive of Egypt, recognizing the necessity of making arrangements for the complete re-establishment of His Highness' authority; and having resolved to conclude a Convention for the attainment of this object.

The Undersigned, duly authorized for this purpose, have agreed upon the following Articles:—

1. A body of British troops shall remain for the present in Egypt to contribute to the re-establishment of tranquillity.

The number of these troops shall not exceed          men.

2. The said body of troops shall remain in Egypt for a period of twelve months

from the          day of          last, but such period may be shortened or extended as circumstances may require, and as may be agreed upon between the two Governments.

3. The Government of His Highness the Khedive will pay to the Government of Her Majesty the sum of          *l.* per month, to meet the additional cost of maintaining the said body of troops in Egypt, over and above the ordinary cost of their maintenance.

4. The present Convention shall take effect from the          day of          , mentioned in Article II of the present Convention.

In witness whereof, &c.

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## No. 26.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December 7.)*

*Temple, December* 7, 1882.

My Lord,

Murder of Mr. Palmer, Lieutenant Charrington, and Captain Gill.
Trial of murderers.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th November last, transmitting to us, by direction of your Lordship, the papers noted in the accompanying list,[*] relating to the murder of Mr. Palmer, Lieutenant Charrington, and Captain Gill, R.E., while on a journey from Moses' Well to Nakhl, undertaken on the public service.

That that outrage took place on Egyptian territory, and the first intimation of it was received in Rear-Admiral Sir William Hewitt's telegram to the Earl of Northbrook of the 24th August last, of which a copy was among the papers.

That the later particulars in the possession of Her Majesty's Government were contained in the Admiralty letters transmitted therewith.

That an expedition under Colonel Warren was dispatched by the Naval Commander-in-chief at Suez to the scene of the murder, in the hope of capturing the guilty parties, and some natives suspected of being implicated in the crime were already in custody.

That the question had arisen how the prisoners should be tried and punished. That it had been suggested that they should be tried by naval court-martial, but it seemed doubtful whether that course would be warranted by law.

That on that point Sir Julian Pauncefote was to inclose our Report of the 5th July last, on some proposed Admiralty instructions respecting the mode of dealing with natives on the West Coast of Africa.

That the occurrence took place at the time when the British military operations were being carried on, and no responsible Government existed in Egypt. That the outrage was committed either for purposes of plunder or as an act of hostility on the part of the Bedouins or of the Egyptian Governor of Nakhl or of El-Arish in the interests of Arabi. That in the latter case it was a barbarous infringement of the civilized usages of war, which might properly be treated as murder.

That, in either case, it appeared to Her Majesty's Government desirable that, if possible, those criminals should be dealt with by some British authority, and Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether the case could be lawfully dealt with by a naval court-martial with or without authority from the Khedive; and if not, whether there would be any objection to the trial of the prisoners by a Commission appointed *ad hoc* by a Decree of the Khedive (assuming such a Decree to be within His Highness' powers), and composed of an Egyptian President and British as well as Egyptian members.

That your Lordship would be glad to be informed whether there was any other mode of proceeding which we would recommend Her Majesty's Government to adopt in that case.

In obedience to your Lordship's commands we have the honour to report—

by court-martial;

That, in our opinion, the case cannot lawfully be dealt with by a British naval court-martial.

by special Tribunal according to Egyptian law.

The crime having been committed on Egyptian territory, the offenders may, no doubt, be tried in any manner which is lawful according to the laws of that country. Assuming, therefore, that the Khedive has power by a Decree to create a Special

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[*] Printed inclosure in Admiralty letter of August 30; Consul West, No. 36, October 17; Admiralty, October 24; ditto, October 26; ditto, October 28; ditto, November 1; ditto, November 3; ditto, November 6; ditto, November 6; ditto, November 6; ditto, November 8; ditto, November 11; ditto, November 11; ditto, November 13.

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Commission for the trial of the case, consisting in part of British members, we think that there would be no legal objection to the trial taking place before such a Commission.

Cannot add any suggestions.

We are not sufficiently acquainted with the mode in which the trial would take place in Egypt in case no special Tribunal were created for the purpose, or with the local circumstances, to enable us to add any suggestions.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

## France.

### No. 27.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 29.)

*Temple, March* , 1882.

My Lord,

Extradition of a criminal escaped from a French to a British Colony.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office* respecting the interpretation to be placed upon Article XVI of the Treaty of Extradition with France signed at Paris on the 14th August, 1876,† of which a copy was inclosed.

That a question had been raised in the course of extradition proceedings in New South Wales, whether, under Article XVI of the Treaty, a demand for the extradition of a fugitive in one of Her Majesty's Colonies could be made by the chief Consular Officer of the demanding party in such Colony when the fugitive had escaped from a Colony belonging to the demanding party, or whether it was necessary in such cases the demand should come from the Governor, or Chief Authority, of the Colony from which the fugitive had escaped,

That Sir Julian was to refer us to our Report to the Colonial Office of the 26th May, 1880 (Inclosure 2 in Colonial Office letter of the 4th instant), on a similar question which had arisen on the interpretation of section 17 (1) of the Extradition Act, 1870, and to the other inclosures in that letter, and to request that we would favour your Lordship with our opinion on the question raised thereon.

In obedience to your Lordship's commands we have the honour to report—

The demand for his extradition may be made by the French Consul, as well as by the Governor of the French Colony.

That, in our opinion, the demand for the extradition of a fugitive who has taken refuge in one of Her Majesty's Colonies can properly be made by the chief Consular Officer of the demanding party in such Colony, when the fugitive has escaped from a Colony belonging to the demanding State.

The words in the XVIth Article of the Treaty are to the same effect as the words in the Extradition Act, 1870, section 17, sub-section 1, and the provision that the requisition (in the case of a Colony or Possession of a foreign State) shall be made by the Governor or Chief Authority of such Colony or Possession, in our opinion, does not limit, but is in addition to, the earlier provision in the XVIth Article that the requisition shall be made by the chief Consular Agent.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* March 4, 1882.

† No. 619.

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### No. 28.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 13.)

*Temple, July* 10, 1882.

My Lord,

Marriage of E. C. Purton, of the steam-ship "Merthyr," and Mary Cryer.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 3rd instant, stating that he was to transmit to us a despatch from Her Majesty's Consul at Havre,* asking for instructions as to the propriety of celebrating a marriage between two British subjects under the following circumstances:—

That Edwin C. Purton, the intended husband, was the chief engineer on board the steam-ship "Merthyr," a collier steamer running regularly to Havre about once every ten days. That Purton had had a room at Havre during the last month, and had occupied it when the steamer had been in port. That Mary Cryer, the intended wife, had been residing at Havre for two years.

That under the Consular Marriages Act, 12 & 13 Vict., cap. 68, the notice of marriage must contain a statement that each of the parties had resided in the Consular district during one calendar month, at the least (sect. 2), and by sect. 6 a declaration was required that the parties had had their usual place of abode within the district.

That copies of the Consular Marriages Act, and of the Law Officers' Report on a somewhat similar case which occurred in 1877, were inclosed.

That your Lordship desired our opinion as to the answer which should be returned to Consul Bernal's inquiry.

In obedience to your Lordship's commands we have the honour to report—

Hiring of room for one month, with occasional residence there, does not legally constitute one month's residence.

That we do not think the hiring a room for one month and residence there only on the occasions when the steam-ship on board which Purton is engineer is at Havre, can be said to fulfil the requirements of the law in regard to the one calendar month's residence.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 29.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 15.)

*Temple, July* 15, 1882.

My Lord,

Marriage between a Frenchman and his deceased wife's sister, an Englishwoman. Rev. J. Orger's question as to validity of, in England.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 21st ultimo, stating that he was directed to transmit to us a despatch† from Her Majesty's Ambassador at Paris, forwarding a letter from the Rev. J. Orger, British Chaplain at Dinan, requesting an opinion for his guidance upon the following point, viz., whether a marriage between a French citizen and his deceased wife's sister—the lady being a British subject—contracted in France in conformity with the *lex loci*, would be recognized as valid in England, and would confer all the rights of legitimacy upon the issue thereof. Lord Tenterden was to request that we would take these papers into our consideration, and, if we should consider that the question raised by Mr. Orger was one which should be answered by the Foreign Office, that we would favour your Lordship with our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have the honour to report—

Ought not to give answer as to legality of.

That we do not think that the question raised by Mr. Orger is one to which an authoritative answer should be given by your Lordship.

Differences of opinion as to.

It is certainly not clear that such a marriage as that referred to would be valid. Dr. Deane is of opinion that it would not be valid in England. The Attorney and Solicitor incline to think it would, but are not prepared to express a positive opinion upon the point.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Consul Bernal, No. 16, May 18, 1882.

† Viscount Lyons' No. 557, of June 9, 1882.

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# General.

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## No. 30.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 18.)

*Temple, January* 14, 1882.

My Lord,

Most-favoured-nation Article in Treaties of Commerce, &c.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st December last, stating that the question of the terms in which the most-favoured-nation Article in future Treaties of Commerce and Navigation between this country and foreign Powers should be worded had been lately under consideration, and that your Lordship would be glad to be favoured with our advice on the matter.

That Sir Julian Pauncefote inclosed, in connection with that subject, the following papers, namely:—

1. A list of the Treaties of Commerce and Navigation between Great Britain and foreign Powers containing most-favoured-nation clauses, stating the period when they were terminable, and showing whether they applied to the British Colonies ("Commercial No. 27, 1879"), No. 2216.

2. The Treaty of Friendship and Commerce between Her Majesty and the Prince of Servia (7th February, 1880), No. 659.

3. The Treaty of Commerce and Navigation between Her Majesty and the Prince of Roumania (5th April, 1880), No. 660.

4. The Report from the Select Committee on Sugar Industries, with the proceedings of the Committee, more particularly pp. 23 and 24, No. 2318.

5. A letter from Mr. Bateman, one of the Joint Secretaries to the Royal Commission for the French Commercial Treaty negotiations, inclosing correspondence on the subject of duties on sugar and the most-favoured-nation clause as affecting bounties on the export of sugar, 10th November, 1881. (Confidential No. 4632, p. 318.)

6. The Treaties recently concluded by France with Belgium, Italy, Austria, and the Netherlands.

7. A Memorandum on the most-favoured-nation Article in Commercial Treaties, with a draft of proposed form of Article annexed to it, 25th November, 1881. (Confidential No. 4557.)

That Sir Julian Pauncefote was to request our attention to the statement of the case contained in the Memorandum last mentioned, and to the proposed form of Article; and he was to ask whether, in our opinion, the proposed Article, either as it was then drafted, or with amendments which we might suggest, was sufficient to secure to this country the benefits which it was intended to provide, or whether we would recommend any other form.

That Sir Julian Pauncefote was also to request that we would favour your Lordship with any remarks which we might have to offer on the question generally, and especially as to what form of stipulation, if any, could be proposed to foreign Governments which would meet the case of the shipping and sugar bounties, which formed the subject of our Reports of the 12th and 23rd July, 1880,* copies of which were inclosed.

That under that head Sir Julian Pauncefote was to refer again to Mr. Bateman's letter of the 10th November, and likewise to the Articles relative to drawbacks contained in the recent French Treaties (Inclosure No. 6), which were also quoted in the Memorandum.

That with regard to the position of the Colonies, and to the statement contained at p. 5 of the Memorandum, it was conceived that the most-favoured-nation clause did not affect the right of this country to extend to the produce of its Colonies more favourable treatment than it accords to the produce of foreign countries, and that the question of admitting colonial produce on more favourable terms than similar produce of foreign countries with which Great Britain had entered into most-favoured-nation stipulations, under the Treaties referred to or set out in Inclosures Nos. 1, 2, and 3, was entirely a question of policy.

That Sir Julian Pauncefote was to request that we would inform your Lordship whether we concurred in that view; and he was to state in conclusion that, as the French negotiations might be resumed immediately, and as it was very important that Her Majesty's Government should be furnished with our opinion on the questions then referred to us, your Lordship would feel much obliged if we would take them into immediate consideration, and favour your Lordship with our Report thereon at our earliest convenience.

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* Confidential No. 4539.

In obedience to your Lordship's commands we have the honour to report—

That we think the draft of proposed most-favoured-nation Article appended on p. 7 to the Memorandum submitted to us is sufficient (with some slight alterations) to secure to this country the benefits which it is intended to provide for.

Suggesting alterations in proposed form of Article.

We suggest that the word "third" should be inserted before the word "nation" in the fourth line of the draft.

In line 9, after "taxes," we recommend the insertion of the words "or other impositions;" and in line 10, after "privileges," the words "including the acquiring, holding, and power of disposing of property."

We think the remainder of that (1) paragraph following the word "privileges" should be omitted. It does not seem properly to form part of a most-favoured-nation clause, but to be an independent stipulation for an absolute exemption, nothing more than which could be granted to any nation.

In the next paragraph (line 14 of the draft) we advise the omission of the word "all" before the word "goods," and the inserting of the words "or in respect of;" and also the insertion, after the word "goods," of the words "of whatever description and."

In the two following paragraphs, in line 28 of the draft, after the word "on," the words "or in respect of;" and in line 33 of the draft, after the word "on," the words "or in respect of" should be inserted.

Moreover, clauses 4 and 5 of the draft should be treated as independent Articles, as they are not governed by the introductory stipulation which governs clauses 1, 2, and 3.

Mode of dealing with sugar bounties.

The case of the sugar bounties would be most satisfactorily dealt with by a stipulation relating to drawbacks similar to that inserted in the recent Treaty between France and Belgium.

Proviso as to countervailing duties on bounty-fed goods.

If it be thought expedient so to frame the most-favoured-nation clause as to leave it within the power of this country to impose countervailing duties upon bounty-fed goods, in case, at any future time, it should be deemed expedient, as a matter of policy, to do so, a proviso might be added to the 2nd clause of the proposed most-favoured-nation Article, to the effect of the stipulation suggested on behalf of the sugar industries to the Royal Commission, which is set out at p. 4 of the printed Memorandum before us.

Case of shipping bounties.

It would seem difficult to meet the case of the bounties on shipping satisfactorily in any other way than by an express stipulation prohibiting them. If it be deemed expedient to leave it open to this country to take hostile action in respect of shipping receiving bounties, it might be done to some extent by a proviso to clause 3 of the proposed most-favoured-nation Article that there should be no right to claim most-favoured-nation treatment in respect of vessels receiving bounties.

Treatment of British Colonial produce.

We concur in the view that the most-favoured-nation clause does not affect the right of this country to extend to the produce of its Colonies more favourable treatment than it accords to the produce of foreign or third countries; and that the question of admitting colonial produce on more favourable terms than similar produce of foreign countries with which Great Britain has entered into most-favoured-nation stipulations is entirely a question of policy.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex 1.

*Form of Most-favoured-nation Article.*

The High Contracting Parties guarantee to each other, in the United Kingdom of Great Britain and Ireland, and in , the treatment of the most favoured third nation, as regards—

1. Their subjects, in respect of residence, whether temporary or permanent; the exercise of any calling or profession; the payment of taxes or other impositions; and

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the enjoyment of all legal rights and privileges, including the acquiring, holding, and power of disposing of property.

2. As regards commerce, in respect of customs duties and all other charges on or in respect of goods of whatever description and whatever may be their place of origin or manufacture, and whether intended for consumption, warehousing, or re-exportation, which may be imported or exported from the one country to the other. Also with respect to the transit of goods, prohibition of importation, exportation, or transit, samples, Customs formalities, and all other matters connected with commerce and trade.

[But the subjects of either Treaty Power shall not be entitled to claim the treatment of the most favoured nation in respect of goods exported under a system of drawback, or of certificates of exportation, which will permit, either directly or indirectly, bounties to be derived as a consequence of the act of exportation.]

3. As regards navigation, in respect of vessels of the other Powers, whether steam or sailing, from whatever place arriving, and whatever may be the place of origin or destination of their cargoes. Also in respect of all charges or dues on or in respect of the said vessels and cargoes, and all formalities and regulations relative to them.

[Most-favoured-nation treatment shall not, however, be claimed in respect of vessels receiving bounties.]

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## Annex 2.

### *Stipulations to be embodied in Separate Articles.*

The subjects of the High Contracting Parties shall be exempted from military service, requisitions, and forced loans.

Any favour, privilege, or immunity in regard to subjects, commerce, or navigation, as well as any reduction of customs duties or other charges on or in respect of goods or vessels which either of the High Contracting Parties may hereafter concede to any third Power, shall be extended immediately and unconditionally to the other.

The Consular officers of the two Powers, as regards appointment, residence, functions, and privileges, shall be placed on the footing of the most favoured nation.

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## Annex 3.

### *Stipulations in regard to Drawbacks in Treaty of* October 31, 1881, *between France and Belgium.*

### ARTICLE IV.

Les drawbacks établis à l'exportation des produits Belges ne pourront être que la représentation exacte des droits d'accise ou de consommation intérieure grevant les dits produits ou les matières dont ils sont fabriqués.

De même, les drawbacks établis à l'exportation des produits Français ne pourront être que la représentation exacte des droits d'accise et de consommation intérieure grevant les dits produits ou les matières dont ils sont fabriqués.

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## No. 31.

### *The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September* 4.)

My Lord, *Temple, September* , 1882.

Passage of foreign ships of war up the Irrawaddy to Mandalay.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 31st July last, stating that he was directed by your Lordship to transmit to us a letter from the India Office, inclosing copy of a letter from the Government of India raising the question of their right to prohibit the passage of foreign vessels of war to Mandalay up the River Irrawaddy, which was stated to flow a distance of more than 250 miles from its mouth through British territory.

That the Marquis of Hartington had expressed his desire to be furnished with an authoritative statement of international law and practice in such a case, for the guidance of the Indian Government.

Proposed rule that it should only be allowed by the permission of the Indian Government.

That the rule which the Government of India proposed to lay down was that no vessel of war should proceed beyond Rangoon or Bassein without their express permission.

That Mr. Lister was to request that we would take the case into our consideration, and that we would favour your Lordship with our opinion, at our earliest convenience, as to the answer which should be returned to the India Office letter.

That he was further to inclose a Memorandum drawn up by the Librarian of the Foreign Office on Treaty stipulations respecting the navigation of rivers by foreign ships, and also a map of the Irrawaddy.

In obedience to your Lordship's commands we have the honour to report—

Proposed rule justifiable.

That, in our opinion, the Government of India are entitled to impose such conditions with reference to the navigation of the Irrawaddy within their territory by vessels of war as they may deem expedient for the safety and well-being of the State, and, consequently, that they would be justified in laying down the proposed rule.

Whether it is expedient to lay it down or to prevent foreign vessels of war as a general rule from passing up the river is a question of policy upon which we do not feel called upon to express an opinion.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

India Office, July 13, 1882.
Memorandum (E. H.), July 29, 1882.

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# Germany.

## No. 32.

### *Opinion of the Lord Chancellor.*

Marriage of Duke of Albany. Approve drafts of Treaty and separate instrument.

I HAVE perused the accompanying drafts of the Treaty for the marriage of His Royal Highness Prince Leopold, Duke of Albany, with Her Serene Highness the Princess Helen of Waldeck and Pyrmont, and of the separate instrument referred to in Article IV of the draft Treaty, and I am of opinion that the terms of these drafts are such as may be properly agreed to by Her Majesty.

(Signed) SELBORNE.

30, *Portland Place, March* 27, 1882.

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## No. 33.

### *The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 29.)

My Lord, *Temple, March* 29, 1882.

Marriage of the Duke of Albany.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 24th instant, stating that he was directed by your Lordship to transmit to us a draft of a Treaty between Her Majesty and the reigning Prince of Waldeck and Pyrmont, for the marriage of His Royal Highness Prince Leopold, Duke of Albany, with Her Serene Highness Princess Helen of Waldeck and Pyrmont, together

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with a draft of the separate instrument* mentioned in Article IV of the draft Treaty, and that Lord Tenterden was to request that we would take the same into our immediate consideration, and favour your Lordship, with as little delay as possible, with our opinion, whether the terms of the draft Treaty and separate instrument were such as might be properly agreed upon by Her Majesty.

In obedience to your Lordship's commands we have the honour to report—

**Approving draft Treaty and separate instrument.**

That, in our opinion, the draft Treaty and separate instrument mentioned in Article IV of the Treaty may properly be agreed upon by Her Majesty.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 34.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 28.)

*Temple, April* 27, 1882.

My Lord,

**Collision between the "James Dale" and the "Salier." Salvage case.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th ultimo, stating that he was to submit the following case for our opinion:—

That a collision occurred on the night of the 4th February, 1880, between the British barque, "James Dale," and the German schooner, "Salier."

That the collision was reported to the Board of Trade on the 5th February by the Receiver at Cowes, who stated that the master and crew of the "Salier" had taken refuge on board the "James Dale" after the collision, and had refused to return to their ship, and that the master of the latter had brought in the "Salier" and handed her over to him for security of his claim for salvage.

That the next day the "Salier" was arrested under a warrant of the Admiralty Court, at the suit of the salvors. That, on the 30th July, 1880, the German Consul-General asked whether an official inquiry would be ordered into certain special circumstances attending the collision, and in case any deposition had been made by the master of the "James Dale," whether the Board of Trade would furnish a copy for the use of the Maritime Court at Bremerhaven, before which an inquiry had been instituted. That the Board of Trade replied that no inquiry had been held in this country, and that no deposition under section 448 of the Merchant Shipping Act had been taken, as the collision had occurred on the high seas.

**Complaint of German Government against master of the "James Dale."**

That, on the 17th September, 1881, the German Government communicated to your Lordship the Report of the Maritime Court of Bremerhaven on the case, which was to the effect that the captain and crew of the "James Dale" had been guilty of acts of violent aggression against the crew of the German ship, in having forcibly prevented the latter from returning on board their own vessel after the collision, when it was found that she was not sinking; and again, after the arrival of both vessels at Cowes, in having forcibly prevented the captain and crew of the "Salier" from landing, and an officer from the German Consulate from communicating with them. That a précis of that Report and of the evidence obtained by the Board of Trade was inclosed.

That, in view of the Report of the Court at Bremerhaven, which declared the action of the master of the "James Dale" to be illegal and unprecedented, the German Ambassador requested that for the acts of violent aggression committed by the crew of the "James Dale" against the crew of the "Salier" an inquiry might be instituted, and that if found guilty the parties might be brought to trial.

**Proceedings of Board of Trade as to inquiry into case.**

That upon that the Board of Trade took steps to obtain further information in the case, and ascertained that the "Salier" was kept in arrest till the 27th March, when the Court had ordered her release, and that the case had been settled out of Court by the "Salier" paying 200*l*. as salvage.

That information as to details concerning the collision and what followed it was also furnished to the Solicitor to the Board of Trade by the German Vice-Consul at Portsmouth, and an affidavit was put in on the same subject by the German Consular Representative at Cowes, to the effect that extreme coercion was used to prevent the master and crew of the "Salier" from leaving the "James Dale." That a statement of the tug "Admiral," which towed the "Salier" to Cowes, was also received.

That all that evidence was summarised in Inclosure to Board of Trade letter of the 9th February.

That the Solicitor to the Board of Trade was then instructed to procure any further evidence which might be available, and he obtained a further statement from the master of the "James Dale," dated the 18th October, 1881.

That in that statement the master of the "James Dale" declared, amongst other things, that the Receiver at Cowes had put a shipbroker on board, and directed him (the master) to keep the crew of the "Salier" on board till the following morning, pending receipt of instructions from London.

That the Receiver, under date of the 20th October, 1881, wrote to the Solicitor to the Board of Trade, contradicting that statement, saying that there was not a word of truth in it, and bringing evidence to prove that he did not see the master of the "James Dale" till after 8 P.M. on the evening of the 5th February.

**Board of Trade opposed to any further inquiry.**

That the Board of Trade having thus completed its inquiries, informed the Foreign Office that the evidence seemed to show that the German crew were only prevented from returning to their vessel after they had abandoned her, and that they were only delayed from seeing their Vice-Consul from the evening of the 5th till the morning of the 6th February; that it was therefore the opinion of the Board, having regard to the time which had elapsed, and to the difficulty of finding the master and officers of the "James Dale," that a formal inquiry would be attended with great expense, nor was it probable that anything conclusive would result from such an inquiry as could be held. That the Board did not, it was stated, propose to take any further steps in the matter.

That your Lordship thereupon addressed a reply in the above sense to the German Ambassador, the draft of which had previously received the concurrence of the Board of Trade (28th November, 1881).

That on the 2nd January, 1882, the German Ambassador addressed a fresh representation to your Lordship, urging that, in spite of the difficulties set forth by the Board of Trade, a formal inquiry should be instituted, and the culprits punished for their illegal treatment of German sailors.

That, on referring that note to the Board of Trade, your Lordship received a reply, dated the 24th January, to the effect that even if an inquiry were held, it could be directed only to the circumstances of the collision itself, and not to what took place afterwards, and that no punishment could be inflicted by the Court for the offence alleged. That it was observed that it was, however, open to either Government, if so advised, to institute criminal proceedings, or that the master and crew of the German vessel could bring an action for false imprisonment, but that it was added that it was in the highest degree doubtful whether any such proceedings would have any chance of success. That the Board, asserting its inability to do anything further in the matter, left the question open to your Lordship to determine as to taking further legal opinion.

That in reply to that communication from the Board of Trade, your Lordship requested to be informed whether, in the opinion of the Board of Trade, the complaint of misconduct, brought by the German Government against the master of the "James Dale," was one which could legally form the subject of an inquiry, under section 241 of the Merchant Shipping Act.

That the Board of Trade rejoined on the 9th February, observing that the alleged misconduct of the master of the "James Dale," even if proved, was not of the class contemplated by section 241 of the Merchant Shipping Act, as rendering a master unfit to discharge his duties as a master.

That they pointed out that there was, on the contrary, proof that he rendered services to foreigners in distress, and that he took possession of the foreign ship only after she was abandoned by her master and crew.

That with a prize in his hand he was naturally anxious to keep it, and that if he exceeded the bounds of courtesy in his struggle to do so, and used undue violence for the protection of his interests and those of his crew, such misconduct was a temporary misconduct, provoked by exceptional circumstances, but not such as to incapacitate him for commanding a ship, or to lead to a fear that if allowed to retain a certificate he would discredit his position.

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* Treaty between Her Majesty and His Serene Highness the Reigning Prince of Waldeck and Pyrmont for the Marriage of His Royal Highness Prince Leopold, Duke of Albany, and Her Serene Highness the Princess Helen Frederica Augusta of Waldeck and Pyrmont. Foreign Office No. 692.

Separate Instrument mentioned in Article IV of the Draft of Treaty of Marriage of His Royal Highness Prince Leopold, Duke of Albany, with Her Serene Highness the Princess Helen of Waldeck and Pyrmont. Confidential No. 4645*.

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That the Board of Trade added further, that a Local Marine Board, though well able to investigate charges of drunkenness or tyranny, was scarcely adapted to consider questions involving nice ethical distinctions, and unlikely to punish a man who had given shelter to men who had abandoned their vessel through fear for conduct to them afterwards which did not involve personal ill-treatment.

That they further observed that neither the master of the "Salier" nor the German Consul appeared to have made any complaint at the time, and that the salvage question was settled out of Court without any complaint of undue influence. That there was, no doubt, a conflict of evidence between the Receiver of Wrecks and the master of the "James Dale," but that on the whole they were of opinion that no proper case had been disclosed for inquiry under the Merchant Shipping Act, as understood and administered by the Board.

That your Lordship would be glad to be favoured with our opinion as to whether a reply might properly be returned to the further representations of the German Government in the sense of the observations contained in the letter of the Board of Trade of the 9th February.

In obedience to your Lordship's commands we have the honour to report—

Conduct of master of "James Dale" towards crew of "Salier" and German Consul unjustifiable.

That we are disposed to take a more serious view of the action of the master of the "James Dale" than has been taken by the Board of Trade.

We concur with them in thinking that the refusal to permit the master and crew of the "Salier" to return to their vessel in the first instance was excusable, under the circumstances; but their detention on board the "James Dale" after both the vessels arrived in port was, in our opinion, altogether unjustifiable. And the course pursued towards the German Consul's representative was, perhaps, even more reprehensible.

Though there may be some exaggeration in the version of these transactions given by the crew of the German vessel, yet there seems little or no doubt that there was an illegal detention of the crew and grave discourtesy shown to the Consular representative.

We think it is doubtful whether section 241 of the Merchant Shipping Act applies to such a case as this, and it is not improbable that, if an inquiry were instituted, the Local Marine Board would not report that the master of the "James Dale" had been "guilty of a gross act of misconduct;" and, without such a Report, the Board of Trade would have no power to deal with his Certificate under section 242.

Expediency of an inquiry.

We would nevertheless suggest the expediency, under the circumstances, of holding an inquiry, in case the attendance of the necessary witnesses can be procured.

Reply to German Government.

Should the Board of Trade concur in this view, we would suggest that the German Government should be informed of the doubts which exist as to the power to institute an inquiry from which any practical result can be obtained; and also that such an inquiry would necessitate the presence of some of the crew of the "Salier" as witnesses before the Court of Inquiry, and that it would be necessary to secure their attendance at a time when the presence of the master of the "James Dale" could also be secured; but that Her Majesty's Government would not refuse the demand for an inquiry if, notwithstanding these difficulties, it should be persisted in.

We think it might be pointed out to the German Government that the practical difficulties have arisen from the fact that no complaint was made until after the German crew had left this country; and that if, in future, the German Consul were at once to call the attention of the British authorities to any cause of complaint, through his Ambassador, the matter could be more effectually dealt with.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 35.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received August 18.)*

My Lord, *Temple, August* 17, 1882.

Prize Courts. Constitution, procedure, and powers of, in England.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 31st July last, stating that he was directed by your Lordship to transmit to us therewith a translation of a letter from the German Ambassador at this Court, requesting information as to the constitution, procedure, and powers of Prize Courts in England.

That Count Münster's letter had been referred to the Lords of the Admiralty, and a copy of their reply was annexed.

That Mr. Lister was now to submit for our approval a draft of a letter founded on that reply, which it was proposed to address to the German Chargé d'Affaires in answer to the inquiries of his Government, and Mr. Lister was to request that we would favour your Lordship with our opinion as to whether it was proper or sufficient, or whether we had any addition or modification to suggest.

In obedience to your Lordship's commands we have the honour to report—

Approving reply to German Chargé d'Affaires as to.

That the proposed reply is, in our opinion, proper and sufficient.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

Count Münster, July 6; to Admiralty, July 14; Admiralty, July 26, 1882.

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*Draft of Letter from Earl Granville to M. Stumm.*

M. le Chargé d'Affaires, *Foreign Office,* , 1882.

WITH reference to Count Münster's note of the 6th ultimo, requesting to be furnished with copies of information respecting the constitution and procedure of Prize Courts in Great Britain, together with all laws, regulations, or official decrees relating to the same, I have the honour to inform you that Prize Courts are called into existence in this country at the commencement of each war, in pursuance of a special Commission from the Crown to the Lords Commissioners of the Admiralty under the Great Seal of England. A copy of the Commission issued at the commencement of the Russian war, dated 3rd April, 1854, is herewith inclosed.

The High Court of Admiralty, now known as the Admiralty Division of the High Court of Justice, is the only Court ever authorized to act as a Prize Court within the limits of the United Kingdom. When necessary, some one or more of the Vice-Admiralty Courts abroad are also authorized to act as Prize Courts.

The practice and procedure in Prize Courts, when so constituted, are now regulated by 27 & 28 Vict., cap. 25, copy of which I have the honour to inclose herewith. This Act contains detailed provisions on the subject, and, further, by section 53, authorizes Her Majesty in Council to make Orders from time to time for the better execution of the Act. Since the passing of that Act, however, no occasion has arisen for the exercise of that power, and it seems that no such Orders in Council have been made.

The above Statute also provides for an appeal to Her Majesty in Council from any decree of a Prize Court, and such appeal is to be heard by the Judicial Committee of the Privy Council. All ships and goods lawfully captured are condemned to the Queen, and it rests with Her Majesty to determine what portion of the proceeds of any prize shall be granted to the captors. This is usually done by Proclamation.

The Prize Court has full power to carry out or execute its own decrees, and it cannot be interfered with by the ordinary Tribunals of the country, except when it exceeds the jurisdiction conferred upon it.

I have, &c.

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## Madagascar.

### No. 36.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 4.)

My Lord,

*Temple, September* , 1882.

Assault by Mr. Reid on a French subject, Quasimodo, at Marancetra.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th ultimo, stating that he was directed by your Lordship to transmit to us a despatch with its inclosures from Her Majesty's Consul in Madagascar,* relative to a case of assault and wounding with intent to murder, alleged to have been committed in that island in September 1881 by a British subject named Reid on a French subject (a coloured native of Réunion) named Quasimodo.

That the scene of the alleged crime was Marancetra, which was at a considerable distance from Tamatave, where Her Majesty's Consul was stationed, and the Commissioner of the French Government had urged Her Majesty's Consul to take the preliminary steps for bringing the offender to trial at Tamatave on the information supplied by the written statements of the complainant and French witnesses addressed to the French Vice-Consul at Tamatave, in order to spare them the double journey from Marancetra, which would have entailed great detriment to their private business.

That in December 1881 the French Vice-Consul had transmitted their statements, duly legalized by him, to Mr. Pakenham, with a request that he would take action on them.

That the case had been reported by him to Mr. Pakenham as one of murder as far back as October 1881, when the recovery of the wounded man was doubtful.

That Sir Julian Pauncefote was to refer us to Mr. Pakenham's letter to the French Commissioner at Tamatave of the 6th January last (Inclosure 1 in Mr. Pakenham's No. 15), and to the reply thereto of the 13th (Inclosure 2).

Grounds for Consul Pakenham's refusal to take action.

That Mr. Pakenham had refused to take any action in the matter unless the French Commissioner would "file a criminal information against Mr. Reid" (the offender) under his official signature and seal, and give a written undertaking that the witnesses for the prosecution should attend before the British Consular Court at Tamatave on the day fixed for the preliminary inquiry, and, if necessary, should be produced before the Superior Court of Mauritius (see Order in Council, Article 23).

That copies of the Madagascar Order in Council of the 4th February, 1869, of the Rules and Regulations made under paragraph 27 of that Order, and of the Treaty between Great Britain and Madagascar of the 23rd October, 1817, and 27th June, 1865, were inclosed for convenience of reference.

That the case appeared to your Lordship to be one of considerable gravity, and Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether, under the circumstances, Mr. Pakenham would have been justified in summoning Mr. Reid or issuing a warrant for his apprehension without insisting on any of the formalities demanded by Mr. Pakenham in his letter to the French Commissioner of the 6th January (Inclosure 1), and generally as to the instructions which should be sent to Mr. Pakenham in reply to the request contained in the last paragraph of his despatch.

In obedience to your Lordship's commands we have the honour to report—

Mr. Reid should have been summoned, or warrant against him issued.

That, in our opinion, Mr. Pakenham has not sufficiently appreciated the gravity of the case, and that he would have been justified in summoning Mr. Reid or issuing a warrant for his apprehension, without insisting on any of the formalities demanded by him in his letter to the French Commissioner of the 6th January.

We think there was ample information before Mr. Pakenham not only to warrant, but to require that Mr. Reid should be summoned before him.

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* List of Papers:—

Consul Pakenham, No. 15, Slave Trade, March 14, 1882.
Madgascar Order in Council of February 4, 1869. (F. O. No. 1624.)
Rules and Regulations under Order in Council of February 4, 1869; dated July 1, 1869. (F. O. No. 1693.)
Treaties between Great Britain and Madagascar of October 23, 1817 ("Commercial Treaties," vol. i, p. 354), and of June 27, 1865. (F. O. No. 494.)

And if there were an information by the injured man or any of the witnesses on oath, we think Mr. Pakenham would be justified in issuing a warrant for Reid's apprehension.

Consul should not make conditions as to attendance of witnesses, as he is not responsible for results of their non-attendance.

It would, of course, be necessary that the witnesses should appear before the Consul and give their evidence in the presence of the accused, and that he should have an opportunity of cross-examining them. But we do not think that the Consul should make any condition with respect to this before taking the necessary steps to bring the alleged offender to justice.

If in the result the witnesses should not attend, there may be a miscarriage of justice for want of their evidence, but no responsibility for the failure to bring to justice an offender who appears to have been guilty of a gross outrage will then rest with the British authorities.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Morocco.

### No. 37.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 23.)

My Lord,

*Temple, March* 23, 1882.

North African and Soos Trading Company.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 13th instant, transmitting papers and requesting that we would favour your Lordship with our opinion and advice on the following question:—

Established independently of Sultan.

That a Company, styling itself the North African and Soos Trading Company, was attempting to establish itself on the south-western coast of Morocco below Mogador, and had entered into agreements with the Sheikhs of Soos, independently of the Sultan of Morocco, whose claim of sovereignty over the territory in question was acknowledged by Her Majesty's Government.

Company will not be protected against Sultan.

That the Moorish Government having protested against the proceedings of that Company as an infraction of the laws of Morocco, your Lordship had caused a letter to be addressed to the Company,* informing them the territories referred to in their prospectus were within the dominions of the Sultan, and that they must not expect protection from Her Majesty's Government against measures taken by His Highness to prevent illegal trading along the coast under agreements with native Chiefs, who had no authority to enter into them.

That Her Majesty's Minister at the Moorish Court about the same time addressed a communication to Her Majesty's Consul at Mogador, instructing him to make known to all persons within his Consular jurisdiction the views of the Moorish Government in regard to the Company. That that instruction received the approval of Her Majesty's Government.

Question as to publication of notification as to.

That Sir J. D. Hay also transmitted to the Foreign Office a letter he had received from the Sultan's Minister, Cid Mahomed Barghash, requesting him to forward a notification by the Moorish Government to the same effect to the "Times" newspaper for insertion, and that he applied for instructions.

That he was informed in reply that such a communication could not properly be made to a newspaper through Her Majesty's Representative, but that your Lordship was willing to give publicity to any official note on the subject which Cid Mahomed Barghash might address to your Lordship for that purpose.

That the Moorish Government adopted that suggestion, and that your Lordship was about to consult us as to the advisability of publishing as it stands the translation of the Moorish Minister's note inclosed in the annexed despatch, when a notice

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* To North African Company, December 12, 1881.

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appeared in the "Times" (of which a copy was annexed). That it appeared that that notice was forwarded to the "Times" for publication by Her Majesty's Consul at Mogador, without authority from the Foreign Office or from Sir J. D. Hay.

That your Lordship understood that that note had aroused the indignation of the promoters of the Company, and that Lord Tenterden invited our attention to the letter addressed to Sir Charles Dilke by Mr. Kerby, a solicitor representing one of the shareholders, and to the reply which had been returned thereto. That the notice was quite correct as regards the facts therein stated, but that Consul Payton exceeded his authority and instructions in transmitting it to the "Times" for publication. That Lord Tenterden was to request that we would favour your Lordship with our opinion whether the steps taken by Her Majesty's Consul might be held by Her Majesty's Government, in meeting any remonstrance addressed to them by the Company, to be justified by the circumstances of the case, and whether they should therefore accept the responsibility of the notice published by him in the "Times." That your Lordship also desired to be informed whether, in our opinion, there was any objection to the publication in the usual manner of the letter from the Moorish Minister to Sir J. D. Hay of the 21st January, 1882, or whether it should be made public at once in confirmation of the notice which had appeared in the "Times."

In obedience to your Lordship's commands we have the honour to report—

Consul Payton's notice in the "Times" justified, and Her Majesty's Government may accept responsibility for it.

That the steps taken by Her Majesty's Consul may, we think, be held by Her Majesty's Government, in meeting any remonstrance addressed to them by the Company, to be justified by the circumstances of the case, and that the responsibility of the notice published in the "Times" may be accepted by Her Majesty's Government.

No objection to publication of Moorish Minister's letter.

We do not think there is any objection to the publication at once, in the usual manner, of the letter from the Moorish Minister to Sir J. D. Hay of the 21st January, 1882. But its publication will probably not add much weight to the notice which has already appeared.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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List of Papers forwarded to the Law Officers, March 13, 1882:—

Sir J. D. Hay, Nos. 9, 10, 11, 12, Slave Trade, November 3, 7, 28, and December 8; No. 105, December 15, 1881; to Sir J. D. Hay (Telegraphic), December 28; No. 43, December 28; No. 44, December 29; to Messrs. McNaught and Co., July 21; to Soos and North African Company, December 12; Mr. Bird, December 19; to Mr. Bird, December 27, 1881; Sir J. D. Hay, No. 4, Commercial, January 28, 1882; Extract rom the "Times," February 15; Mr. Kerby, February 23; to Mr. Kerby, March 1, 1882.

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## Nicaragua.

### No. 38.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 6.)

My Lord, *Temple, April* 5, 1882.

Arbitration under the Treaty of Managua.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, copies of three Reports of the Law Officers of the Crown, dated respectively the 12th December, 1877[*]; the 13th May, 1878; and the 8th August, 1878,[†] relating to the questions then in dispute between Her Majesty's Government and the Government of Nicaragua, and arising out of the Treaty of Managua.

That those questions were referred to the Arbitration of the Emperor of Austria; and that Sir J. Pauncefote also transmitted the papers laid before Parliament[*] on the subject, which contained extracts from the preliminary correspondence, the Cases and Counter-Cases presented by each Government, and the Award of His Imperial Majesty. Also a printed Memorandum[†] on that Award by Mr. F. S. Reilly, who was intrusted with the preparation of the British Case and Counter-Case. That we should observe from the correspondence, at p. 50 of the Parliamentary Paper No. 2, that Her Majesty's Government refused to proceed to Arbitration unless every question arising under the Treaty of Managua was included in the reference, and that that condition was unreservedly accepted by the Government of the Republic.

Question of duties at Greytown.

That one of the principal questions laid before the Arbitrator was that of the right of the Nicaraguan Government to levy certain export and import duties at Greytown, which duties had been paid by British merchants and others under protest, Greytown having been declared a free port by Article VII of the Treaty of Managua. (British Case, Nicaragua, No. 2, p. 22: Article VII.)

That in the British Case, p. 24, sec. 105 (4), and in the British Counter-Case, p. 105, sec. 100 (16), the Arbitrator was asked to declare "that so much of the produce of the local duties or taxes on importation and exportation, which have been heretofore levied at Greytown, as has not already been applied for the purposes of the administration or preservation of the city should now be repaid, as far as practicable, to the merchants and others from whom those duties or taxes have been levied, and that, subject thereto, the same should now be applied for the purposes of the port."

That we should observe, however, that the Award declared, by Article VIII, that the imposition of import and export duties at Greytown (except as therein mentioned) was not warranted by the Treaty, but that it was silent as to the refunding of the duties paid under protest.

That the question had arisen whether such refund could be demanded by Her Majesty's Government, and that Sir Julian Pauncefote referred us to paras. 42–45 of Mr. Reilly's Memorandum, in which the point was considered and discussed.

That your Lordship would be glad to be favoured with our opinion whether Her Majesty's Government were entitled, under the Award, to demand the refund of those duties by the Nicaraguan Government, or whether the merchants who paid the same should be left to prosecute their claim in the Nicaraguan Courts, as suggested by Mr. Reilly.

In obedience to your Lordship's commands we have the honour to report—

These duties contrary to Treaty.

That we think the Award of the Emperor of Austria must be taken as determining conclusively that the duties in question were levied in violation of the Treaty.

But we think the Arbitrator intentionally abstained from ordering a repayment to the merchants of the duties paid by them, deciding that this was a matter of civil reclamation.

By Award, Her Majesty's Government not entitled to their repayment.

We think, therefore, that Her Majesty's Government cannot treat the Award as entitling them to insist on a refund of the duties.

Nicaraguan Government should be urged to refund.

But, inasmuch as the result of an appeal to the Courts of Nicaragua would probably be of doubtful value, we think Her Majesty's Government might properly urge the Nicaraguan Government to refund the duties, the illegality of which has been established, without compelling the merchants entitled to them to resort to legal proceedings.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 39.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 7.)

My Lord, *Temple, June* 6, 1882.

Import duties at Greytown.

WE were honoured with your Lordship's commands signified in Lord Tenterden's letter of the 20th ultimo, stating that, with reference to our Report of the 5th April[‡] (of which a printed copy was inclosed) on the subject of the Award of the Emperor of Austria in the Mosquito Coast Arbitration, and the claim of British merchants to a refund

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[*] Confidential No. 4216, p. 8.

[†] Confidential No. 4280, pp. 8 and 10.

[*] Parliamentary Nos. 2461, 2475.

[†] February 9, 1882.

[‡] See No. 38.

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of the import duties illegally levied at Greytown by the Nicaraguan Government before the date of the Award, Lord Tenterden was directed by your Lordship to transmit to us the further despatches, and their inclosures, which had been received from Her Majesty's Minister in Central America and Her Majesty's Consul at Greytown.*

Claim of British merchants for a refund of duties levied since the publication of the Award under Treaty of Managua.

That the question which now arose was in respect of the claim of British merchants at Greytown to a refund of the import duties illegally levied since the date of the Award. That the Award was dated the 2nd July last, but that, owing to the absence of a Representative of the Nicaraguan Government in Vienna, it was not actually communicated to them for a considerable time, and it was not until the 11th February last that a Decree appeared in their "Official Gazette" abolishing the import and export duties in question, which in the meanwhile had been exacted before by the local authorities. That we would observe that, in the explanatory Report which accompanied the Award (para. v, p. 28, Parliamentary Paper, sent with letter), it was stated that "the import duty will have to make room for some other system," and that your Lordship presumed that the Nicaraguan Government were entitled to a reasonable time for introducing this change of system, which involved a recourse to entirely different sources of revenue.

That if, therefore, Her Majesty's Government should decide upon demanding a refund of those duties, the first question to be determined would be the date from which the refund was to be made.

But that your Lordship entertained considerable doubt as to whether the merchants of Greytown had really sustained any loss by the payment of those duties, though illegally levied, which would morally justify Her Majesty's Government in pressing the above demand.

That, on that part of the question, Lord Tenterden was to invite our attention to Mr. St. John's despatch No. 3, Commercial, of the 14th February, and the translation inclosed therein of a letter addressed to him by the Nicaraguan Foreign Minister, Señor Cardenas; also to Mr. St. John's despatch No 3 A of the 7th March, inclosing a copy of the Nicaraguan Decree abolishing the duties, and his correspondence with Señor Medina, the successor of Señor Cardenas.

Nicaraguan Government admits justice of claim, but asks that it should not be pressed.

That the Nicaraguan Government did not contest the strict right of Her Majesty's Government to demand the refund of the duties paid since the promulgation of the Award, but that they strongly appealed to Her Majesty's Government not to press the claim on an impoverished country, supporting that appeal on equitable grounds which appeared to your Lordship to be worthy of careful consideration.

That the grounds on which the Nicaraguan Government founded their appeal were the following:—

That the import duty of 10 per cent. complained of was, it was alleged, substituted at the desire of the Greytown community in lieu of the ordinary taxes, which would rightfully have been imposed on them for the expenses of the port, under Article VII of the Treaty of Managua (Parliamentary Paper, "Nicaragua No. 2," p. 60).

That, if the Government had not exclusively applied the proceeds of that import duty to local purposes of administration and for the maintenance of the town and harbour of Greytown, they had devoted to those objects large sums taken from the general revenue of the Republic which could not have been supplied by local taxation.

That a large portion of the goods on which the import duty of 10 per cent. had been levied was destined for the interior of the Republic, and a drawback to the full amount of 10 per cent. was allowed out of the Nicaraguan import duty payable at the frontier, so that the payment of the 10 per cent. at Greytown was thereby cancelled. That, finally, that if the merchants received restitution of the import duty levied since the Award, they would not benefit by it, as local taxation to the same amount would have to be imposed to cover the expenses of administration incurred during that period.

That the proportion of imports which found their way into the interior of the Republic, and on which a drawback was allowed, was estimated by Mr. St. John and Consul Bingham at a fourth of the total imports, and those were valued at 200,000 dollars per annum.

That on that proportion the merchants could have no claim to indemnity, and, as regarded the goods not destined for the interior of the Republic, and on which no drawback had been allowed, it was not improbable that the 10 per cent. import duty, though paid under protest, was added to the selling price of the goods.

That, if so, the merchants had no moral claim to a refund of the duty paid on those goods, any more than they had for a refund of the duty already returned by way of drawback at the Nicaraguan frontier.

That Consul Bingham, in his despatch No. 2, stated that the amount of import duties paid in Greytown since the date of the Award was 12,593 dol. 82 c.

That, if one-fourth be deducted in respect of the drawbacks allowed on the goods destined for the interior, the amount of the claim would hardly exceed 9,000 dollars, even supposing that the refund could be claimed from the date of the Award; and that therefore, looking at the objects for which taxation might be imposed under Article VII of the Treaty of Managua, it was competent to the Nicaraguan Government to have levied by local taxation an amount equal to that irregularly levied by import duties.

That the question also remained whether the merchants were able to show that they were not recouped the import duty in the increased selling price of the goods.

That, in view of the above considerations, your Lordship was disposed to think that the British merchants would find it difficult to establish a sound claim to indemnity, and that before any demand was made to the Nicaraguan Government for a refund of the duties, some inquiry should be instituted, in order to ascertain the real measure of loss sustained by the claimants.

That, if we should concur in the above views, Lord Tenterden was to request that we would favour your Lordship with our opinion as to whether, under the circumstances, Her Majesty's Government would be justified in insisting upon proof of the losses alleged to have been sustained by the British merchants of Greytown, before making a demand on the Nicaraguan Government for the indemnity which they claimed.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government justified in demanding proof of losses by British merchants before claiming the indemnity.

That we think Her Majesty's Government would be justified, under the circumstances, in insisting upon proof of the losses alleged to have been sustained by the British merchants of Greytown before making a demand on the Nicaraguan Government for the indemnity which they claim.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] Mr. St. John, No. 3, Commercial, February 14; ditto, No. 3 A, Commercial, March 7; Mr. Bingham, No. 2, Political, March 26, 1882. "Nicaragua No. 1 (1881);" Foreign Office, No. 2461; "Nicaragua No. 2 (1881);" Foreign Office, No. 2475.

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## Pacific Islands.

### No. 40.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October 26.*)

*Temple, October* 26, 1882.

My Lord,

Naturalization of Mr. W. J. Hunt, a British subject, Samoa, and his exemption from British jurisdiction.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit us documents, as described in the accompanying list,* referring to the case of Walter James Hunt, by birth a British subject, who claimed to have exempted himself from

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[*] List of Papers transmitted to the Law Officers in Foreign Office letter of September 18, 1882:—
1. Letter from Colonial Office of May 19, 1882, with four inclosures.
2. Law Officers' Report, No. 181, of June 14, 1872, Confidential No. 4098.
3. "The Naturalization Act, 1870," 33 Vict., cap. 14.
4. Western Pacific Orders in Council of 1877 and 1879, Confidential Nos. 3966 and 3958.
5. Treaty with Samoa of August 28, 1879, No. 668.
6. Convention with Samoa of September 2, 1879, No. 669.

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the operation of the Western Pacific Orders in Council, 1877-79, and the other liabilities incidental to the status of a British subject, by having obtained letters of naturalization as a subject of Samoa.

That a statement of the facts of the case would be found in Inclosure 2 of the Colonial Office letter of the 19th May.

That the Law Officers of the Crown advised in 1872 (Paper 2), with special reference to Fiji, that British subjects could not, by assuming the nationality of an uncivilized State, withdraw themselves from British jurisdiction, and the question now raised in the case of Mr. Hunt was whether Samoa was a "foreign State" within the meaning of section 6 of "The Naturalization Act, 1870."

That Sir A. Gordon, in a Memorandum which forms Inclosure 4 of the Colonial Office letter of the 19th May, contended that, even if Samoa were a foreign State within the meaning of the Act, Mr. Hunt's claim to be a Samoan subject was not such as to exempt him from the operation of the Western Pacific Orders in Council.

That Mr. Lister had to request that we would take the papers into our consideration, and favour your Lordship with our opinion on the questions submitted in the Colonial Office letter of the 19th May, namely, whether there was any ground for the contention that Hunt could be naturalized as a Samoan subject, so as to be taken out of the High Commissioner's jurisdiction; and whether, by recognizing a native Government in the Western Pacific to the extent of concluding Treaties with it, Her Majesty's Government could be held to have bound itself to recognize its letters of naturalization granted to British subjects who resisted the Queen's authority.

That, in relation to the above points, Mr. Lister was to direct our attention to the Judgment of the Chief Justice of Fiji, which we would find at p. 25 of the printed papers forming Inclosure 3 in the Colonial Office letter of the 19th May.

In obedience to your Lordship's commands we have the honour to report—

Hunt not exempt from British jurisdiction.

That, in our opinion, there is no ground for the contention that Hunt was naturalized as a Samoan subject so as to be taken out of the High Commissioner's jurisdiction.

Samoa not a "foreign State" by Act of 1870.

The information before us appears to us to show that Samoa is not a "foreign State within the meaning of "The Naturalization Act, 1870," and even if it were, there appears to have been no legal act of naturalization in the case of Mr. Hunt.

Conclusion of Treaties does not bind Great Britain to recognize letters of naturalization.

We are of opinion that, by the mere fact of recognizing a native Government in the Western Pacific to the extent of concluding Treaties with it, Her Majesty's Government cannot be held to have bound itself to recognize the letters of naturalization granted by it to British subjects. The fact that such Treaties have been entered into is not, we think, conclusive that the Government with whom they have been made is the Government of a "foreign State" within the meaning of the Act of 1870.

Whether it is a "foreign State" or not must be determined by other considerations.

We have, &c.
(Signed) HENRY JAMES
FARRER HERSCHELL.
J. PARKER DEANE.

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## Persia.

### No. 41.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 1.)

*Temple*, *November* 30, 1882.

My Lord,

Case of Mr. Arsenian, a Persian, naturalized in Great Britain.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 21st instant, stating that in our Report of the 22nd November, 1881, on the case of Mr. Arsenian, we advised that there was no reason to modify the opinion we had expressed in our previous Report, that Mr. Arsenian was not exempt from the jurisdiction of the Persian Consular Court at Constantinople in a civil suit instituted against him there; but that, for the reasons stated by us, we suggested that Her Majesty's Ambassador should afford his good offices to Mr. Arsenian, and should comply with his request that an officer from Her Majesty's Embassy might attend at the Court of the Persian Ambassador when the case should come before his Excellency on appeal from the Consular Court.

Judgment given against him by Persian Court at Constantinople, with power to appeal.

That the Earl of Dufferin was instructed accordingly; and that we should perceive from his Excellency's despatch that the case was tried on the 9th January last; that a Dragoman from the British Embassy was present throughout the trial, who reported that the proceedings were conducted with perfect propriety and decorum, and that every opportunity was given to Mr. Arsenian's counsel to state their case; and that, although Judgment was given against the appellant, it was explained by the legal adviser to the Persian Ambassador that a door had been left open for Mr. Arsenian to make good his claims to a portion of the property upon the ground of his co-partnership with his father.

Mr. Thomson to assist him unofficially on his going to Tehran.

That Mr. Arsenian thereupon determined to go to Tehran to press his case with the Persian Government, and that Her Majesty's Minister at Tehran was instructed to afford him such advice and assistance, unofficially, as he might think proper, inasmuch as he was a naturalized British subject, though amenable to the laws and jurisdiction of Persia, the country of his birth.

Mr. Thomson's three objections to Persian jurisdiction.

That a despatch had been received from Mr. Thomson, Her Majesty's Minister at Tehran, in which, with reference to the instruction above referred to, he raised the following points:—

1. That he believes Mr. Arsenian is not of Persian, but Turkish, origin.
2. That he (Mr. Thomson) is not aware that the law of Persia requires the formal assent of the Government to a change of nationality by a Persian subject.
3. That the Russian Government protects Persian subjects naturalized in Russia, not only out of Persia, but in Persia itself, and that under the most-favoured-nation clause of the British Treaty with Persia Her Majesty's Government is entitled to the same privilege (Treaty, Article IX).

Objections 1 and 2 of no force.

That, with regard to the first point, it might be remarked that Mr. Arsenian himself had never denied his Persian origin, but, on the contrary, had affirmed it throughout, and that if he were really a Turkish subject the same difficulty would arise as to extending British protection to him in Turkey as against the Turkish authorities.

That, with regard to the second point, it was to be observed that the Persian Ambassador at Constantinople had formally affirmed that such was the law of Persia.

Third objection. Jurisdiction conceded to Russia in similar cases can be claimed by Great Britain.

Can case, after settlement in Persian, be transferred to British Court at Constantinople?

That, as regards the third point, which would appear to be the most important, it was to be presumed that if the Persian Government conceded to Russia the right of protecting officially, in Persia, Persian subjects naturalized in Russia, Her Majesty's Government should claim the same privilege in the case of Mr. Arsenian; but that your Lordship would be glad to know whether the case, having already been tried and decided by the Persian Court in Constantinople, Her Majesty's Government could demand that the property of Mr. Arsenian, confiscated by the Judgment of that Court, should be transferred to Her Majesty's Supreme Consular Court at Constantinople, as suggested by Mr. Thomson.

That Sir J. Pauncefote was to request our opinion as to the instructions which should be sent to Mr. Thomson in answer to his despatch.

In obedience to your Lordship's commands we have the honour to report—

Concur in opinion as to objections 1 and 2.

That, with regard to the first two points raised by Mr. Thomson, we concur in thinking that it would be impossible to take any action upon them in the present case.

Great Britain can claim rights of jurisdiction conceded to Russia.

As regards the third point, there can be no doubt that Great Britain is entitled to claim that the treatment of her subjects shall be placed on the footing of the treatment of the subjects of the most favoured nation. And if, as a matter of right, Persian subjects who have been naturalized in Russia, without the consent of the Persian Government, are accorded the same rights as natural-born Russian subjects, we think Her Majesty's Government would be justified in insisting that Persian subjects, naturalized in Great Britain, should receive the same treatment. But it would need to be clearly made out that the term "subjects" had, as a matter of right, been given this extended meaning, and that it was not a mere concession in particular cases.

But further information as to such concession necessary.

The information afforded by Mr. Thomson's despatch is far too indefinite to enable us to form a judgment upon the question. We would suggest, therefore, that, in order

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to guide the action of Her Majesty's Government in the future, inquiry should be made of Mr. Thomson whether the point has ever been distinctly raised between the Russian and Persian Governments, and in what class of cases naturalized Persians have, in Persia, received Russian protection as against Persian authorities, and whether such cases have frequently arisen.

Case cannot be transferred to British Court at Constantinople.

But whatever the result of these inquiries may be, we think that Mr. Thomson should be informed that, after what has occurred in the present case, it is impossible for Her Majesty's Government to demand that the property of Mr. Arsenian should be transferred to Her Majesty's Supreme Court at Constantinople, as suggested by Mr. Thomson.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*—Law Officers, April 8 and June 9, 1880; and November 22, 1881; to Earl of Dufferin, No. 794, November 25, 1881; Earl of Dufferin, No. 70, February 1; Mr. Slagg, March 25; to Mr. Thomson, No. 36, April 6; Mr. Thomson, No. 182, October 16, 1882; Treaty between Great Britain and Persia, March 4, 1857, No. •

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## Peru.

### No. 42.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 6.)*

*Temple, July* 5, 1882.

My Lord,

War contributions and tax on traders levied by Chile in Peruvian territory.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 14th instant, stating that the attention of Her Majesty's Government had been called to an increase in the tax on traders which was recently decreed by the Chilean authorities in Lima, in excess of the amount formerly levied by the Peruvian Government, and to an assertion of right on the part of the Chilean Secretary of State to impose war contributions on foreigners in the territories of Peru then in the military occupation of the Chilean forces.

Treaty stipulations.

That the despatches which had been received from Her Majesty's Diplomatic Agent at Lima on the subject of those exactions by the Chilean authorities were forwarded therewith, together with a copy of the Treaties between Great Britain and Chile of the 4th October, 1854, and between Great Britain and Peru of the 10th April, 1850, and a Memorandum by Sir E. Hertslet, from which we should perceive that both Chile and Peru were precluded by Treaty from imposing, in their respective countries, military exactions and requisitions on British subjects.* That that immunity was enjoyed also by the subjects of other Powers under their Treaties. That it appeared from Sir S. St. John's despatch No. 103 that the Representatives of the Powers in Lima demurred to the doctrine of the Chilean Government, that the latter, though belligerents in occupation of Peruvian territory, were justified in exacting war contributions in that territory from natives and foreigners alike, and they contended that such doctrine was contrary to international law, as well as to the Treaties. That although no such war contribution had yet been levied by the Chileans on foreigners in the occupied territories of Peru, the question might arise any day; and that Sir J. Pauncefote was to request our opinion as to whether the contention of the foreign Representatives on the above question could be supported as regarded the immunity claimed by Her Majesty's Representative for British subjects.

In obedience to your Lordship's commands we have the honour to report—

British subjects cannot claim immunity.

That we do not think the contention of the foreign Representatives can be supported as regards the immunity claimed by Her Majesty's Representative for British subjects.

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* Sir S. St. John, No. 103, November 7, 1881; Mr. Graham, No. 33, April 21, 1882; Hertslet's Treaties, vol. ix, pp. 624, 952; Memorandum (Sir E. Hertslet), June 8, 1882.

No breach of Treaty with Chile, or of international law, in levying of tax by one country in military occupation of another.

Though we have not definite information before us upon the point, we understand that the Chilean army is, as a belligerent, in military occupation of a part of the Peruvian territory. This being so, the imposition there of the tax complained of is not, in our opinion, a breach of the Treaty between this country and Chile.

It also appears to us that there is no violation of international law if a tax levied by a Power in military occupation of the territory of another be levied upon foreign residents within the occupied territory.

Tax is not a "military exaction."

Even if Chile be regarded as *de facto* ruler of that part of Peru which is occupied by her, and as bound in respect of it by the Treaty with this country, the tax imposed on traders does not appear to us to be a "military exaction or requisition" within the meaning of the Treaty, even if some of the revenue raised by it be required for the purposes of war.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Portugal.

### No. 43.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 26.)*

*Temple, July* 25, 1882.

My Lord,

"City of Mecca." Collision case.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 30th ultimo,* stating that he was to transmit to us the reply of the Portuguese Government to the proposal made to them by Her Majesty's Government in October last to refer to arbitration the question whether the Judgments of the Portuguese Tribunals whereby the British steamer "City of Mecca" was held solely to blame and mulcted in the whole damages and costs arising out of her collision with the Portuguese steamer "Insulano" were compatible with the International Sailing Rules.†

That the proposal of Her Majesty's Government, and the grounds on which it was based were contained in your Lordship's despatch No. 33 of the 30th September, 1881, to Mr. Morier (Correspondence: Part II, p. 99), the draft of which had previously been submitted and approved by us in our Report of the 10th September, 1881 (Correspondence: Part II, p. 98).

That a copy of that despatch was communicated to the Portuguese Government by Mr. Morier on the 20th October last, and that their reply, which was dated the 14th April last, formed the inclosure in Sir C. Wyke's No. 21, Commercial, of the 25th April (Correspondence: Part II, p. 105).

Portugal declines arbitration.

That we should perceive that the Portuguese Government absolutely declined the proposed arbitration, and that the note of the Foreign Minister, Senhor Serpa, entered at great length on the various points raised in the case.

That inclosed was a Minute on the Portuguese reply, which concluded with some suggestions as to the substance of a rejoinder on the part of Her Majesty's Government,‡ and that Sir J. Pauncefote was to request that we would inform your Lordship whether we concurred in the observations and suggestions contained in the Foreign Office Minute thereon, and if not, that we would favour your Lordship with our opinion as to the nature of the rejoinder which might properly be sent thereto.

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* See also letter to Law Officers of July 20, 1882.
† Sir C. Wyke, No. 21, Commercial, April 25, 1882.
‡ See printed Minute by Sir J. Pauncefote (unnumbered), dated June 24, 1882, annexed.

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In obedience to your Lordship's commands we have the honour to report—

Approving proposed reply.

That we concur in the suggestions contained in the Foreign Office Minute with regard to the rejoinder proposed to be sent to the Portuguese Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Extract from Minute by Sir J. Pauncefote, dated June* 24, 1882.

I would suggest the following heads of a rejoinder:—

1. Express satisfaction at the disclaimer of the doctrine we objected to as to territorial waters, and state that we did not invite them to come to any agreement as to the limits of territorial waters, and it is unnecessary, therefore, to pursue that subject.

2. Express regret at refusal to arbitrate, and explain that we did not propose to reopen the suits, which are finally disposed of so far as legal Tribunals are concerned, and that it is precisely because all legal remedies are exhausted that we desired to submit to arbitration our contention that the Portuguese Judgments are incompatible with the International Sailing Rules, and constitute, therefore, a breach of an international compact between the two Governments.

3. Repudiate the charge that the action of the "City of Mecca" was cowardly and malicious, and that she failed to render proper assistance. Re-establish the facts.

4. Point out that the protest of the Portuguese captain is alone sufficient to establish our case, which does not rest on the premises stated by Senhor Serpa, but on the fact that, owing to his mistake as to the meaning of Article 14, the captain of the "Insulano" got into the way of the "City of Mecca" instead of getting *out* of it, and that the Portuguese Tribunals refused to recognize any fault on his part.

5. State that the Judgment has not been enforced in England, and that as regards the decision of the French Cour de Cassation, point out that it proceeds on the assumption that there were exceptional circumstances which justified the "Insulano" in departing from Rule 14, whereas there is not a vestige of evidence of any such exceptional circumstances; and unless these can be pointed out, Her Majesty's Government cannot accept that decision as any authority in support of Senhor Serpa's arguments.

6. Her Majesty's Government therefore maintain the opinion that there has been a grave miscarriage of justice; that the Portuguese Tribunals were bound by the International Sailing Rules to pronounce the captain of the "Insulano" in fault for having admittedly violated Article 14 and caused the peril, and that they were not justified under those Rules in laying the whole blame on the "City of Mecca" for not manœuvring so as to avoid the peril thus created by the "Insulano."

7. In conclusion, say that Her Majesty's Government can only repeat the expression of their regret that their friendly proposal to refer the question to arbitration has been rejected on grounds which they consider altogether unsatisfactory and insufficient.

The papers, however, should, in the first place, be referred to the Law Officers, for their observations and suggestions.

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## No. 44.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 21.)

*Temple, September* 21, 1882.

My Lord,

Collision between "City of Mecca" and "Insulano."

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 9th instant, stating that, with reference to our Report of the 25th July last, on the case of the "City of Mecca," he had the honour to transmit to us the draft of a despatch which it was proposed to address to Her Majesty's Minister at Lisbon in reply to the note of the Portuguese Minister for Foreign Affairs declining arbitration.

That the draft was founded on the suggestions contained in the printed Minute on the Portuguese reply, referred to and approved in our Report of the 25th July.

That Sir J. Pauncefote was to request our opinion as to whether the draft despatch called for any modification.

In obedience to your Lordship's commands we have the honour to report—

Approving draft of reply to Portuguese note declining arbitration.

That we do not think the draft despatch submitted to us calls for any modification.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*Minute by the Lord Chancellor.*

I entirely approve of this draft despatch.

(Signed) SELBORNE.

*Cuffnells, Lyndhurst, September* 12, 1882.

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*Draft of a Despatch from Earl Granville to Sir C. Wyke.*

(No. . Commercial.)

*Foreign Office, August* , 1882.

Sir,

HER Majesty's Government have had under their consideration the reply of the Portuguese Minister for Foreign Affairs, transmitted in your despatch No. 21, Commercial, of the 25th April last, to their proposal to refer to international arbitration the question whether, in the case of the collision between the "City of Mecca" and the "Insulano," the Portuguese Tribunals had failed to give proper effect to the International Sailing Rules. The grounds on which that proposal was based were explained in my despatch No. 33 of the 30th September, 1881, to Mr. Morier, of which a copy was left by him with Senhor Hintze Ribeiro. In that despatch I also expressed the hope that the Portuguese Government would disclaim the doctrine laid down by their Supreme Court, that the territorial waters of Portugal extend as far as the sight can reach from her shores.

Her Majesty's Government note with satisfaction that the Foreign Minister, in his reply, clearly repudiates that doctrine. I need not follow his Excellency in his remarks as to the absence of any fixed international rule on the subject, as Her Majesty's Government did not ask that the Portuguese Government should agree to any particular rule, but only took exception to the doctrine laid down in the Judgment complained of. That question is now disposed of by the assurance given by Senhor Serpa that Portugal does not claim any greater extent of maritime territory than other nations. Her Majesty's Government, however, regret to learn that the Portuguese Government decline their proposal of an arbitration on the question of the International Sailing Rules; and it appears to them that Senhor Serpa does not correctly apprehend the nature of that proposal; for one of the grounds taken by his Excellency for declining the arbitration is that neither the constitutional law of Portugal nor the public law of Europe will allow the revival of a suit which has been definitely terminated.

On this point I have to observe that Her Majesty's Government did not ask that the Judgments should be reopened. They admit that the Judgments are final, but they contend that the Portuguese Government are liable to indemnify the owners of the "City of Mecca" for the consequences resulting to them from the disregard by the Portuguese Tribunals of the International Sailing Rules; and the only question they proposed to refer to arbitration is whether the Portuguese Tribunals had properly applied the Sailing Rules to the facts proved or admitted before them, or had failed to give effect to the international engagement therein contained to the prejudice of British subjects.

It is precisely because all legal remedies are exhausted that Her Majesty's Government desired to submit to arbitration their contention that the Portuguese Judgments are incompatible with the International Sailing Rules, and constitute, therefore, a breach of international compact between the two Governments.

Senhor Serpa, in declining this proposal, criticizes the arguments contained in my despatch to Mr. Morier, and after giving a summary of the case as therein presented, he states that "its capital grounds or essential premises" are as follows:—

1. That the original cause of the collision was that the "Insulano" did not alter her course *as soon as she saw the "City of Mecca."*

2. That the Portuguese Courts, "*by not imputing the fault to the 'Insulano,'*" failed to carry out Article 14 (British) of the Sailing Rules.

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I desire to point out, however, that both these statements are inaccurate.

As regards the first, the contention of Her Majesty's Government was not that the "Insulano" did not alter her course "as soon as she saw the 'City of Mecca,'" but that she failed to do so *in time to get out of the way* of the "City of Mecca," as she was bound to do by Article 14.

As regards the second, Her Majesty's Government have only contended that the Portuguese Court, by relieving the "Insulano" from any blame whatever, and imputing the whole blame to the "City of Mecca," have failed to give effect to Article 14.

Senhor Serpa goes on to argue that Article 14 does not require the steamer which is bound to get out of the way to alter her course the moment she sights the other steamer, and that as the appreciation of the proper moment for doing so is a difficult matter, Article 14 is made subordinate to Article 19 (British), which prescribes a departure from it when special circumstances render it necessary to avoid immediate danger; that the "City of Mecca" was bound to avoid the danger, and did not; and that the misinterpretation by the Portuguese captain of Article 14, far from constituting such a grievous mistake as Her Majesty's Government endeavour to make out, was quite excusable under the circumstances.

As regards this last statement, I would observe that it is hardly possible to conceive a more dangerous violation of the Sailing Rules than that of a steamer wrongfully attempting to cross the bows of another when bound to get out of her way, under Article 14, especially where (as in the present case) the captain of the offending steamer is under the mistaken impression that he is doing his duty, and obeying the Sailing Rules, instead of violating them, and is the more likely, therefore, to persevere in his blunder.

The protest of the master of the "Insulano" is most important on this point. He stated that, as the "City of Mecca" did not get out of the way, she being bound to do so, while it behoved the "Insulano" to keep her course, "he sheered to the southward to see if he could thus avoid the collision, *which was then imminent.*"

It is admitted that the vessels were crossing within the meaning of Article 14, and that it was the duty of the "Insulano," and not of the "City of Mecca," to get out of the way.

Nevertheless, Senhor Serpa argues that the mistake of the captain of the "Insulano" was immaterial, as he wore off to the south when the danger was immediate and evident, and the collision would not have occurred had the "City of Mecca" taken steps to avoid it, as bound to do by Article 19.

It is clear, however, that the "Insulano," owing to the mistake of her master, did not wear to the southward *in time to get out of the way*, as she was bound to do under Article 14, and the jury expressly found that, had she altered her course *at a proper distance*, the collision would have been avoided. (British Underwriters' Suit; Answers 30 and 31.) It cannot be denied, therefore, that the imminent danger which the "City of Mecca" is blamed for not avoiding was created by the wrongful navigation of the "Insulano," and, in fact, that the "Insulano" got in the way of the "City of Mecca," instead of getting out of her way, as bound to do by Article 14.

It has never been pretended throughout the whole proceedings that any special circumstances existed which justified a departure from that important Sailing Rule. Its violation by the captain of the "Insulano" was unquestionably the primary cause of the collision. Yet he was exonerated by the Portuguese Tribunals of all blame for the consequences of his grave mistake.

The ground assumed by Senhor Serpa appears to Her Majesty's Government to have really tbe effect, when applied to such a state of facts as that of the present case, of reducing to a nullity the international agreement contained in Article 14. "The absolute rule of navigation," his Excellency says, "the supreme and immutable precept imposed by the Regulations upon every ship, is that whenever a danger is impending they should regulate their course, or steer in such a manner as to obviate such danger, although it may be necessary for the purpose to act contrary to, or to break, the Rules laid down in the foregoing Articles." This principle, which can have no application except when it is already too late for safety to be obtained by adherence to the Rules, is here apparently extended so as to leave it in all cases of "impending danger" to the discretion of the masters of ships to "act contrary to, or break, the Rules."

To the contention of Her Majesty's Government, that even assuming that there was blame on the side of the "City of Mecca," the Court should have held that the "Insulano" was also in fault for not having obeyed Article 14, and that each party should have been ordered to bear his own losses, as provided by Article 1568 of the Portuguese Code, Senhor Serpa replies that the jury did not find that the "Insulano" had been guilty of a fault in the sense and for the purposes of Article 1568; and further, that the owners of the "City of Mecca" did not ask the Court to apply Article 1568 of the Code, but only to find the "Insulano" solely to blame, and that the Court could only decide according to what is petitioned, and he cites a Municipal Law in support of this objection.

This is a new argument, now raised for the first time, and the force of which Her Majesty's Government are unable to recognize. They apprehend that this rule of procedure cannot possibly relieve the Court from giving effect to a positive enactment like Article 1568 of the Code on the law of collision—an enactment founded on such obvious principles of justice that it has found its place in some form or other in the jurisprudence of all civilized States.

Senhor Serpa then proceeds to state that one of the Portuguese Judgments has been enforced in France and another in England; that the French Tribunal entirely concurred in the Portuguese decision and its application of the Sailing Rules to the case, and that it is impossible that all these suits and Judgments should now be reopened.

I have already explained that it is not proposed to reopen any Judgments. I may mention, however, that, as regards the enforcement in England of the first Judgment in favour of the English underwriters, no such proceeding took place, the Order obtained for that purpose in the Court of Admiralty, under the impression that the Judgment was *in rem*, having been set aside on appeal.

As regards the enforcement in France of the second Judgment in favour of the French underwriters, it is to be observed that in its "Arrêt" the Court of Cassation approves the view of the Court of Rouen that, if Article 14 was not obeyed by the "Insulano," "c'est que les circonstances particulières, autorisant aux termes de l'Article 19 du même Décret une dérogation à ces Règles, se présentaient dans l'espèce." But there is nothing whatever to show what were the "circonstances particulières" which justified the "Insulano" in departing from Rule 14. Not a vestige of them is to be found in the evidence throughout the whole proceedings, and unless these can be pointed out, Her Majesty's Government cannot accept that decision as any authority in support of Senhor Serpa's arguments.

I regret to observe that his Excellency cites a passage from one of the Portuguese Judgments in the case implying that the "City of Mecca," in a cowardly manner, and "out of mere caprice," ran into the "Insulano" because the latter, for some reason, did not keep from her bow.

I am glad of this opportunity to give the most emphatic denial to those imputations, which are unsupported by the evidence, and most unjust towards the officers and crew of the British vessel. That juries, in cases of this kind, should be carried away by strong feelings of national prejudice can well be conceived, and no more striking instance can be cited than that which occurred in the third suit against the "City of Mecca," where the jury, in order to set at rest once for all the competency of the Portuguese Courts of Justice, decided, in opposition to the declarations of the parties, and in the face of the reports of the captains of the two ships, and in the face of everything that was stated in the pleadings, that the accident occurred at a distance of 3 miles from the coast.

But that imputations of cowardice and inhumanity should have been so lightly and inconsiderately made from the Judicial Bench against the officers and crew of the British vessel cannot fail, when the whole case is published in this country, to excite feelings of painful surprise.

Again, Senhor Serpa urges that the "City of Mecca," instead of rendering assistance to the "Insulano" after the collision, steamed away at full speed, and only stopped after she had discovered that her own damage compelled her to put into Lisbon, and two guns of distress had been fired by the "Insulano," for which misconduct alone the "City of Mecca" would have been held solely to blame by a British Court under section 16 of "The Merchant Shipping Act, 1873."

That section, it is true, provides that in every case of collision it shall be the duty of the master of each vessel, *if and so far as he can do so without danger to his own vessel*, crew, and passengers, to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel such assistance as may be practicable and necessary; and that if he fails to do so without reasonable cause, the collision shall, *in the absence of proof to the contrary*, be deemed to have been caused by his own wrongful act, neglect, or default.

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But on this part of the case his Excellency, unintentionally, no doubt, does injustice to the Commander of the "City of Mecca," and it becomes necessary to re-establish the facts.

This charge of misconduct against the English captain was originally made in the suits brought against the "City of Mecca," but it was entirely contradicted by the English crew, and the condition of the "City of Mecca" after the collision, as well as the declarations of some of the witnesses on the side of the "Insulano," attest the humane conduct of the English captain, who succeeded, notwithstanding the perilous state of his own vessel, in rescuing the crew and passengers of the "Insulano," and landing them safely at Lisbon.

After the collision the Portuguese steamer had no holes that were visible, and that showed her to be in a dangerous and sinking condition, so much so, that whereas the accident took place at 1 P.M. she only foundered at 2·45 P.M. The passengers of the "Insulano" considered their steamer to be in less danger, because after they had jumped on board the "City of Mecca" they returned to the Portuguese ship, thinking themselves safer there. And even the Portuguese captain himself thought that his ship was in a better condition, as he was the first to call on her passengers, who had jumped on board the British steamer, to return to the "Insulano."

On the contrary, the British steamer, after the two ships had got clear of each other, was found to be in great danger, with her stern wrung away from the plates, with a hole of 3 inches, as far as could be seen, under water, with her head twisted to starboard, with 18 inches of water in her forehold, while the compartment that had been struck was filling rapidly; and the English captain, thinking that the Portuguese steamer had suffered no damage that placed her in so great a danger, ordered the engines to go at full speed, so as to hasten his entrance into the bar of Lisbon. But he had not gone far when, a signal of distress from the "Insulano" having been reported to him, he immediately stopped and lowered boats.

The condition of the British ship was so dangerous that, having sent three boats, each in charge of a mate, in order to save, conjointly with the boats of the "Insulano," the people wrecked from that steamer, she had only time to hoist one into the ship, and she had to tow the other two, and when one of these got loose, the hawser having parted, she could not pick it up, and the mate cried out to a schooner that was near to pick it up, there being at the time 24 inches of water in the fore-hold. With her compartment full of water, she only arrived at Belem at 6 P.M., and would have foundered at sea if the forty soldiers whom she saved from the "Insulano" had not rendered assistance by working the pumps, in order to empty the compartment that had been struck.

As regards the complaint made against the captain of the British steamer that it was necessary to fire two guns for him to make up his mind to render assistance to the shipwrecked people, his statement that the first gun was not heard on board the "City of Mecca" until after the boats had been lowered, is confirmed by the deposition of the Captain of the 2nd Regiment of Artillery, Manuel Rodrigues d'Oliveira, who commanded the detachment on their way to Madeira, and who swore that some efforts were made to fire a few shots from a small piece of artillery on board the "Insulano," but the guns could hardly be heard, because the powder was already wet.

I have dwelt at some length on this part of Senhor Serpa's note, on account of the gravity of the charge brought against the British vessel and of its injustice.

After full consideration of the various arguments adduced by Senhor Serpa, Her Majesty's Government are unable to modify their views of the case as expressed in my despatch to Mr. Morier of the 30th September, 1881. They maintain the opinion that there has been a grave miscarriage of justice; that the Portuguese Tribunals were bound by the International Sailing Rules to pronounce the captain of the "Insulano" in fault for having admittedly violated Article 14 and caused the peril, and that they were not justified under those Rules in laying the whole blame on the "City of Mecca" for not maœuvring so as to avoid the peril thus created by the "Insulano."

In conclusion, I can only repeat, on behalf of Her Majesty's Government, the expression of their regret that their friendly proposal to refer to arbitration the question of the liability of Portugal for the consequences of the Judgments rendered by her Tribunals in this case has been rejected on grounds which they consider altogether unsatisfactory and insufficient.

I have to instruct you to place a copy of this despatch in the hands of the Portuguese Minister for Foreign Affairs.

I am, &c.

# Russia.

## No. 45.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 19.)

*Temple, January* 17, 1882.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that, by your Lordship's direction, he transmitted to us the correspondence marked in the margin of his letter,* from which we would perceive that two firms, Messrs. Lipman and Co. and Messrs. Weiss, Brothers, consigned some goods to certain forwarding agents in Russia; that those agents being indebted to the Russian Customs on general account, the authorities had detained the goods in question to secure the payment of their claim.

Seizure by Russian Customs of goods consigned to agents by Messrs. Lipman and Messrs. Weiss, on account of debts of agents.

That Her Majesty's Ambassador at St. Petersburgh was instructed to represent to the Russian Government the hardship of making foreign merchants responsible for the debts of their forwarding agents, with whose liabilities they had no concern; but the reply of M. de Giers (inclosure in Mr. Wyndham's No. 82 of the 5th October) was to the effect that, under their Customs Regulations, the consignee and not the consignor is deemed the owner of the goods, and that, as there were no other goods of the agent in the Customs sufficient to cover his liability, the shipments in question could not be released.

That Sir Julian Pauncefote was to refer us also to the further note from M. de Giers (Inclosure 3 in Sir E. Thornton's No. 88), in which he justified the action of the Customs.

That in the covering despatch (No. 88), Sir E. Thornton reported his conversation with M. de Giers, who expressed a desire to know what was the practice in England in such cases, and, in reply to the inquiry whether, on proof of the property in the goods being in the shippers, they would be released, replied that the question was one for a lawyer to answer.

Correspondence with Russian Government.

That, under those circumstances, your Lordship instructed Sir E. Thornton to obtain a legal opinion on the question whether the consignor could, by Russian law, recover his goods on proof that they were his property and not that of the agent.

That the opinion of the legal adviser to Her Majesty's Embassy at St. Petersburgh, inclosed in Sir E. Thornton's No. 92, Commercial, of the 7th ultimo, showed that, although the consignor, on proving his title to the goods seized for the debt of the forwarding agent, was entitled to recover them, the practical difficulties were so great that the consignor had but little chance of success, and in the present cases, more than three months having elapsed since the date of the seizure by the Customs, it would seem that the remedy of the shippers, such as it might be, in the Courts of Law was no longer available.

That it appeared to your Lordship, under all the circumstances, that it might be desirable that Her Majesty's Ambassador should ascertain for what sum the Customs authorities would release the goods, in view of the other securities in their hands (see M. de Giers' note of the $\frac{\text{21st September}}{\text{3rd October}}$, inclosed in Mr. Wyndham's despatch No. 82, Commercial, of the 5th October), and to suggest to Messrs. Lipman and Messrs. Weiss that they should endeavour to effect a compromise with the Customs in order to free their goods, reserving their remedy against the agent.

Suggesting payment for release of goods, and compromise with Customs.

That before taking any further step in the matter your Lordship desired to be favoured with our opinion on the above suggestion, and generally as to the course which should be pursued; also as to what answer should be returned to M. de Giers' inquiry respecting the practice in this country in similar cases. Your Lordship presumed that Sir E. Thornton might be instructed to state that where the property in

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* Messrs. Lipman and Co., January 19; to the Earl of Dufferin, No. 5, Commercial, January 25; Messrs. Weiss, Brothers, October 10; Mr. Wyndham, No. 82, Commercial, October 5; to Messrs Lipman and Co., October 21; to Mr. Wyndham, No. 57, Commercial, October 21; to Messrs. Weiss, Brothers, October 21; Messrs. Weiss, Brothers, October 24; Sir E. Thornton, No. 88, Commercial, November 16; to ditto, No. 61, Commercial, November 26; to Messrs. Weiss, Brothers, December 14; to Messrs. Lipman and Co., December 14; and Sir E. Thornton, No. 92, Commercial, December 7, 1881.

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the goods consigned had not passed to the agent, the consignor, on proof of his title, would recover them, subject to the agent's lien thereon and to the payment of duties to which the goods were liable.

We were also honoured with Sir Julian Pauncefote's communication of the 10th instant.

In obedience to your Lordship's commands we have the honour to report—

That whether the views expressed by M. de Giers or the opinion of M. Cieszkowski in relation to the legality of the action of the Russian Government be correct, the result appears to be that Messrs. Lipman and Messrs. Weiss have no power to obtain the restoration of their goods by legal process. Notwithstanding that the extreme hardship of the case is apparent, we cannot say that the action of the Russian Government is so repugnant to justice as to justify Her Majesty's Government in insisting upon the release of the goods; for although, as is shown by the letter from the Customs Department of the 7th instant, the practice of the Department would prevent any such seizure in this country, yet a similar hardship might arise here if, under our law of distress for rent, the goods of a consignor were seized on the premises of an agent.

Approving suggested course.

We therefore think that the course suggested by your Lordship is the best that can be pursued, and that Messrs. Lipman and Messrs. Weiss should be informed that, the above views being entertained, Her Majesty's Ambassador at St. Petersburgh will be instructed again to represent the hardship of the case, and to learn from the Russian Government what is the smallest payment (in view of the fact that the goods of other consignors are in their possession) by which the release of Messrs. Lipman's and Messrs. Weiss' goods can be secured, and those gentlemen should also be informed that they will best consult their own interests by arriving at a compromise with the Russian authorities, reserving their remedy against the agent.

Practice in England in similar cases.

The letter of the 7th January, above referred to, affords the information which will enable your Lordship to reply to M. de Giers' inquiry respecting the practice in this country in cases similar to the present.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 46.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 18.)

*Temple, March* 17, 1882.

My Lord,

Expulsion of Mr. Lewisohn, a British Jew, from Russia.

WE are honoured with Lord Tenterden's letter of the 23rd ultimo, stating that in our Report of the 15th December relative to the case of Mr. Lewisohn, we suggested that a fuller Report should be obtained from a legal authority in St. Petersburgh upon the point whether his expulsion was in accordance with Russian municipal laws as applied to native Jews.

M. Cieszkowski's Report.

That Lord Tenterden had the honour to transmit the accompanying despatch* from Her Majesty's Ambassador at St. Petersburgh, inclosing the Report called for from M. Cieszkowski, and that he was directed by your Lordship to request that we would favour him with our observations upon it.

In obedience to your Lordship's commands we have the honour to report—

Expulsion contrary to Russian law. Should make representations to Russian Government.

That the Report of M. Cieszkowski appears to establish that Mr. Lewisohn was compelled to leave Russia in a manner not justified by the law of that Empire. And we think the Report affords the materials upon which that view of the case may well be urged upon the Russian Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] Sir E. Thornton's No. 54, February 7, 1882.

## No. 47.*

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May* 19.)

*Temple, May* 18, 1882.

My Lord,

Reduction of Chinese export duties on tea under Treaty of Kuldja.

WE were honoured with your Lordship's commands signified in Sir Charles Dilke's letter of the 11th instant, stating that in Sir J. Pauncefote's letter of the 28th March last, submitting for our opinion a question arising out of the Treaty of Kuldja between Russia and China it was stated that the Chinese Government had undertaken to lower the export duty on certain teas exported from China to Russia over the land frontier; that the Russian Government maintained that it was a recognized principle that goods imported by land received a different Tariff treatment to that adopted for sea-borne goods, and that consequently Her Majesty's Government could not claim similar reductions of duty on tea exported by British subjects from China by sea.

New Russian Tariff Regulations.

That Sir Charles Dilke, by your Lordship's direction, then transmitted to us the accompanying despatches from Her Majesty's Ambassador at St. Petersburgh,† from which it appeared that the Russian Government had recently issued new Regulations (of which a translation was inclosed in Sir E. Thornton's despatch No. 19 of the 27th March), whereby, with the exception of tea, muslin, and indigo dye, the importation of Anglo-Indian goods—as well as European, Persian, and Turkish goods—into Russia, through the frontier of the Central Asian Khanates, was prohibited; and a duty was imposed on tea imported through that frontier, greatly in excess of that charged on tea imported by sea. That Sir Charles Dilke was also to transmit to us the accompanying letter from the India Office,‡ and the accompanying copy of the Treaty of the 12th January, 1859,§ between Great Britain and Russia; and he was to request us to favour your Lordship with our opinion as to whether Her Majesty's Government would be justified in remonstrating against the Regulations in question, as being inconsistent with the IInd and Xth Articles of the Treaty of 1859, or with any other Articles of the Treaty; or whether Russia, not being bound by any particular Tariff, might, so long as the most-favoured-nation treatment was accorded to Great Britain, increase the existing Tariff on goods imported into Russia through that portion of the frontier of the Empire contiguous to the Central Asian Khanates, or absolutely prohibit the importation of goods through that frontier.

In obedience to your Lordship's commands we have the honour to report—

English goods by Treaty entitled to most-favoured-nation treatment.

That, under Article XI of the Treaty of 1859, the Emperor of Russia has in express words contracted "that no other or higher duties shall be imposed on the importation into the dominions and possessions of His Majesty of any article, the growth, produce, or manufacture of Her Britannic Majesty's dominions or possessions than are or shall be payable on the like article the growth, produce, or manufacture of any other foreign country; nor shall any prohibition be imposed on the importation of any article, the growth, produce, or manufacture of the dominions or possessions of either of the two Contracting Parties into the dominions and possessions of the other which shall not equally extend to the importation of the like articles, being the growth, produce, or manufacture of any other country."

In answer to your Lordship's questions put to us in the letter of Sir Charles Dilke, we are of opinion that Russia consistently with the words which are cited above, cannot increase the existing Tariff on articles the growth, produce, or manufacture of Her Majesty's possessions, and imported into Russia through the frontier of Russia contiguous to the Central Asian Khanates, so as to cause the duties thereon to exceed those imposed on the importation of the like articles, the growth, produce, or manufacture of any other foreign country, whether imported by land or sea-borne.

Differential Tariff treatment of goods imported by land and sea maintained by Russia cannot be upheld.

The principle maintained by Russia that goods imported by land received a different Tariff treatment to that adopted for sea-borne goods, seems to us not susceptible of argument when attempted to be applied to a country like Great Britain under such circumstances as the present.

Such a principle, if admitted, would defeat the intention of the most-favoured-nation clause in almost all, if not all, the Commercial Treaties contracted by Great Britain.

Russia may consistently with the Article of the Treaty of 1859 absolutely prohibit the importation of goods, but that prohibition must equally extend to the like articles being the produce, growth, or manufacture of any other country.

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[*] See also No. 8, p. 12.

[†] Sir E. Thornton, No. 2, Commercial, January 14; No. 16, Commercial, March 14; No. 19, Commercial, March 27, 1882.

[‡] India Office, May 5, 1882.

[§] Foreign Office, No. 427.

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**Should remonstrate against the new Regulations.**

We are therefore of opinion that Her Majesty's Government would be justified in remonstrating against the Regulations in question.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 48.

*The Attorney- and Solicitor-General to Earl Granville.—(Received October* 18.)

*Temple, October* 16, 1882.

My Lord,

**British vessel "Trevilley."**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he had to transmit to us, by your Lordship's direction, the papers noted in the accompanying list* relating to a dispute concerning a certain sum of 5,000 roubles, deposited in the hands of Her Majesty's Consul at Taganrog under the following circumstances:—

**Judgment against for breach of charter-party.**

The British vessel "Trevilley," on her return to Taganrog last April, was arrested in pursuance of a Judgment obtained against the master for 5,000 roubles in a suit for breach of charter-party.

**Release of vessel on deposit of 5,000 roubles with British Consul.**

That the case had been tried by the Commercial Court of Taganrog in the previous November. That the defendant, however, gave notice of appeal to the Superior Court at St. Petersburgh, and in order to obtain the release of the "Trevilley," the Directors of the Ship-owners' Mutual Protection and Indemnity Association intrusted their agents at Taganrog to deposit the sum of 5,000 roubles, which they did, and the vessel was released. That the deposit was made in the hands of Mr. Wooldridge, the British Consul, who gave a receipt in writing in the following terms:—

**Terms of receipt for deposit.**

"Received from Captain Beckerly, of the steamer 'Trevilley,' through Mr. Godfrey M. Hoyland, the sum of 5,000 roubles, as security for the claim of Mr. Berthold Smith, of Taganrog, upon Captain Hain, of the English steamer 'Trevilley,' recently adjudicated upon by the Commercial Court of Taganrog, which deposit is to lie in the British Consulate at Taganrog until the case in question is settled by final decision according to the Russian laws; and if that decision is in favour of Mr. Berthold Smith, I, or my successor in the Consulate, undertake to pay over to Mr. Berthold Smith the above amount of 5,000 roubles. If, at the expiration of six months, the present sentence of the Court in favour of Mr. Berthold Smith is not reversed, I am to consider the case as finally settled, and am bound to hand over the amount hereby deposited to Mr. Berthold Smith."

**Dispute as to agreement respecting deposit.**

That the Consul asserted that the terms of the receipt were adopted with the consent of both parties (see his letter of the 20th July). That the Association, however, contended that the real agreement was not expressed in the receipt, as it was the intention of the parties that the deposit should remain in the hands of the Consul for such reasonable time as would allow of the appeal being heard (see letter of Mr. Adamson of the 10th July, and of Mr. Mitcalfe of the 20th September), and they had requested that Her Majesty's Consul should be instructed to hold the sum deposited with him until the conclusion of the proceedings on appeal.

That your Lordship then telegraphed to Consul Wooldridge, inquiring whether he could not obtain an order from the Court to pay the 500*l.* into Court, and thus free himself from the whole business. That the Consul had telegraphed, in reply, that the President of the Court would not make any order, but that he would accept the money, if offered, on the understanding that it might be paid to the party in whose favour the Senate decided. That, on the other hand, the plaintiff, Mr. Berthold Smith, protested against the action of the Consul in communicating with the Commercial Court here respecting money deposited under an agreement mutually made by the agents for the "Trevilley" and himself, and declared his intention of holding the Consul responsible for any violation of his undertaking in the matter.

That he would probably institute a suit against Mr. Wooldridge, if the latter refused to pay him the money on the 8th of this month, when the period of six months would expire.

That your Lordship would be glad to be favoured with our opinion as to whether Mr. Wooldridge should be instructed to retain the money provided the Association undertook to indemnify him against all legal proceedings in respect thereof, and to defend such proceedings, or, in the event of their refusing to do so, pay the money to Mr. Berthold Smith, or what other course the Consul should be instructed to adopt under the circumstances.

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* This list was not forthcoming when these Reports were printed.

In obedience to your Lordship's commands we have the honour to report—

**Consul should retain deposit on obtaining an indemnity.**

That we think that if an indemnity can be obtained from the Ship-owners' Association, Mr. Wooldridge should retain the 500*l.* until the appeal has been heard. If such indemnity is not given, Mr. Wooldridge must bear the responsibility of acting according to his knowledge of what the circumstances of the case really are.

**If he is certain as to agreement, he should pay the money to Mr. B. Smith.**

If Mr. Wooldridge is certain that the receipt given by him truly sets out the terms of the deposit, and that those terms were acquiesced in by the depositors, we think he should pay the money to Mr. Berthold Smith, and run the risk of proceedings being taken against him by the other parties interested. It seems difficult to suppose that the receipt does not correctly set out the terms upon which the deposit was made.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 49.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December* 5.)

*Temple, December* 4, 1882.

My Lord,

**Expulsion of Mr. Lewisohn, a British Jew, from Russia.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st ultimo, stating that in our Report of the 17th March last (copy of which was inclosed) relative to the case of Mr. Lewisohn, we stated that, in our opinion, the Report of M. Cieszkowski appeared to establish that Mr. Lewisohn had been compelled to leave Russia in a manner not justified by the law of that Empire, and that it afforded materials upon which that view of the case might well be urged upon the Russian Government.

**Further representation to Russian Government, and their reply.**

That Sir Julian had now the honour to transmit to us, by your Lordship's direction, the instruction* which was in consequence addressed to Her Majesty's Ambassador at St. Petersburgh, directing his Excellency to make a further representation to the Russian Government on the subject, as well as the reply† which had been received from that Government, in which it was argued that the expulsion of Mr. Lewisohn was carried out without unnecessary harshness, and that it was not in contravention of Russian law with regard to foreign Jews.

That, upon receipt of that reply, Sir Edward Thornton was instructed to obtain from the legal adviser of Her Majesty's Embassy a Report upon the contention of the Russian Government.

That that Report‡ had now been received, and Sir Julian was to transmit it to us, with a request that we would take it into our consideration, and would favour your Lordship with any observations which we might have to offer thereupon.

That the previous Reports§ obtained from M. Cieszkowski relative to Mr. Lewisohn's case were inclosed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

**Unreasonableness of Russian views.**

That the view put forward by M. de Giers appears to us to be highly unreasonable.

It is admitted that the Russian Consul in London has authority to grant a *visa* to the passports of British Jews, though he is under an obligation, when he does so, to communicated the fact to the Minister of the Interior. Mr. Lewisohn, therefore, entered Russia with a passport duly *visé* by a competent authority, and which, so far as he knew, was a valid one.

But it is urged that Mr. Lewisohn was bound to know the provisions of the Russian law with regard to foreign Jews, and that it was his duty to communicate to the Russian Consul the fact that he was a Jew; that, in the absence of such communication, the Consul was entitled to assume that he was a Christian, and therefore he

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* To Sir E. Thornton, May 15, 1882.
† Sir E. Thornton's No. 210, June 20, 1882.
‡ Sir E. Thornton's No. 342, November 8, 1882.
§ In Mr. Wyndham's No. 279, June 7, 1881, and No. 280, June 7, 1881; and Sir E. Thornton's No. 54, February 7, 1882.

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either led to the passport being *visé* erroneously, or ought to have known that it was not valid so far as he was concerned.

We think the contention is not a sound one, and should certainly not be accepted without protest. It seems to us most unreasonable that British subjects should be required to know the distinctions drawn by the Russian laws between different creeds, and that if the law, and passport regulations under it, drew such a distinction, it is the duty of the Consul to see that the law and regulations are observed. He ought, we think, either to give distinct notice to applicants for a *visa* of their passports of the fact that there are special regulations affecting Jewish subjects, or to require from applicants a statement as to their creed, or a declaration that they are not of the Jewish persuasion.

If the Consul-General omits to take such steps and grants an applicant a *visa* without inquiry, we think a British subject so obtaining it is entitled to rely on its validity, and ought not on his arrival to be subjected as Mr. Lewisohn was to immediate expulsion.

But beyond this, if Mr. Lewisohn was to be regarded as having entered Russia with a *visa* which the Russian Consul ought not to have given without communicating the fact to the Minister of the Interior, we think that Mr. Lewisohn should have been afforded an opportunity of applying to the Minister of the Interior, to whom the right of finally dealing with the petitions of foreign Jews in such matters is assigned, and by his expulsion within twenty-four hours he was substantially refused any such opportunity.

The Russian laws and regulations to which attention has been called contain no provisions for the expulsion of a foreigner arriving *boná fide* with a *visa* on his national passport in Russia on the mere ground that he belongs to the Jewish confession.

Expulsion not warranted by Russian law.

And we think that the expulsion was not, under the circumstances, warranted upon a sound and rational view of the provisions of the Russian law taken in connection with the Treaty between this country and Russia, and with general principles of international obligation and courtesy.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Siam.

### No. 50.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 6.)

*Temple, April* 5, 1882.

[The Law Officers recite the instructions addressed to them by Sir J. Pauncefote on the 27th March, 1882, as follows:]

Proposed Treaty with Siam.

"I HAVE the honour to transmit to you, by direction of Earl Granville, the draft of a proposed Treaty between Her Majesty the Queen and His Majesty the King of Siam for the promotion of commercial intercourse between British Burmah and the adjoining Siamese territories of Chiengmai, Lakon, and Lampoonchi, together with the correspondence relating thereto;* and I am to request that you will favour his Lordship with your opinion as to whether any of its provisions are open to objection. The general relations of peace and commerce between Great Britain and Siam are regulated by the Treaty of 1855 (Paper A, p. 1), and the Supplementary Agreement of 1856 (Ibid., p. 10); and in 1874 a special Treaty was concluded between His Majesty the King of Siam and the Government of India to promote commercial intercourse between British Burmah and the adjoining Siamese territories before mentioned (Paper B, p. 30).

"This special Treaty of 1874 has not worked satisfactorily, and in March 1880 the India Office transmitted to the Foreign Office a despatch from the Government of India suggesting the negotiation of a new Frontier Treaty in substitution for the existing one (India Office, 24th March, 1880, Paper C). This suggestion was adopted, and the Government of India were requested to furnish the draft of Articles which, in their opinion, were required to carry out the object in view.

"In June 1881 the India Office transmitted to the Foreign Office a despatch from the Government of India, inclosing a printed correspondence on the subject, and the draft of certain Supplementary Articles which they proposed should be appended to a new Convention between Great Britain and Siam, then in course of negotiation with a Siamese Envoy in London (India Office, 8th June, 1880, paper D).

"This new Convention, though provisionally agreed to, was subsequently abandoned, and it was thereupon decided that the draft Articles transmitted by the Government of India, with such amendments as might be deemed expedient, should be embodied in a new Frontier Treaty, in substitution of the Frontier Treaty of 1874.

"The draft proposed by the Government of India forms Inclosure 2 in the India Office letter of the 8th June, 1880 (Paper D), and a duplicate copy is sent herewith for convenience of reference, marked 'E.'

"You will observe that the draft was, in some particulars, amended by the India Office, as appears from the alterations in red ink.

"The draft was referred to Mr. Gould, of the Bangkok Consular Establishment, who is now in this country, and has accepted the post of Vice-Consul at Chiengmai; and, in consequence of his Report (14th October, 1881, Paper F), which was communicated to the India Office, further alterations were suggested by them in their letter of the 19th January, 1882 (Paper G). It was then decided that a new revised draft should be prepared in the Foreign Office. This was accordingly done, and I am now to invite your attention to that revised draft, which is marked "H," and more especially to Articles VII, VIII, and IX. By Article VII the British Vice-Consul at Chiengmai will be invested with the Consular jurisdiction conferred by existing Treaty arrangements on Her Majesty's Consul-General at Bangkok, and which, under the most-favoured-nation clause, Her Majesty's Government are entitled to claim for British Consular officers in any part of Siam. But, for reasons explained in the correspondence, it is deemed expedient to allow civil and criminal jurisdiction over British subjects in Chiengmai, Lakon, and Lampoonchi to be exercised by a Siamese Special Commissioner and Judge, subject to the right of the British Vice-Consul to be present at the hearing, and to be furnished with notes of the proceedings, and, if necessary, at any time before judgment, to demand that the case be removed to the British Consular Court.

"The Government of India propose that the British Consular officer at Chiengmai should not have power to exercise jurisdiction, and that cases removed from the Siamese Court should be tried at Bangkok. But the journey occupies several months, and having regard to the difficulty and cost of sending the witnesses, and other considerations, Lord Granville is of opinion that such cases, when removed, should be disposed of on the spot by the British Consular officer, who is accordingly invested in the present draft with the necessary jurisdiction.

"Mr. Gould in his Report having suggested the risk of torture being applied by the Siamese Judge, it is proposed to caution the Siamese authorities, and to instruct the Vice-Consul to remove at once to his own Court any case in which he may have reason to believe that torture will be applied under the provisions of Siamese law or otherwise. At present, native Indian subjects of Her Majesty alone resort to the frontier territories in question, but in consequence of the establishment of a British Consulate at Chiengmai, it is possible that European British subjects may be attracted there, and it is not desirable, nor does it appear to have been the intention of the Indian Government, to submit the latter to Siamese jurisdiction. The British Vice-Consul would no doubt have power to remove all such cases to his own Court, and therefore in the Foreign Office draft no distinction has been made between the two classes of British subjects, and they are all made amenable alike to Siamese juris-

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* (A.) Treaty between Great Britain and Siam, signed at Bangkok, April 18, 1855; with Supplementary Agreement, May 13, 1856. Foreign Office No. 411.
(B.) Treaty between India and Siam, 1874. In Mr. Knox's No. 8, March 7, 1874.
(C.) India Office, March 24, 1880.
(D.) India Office, June 8, 1881.
(E.) Duplicate: Inclosure 2 in India Office, June 8, 1881.
(F.) Mr. Gould, October 14, 1881.
(G.) India Office, January 19, 1882.
(H.) Revised Draft Treaty with Siam, March 1882.

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diction. If, however, there should not be, in your opinion, any constitutional objection to the distinction being made, Lord Granville would prefer that the jurisdiction surrendered by the proposed Treaty to the Siamese authorities should be expressly limited to Indian native subjects of Her Majesty.

"Article IX deals with appeals from the decisions of the Siamese Commissioner and Judge, and it is conceived that these appeals should lie in every case (where leave has been granted) to the Siamese authorities at Bangkok, and in no case to Her Majesty's Consul-General, as proposed in Article IX of the draft of the Government of India (Paper E), the case having originally been submitted to and dealt with by a Siamese Court according to Siamese law.

"The other Articles of the draft are mostly reproductions of the provisions contained in the existing Frontier Treaty of 1874 (Paper B, p. 30), and call for no special remark.

"I am to request that you will favour Lord Granville with your Report on the draft, and on the points above mentioned, at your earliest convenience."

[The Law Officers then proceed to say:]

In obedience to your Lordship's commands we have the honour to report—

**Suggesting alterations in various Articles.**

That, with reference to Article XIII* of the proposed Treaty, we are not aware of any precedents for making such a distinction as is suggested between different classes of Her Majesty's subjects in Treaties negotiated with foreign Powers; and we think there are grave constitutional objections to such a course.

It would at first sight appear to be more fitting that appeals from the local Siamese Commissioner and Judges should lie to the Siamese authorities than to the Consul-General at Bangkok. At the same time, we would submit for consideration whether the right of the British Consul-General to intervene in such appeals and the authority which he is to exercise should not be better defined.

To provide merely that these Appeals shall be disposed of by the Siamese authorities, "in consultation with Her Majesty's Consul-General," appears to us not unlikely to give rise to grave misunderstandings.

We are not aware how far the impartial action of the Siamese judicial authorities at Bangkok can be depended upon, but, unless it can be, the protection afforded by the supervision and control of the British Consul at Chiengmai might be seriously detracted from. For an Appeal by a Siamese subject against a Judgment obtained by a British subject can, in all cases, be allowed by the Siamese Judge; and the control given to the Consul-General in relation to the Court of Appeal is, we have pointed out, of a very indefinite character.

We presume the right of Appeal given by Article IX is intended to be confined to civil cases.

This appears to be the construction of the Article, as drawn; but we would suggest the expediency of so altering the wording as to [*sic*] the intention beyond the possibility of question.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

## Spain.

### No. 51.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 22.)

My Lord, *Temple, September* 21, 1882.

Confinement of three engineers, British subjects, on the "Leon XIII" at Aden.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that he was directed to transmit to us a letter from the India Office* forwarding copy of a letter from the Governor of Bombay, with inclosures, relative to the confinement of three engineers, British subjects, on board the Spanish steamer "Leon XIII" during the stay of that vessel in Aden harbour from December to February last, and stating that as the case involved questions of international law, Lord Hartington would be glad to learn your Lordship's views concerning it, and especially as to the propriety or otherwise of the procedure of the late Resident at Aden, to which exception had been taken by the Governor of Bombay.

That the facts were clearly stated in General Loch's letter to the Governor of Bombay of the 24th February last, and subsequent correspondence, and the question raised appeared to be whether it was the duty of the local authorities at Aden to ascertain whether the three British engineers who were under arrest on board the "Leon XIII" in the harbour of Aden on a charge of insubordination, had any due ground of complaint, or "what circumstance was wanting to constitute a case for interference and inquiry."

That Sir Julian Pauncefote was to request our opinion as to the reply which should be returned to the inquiries made by Lord Hartington.

In obedience to your Lordship's commands we have the honour to report—

**They were amenable to Spanish, and not to local, jurisdiction.**

That there is no doubt that, according to international law, the British engineers, who had voluntarily become part of the crew of the Spanish ship, were subject to the law of Spain whilst on board that vessel, and in respect of acts done by them there. And they were not amenable, nor were the master or other members of the crew, to the jurisdiction of the local authorities at Aden.

**The Resident could not legally interfere.**

We think, therefore, that the Resident was under no legal obligation to inquire into the circumstances in which they were placed under arrest, or to any cause of complaint they may have had. Whether the Resident should have made further inquiries with a view to using, if necessary, his good offices on their behalf (for more than this he could not have done) is a matter which it is not within our province to consider.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### No. 52.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 6.)

My Lord, *Temple, November* 4, 1882.

Arrest of deserter from the Spanish man-of-war "Don Jorge Juan," and his transmission for surrender through United States by Governor of British Honduras.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office,† forwarding copy of a despatch from the Officer administering the Government of British Honduras, relating the circumstances under which, in accordance with the advice tendered by the Acting Attorney-General of the Colony, he had acceded to a request made by the Captain of the Spanish man-of-war "Don Jorge Juan," for the arrest and surrender of a deserter from that ship.

Neither "The Foreign Deserters Act," 1852,‡ nor any other Act of Parliament, authorizes the surrender of deserters from foreign ships of war in Her Majesty's dominions. That, nevertheless, it appeared that the deserter from the "Don Jorge Juan" having been found in the Colony after the departure of the ship, was arrested and sent by the Acting Governor in custody, through the United States, to Havana, for the purpose of being there surrendered to the Spanish authorities.

That it appeared to your Lordship that the action of the Colonial Administrator should be disapproved, not only as regarded the arrest and surrender of the deserter, but also as regarded his transmission through the territory of the United States.

That before replying to the letter of the Colonial Office your Lordship desired our opinion on the case, and as to the instructions which should be sent to the Administrator of British Honduras in this matter for his future guidance.

In obedience to your Lordship's commands we have the honour to report—

**Conduct of Governor should be disapproved.**

That we concur in thinking that the action of the Colonial Administrator, in arresting and surrendering the deserter, and in transmitting him in custody through the territory of the United States, should be disapproved.

**No legal authority for such an arrest.**

We think that the Administrator of British Honduras should be informed that

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* *Qy.* VIII.

* India Office, September 2, 1882, with inclosures.

† Colonial Office, September 25, 1882.

‡ 15 & 16 Vict., cap. 26.

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there is no legal authority for the arrest and surrender of a deserter from a foreign ship of war who takes refuge in Her Majesty's dominions.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 53.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 11.)

*Temple, November* 11, 1882.

Arrest of Master of the "Léon XIII" at Singapore.

My Lord,

WE are honoured with your Lordship's commands, signified in Sir J. Pauncefote's letter of the 28th ultimo, stating that he transmitted two despatches* from Her Majesty's Minister at Madrid relating to the arrest, imprisonment, and liberation of the master of the Spanish steamer "Leon XIII," when at Singapore, in March last.

That the facts of the case were clearly stated in Mr. Morier's note to the Spanish Minister of the 17th June last, a copy of which would be found in his despatch No. 62, and the reply of the Spanish Government in his despatch No. 112, together with Mr. Morier's comments thereon. That the draft of an instruction was inclosed, which your Lordship proposed to address to Mr. Morier; and that we were requested to favour your Lordship with our opinion as to whether such instruction was right and proper under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

Approving instructions to Mr. Morier.

That, in our opinion, the instruction is right and proper under the circumstances.

View of Spanish Minister as to proceedings of Court at Singapore founded on a misapprehension.

But, as there is some plausibility in the view put forward by the Spanish Minister, that if the Court at Singapore had proceeded to inquire into the charges made by the master against the engineers, they would have been assuming jurisdiction in a case in which the jurisdiction really rested with the Spanish Courts, we suggest that it would be well, in answer to the reply of the Spanish Government, again to point out specifically that this view is founded upon a misapprehension.

If the master of the "Leon XIII" had produced the prisoners in obedience to the writ of *habeas corpus*, and had shown the Court that he was detaining them in custody upon the charge of an offence committed on board his vessel whilst on the high seas, with a view to their being tried by the Spanish authorities at the port to which he was proceeding, the Court at Singapore would no doubt have remitted them to his custody, in order that they might so be dealt with according to law, the only question raised upon the writ of *habeas corpus* being whether they were lawfully in custody.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*Draft of Despatch from Earl Granville to Sir R. Morier.*

(No. .) *Foreign Office*, , 1882.

Sir,

HER Majesty's Government have had under their consideration your despatch No. 112 of the 15th ultimo, forwarding copy and translation of the reply returned by the Spanish Government to your note of the 17th June last, respecting the case of the "Léon XIII," of which a copy accompanied your despatch No. 62 of the 20th of the same month.

Her Majesty's Government concur in the observations upon the reply of the Spanish Government which you make in that despatch. It appears to them quite unnecessary to enter into any argument on the question of jurisdiction to try the offence with which the engineers were charged, as no attempt was made to put them on their trial.

The captain of the Spanish steamer being within the waters of the Colony, and not enjoying any immunity from the process of the local Courts, was bound to obey the writ of *habeas corpus*, which was issued by the Supreme Court, as was clearly explained to the Spanish Consul, solely for the purpose of ascertaining the cause of the imprisonment of the British engineers within British jurisdiction, and the refusal of the captain to obey the writ was a grave contempt of Court, for which he was justly punished.

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* Mr. Morier, No. 62, June 20; No. 112, September 15, 1882.

If he had produced the prisoners in obedience to the writ, and had shown the Court that he was detaining them in custody upon the charge of an offence committed on board his vessel whilst on the high seas, with a view to their being tried by the Spanish authorities at the port to which he was proceeding, the Court at Singapore would no doubt have remitted them to his custody, in order that they might so be dealt with according to law, the only question raised upon the writ of *habeas corpus* being whether they were lawfully in custody.

The action of the Spanish Consul in encouraging him to disobey the writ was also an act of disrespect towards the Court.

The case of the "Creole," which occurred at Nassau in 1841, as you observe, has no bearing on the present case, in which the action of the Supreme Court was limited to the issue of a writ of *habeas corpus*, and as regards the statement in the Spanish Minister's note that the Court at Aden refrained from issuing such a writ, I have to observe that the reason was that none was applied for.

With regard to the concluding paragraph of his Excellency's note, I have only to state that, while Her Majesty's Government are most anxious to avoid any conflict of jurisdiction or any legitimate ground of complaint on the part of the commanders or crews of Spanish vessels frequenting British ports, they cannot hold out any hope that any restriction will be placed on the exercise of the remedies afforded by the law of *habeas corpus* in Her Majesty's dominions, which, of all the constitutional safeguards of the liberty of the subject, is the one most highly prized by the Government and people of this country.

You will, accordingly, address a communication to the Spanish Government in the above sense, adding that Her Majesty's Government adhere to the views expressed in your note to the Spanish Minister of the 17th June last, and regret that the Spanish Government should fail to perceive that no question of jurisdiction over the offence has arisen in the case, but only of the liability of a Spanish ship-captain, while in a British Colony, to obey a writ of *habeas corpus* issued by the competent authority.

I am, &c.

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### No. 53*.

*The Lord Chancellor to Sir J. Pauncefote.*—(*Received November* 27.)

30, *Portland Place, November* 25, 1882.

Cuban refugees. Views as to liberation;

Dear Sir Julian,

I QUITE agree that spontaneous liberation would be entirely satisfactory, and that if a note, such as Sir R. Morier contemplates, would be likely to interfere with that solution (and if there is otherwise any reasonable prospect of it), the note ought not to be written, or (at all events) ought to be postponed.

and note suggested by Sir R. Morier.

I must observe also that, if any such note were written, I do not think it would be dignified to say that the Spanish Government "would place both Her Majesty's Government and the British nation under a real obligation." Those, surely, would not be wise diplomatic words.

I should infer from Sir R. Morier's despatch that he does not at all expect spontaneous liberation.

Believe me, &c.
(Signed) SELBORNE.

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### No. 54.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 5.)

*Temple, December* 5, 1882.

Arrest by Spaniards of Cuban refugees expelled from Gibraltar.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that he was to transmit to us papers* relative to the expulsion from Gibraltar, by the local police, of three Cuban refugees, at the request of the Spanish Consul, under circumstances which had attracted the attention of Her Majesty's Government, and which were, at the present time, the subject of a searching inquiry on the spot. That the facts of the case, so far as they were known, were detailed in the despatch of the Governor of Gibraltar of the 2nd October, a copy of which was inclosed in the Colonial Office letter of the 19th October last, and

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* Colonial Office, Confidential Print, September 7 to November 14, 1882; Extradition Treaty between Great Britain and Spain, June 4, 1878, No. 627; Aliens Order in Council, August 30, 1873; "Hertslet's Commercial Treaties," vol. xiv, p. 820; to Colonial Office, October 24, 1882.

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in the Petition of J. R. Castillo and C. Roderiguez to the Earl of Kimberley, which formed Inclosure 4 of the same letter. That the petitioners, and a third person named Maceo, were ex-officers of the Cuban rebel army, and had, according to their statement, been confined (under sentence of transportation) in the fortress of Cadiz, from which they effected their escape on the 15th August. That on the 16th August the Spanish Consul at Gibraltar informed the Colonial Secretary of the escape of Maceo, and asked that he might be expelled should he enter the fortress.

That the Colonial Secretary apparently treated the application as one for the surrender of a fugitive in the event of his being found in the Colony, and he instructed the acting police magistrate "to facilitate his apprehension."

That the three prisoners had first sought refuge in Tangier, and afterwards, on the 20th August, they crossed in a British steamer to Gibraltar, intending to proceed from thence to the United States.

That on arrival at Gibraltar they were arrested by the police on the ground that they had no passports, and were liable, therefore, under the "Aliens Order in Council," to be expelled from the garrison.

That the police magistrate and police officers were under the impression that the instructions of the Colonial Secretary meant that the fugitives were to be expelled under the "Aliens Order in Council," in order to facilitate their apprehension by the Spanish police outside the British lines. That, accordingly, the Inspector of Police communicated to the Spanish Consul, and, notwithstanding the protest and declaration of the fugitives that they were political prisoners and refugees, they were conveyed in carriages out of the garrison, and put outside the British lines, where they were arrested by the Spanish police, who had been posted there for the purpose.

That copies were inclosed of the "Aliens Order in Council," of the Extradition Treaty between Great Britain and Spain, and also Confidential Print, communicated to the Foreign Office by the Colonial Office, containing the whole correspondence which had passed on the subject.

That the Report of the Commission of Inquiry then sitting at Gibraltar would be laid before us as soon as it was received.

That, in the meanwhile, your Lordship desired our opinion as to whether the facts disclosed in the correspondence were such as to warrant a demand by Her Majesty's Government for the restoration of the prisoners to British jurisdiction.

In obedience to your Lordship's commands we have the honour to report—

**Facts of case do not warrant a demand for their restoration; but strong representations should be made owing to conduct of the Spanish Consul.**

That we do not think the facts disclosed in the documents transmitted to us are such as to warrant a demand, as of right, for the restoration of the prisoners to British jurisdiction. But we think it is a case in which very strong representations may be made to the Spanish Government that this course ought, under the circumstances, to be pursued by them. Although the British officials who practically delivered up the prisoners to the Spanish authorities were primarily to blame, yet their action was manifestly induced by the letter of the Spanish Consul requesting the expulsion of the escaped prisoners. The Treaty between Great Britain and Spain points out the mode in which the surrender of criminals escaping into British territory is to be obtained. And that Treaty expressly excludes those whose offences are political. This being the case, it may well be urged on the Spanish Government that the Spanish Consul ought not to have requested the expulsion of the escaped convicts, suppressing the fact that the offence of which they were convicted was political. And that this mistake of his having led to the error of the British officials, the proper course would be that advantage should not be taken of the mistake arising through the Spanish Consul's action.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 55.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December 9.)*

**"Leon XIII," a Spanish vessel. Refusal of master to obey writ of *habeas corpus* in case of imprisonment of British Engineers when at Singapore.**

My Lord, *Temple, December* 8, 1882.

WE are honoured with your Lordship's commands, signified in Sir Julian Pauncefote's letter of the 27th ultimo, stating that with reference to our Reports of the 21st September last, and of the 11th instant, relating to the case of the Spanish mail-steamer "Leon XIII," he was to inform us that a question had been put in the House of Commons as to whether Her Majesty's Government would demand compensation from

the Spanish Government, on behalf of the three British engineers of the "Leon III," on the ground that they were "forcibly carried off" in that steamer from Singapore pending the return to the writ of *habeas corpus* served on the master of that vessel, ordering him to produce the men before the Supreme Court of the Colony, for the purpose of inquiring into the legality of their imprisonment on board the steamer in the harbour of Singapore. That, in our Report of the 11th ultimo, on the proposed instruction to Her Majesty's Minister at Madrid, in reply to the views put forward by the Spanish Government in the case, we advised the addition in the draft of the following paragraphs:—

"If the master of the "Leon XIII" had produced the prisoners in obedience to the writ of *habeas corpus*, and had shown the Court that he was detaining them in custody upon the charge of an offence committed on board his vessel whilst on the high seas, with a view to their being tried by the Spanish authorities at the port to which he was proceeding, the Court at Singapore would no doubt have remitted them to his custody, in order that they might so be dealt with according to the law, the only question raised upon the writ of *habeas corpus* being whether they were lawfully in custody."

That the offences with which the three engineers were charged were insubordination and violence towards the officers of the ship, and were committed in the harbour of Aden. That, in our Report of the 21st September last on the question raised by the Government of India as to whether the Resident at Aden had failed in his duty by reason of his having taken no measures to investigate the ground on which the engineers were placed in confinement on board the "Leon XIII," we advised that "According to international law the British engineers, who had voluntarily become part of the crew of the Spanish ship, were subject to the law of Spain whilst on board that vessel, and in respect of acts done by them there," that "they were not amenable, nor were the master or other members of the crew, to the jurisdiction of the local authorities at Aden," and that "therefore the Resident was under no legal obligation to inquire into the circumstances in which they were placed under arrest, or into any cause of complaint they may have had."

That it would seem to follow, therefore, that the custody or imprisonment of the engineers on board the "Leon XIII," during her stay at Singapore was lawful, and that the fact of their having been "forcibly carried off" to the port of destination, with a view to their being tried there by the Spanish authorities, did not entitle them to compensation, however unlawful and reprehensible might have been the conduct of the captain in refusing to obey the writ of *habeas corpus*, and the conduct of the Spanish Consul in giving him aid and advice to resist and defeat the action of the Supreme Court.

That moreover the act complained of was that of the officer in command of the "Leon XIII," who was not an officer of the Spanish Government, and even if a claim for damages could be supported against him, it would seem difficult to charge the Spanish Government with responsibility on account of the bad advice given to the captain of the ship by the Spanish Consul,

That Sir Julian Pauncefote requested our opinion as to whether, under all the circumstances of the case, Her Majesty's Government would be justified in preferring a claim for compensation against the Spanish Government on behalf of the engineers.

In obedience to your Lordship's commands we have the honour to report—

**Cannot claim compensation from Spanish Government.**

That, under all the circumstances of the case, Her Majesty's Government would not, in our opinion, be justified in preferring a claim against the Spanish Government on behalf of the engineers.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### *List of Papers.*

Law Officers' Reports, November 11; ditto, September 21 (see Nos. 51 and 53, *ante*); Mr. Morier, No. 62, June 20; ditto, No. 112, September 15; Report from Singapore, Inclosures 1 and 3 in Colonial Office of May 2, 1882.

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# Tunis.

## No. 56.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 13.)

*Temple, January* 12, 1882.

My Lord,

Enfida estate.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that with reference to our Reports on the Enfida case of the 19th and 22nd July, the 8th and 27th August, and the 27th October last,* he had the honour to transmit to us, by direction of your Lordship, the further correspondence which had since taken place on the subject.†

That the position of the case at the date of our last Report of the 27th October was as follows:—

Circumstances of case and state of negotiations.

Mr. Levy, according to his Petition of the 12th August last, having been summoned to appear before the Meliki Court to which the case had been transferred from the Hanafi Court, by order of the Bey, protested against the jurisdiction and refused to appear, insisting on his right to have the case tried in the British Consular Court, conformably with Article XXIV of the Treaty of 1875.

That his protest, however, was disregarded, and the Meliki Court issued a Decree *ex parte* directing the authorities to put the Marseillaise Company into possession of the Enfida estate.

That in our report on those proceedings, we stated that the information furnished in the papers, submitted to us, was insufficient to enable us to pronounce an opinion, whether the Meliki Court had acted without jurisdiction. That we pointed out that, under certain circumstances, which we indicated, the intervention of Her Majesty's Government might be called for or warranted, and we suggested that an arbitration would be the best solution of the difficulty.

That Mr. Reade had telegraphed on the 24th September that, nothwithstanding the "illegal sentence" of the Meliki Court, Mr. Levy's possession was still undisturbed, and, under all the circumstances, no further action was deemed necessary.

That on the 14th November, however, Mr. Reade telegraphed that the Marseillaise Company had obtained from the Bey an order direct to the Cadi of Hamamet, to execute the Decree of the Meliki Court by letting all the Enfida lands to Arabs, on their own account. That on receipt of that Report Lord Lyons was instructed to move the French Government to stop at once the threatened further action in that case, pending the receipt of a communication from Her Majesty's Government. That that request was duly made, but declined on the ground that the French Government could not obstruct the execution of a judicial decision, and that Lord Lyons in his despatch No. 1073 of the 1st ultimo reported his conversation on the subject with M. Gambetta, who promised to communicate to Her Majesty's Government the information whhich he had received from Tunis, in answer to his call for a Report, and which, he said, established the legality of the proceedings. That on the 2nd ultimo a despatch was addressed to Lord Lyons, in which, after a résumé of the case and a remonstrance against the course pursued, it was proposed that the dispute should be referred to arbitration, all further action in the matter being suspended in the meanwhile.

That in pursuance of the instructions contained in that despatch, Lord Lyons addressed a letter to M. Gambetta, dated the 4th ultimo, of which a copy was inclosed in his despatch No. 1086 of the same date. That Mr. Reade had, in the meanwhile, urgently pressed for instructions, and, on the 7th ultimo, he was informed by telegram that the French Government had promised the communication of a Report showing that the proceedings were legal, and that pending its receipt Her Majesty's Government could give him no further instructions.

That, on the 8th ultimo, Mr. Reade's No. 118 of the 30th November was received, in which he transmitted a Petition addressed to him, on behalf of Mr. Levy, protesting against the intended execution of the Decree of the Meliki Court, and that on the 10th, 12th, and 14th ultimo Mr. Reade's telegrams Nos. 114, 116, and 117 were received, reporting the forcible ejectment of Mr. Levy's employés from the Enfida estate· That that announcement was followed by Mr. Reade's despatches Nos. 122 and 123 of the 14th ultimo, transmitting two further protests from Mr. Levy, which contained full particulars of the action of the Tunisian authorities in carrying out the Decree of the Meliki Court.

That Sir J. Pauncefote was to invite our attention to Lord Lyons' despatch No. 1124 of the 15th ultimo reporting a further conversation with M. Gambetta, and to his despatch No. 1130 of the 16th ultimo transmitting a copy of M. Gambetta's reply to Lord Lyons' letter of the 4th ultimo.

That we should perceive from that reply that the French Government maintained that the right of the Bey to transfer the case from the Hanafi Court to the Meliki Court was vested in him by the law of the country, and was indisputable; that the proccedings of the Meliki Court did not dispose of the case on its merits, but were only of a preliminary character, and that Mr. Levy did not think proper to show cause against them, and the application made to the Court by his opponents to be put into possession was therefore unopposed; that the Tunisian authorties could not refuse to carry out the orders of the Court; that the French Government and their Resident and other Agents in the Regency had scrupulously abstained from exercising any influence or pressure in the matter, but that the case had followed the course of law, and that the French Government could not, without grave prejudice to the vested rights of French subjects, arbitrarily suspend the right of possession which the Marseillaise Company had legally acquired, and thus deprive them of the benefit of the Judgment of the local Tribunal in their favour, in order to subject them to to the risks and delays of an arbitration which, moreover, there was no power to impose on them.

That it would be observed that M. Gambetta, in his reply, avoided all reference to the question of jurisdiction under existing Treaties.

That the following questions arose:—

1. Had any native Tribunal jnrisdiction to deal with the case in view of the existing Treaties?

2. Had the Bey the right to transfer the case from the Hanafi to the Meliki Court?

3. Was the Meliki Court justified in disregarding Mr. Levy's protest and his demand that the case should be transferred to the British Consular Court, as provided by the existing Treaties?

That, as regarded the 1st and 3rd questions, Sir J. Pauncefote referred us to our Report of the 27th August, in which we advised that, inasmuch as Mr. Levy had himself instituted proceedings in one of the local Tunisian Courts, he had rendered it difficult for Her Majesty's Government to maintain his right to have the case heard only in the British Consular Court.

That, on the other hand, the transfer of the case from the Hanafi Court, in which he had instituted proceedings, to the Meliki Court, was effected against his will, and that, in our Report of the 19th July, we expressed the opinion that, if cited to appear before the Meliki Court, "he would be entitled to insist that the case should be taken before the Consular Court, to be tried there in the ordinary way."

That, as regarded the second question, no further information had been received by the Foreign Office since the date of our last Report on the case, which contraverted the assertion contained in M. Barthélemy St. Hilaire's note of the 24th July, and in M. Gambetta's note of the 14th ultimo, that the transfer of the case from the Hanafi to the Meliki Court was within the constitutional powers of the Bey.

That Mr. Levy, in his protest of the 13th ultimo, complained of the illegality of the proceedings "according to the local laws," and referred, in support of that complaint, to M. Santillana's Memorials on his behalf, which had already been submitted to us.

That, in his protest of the 14th December, Mr. Levy complained that no sort of Judgment was signified to him through the channel of Her Britannic Majesty's Agent and Consul-General, "as ordered by Treaty," but that, on reference to the Treaties, it did not appear that they contained any such stipulation.

That that despatch was followed by Mr. Reade's No. 124.

That, from the explanations furnished by the French Government, it would appear that, whereas Mr. Levy, being previously in possession of the estate, under the order of the Hanafi Court, was in the position of defendant in the suit. The Decree of the Meliki Court shifted his position to that of plaintiff by placing the Marseillaise Company into possession of the estate in his stead, but that no Judgment had then been pronounced on his claim.

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* Confidential Paper No. 4637.

† Confidential Paper No. 4622.

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That Sir J. Pauncefote was to state that Sir Adrian Dingli, of Malta, was now in Tunis on a special mission of inquiry, on behalf of the Foreign Office, respecting certain Consular matters, and that if we should deem it advisable, he could be instructed to report on any point arising in the present case, as to which we required further local information.

That, in the meanwhile, Sir J. Pauncefote requested that we would take all the papers transmitted therewith into consideration, and favour your Lordship with our opinion as to whether the case, as it then stood, called for any action on the part of Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the case, as it now stands, does not call for any action on the part of Her Majesty's Government.

Mr. Levy's resort to local Tribunals precludes complaint as to their jurisdiction.

As to Mr. Levy's protest against Bey's right to transfer suit, and further action in case.

In answer to the first question mentioned in Sir Julian Pauncefote's letter, we have to repeat that Mr. Levy, having himself resorted to the local Tribunals, cannot call upon Her Majesty's Government to complain of the exercise of any ordinary jurisdiction by such Tribunals. Whether the Bey had the right to transfer the suit from the Hanafi to the Meliki Court is a question of procedure and jurisdiction upon which we are still without sufficient information to express an opinion, and we therefore think it will be well that Sir Adrian Dingli should be instructed to report whether the Bey has, or has not, legal power to transfer such a case as the present from the Hanafi to the Meliki Court. If he has such power, Mr. Levy's protest can avail him nothing; but if it should be found that the transference has been an arbitrary and illegal act, further steps may then be taken by Her Majesty's Government.

We have, &c.

(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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## No. 57.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 4.)*

Claim by Mr. T. L. Smith, of Mater, for damage done by French troops.

My Lord, *Temple, February* 3, 1882.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th ultimo, stating that he had the honour to transmit to us, by your Lordship's direction, the papers* relative to a claim brought by Mr. T. L. Smith, a British subject residing at Mater in Tunis, against the French Government, for damage done to his crops by the French troops in May last.

That Sir Julian was in the first instance to refer us to the copy of the despatch No. 74 of the 26th May from Her Majesty's Agent at Tunis, from which it would be seen that the French authorities began by accusing Mr. Smith of inciting the Arabs against their proceedings, and requesting his removal from Mater, and that although those accusations turned out to be groundless Mr. Smith did, on Mr. Reade's recommendation, though at great inconvenience to himself, consent to remain absent from his farm for some time.

That Mr. Reade's proceedings as reported in that despatch received your Lordship's approval. That from Mr. Smith's own account of what occurred, it appeared that he requested the General in command to restrain his troops from destroying the crops, &c., and that that officer offered him compensation, which he declined at that time. But that on finding that the soldiers persisted in their conduct, he formulated a claim for indemnity in a letter to Mr. Reade of the 1st July, of which a copy (inclosed) was privately communicated to your Lordship, but was not sent home by Mr. Reade at the time, as he was anxious, as stated in his despatch No. 119, to obtain before doing so the consent of Mr. Smith to submit it to the French Legation.

That to that suggestion Mr. Reade received no decided reply until the 10th ultimo, when a claim for the sum of 364*l.* was sent in by Mr. Smith for damage to his property and losses through his absence from Mater.

Rejection of claim by French Minister.

That that claim had been rejected by the French Minister on the ground that it was a stale demand, and that the lapse of time since the alleged damage was committed would prevent a proper assessment from being made, and that Sir Julian was to request that we would favour your Lordship with our opinion whether the circumstances would justify Her Majesty's Government in pressing the matter further.

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* Mr. Reade, No. 74, May 26; No. 75, June 6; and No. 119, November 30, 1881.

In obedience to your Lordship's commands we have the honour to report—

That it would appear that Mr. Smith did sustain some damage to his crops, and that at one time there was a willingness on the part of the French authorities to make him some compensation.

Difficulty caused by delay in pressing claim. No ground for abandoning it.

No doubt the delay which has taken place interposes considerable difficulty in the way of pressing his claim. It may be admitted that this delay renders it less easy to estimate the damage with accuracy, and that so far as it has involved a doubt, that doubt must be resolved against Mr. Smith so as to ensure that he shall receive no more than compensation.

But it hardly seems a ground for altogether and at once abandoning the claim, having in view the answer of the French Minister.

Should urge compensation or arbitration.

We would suggest, therefore, that the French authorities should be urged to reconsider the matter, and afford some compensation, or to refer the claim to arbitration.

As to action in case of refusal of compensation.

Should compensation be again refused, it may be matter for further consideration whether sufficient ground exists to justify further interference by Her Majesty's Government.

We have, &c.

(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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## No. 58.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 27.)*

Alleged violation of Consular domicile at Hamamet. Arrest of Miftale Dardouri, Consular Agent Cacchia's gardener.

My Lord, *Temple, February* 25, 1882.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 9th instant, stating that, by direction of your Lordship, he had the honour to transmit to us two despatches* from Her Majesty's Agent and Consul-General at Tunis regarding the arrest of Miftale Dardouri, an Arab gardener in the employ of Mr. Cacchia, the British Consular Agent at Hamamet, and his execution by the French military authorities.

That the Arab was accused of having fired at the French troops from a garden rented by Mr. Cacchia.

That the facts of the case, as stated by Mr. Cacchia, appeared in Inclosure 2 of Mr. Reade's No. 2, and that it would be seen that he charges the Vice-Governor of Hamamet with a violation of domicile, in having effected the arrest of Dardouri in that garden.

That it did not appear from Mr. Reade's Report whether the garden was an isolated piece of ground, or was attached to the residence which (as stated in his No. 3) Mr. Cacchia inhabited at Hamamet during the summer months.

That the evidence of the witnesses examined in the case would be found in Inclosure 1 in No. 2 and 3 in No. 3.

That it was not denied by the local authorities and by M. Roustan (Inclosure 1 in No. 3) that if the arrest did take place in the garden in question there was a violation of domicile, though General Elias Musalli (Inclosure 3 in No. 3) suggested at the examination of the witness Mohamed Tourki, that the place of arrest was not the house or garden of Mr. Cacchia, but "simply a piece of ground hired by him in order to sow corn."

That the witness Tourki declared that he and the others charged with the arrest merely told Dardouri that the Cadi wanted to see him; that he was ploughing in Mr. Cacchia's garden at the time, and handed the horses to a neighbour and followed them without opposition. He was handed over to the Khalifa at the gate of the town.

That there was too much reason to believe that the unfortunate gardener was innocent, and that his life would have been spared if the Consular Agent had been apprised of his intended arrest, and had had the opportunity of protecting him against the inhumanity of the Khalifa, who was charged with having handed him over to the French authorities in order to screen the real offender.

That a Memorandum† by Sir E. Hertslet on the Inviolability of Premises attached

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* Mr. Reade, No. 2, January 9; and No. 3, January 20, 1882.

† January 31, 1882.

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to British Consular Houses in Tunis was transmitted therewith; and that Lord Tenterden was to request that we would favour your Lordship with our opinion whether, under all the circumstances, the case called for further action on the part of Her Majesty's Government, and, if so, what was the measure of redress which could properly be demanded by Her Majesty's Government, in case the violation of Mr. Cacchia's Consular privileges should be established by reason of the arrest of Dardouri in his garden.

In obedience to your Lordship's commands we have the honour to report—

No further action called for.

That, in our opinion, under the circumstances, the case does not call for further action on the part of Her Majesty's Government.

According to the rules of International Law, a Consul or Consular Agent has, apart from Treaty, no claim to absolute inviolability in respect of his house or premises.

By the IInd Article of the Convention with Tunis of the 19th July, 1875,* it is provided that the "houses and families of British Consuls, Vice-Consuls, and Consular Agents shall be safe and protected."

No breach of Treaty.

But we do not think it can be contended that the arrest of a native servant, in the place and under the circumstances described, was a breach of this Article of the Treaty. And we do not find any other Treaty applicable to Tunis which would entitle Her Majesty's Government to insist on redress.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 59.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April* 11.)

*Temple, April* 11, 1882.

My Lord,

Concession of Esparto grass district to M. Duplessis.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the correspondence† on the subject of the grant by the Bey of Tunis of a concession to a French subject named Duplessis, giving him the exclusive right to collect and dispose of all esparto grass, being the produce of certain portions of the Regency.

That a translation of the concession was inclosed in Mr. Reade's despatch of the 22nd ultimo, and that he stated that in his opinion it amounted to a virtual monopoly of the esparto trade in the southern portion of the Regency.

That Messrs. Perry, Bury, and Co., and Mr. Levy, who were interested in the trade, had addressed letters to your Lordship, calling your Lordship's attention to the subject, and that it appeared from the account given by the last-named gentleman that esparto, which was largely used in the manufacture of paper in this country, was not a cultivated plant, but grew wild, and was gathered by the Arabs, who brought it down to the seaboard for sale to the exporting merchants.

That Mr. Reade, in his No. 7 of the 2nd ultimo, mentioned that the Representatives of Messrs. Perry and Bury's firm had been informed by the Franco-Tunisian Governor of Southern Tunis of the existence of the concession, and that he had hinted that they should put themselves in communication with the concessionaires.

That it might be presumed therefore that the rights conceded to M. Duplessis were exclusive so far as the districts mentioned in the concession were concerned.

That a copy of the Convention of the 19th July, 1875,* between Her Majesty and the Bey of Tunis, was annexed, and that Sir Julian Pauncefote was to call our special attention to Articles IV and IX, which provided that British merchants or their agents and brokers shall be permitted to purchase at all places within the Regency, whether for the purposes of internal trade or of exportation, all articles, without any exception whatsoever, being the produce or manufacture of the said Regency, and that the purchaser shall be free to remove his goods, when purchased, from one place to another, without any attempt being made on the part of the Local Governors to interfere with them. And further, that the Bey formally engaged to abolish all monopolies of agricultural produce, or of any other articles whatsoever, save and except tobacco and salt.

That Article XLI moreover provided that in case of doubt as to the interpretation or the application of any of the stipulations of the Convention the interpretation most favourable to British subjects shall be given in Tunis, subject to the explanatory additions contained in the Article.

That Sir Julian Pauncefote was to request our opinion as to whether the concession to M. Duplessis constituted an infraction of the Treaty between Her Majesty and the Bey, and, if so, that we would suggest the terms of the protest which Mr. Reade should be instructed to address to the Tunisian Government.

We are also honoured with a further letter from Sir Julian Pauncefote, dated the 30th ultimo, inclosing a further despatch* from Her Majesty's Agent at Tunis, on the subject of the alleged esparto grass monopoly.

In obedience to your Lordship's commands we have the honour to report—

The Bey, if competent to grant concession, has not created a monopoly under Treaty of 1875.

That we have not before us complete information with regard to the rights which the Bey possesses over the mountains, the esparto from which has been granted to the French Company, nor with regard to any rights which the public may possess to gather the esparto so grown.

We observe that M. Lequeux, in his despatch of the 20th March, states: "Le Gouvernement a simplement disposé à titre de seul et légitime propriétaire des produits de terrains qui lui appartiennent." If this be a correct statement, and if it was competent for the Bey, without derogating from the right of the public, to make the grant, we do not think it amounted to the creation of a monopoly within the meaning of Article IX of the Treaty of 1875.

And we do not think it would involve a violation of any other of the rights accorded to Great Britain by the Articles of that Treaty.

Points on which further information is necessary.

We would suggest, therefore, that fuller information should be obtained on the following points: whether the mountains named in the concession are the property of the Bey of Tunis; whether the public had any, and, if so, what right (as distinguished from mere license or permission), to gather the esparto growing on those mountains; and whether it was competent for the Bey, apart from any question of Treaty engagements, to grant a concession of the exclusive right of gathering esparto grown there.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 60.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May* 6.)

*Temple, May* 6, 1882.

My Lord,

Esparto grass concession.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 26th ultimo, stating that in accordance with the request contained in our letter of the 11th ultimo, your Lordship had obtained from Tunis further information with regard to the concession of the esparto grass district to a French Company, and that he had the honour to forward Mr. Reade's telegram† on the subject for our consideration, with the previous papers which accompanied his letter of the 29th March.

In obedience to your Lordship's commands we have the honour to report—

The further information sent not sufficient.

That the information contained in Mr. Reade's telegram does not afford us the means of expressing any further opinion upon the question submitted to us.

The statements with reference to the ownership of the lands upon which the esparto grows is very vague. And Mr. Reade expresses himself unable at present to report regarding the Bey's competency to dispose as he has done of the esparto grown

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* Treaty, No. 586.

† Mr. Reade, No. 7, March 2; No. 10 (Telegraphic), March 17; No. 11 (Telegraphic), March 22; No. 12, March 22; to Mr. Reade, No. 1, Commercial, March 14; to Lord Lyons, No. 79, Commercial, March 15; Messrs. Perry, Bury, and Co., March 18; to Messrs. Perry, Bury, and Co., March 23; to Mr. Levy, March 23; Memorandum, March 13; Papermakers' Association, March 28, 1882.

* Mr. Reade, No. 13, March 24, 1882.

† Mr. Reade, No. 19 (Telegraphic), April 21, 1882.

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upon them, which is the most important element in determining whether the concession can be properly impeached.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 61.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 6.)*

My Lord, *Temple, May* 6, 1882.

Concession of Esparto grass district. Question as to support of Mr. Hough's demand for.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 4th instant, stating that he was directed by your Lordship to request that we would, at our earliest convenience, furnish your Lordship with a Report with regard to the question of concessions of Esparto grass districts in Tunis, which was then before us, and that we would, at the same time, favour your Lordship with our opinion as to the reply which should be returned to the telegram from Mr. Reade,* of which a copy was therein inclosed, applying for instructions as to the support to be given by him to a demand put forward on behalf of Mr. Hough, of London, for the concession of some Esparto-producing districts in southern Tunis.

That Mr. Reade had been informed by telegraph that the question of the concession was under our consideration, and that he should not interfere.

In obedience to your Lordship's commands we have the honour to report—

Should not intervene without further information as to Bey's rights.

That we would suggest that your Lordship, in reply to Mr. Reade's telegram of the 4th May, should inform him that, in the absence of information regarding the right of exclusive property in the Bey to the esparto grass, your Lordship does not think it right to sanction any official intervention on behalf of any proposed concessionnaires.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Turkey.

### No. 62.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 3.)*

My Lord, *Temple, January* 2, 1882.

Samuda *v.* Gadban and Watson.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 20th ultimo, stating that the accompanying letter† had been received from the Lords Commissioners of the Admiralty, inquiring whether there would be any objection to produce in Court, on the hearing of a lawsuit between Messrs. Samuda and Messrs. Gadban and Watson, two letters‡ addressed to that Department by the Foreign Office in May 1877. That Lord Tenterden had the honour, by your Lordship's direction, to inclose the correspondence referred to, which included a Report from the Law Officers of the Crown, and to request that we would favour your Lordship with our opinion as to the advisability of its production in Court.

In obedience to yonr Lordship's commands we have the honour to report—

Law Officers' Reports should not be produced in Court.

That we think that the production of the Law Officers' Report would form a very dangerous precedent, and ought not, under any circumstances, to be sanctioned.

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* Mr. Reade, No. 20 (Telegraphic), May 4, 1882.

† Admiralty, December 10, 1881.

‡ To Admiralty, May 7 and 25, 1877.

Objection to production of official correspondence.

We also think that, on principle, there is grave objection to the correspondence between two Departments of the Government being produced in support of litigation between private persons. It does not occur to us that such correspondence could be given in evidence in the existing suit, and, unless it be quite clear that injustice would result from the non-production of the letters addressed to the Admiralty, we think that they ought not to be produced. This view does not extend to Mr. Watson's letter of the 4th May, 1877.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 63.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 13.)*

My Lord, *Temple, January* 12, 1882.

Pitts *v.* La Fontaine. Course recommended in Report of the 21st September, 1881, as to the reinstatement of Mr. Pitts, should be followed.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that with reference to our Report of the 21st September last respecting the case of Pitts *v.* La Fontaine, of which a printed copy was inclosed,* he was directed by your Lordship to transmit to us a despatch which had been received from Her Majesty's Ambassador at Constantinople, forwarding a copy of a communication addressed by the Porte to Her Majesty's Consul-General in that capital in reply to Mr. Fawcett's request for the reinstatement of Mr. Pitts in his property.

That in that communication the Porte, after expressing the opinion that the Ottoman Tribunals had acted in that matter in conformity with the provisions of the Ottoman law relating to real property, and that it would be inadvisable to recall the decisions already arrived at, stated that Mr. Pitts, should he consider himself wronged, was at liberty to have recourse to the Ottoman Tribunals, who were alone competent to grant him redress if his complaints appeared well founded.

That Sir Julian was to inform us that your Lordship, under those circumstances, proposed, with our concurrence, to follow the course indicated in the last paragraph of our Report of the 21st September last.

In obedience to your Lordship's commands we have the honour to report—

That we concur in your Lordship's view, that the course indicated in the last paragraph of our Report of the 21st September last should be followed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 64.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

Gentlemen, *Foreign Office, December* 22, 1881.

Surplus revenue of Cyprus. Question as to appropriation of.

EARL GRANVILLE has had under his further consideration, in communication with the Lords Commissioners of the Treasury, the question dealt with in your Report of the 6th January last (Print A, p. 46), of the right of Her Majesty's Government to retain the surplus revenue of Cyprus, as part of the general revenues of the Ottoman Empire, in satisfaction of the arrears due by the Porte in respect of the Turkish Loan of 1855, the interest on which is guaranteed by Great Britain and France under the Convention of 1855.

On receipt of your Report of the 6th January,† it was decided to call upon the Porte to give to Her Majesty's Government the benefit of the special securities, namely, the customs of Smyrna and Syria, which are specially charged with the payment of the interest on the loan and the sinking fund under the Convention, and

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* Law Officers' Report, September 21, 1881, Confidential No. 4637; to Lord Dufferin, No. 65, Consular, September 30, 1881; Lord Dufferin, No. 74, Consular, October 23, 1881; Lord Dufferin, No. 70, Consular, October 13, 1881; Lord Dufferin, No. 83, Consular, December 5, 1881.

† Law Officers, January 6, 1881, Confidential No. 4637, pp. 121–122.

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Mr. Goschen, then Her Majesty's Special Ambassador at Constantinople, was instructed accordingly in the Foreign Office despatch No. 148 of the 3rd March, 1881 (Print A, p. 66).

The French Government were invited at the same time to send similar instructions to their Representative at Constantinople, and you will perceive from their reply, transmitted in Lord Lyons' despatch No. 300 of the 1st April, 1881 (Print A, p. 77), that while agreeing to send such instructions they expressed the opinion that it would be preferable to recommend to the Porte to assign the surplus revenue of Cyprus permanently to the payments in question.

Mr. Goschen carried out Lord Granville's instructions in a note to the Porte dated the 30th April, a copy of which was transmitted in his despatch No. 338 of the 2nd May (Print A, p. 86).

Shortly afterwards Mr. Goschen, in his despatch No. 374 of the 10th May (Print A, p. 86), transmitted a note he had received from Assim Pasha (the Turkish Minister for Foreign Affairs), dated the 7th May. This note was not in reply to Mr. Goschen's note of the 30th April, but in reply to a previous communication, and it stated that, under a Convention made (22nd November, 1879) through the "Administration of the Six Indirect Contributions," between the Porte and the Imperial Ottoman Bank and certain Bankers at Galata, the Ottoman Government had pledged the Cyprus revenues for the payment of interest on the General Public Debt, and, therefore, that they could only apply to the Loan of 1855 such portion of those revenues as had accrued due before the date of that Convention.

The text of that Convention, and of the Decree confirming it, will be found in Sir H. Layard's despatches No. 1035 of the 25th November and No. 1056 of the 1st December, 1879 (Print C, pp. 98 and 100).

The Earl of Dufferin, who in the meanwhile had succeeded Mr. Goschen, was thereupon instructed in the Foreign Office despatch No. 485 of the 14th July (Print A, p. 109) to call the attention of the Porte to the communication addressed to it by Sir H. Layard in January 1880 [see Foreign Office despatch No. 1514 of the 23rd December, 1879, Print C, p. 109, and Sir H. Layard's No. 79 of the 17th January, 1880, M.S.], in which it was stated that Her Majesty's Government declined to recognize the assignment of the Cyprus revenues to the Banks under the Convention of the 22nd November, 1879, and further that "Her Majesty's Government could not accept or recognize the transfer to any other person of the Sultan's right to receive this payment, nor could they admit any liability, immediate or contingent, to pay it to any person except the Sultan."

Lord Dufferin was instructed in the same despatch to inform the Porte that Her Majesty's Government had decided, in order to maintain the prior claim of the guaranteeing Governments, to instruct the High Commissioner of Cyprus to suspend any further payments on account of the surplus revenue.

The instructions sent to Lord Dufferin in that despatch were submitted to you, and in your Report of the 30th June last (Print A, p. 106) you expressed your concurrence therein.

Copies of two notes addressed by Lord Dufferin to the Porte in accordance therewith will be found in his despatch No. 671 of the 9th August (MS.).

About the same time Lord Dufferin, in his despatch No. 496 of the 13th June (MS.), transmitted a copy of a letter from certain British creditors of the Porte claiming the right to attach the surplus revenue of Cyprus in the hands of Her Majesty's Government. This despatch was referred to you in the Foreign Office letter of the 13th July last, and with your concurrence [see your Report thereon of the 1st August, Print B, Section No. 31], Lord Dufferin was instructed in the Foreign Office despatch No. 562 of the 9th August [Print B, Section No. 31] to inform the British creditors that "Her Majesty's Government claimed to be entitled to retain such surplus revenue in satisfaction of debts due to them by the Porte, and that they could not admit the right of any other creditors of the Porte to attach that surplus in their hands, or the right of the Turkish Government to dispose of the same until its pecuniary obligations towards Great Britain had been liquidated."

On the 5th September the French Ambassador in London, in a verbal communication to the Foreign Office, stated incidentally that in the opinion of his Government the surplus revenue of Cyprus ought to be attached in satisfaction of the arrears of the 1855 Loan; and on the 7th September Lord Dufferin (telegram No. 360) telegraphed that the French Chargé d'Affaires at Constantinople, in referring to the Guaranteed Loan, appeared to assume that the Cyprus surplus was a security upon which France had as much right to count as England.

In the meanwhile, Lord Dufferin, in his despatch No. 630 of the 30th July (MS.), had transmitted the long-deferred reply to Mr. Goschen's note to Assim Pasha of the 30th April (Print A, p. 86), calling upon the Porte to give to the Governments of Great Britain and France the benefit of the special securities, namely, the Customs of Smyrna and Syria, to which they were entitled under the Convention of 1855. This reply, which is dated the 28th July last, was laid before the Lords Commissioners of the Treasury. (Foreign Office to Treasury, 16th August.)

Their Lordships have now caused the inclosed draft of a letter to the Foreign Office (marked D) to be prepared, and have submitted it privately to Lord Granville for his concurrence in the course of action therein recommended.

Lord Granville feels some hesitation in expressing his concurrence in that part of the draft (pp. 8-11) which deals with the proposed communication to the French Government.

In view of your Report of the 6th January, his Lordship apprehends that it may be open to question whether Her Majesty's Government are entitled to treat the enforcement, on the surplus revenue of Cyprus, of the charge created by the Convention of 1855, as a remedy so entirely within their control that they can resort to it and abandon it at their discretion, without reference to the claims of France under the Convention.

The British claims which Her Majesty's Government are desirous, if possible, to satisfy out of the surplus revenue of Cyprus, are the following :—*

(*a.*) The claim in respect of Colonel Synge's ransom (10,000*l.*).
(*b.*) The claim in respect of Mr. Suter's ransom (15,000*l.*).
(*c.*) The claim in respect of the Loan of 1855.

[The amount of this claim, up to the 6th April last, for interest and expenses, but exclusive of sinking fund, which is in arrear since 1875, is 142,754*l.* 13*s.* 8*d.* (Print A, p. 81).]

The first claim (Colonel Synge's ransom) is admitted by the Porte.

The second claim (Mr. Suter's ransom) is not admitted by the Porte. (See Law Officers' Report on the case.)

As regards the third claim, the guarantee of Great Britain and France under the Convention of 1855 is "joint and several," according to the French text, though the words "conjointement et solidairement" are translated in the English version by the word "conjointly" alone.

By the Declaration of the same date between the British and French Governments relative to the loan (in which the same discrepancy is observable), it is agreed that the sums to be advanced by the British and French Governments "shall be proportionally repaid to them out of any funds which may be remitted by the Turkish Government to the British Government."

The following questions arise :—

1. Have the French Government the right to demand payment to them by Her Majesty's Government, subject to the equal rights of Great Britain, of the surplus revenue of Cyprus, by way of enforcement, for their benefit, of the charge created in favour of Great Britain and France on the whole revenues of the Ottoman Empire by the Convention of 1855; and have they such right, whether or not Her Majesty's Government also resort to the same remedy for their own benefit?

2. If the preceding question be answered in the affirmative, is the claim of the French Government confined to the surplus revenue of Cyprus received by or payable to Her Majesty's Government, after the formal notification of their demand?

3. So far as the claim of the French Government does not attach to any portion of the surplus, are Her Majesty's Government entitled to apply that portion *pro tanto* in satisfaction of Colonel Synge's ransom and Mr. Suter's ransom, or either of them, or in discharge of the British share of liability under the Convention of 1855?

As regards the ransoms, and with reference especially to the concluding paragraph of your Report of the 6th January last, I am to draw your attention to Sir H. Layard's protest on behalf of Her Majesty's Government against the assignment by the Porte of the Cyprus surplus to the Bankers, under the Convention of the 22nd November, 1879; and I am to add that before that Convention was signed, the

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* The actual sums are—

| | £ | *s.* | *d.* |
|---|---|---|---|
| (*a.*) .. .. .. .. .. .. | 11,171 | 14 | 0 |
| (*b.*) .. .. .. .. .. .. | 13,869 | 1 | 11 |
| | 25,040 | 15 | 11 |

F. L. B.

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Imperial Ottoman Bank was privately informed that Her Majesty's Government claimed a prior lien on the Cyprus surplus in respect of their guarantee, and would recognize no new mortgage on that surplus. [Print C, No. 111, p. 93; No. 115, p. 96; No. 116, pp. 96–97.]

I am to request that you will favour Lord Granville with your opinion on the points above stated, and with any observations which you may have to offer generally on the questions under consideration.

All the documents referred to in this letter are comprised in the list of papers transmitted herewith.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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*List of Papers.*

1. Print A (Correspondence respecting Finances of Turkey, Part I, Confidential No. 4607).
2. Print B [Section 31].
3. Print C (Further Correspondence, Ottoman Loans, Part III, Confidential No. 4250).
4. Sir H. Layard, No. 79, of January 1880 (MS.).
5. Lord Dufferin, No. 671, of August 9, 1881 (MS.).
6. Lord Dufferin, Telegram No. 360 (MS.).
7. Lord Dufferin, No. 630, of July 30, 1881 (MS.).
8. Foreign Office to Treasury, August 16, 1881.
9. Treasury Draft, marked D.
10. Law Officers' Report on Mr. Suter's case, September 21, 1881, Confidential No. 4637, pp. 93–95.
11. Convention of 1855. Treaty No. 392.
12. Declaration between British and French Governments. Treaty No. 393.
13. Conventions between Great Britain and the Porte relating to Cyprus. Parliamentary Nos. 2054–2150.

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In obedience to your Lordship's commands we have the honour to report—

France should participate equally with England in appropriation of surplus to Loan of 1855.

That, in our opinion, any portion of the surplus revenue of Cyprus which Her Majesty's Government may determine to apply to the liquidation of the debt owing from the Porte under the Convention of the 27th June, 1855, should be regarded and dealt with as if it had been remitted in accordance with Article III of that Convention.

If this view be correct, it follows that the French Government ought to receive equal benefit in common with Her Majesty's Government from the application of such funds. But still no right of "attachment" of or interference with the ascertainment of the amount, or the destination of the Cyprus revenues, can be claimed by the French Government except to the extent of requiring (as we have above pointed out to be equitable), that any surplus revenue which Her Majesty's Government should think right to apply for the purpose of discharging the liability of the Porte under the Convention should enure to the benefit of both Governments alike.

Treasury draft should be modified.

We therefore submit, for your Lordship's consideration, whether the communication to the French Government suggested by the Treasury should not be of a more limited character, merely reserving to Her Majesty's Government the sole control over the Cyprus revenue, but intimating that your Lordship's present view is, that the French Government should equally participate with Her Majesty's Government in any appropriation of the surplus revenue to meet the liabilities of the Porte under the Convention which Her Majesty's Government may think it right from time to time to make.

As to French notification.

We also think that these views ought not to be in any way affected by the giving by the French Government of any formal notification, or by the absence thereof.

More expedient to assign surplus to loan than to special debts such as the ransoms.

In relation to the ransoms, we still incline to think that the views expressed in the concluding paragraph of our Report of the 6th January, 1881, are worthy of your Lordship's consideration, and, inasmuch as the protest against the assignment of the surplus revenue to the Galata Bankers must be based upon the charge created by the Convention of 1855 upon the general revenues of the Porte in favour of Her Majesty's Government, we think it would be more expedient to devote such surplus revenue to the discharge of the liability of the Turkish Government under that Convention than to meet a special indebtedness, although by so doing the French Government would participate in the benefits arising from the application of the funds.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*Temple, January* 14, 1882.

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## No. 65.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 31.)

My Lord, *Temple, January* 30, 1882.

"Originaires" of territory ceded to Greece domiciled in Turkey.

Claim of Greek Government to inscribe them as Greek subjects.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 24th instant, stating that the Greek Government had addressed to the Greek Chargé d'Affaires in this country a despatch, of which a copy had been communicated to your Lordship, complaining that the Turkish Government refused to recognize the right of Greek Consuls in the Ottoman dominions to inscribe as Greek subjects and take under their protection "originaires" of the districts lately ceded to Greece, who, having a Turkish domicile, may desire to adopt Hellenic nationality.

That Mr. Lister had the honour to transmit therewith a copy of the despatch* from the Greek Government, and the Parliamentary Paper† which contained the Convention for the settlement of the frontier between Greece and Turkey of the 24th May last, and that he was directed by your Lordship to request that we would inform you whether the terms of the XIIIth Article could be held to give to the Greek Government the rights to which they laid claim, or whether independently of the terms of the Convention the Greek Government could claim for "originaires" of the ceded provinces, who were settled in Turkey at the time of the cession, the right to elect between Turkish and Greek nationality.

In obedience to your Lordship's commands we have the honour to report—

Claim not valid either under, or independently of, the the Convention.

That, in our opinion, the terms of the XIIIth Article cannot be held to give to the Greek Government the right to which they lay claim.

That Article only provides that natives of the ceded territories, or persons domiciled there, may, by transferring their domicile to Turkey, retain their Turkish nationality. But it does not, in terms, nor as we think, by implication, provide that "originaires" of the ceded provinces domiciled in Turkey may elect to become Greek subjects.

We are of opinion that the Greek Government is not entitled, independently of the terms of the Convention, to make such a claim. The cession provided for by the Convention would thereafter subject to the laws of Greece all persons within the ceded territory; but in the absence of any stipulation to that effect in the Convention, it would not, in our opinion, affect the nationality of persons domiciled in Turkey, even though "originaires" of the ceded territory.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 66.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February* 11.)

My Lord, *Temple, February* 11, 1882.

Russian claim to Bulgarian tribute as security for war indemnity.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st January last, stating that he had again to refer to us on the subject of the claim advanced by Russia to the Bulgarian tribute as security for the war indemnity imposed upon Turkey by Russia.

That, in his despatch from Berlin of the 13th July, 1878,‡ transmitting a copy of the Treaty signed that day, the Marquis of Salisbury stated that, from the declarations made in Congress with regard to the war indemnity, it resulted that Turkey "is not internationally bound and cannot be compelled to pay any portion of the indemnity until the claims of all the creditors of loans anterior to the war have been paid in full."

That from the Decree§ which Sir Julian Pauncefote inclosed, we would perceive that the bondholders of Turkey had now accepted a special hypothecation from the Porte in which the Bulgarian tribute was not included, but that by Article 20 of that Decree they had had reserved to them the right to have recourse to the general

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* M. Coumoundouros to M. Gennadius, December 17, 1881.
† "Greece No. 7 (1881)," Parliamentary No. 2439.
‡ "Turkey No. 38 (1878)," Parliamentary No. 2058.
§ Inclosure in Lord Dufferin's No. 1125 of December 20, 1881.

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hypothecation originally granted to them in the event of the failure of the special securities then assigned to them.

That the Russian Government had expressed their willingness that the Bulgarian tribute should be paid to Commissioners or to a bank or other public establishment at Constantinople, who should hold it as a security for the war indemnity.

That your Lordship would be glad to be favoured with our opinion whether, having regard to the legal rights of all parties, Her Majesty's Government would be justified in admitting the rights of the Russian Government as second incumbrancers, and in agreeing that the Bulgarian tribute should be held as a security for the war indemnity, subject to the prior lien of Great Britain and France under the Convention of 1855, and that of the Turkish bondholders, should they ever have occasion to resort thereto by reason of the failure of the special securities respectively assigned to them.

That, for convenience of reference, Sir Julian Pauncefote returned therewith our Reports* of the 13th and 30th December, and the previous papers on the subject, and he also inclosed a copy of the Parliamentary Paper which contained the despatch from Lord Salisbury of the 13th July, 1878, thereinbefore mentioned.

In obedience to your Lordship's commands we have the honour to report—

**Should admit right of Russia, subject to prior lien of Great Britain and France and the bondholders.**

That, assuming the Bulgarian tribute to be paid by direction of the Porte to Commissioners or to a bank or other public establishment at Constantinople, to be held as a security for the Russian war indemnity, we think that Her Majesty's Government would be justified in admitting the rights of the Russian Government thereto, and agreeing that the Bulgarian tribute should be held as a security for the war indemnity subject to the prior lien of Great Britain and France under the Convention of 1855, and that of the Turkish bondholders, should they ever have occasion to revert thereto by reason of the failure of the special securities respectively assigned to them.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 67.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 9.)

My Lord, *Temple, March* 8, 1882.

Consular jurisdiction in Ottoman Dominions. Proposed Order in Council.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, a draft of an Order in Council for the further Regulation of Consular Jurisdiction in the Ottoman Dominions, and that he was to request that we would favour your Lordship with our opinion whether it might properly be submitted to the Queen for Her Majesty's approval.

That a correspondence that had taken place between the Foreign Office and the Lords Commissioners of Her Majesty's Treasury was also annexed, for our information,† from which we would perceive that their Lordships agreed to the proposed Order.

That the draft had also been submitted to the Board of Trade, who had expressed their concurrence therein.

That Sir Julian Pauncefote was also to request that that correspondence, which was sent in original, might be returned to that Department with our Report, which your Lordship would be glad to receive at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

Approving draft.

That, in our opinion, the Order in Council may properly be submitted to the Queen for Her Majesty's approval.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Confidential No. 4637, pp. 102–105.

† Treasury, February 3, 1880; Consul Cookson, No. 14, 1881; Mr. Reilly, April 30, 1880, and August 18, 1881; to Treasury, October 15; Treasury, November 16, 1881; Mr. Reilly, February 4, 1882.

## No. 68.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May* 19.)

My Lord, *Temple, May* 19, 1882.

**Emlak, tax on real real property in Turkey.**

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 10th instant, stating that he had the honour to transmit a despatch* from Her Majesty's Consul at Smyrna, inclosing a Report on the emlak, or tax on real property in Turkey, respecting which we desired information, before giving our opinion as to the course to be adopted with regard to the case of the British subject named Hadkinson, who disputed the right of the Turkish Government to levy a tax on machinery which he had erected in his house at Mytilene.

**Case of machinery in Mr. Hadkinson's house.**

That our previous Report of the 20th September last† was returned therewith, and that Lord Tenterden was directed to request that we would favour your Lordship with our further opinion in the case.

In obedience to your Lordship's commands we have the honour to report—

That it appears, from the Report of Consul Dennis, to have been usual, in some parts of Turkey, to treat machinery affixed to real property as enhancing its value for the purposes of taxation.

Whether this course is lawful must be determined by Turkish law.

**No grounds for intervention.**

We do not think it affords any ground for diplomatic intervention, as involving the violation of any Treaty stipulations.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 69.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May* 20.)

My Lord, *Temple, May* 20, 1882.

Smyrna quays.

WE were honoured with your Lordship's commands signified in Sir Charles W. Dilke's letter of the 13th instant, stating that he had the honour to request, by your Lordship's direction, that we would favour your Lordship with our opinion on the following point:—

That in 1867 the Ottoman Government granted a Concession to a Company for the construction of a quay at Smyrna.

**Conditional retrocession of certain parts to Company.**

That on its being represented to Her Majesty's Government that the quay would interfere with the rights of British and other merchants, under the Capitulations, by preventing the landing of goods at the custom-house except on payment of heavy dues, a remonstrance was addressed to the Porte, and that the latter ultimately agreed to reserve free to commerce a space of 100 pics, or about 250 feet, which formed the then existing Custom Quay.

That the history of the negotiations which led to that arrangement would be found in Consul Dennis' Report of the 27th November, 1879, at p. 34 of the printed correspondence‡ (which was inclosed).

That the Tariff of dues imposed by the Company for the landing of goods at the new quay was so excessive that the bulk of the trade of Smyrna passed over the free space, to the great loss of the Company.

That the latter consequently offered to reduce their charges if the free space were given up to them.

That after considering a Report on the subject from a Committee of the mercantile community of Smyrna, Her Majesty's Government signified to the Porte their willingness to consent to the retrocession of the 100 pics on certain conditions, which were set out in Consul Dennis' Report at p. 36 of the printed correspondence.

That those conditions were accepted by the Porte, and some of them were carried out, but that the first and most important one, relating to the reduction in the Tariff of quay dues, was not fulfilled.

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* Consul Dennis, No. 11, February 25, 1882.

† Confidential No. 4637, p. 90.

‡ Confidential No. 4605.

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Condition as to reduction of Tariff not carried out.

That it had been agreed that the Tariff would "be reduced in such a manner as should satisfy all parties concerned;" but that the Porte, after handing over the free space of 100 pics to the Company, permitted them to put into force, from the 1st May, 1880, the new Tariff complained of, without having previously submitted it either to the British Embassy or to the Smyrna merchants.

That Her Majesty's Ambassador at Constantinople protested against that proceeding, and declared that Her Majesty's Government would hold the Porte responsible for the consequences.

That Her Majesty's Consul at Smyrna also protested, and stated that, "in the name of Her Britannic Majesty's Government, he held the Ottoman Porte responsible for all losses, damages, and interest, of whatever description, that might accrue to British merchants or to British commerce."

That Sir A. H. Layard's and Mr. Consul Dennis' protests would be found at pp. 78 and 81 respectively of the printed correspondence, and the approval of Mr. Dennis' action at p. 86.*

Question as to liability of Her Majesty's Government for excess of dues paid by British subjects.

That in the last paragraph of a despatch of the 10th February, 1882, which would be found at p. 220 of the printed correspondence, Mr. Dennis spoke of the repayment of the quay dues arbitrarily exacted by the Porte, under the new Tariff, since the 1st May, 1880, as having been guaranteed by Her Majesty's Government to the British merchants.

That he was accordingly requested to explain to what guarantee by Her Majesty's Government he referred, and that his reply would be found in his despatch No. 3, Commercial, of the 17th March last, at p. 229 of the printed correspondence.

That in that despatch he stated the grounds on which he contended that the repayment of the dues in question was guaranteed by Her Majesty's Government to the British merchants, and that he stated that the latter had always regarded the matter in that light.

That your Lordship, however, was unable to perceive that there was anything in the above-mentioned protests addressed to the Porte, or in those mentioned in Mr. Dennis' despatch, or in the correspondence, which could constitute any guarantee on the part of Her Majesty's Government towards the British merchants that they should be repaid the sums which they claimed.

That apart from the question of liability incurred by Her Majesty's Government, it was questionable whether, on the whole, the improvements effected by the Company did not afford advantages to commerce equivalent to the increased dues levied under the new Tariff; and, further, that it seemed highly improbable that the merchants should not have taken those increased dues into account in fixing the selling price of their goods.

That the recent transfer of the Concession to a British Company presented an opportunity for an equitable settlement of the question, and it appeared to your Lordship that Her Majesty's Government should deal with it on the principle laid down by the Earl of Derby in his despatch No. 35 of the 31st May, 1875 (printed correspondence, p. 26), namely, to secure to British merchants the advantages to which they might be fairly entitled without unduly interfering with a work of public utility.

That the contention of Consul Dennis as to the responsibility of Her Majesty's Government towards the British merchants of Smyrna for the repayment of the dues in question, if admitted, would create a most inconvenient precedent, and that Sir Charles W. Dilke was to submit the draft of a reply which it was proposed to return to his despatch No. 3 of the 17th March, and to request we would inform your Lordship whether we concurred in its terms.

In obedience to your Lordship's commands we have the honour to report—

Approve draft to Consul Dennis.

That we concur in the terms of the proposed reply to the despatch of Consul Dennis, No. 3, of the 17th March.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Sir A. H. Layard's No. 56, Commercial, of May 4, inclosing Sir A. H. Layard to Sawas Pasha, May 1; Protest, May 1, in Mr. Dennis' No. 11, Commercial, of May 3; to Mr. Dennis, No. 4, Commercial, May 18, 1880.

*Draft of Despatch from Earl Granville to Consul Dennis.*

(No. . Commercial.)

Sir, *Foreign Office*, , 1882.

I AM directed by Earl Granville to acknowledge the receipt of your despatch No. 3, Commercial, of the 17th March, in which you state the grounds on which you base your contention that Her Majesty's guaranteed to British merchants in Smyrna the repayment to them of the duties levied by the Quay Company since the 1st May, 1880.

Protests of Her Majesty's Government do not constitute a guarantee of indemnity.

I am now to inform you that, in the opinion of his Lordship, there is nothing in the protests addressed to the Porte in this matter, or in the correspondence which has taken place, which constitutes any guarantee on the part of Her Majesty's Government towards the British merchants that they shall be repaid the sums which they claim by way of indemnity in respect of the higher quay duties levied since the 1st May, 1880; nor are there any circumstances which distinguish the present case from any other in which Her Majesty's Government have had occasion to warn the Turkish Government that they would be held responsible, in certain events, for losses occasioned to British subjects in consequence of the threatened breach of Treaty engagements. The settlement of such questions is an act of State in which Her Majesty's Government, however anxious to secure full justice for the British subjects aggrieved, incur no obligation towards them individually, and must be guided not only by the particular facts of the case, but also by considerations of public policy and convenience.

I am, &c.

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## No. 70.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 1.)*

My Lord, *Temple, June* 30, 1882.

Pitts *v.* Lafontaine.
Pitts *v.* Fawcett.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 22nd instant, stating that he was directed to transmit to us a copy of a telegram received from Her Majesty's Ambassador at Constantinople, stating that Mr. Pitts, the plaintiff in the suits Pitts *v.* La Fontaine and Pitts *v.* Fawcett, which cases had already occupied our attention,* had applied to his Excellency to have a translation of a Turkish document, which he had obtained through Lord Dufferin's instrumentality, legalized at Her Majesty's Embassy, as he was anxious that Consul-General Fawcett, who was the defendant in the second suit above mentioned, should not have cognizance of it.

As to legalization of a document at Embassy at Constantinople instead of in Consular Court.

That in our Report of the 10th March, 1881, we advised, with reference to the question of the legalization of papers at Her Majesty's Embassy, that as there was at Constantinople no difficulty in swearing affidavits, &c., in the Consular Court before the officer duly appointed for the purpose, instructions might, in our opinion, properly be sent to Her Majesty's Embassy at Constantinople to decline in future, unless under exceptional circumstances of emergency, to swear persons to affidavits to be used in proceedings pending before the Supreme Consular Court there, and instructions to that effect were, on the 25th March, addressed to Mr. Goschen. That in the present case the document was not required in any proceedings pending before the Consular Court, but in proceedings pending in this country against Mr. Fawcett; and under the peculiar circumstances of the case, your Lordship would be glad to be favoured with our opinion as to whether Lord Dufferin should accede to Mr. Pitts' application, or inform him that he should apply in the ordinary course to the Consulate-General for the necessary legalization of the document in question.

We are also honoured with a further letter from Sir J. Pauncefote, dated the 28th instant, inclosing a copy of a telegram received from Her Majesty's Ambassador at Constantinople, pressing for a reply to the above question.

In obedience to your Lordship's commands we have the honour to report—

May be so legalized.

That we think that, under the peculiar circumstances of the case, Lord Dufferin should accede to Mr. Pitts' application.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Law Officers' Report, September 21, 1881 (Confidential 4637, p. 92).

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## No. 71.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 14.)

*Temple, September* 14, 1882.

My Lord,

Charge against Captain Grenfell and marine, Moore, for shooting at murderers of Captain Selby.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th August last, stating that by direction of your Lordship he had to transmit to us the correspondence, noted in the margin of his letter,* relating to the following incident which had arisen out of the prosecution before the Turkish Courts of the Albanians at whose hands the late Captain Selby met with his death.

Grounds for claiming their immunity from local jurisdiction:—1st. As belonging to ship of war; 2nd. As belonging to "stationnaire" attached to Embassy.

That we would observe that, as reported in Lord Dufferin's No. 284, the Turkish authorities preferred a counter-charge against Captain Grenfell and the marine, Moore (who were with Captain Selby at the time of the attack made on him), for having fired at and wounded his retreating assailants. Lord Dufferin thereupon claimed immunity for Captain Grenfell and the marine, Moore, from the jurisdiction of the Turkish Courts, on the ground that such immunity was enjoyed under the law of nations by the officers and crew of vessels of war in foreign waters, and also that the vessel of war to which Captain Grenfell and the marine belonged was attached to the Embassy as a "stationnaire," and by custom the officers and crew of such vessels were exempt from the local jurisdiction.

That Lord Dufferin, in his despatch No. 380, reported that the Porte had assented to the above views. He was informed in the Foreign Office despatch No. 292, that the doctrine that the officers and crew of all foreign vessels of war enjoyed such immunity while on shore in respect of offences committed there could not be supported, but he was requested to report on the local custom applying to "stationnaires."

That in his despatch No. 688 Lord Dufferin transmitted a Report on that subject, from which it appeared that the immunity in question, in regard to the officers and crews of "stationnaires," was claimed by the Embassies of Austria, France, Germany, Italy, and Russia.

That in his despatch No. 741 Lord Dufferin transmitted the Reports of the Law Advisers of the Porte, who avoided expressing any opinion as to the privileges of a "stationnaire," but maintained that the officers and crew of any vessel of war in foreign waters enjoyed by international law immunity from the local jurisdiction in respect of all offences, whether committed on shore or on board.

That your Lordship apprehended that the law on the subject was correctly laid down in the inclosed extract from Ortolan, Book 2, cap. 13, p. 268, and Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion whether Lord Dufferin might be instructed to that effect while claiming for Captain Grenfell and the marine, Moore, the immunity from the local jurisdiction accorded by local custom to the officers and crews of "stationnaires" and claimed by other Embassies.

In obedience to your Lordship's commands we have the honour to report—

Statement of law by Ortolan correct.

That we think the law is correctly laid down in the inclosed extract from Ortolan, and that Lord Dufferin may properly be instructed to that effect while claiming for Captain Grenfell and the marine, Moore, immunity from local jurisdiction as an officer and member of the crew of the "stationnaire."

Sounder to base immunity of those belonging to "stationnaire" on ground that they are attached to Embassy than on local custom.

We think, however, it would be a sounder view not to base the immunity of the officers and crew of the "stationnaire" merely on local custom, but on the ground that they are attached to the Embassy and share the immunity accorded by international law to all persons attached to the Embassy, the local custom serving merely to define their position as members of that body.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Extract from "Règles Internationales et Diplomatie de la Mer." T. Ortolan. Vol. I, pp.* 268, 269.

"Mais si c'est à terre, en pays étranger, que des individus, quels qu'ils soient, appartenant aux États-Majors ou aux équipages des bâtiments de guerre, se rendent coupables d'infractions aux lois de ce pays, nul doute que les autorités locales n'aient le droit de s'en emparer tant qu'ils sont à terre, et de les livrer aux Tribunaux de leur nation pour être jugés et punis suivant ces lois. Seulement, les commandants doivent être informés de ces arrestations et des motifs qui y ont donné lieu; et c'est alors le cas, pour eux ou pour les Agents Diplomatiques ou Consulaires, de faire, suivant les règles et les distinctions que nous exposerons bientôt à ce sujet, toutes les démarches nécessaires soit pour obtenir que les personnes inculpées leur soient rendues, soit du moins pour veiller à la manière dont elles seront traitées et jugées.*

"Si les coupables parviennent à rallier leur bord avant d'avoir été saisis, les autorités du pays n'ont pas le droit de les y poursuivre et de les y arrêter; il ne leur reste plus qu'à demander et à obtenir, s'il y a lieu, que ces personnes leur soient livrées; et c'est encore le cas d'appliquer les règles que nous devons exposer plus loin sur ces extraditions réciproques."

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## No. 72.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 14.)

*Temple, September* 14, 1882.

My Lord,

Charge against Captain Grenfell and the marine Moore for shooting at the murderers of Captain Selby.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st August last, stating that, by direction of your Lordship, he had to transmit to us therewith a further despatch from Her Majesty's Ambassador at Constantinople relative to the counter-charge brought by the Turkish authorities against Captain Grenfell and the marine Moore in connection with the murder by Albanians of the late Captain Selby.†

That in the note from the Porte which accompanied that despatch it was stated that during the course of the preliminary examination of the persons accused of the murder of Captain Selby, Captain Grenfell and the marine were found to have incurred the penalties prescribed in Article 179 of the Ottoman Penal Code for having fired upon the assailants of Captain Selby without due justification, and the Porte requested that those penalties might be applied to them.

That the former papers in the case were already before us in connection with the question as to the privileges of officers and crews of "stationnaires" which was referred to us in Sir Julian Pauncefote's letter of the 24th ultimo.

That the Porte disclaimed jurisdiction over the offence alleged to have been committed by Captain Grenfell and the marine Moore, and yet asked that the penalty imposed by Turkish law for that offence should be imposed on them by the British authorities, and apparently without previous trial.

Proposed instructions to Lord Dufferin: They are amenable to British law, and cannot be subjected to Ottoman Penal Code.

That your Lordship proposed to instruct Lord Dufferin to inform the Porte, in reply to the note of Saïd Pasha, that even if the Turkish Tribunals had jurisdiction over the case, no punishment could be inflicted without previous trial and sentence; but it was admitted that the Turkish Tribunals had no jurisdiction in the case; Captain Grenfell and the marine Moore were therefore amenable only to British law and jurisdiction, and the request contained in the note that they should be subjected to the penalties prescribed by Article 179 of the Ottoman Penal Code could not be entertained.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether the proposed instruction was right and proper under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

Approve instructions.

That, in our opinion, the proposed instruction is right and proper under the circumstances.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* List of Papers:—The Earl of Dufferin, Nos. 284, 317, 380, 688, and 741 of 1882; to the Earl of Dufferin, No. 292; Extract from Ortolan's "Règles Internationales et Diplomatie de la Mer," vol. i, pp. 268, 269. (F. O. Library, 8vo, 2632.)

* "Le différend survenu en 1862 entre le Brésil et la Grande-Bretagne, auquel a mis fin un Jugement du Roi des Belges, arbitre choisi par les deux parties, avait pour origine l'arrestation faite à terre aux environs de Rio Janeiro par une patrouille de police du pays de trois officiers appartenant à la frégate de Sa Majesté Britannique 'La Forte' (le chapelain de la frégate, un lieutenant, et un midshipman) à la suite d'un conflit entre ces trois officers, non revêtus de leur uniforme, et une sentinelle Brésilienne. Le Gouvernement Anglais avait considéré comme un outrage à sa marine la détention momentanée qu'ils avaient eu à subir. (Voy. Appendice, Annexe I.)"

† The Earl of Dufferin, No. 767, August 11, 1882.

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# United States.

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## No. 73.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May* 17.)

Murder of J. H. Tunstall. Proposed reference of case to the Court of Claims.

My Lord, *Temple, May* , 1882.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 1st March last, stating that, with reference to our Report of the 9th May last, relative to the claim of Mr. J. P. Tunstall, a British subject, for compensation for the loss sustained by him through the murder, in New Mexico, of his son, Mr. J. H. Tunstall, and the plunder of his property, he had the honour to transmit to us, by direction of your Lordship, a despatch from Mr. West,* inclosing copy of a note addressed to him by the United States' Secretary of State, in reply to a communication addressed to the United States' Government by Sir E. Thornton in May last, founded on our Report above referred to.

That in that reply Mr. Frelinghuysen proposed that the case should be referred for adjudication to a competent judicial Tribunal, provided that the sanction of Congress to that course could be obtained.

That Lord Tenterden was to request that we would take that proposal into our consideration, and favour your Lordship with our opinion whether it might properly be acceded to by Her Majesty's Government.

We are also honoured with a further letter from Lord Tenterden, inclosing a despatch addressed by your Lordship to Her Majesty's Minister at Washington,† instructing him to make certain inquiries as regards the Court to which the case would be brought, together with Mr. West's reply, and that Lord Tenterden requested that we would take those papers into consideration with those then before us, which were transmitted in his letter in my letter of the 1st March last.

That the Act of Congress was inclosed to which reference was made.

In obedience to your Lordship's commands we have the honour to report—

That we presume it is proposed that the Court of Claims should have jurisdiction given to it by the reference of this claim by Congress under section 1,059 of the Revised Statutes of the United States.

Objections to such a course.

If the liability of the United States were admitted, subject to the facts being established after judicial inquiry, we should see no objection to this course.

But the Court of Claims as constituted hardly appears to be a suitable Tribunal to which to refer so delicate and important a question as that which has been raised by the United States in the present case.

We think Her Majesty's Government could not reasonably be expected to consent to be bound upon such a point by the determination of such a Tribunal as the Court of Claims.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 74.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 10.)

Murder of J. H. Tunstall in New Mexico and plunder of his property.

My Lord, *Temple, June* 9, 1882.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was directed to acknowledge the receipt of our letter of the ultimo, relative to the proposal of the United States' Secretary of State to refer Mr. J. P. Tunstall's claim for compensation for the murder of his son in New Mexico, and the plunder of his property, for adjudication to a competent Judicial Tribunal, provided that the sanction of Congress to that course be obtained. That Sir Julian Pauncefote was to transmit to us the draft of an instruction founded upon our Report, which your Lordship proposed to address to Her Majesty's Minister at Washington in the matter, and that he was to request that we would inform your Lordship whether we approved of its terms, or whether we would suggest any modifications or additions.

Approve instructions to Mr. West as to submission of case to Court of Claims.

In obedience to your Lordship's commands, we have the honour to report—

That we approve of the terms of the accompanying draft instruction.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch to Mr. West.*

(No. .)

Sir, *Foreign Office, June* , 1882.

HER Majesty's Government have had under their consideration your despatch No. 43 of the 31st January last, conveying the proposal of the Government of the United States to refer Mr. J. P. Tunstall's claim for adjudication to a competent Judicial Tribunal, provided Congress shall be willing to confer the necessary jurisdiction on the Court of Claims, or to make some other like provision in regard to the matter. They have also considered your further despatch No. 158 of the 6th April transmitting a correspondence with Mr. Frelinghuysen, in which the Secretary of State explains that the functions of the Court of Claims in dealing with the case would not be limited to a judicial inquiry into the facts, but that the Court would be called on to determine whether on general principles of international law a valid claim exists against the United States.

I have now to state to you that, if the liability of the United States were admitted, subject to the facts being established after judicial inquiry, Her Majesty's Government would have no objection to the course proposed by Mr. Frelinghuysen.

The Court of Claims, however, as constituted, hardly appears to be a suitable Tribunal to which to refer so delicate and important a question as that which has been raised by the United States' Government in the present case, and Her Majesty's Government could not reasonably be expected to consent to be bound by its decision upon such a point.

I have to instruct you to address a communication to the United States' Government in the above sense, and to express the hope that they will be able to meet the views of Her Majesty's Government in this long-pending matter, and suggest some other mode of disposing of the case.

I am, &c.

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## No. 75.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 4.)

Shipping abuses.

My Lord, *Temple, June* , 1882.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 9th instant, stating that we were probably aware that Her Majesty's Government had endeavoured at various times to come to an agreement with the Government of the United States which should put a stop in the ports of either country (but more especially in the ports of the United States) to objectionable practices which caused considerable loss and annoyance to masters and owners of trading vessels.

Suits against masters: Desertion, &c.

That those practices might be shortly described as the encouragement of desertion among the ships' crews and of the institution of suits against the master, which would come to nothing if proceeded with, but which had so often to be compromised to the detriment of the interests of the ship in consequence of it being impossible for the master to remain long enough in port to defend the action.

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* Mr. West, No. 43, January 31, 1882.

† To Mr. West, No. 80, March 29, 1882. From Mr. West, No. 158, April 6, 1882.

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Proposed Convention with United States. (Consular Convention.)

That the whole case was fully stated in the accompanying printed paper,* and that Sir J. Pauncefote referred us more particularly to the Board of Trade letter of the 14th February, 1882, and to Mr. Buckley's Memorandum thereon, which set forth the proposed remedies for the state of things complained of. That it would be observed that one of the suggestions is that certain clauses of the British Merchant Shipping Acts should be applied to United States' ships in British ports on condition of the corresponding clauses in United States' Acts of Congress being applied to British ships in United States' ports.

That under 39 & 40 Vict., cap. 80, Her Majesty could, by Order in Council, apply any of the provisions of the Merchant Shipping Acts, 1854 to 1876, or of any Act amending the same, to the ships of any foreign country, the Government of which desired that the provisions of those Acts should be so applied, with or without limitation.

But that the Act 39 & 40 Vict., cap. 80, did not expressly sanction any arrangement by which British subjects would be liable to be proceeded against and punished in the Courts of a foreign country.

As to reciprocal application of British and United States' Merchant Shipping Acts, by Convention.

That Sir J. Pauncefote was to request our opinion whether Her Majesty's Government had power, without the express sanction of Parliament, to enter into a Convention with the United States' Government, for the reciprocal application of certain clauses of the Merchant Shipping Acts of each country to the seamen belonging to the ships of the other under which British subjects would be liable to be proceeded against and punished in and by the Courts of the United States.

In obedience to your Lordship's commands we have the honour to report—

Act of Parliament necessary for punishment in United States of offences committed outside that country.

That, in our opinion, Her Majesty's Government have not the power, without the express sanction of Parliament, to enter into a Convention with the United States' Government for the reciprocal application of certain clauses of the Merchant Shipping Acts of each country to the seamen belonging to the ships of the other under which British subjects would be liable to be proceeded against and punished in the Courts of the United States in respect of offences committed outside that country.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 76.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October 20.)*

*Temple, October 19, 1882.*

My Lord,

Claim of Mr. Young, trustee under bankruptcy of A. Collie.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th ultimo, stating that he was to submit to us papers† relating to the claim of Mr. Young (as trustee under the bankruptcy of Alexander Collie) to the restitution by the United States' Government of the proceeds of some cotton belonging to the bankrupt which was seized and sold by them at Savannah in 1864, under the provisions of the Captured and Abandoned Property Act of the United States' Congress of the 12th March, 1863.

For recovery of proceeds of cotton seized by the United States' Government in 1864.

That the claim for the recovery of the proceeds of the cotton in question had been the subject of a protracted litigation in the United States, and that the final decision of the Supreme Court of the United States on appeal from the Court of Claims was against the right to recover the same.

That the case of Mr. Young was stated at great length in a voluminous Memorial transmitted by him to your Lordship on the 3rd July last, and which contained, in the Appendix, a copy of the Judgment of the Court of Appeal. That an epitome of that Memorial would be found in Mr. Young's letter of the 11th ultimo, which also contained a brief statement of the case. That the principal facts were as follows:—

By the Captured and Abandoned Property Act of 1863, persons whose property had been seized under its provisions were entitled to recover the proceeds on proof of ownership, and that the claimant "had never given aid or comfort to the rebellion." That it was admitted that Collie carried on a great trade in contraband of war and blockade-running, and gave "aid and comfort to the rebellion." But on the 25th December, 1868, a General Proclamation was issued by the President, granting full pardon to all persons *engaged in the rebellion or otherwise guilty of any crime or offence in connection therewith.* That the pardon extended, without reservation, to all persons, and granted full restitution of all rights.

Claim rejected by United States' Courts on the ground that Mr. Collie, being a British subject, was not guilty of any offence against the United States, and therefore could not claim benefit of pardon proclaimed in 1868.

That, nevertheless, the Supreme Court of the United States, on appeal, confirming the Judgment of the Court of Claims, held that "Collie's acts were 'aid and comfort' to the rebellion within the meaning of section 3 of the Act of the 12th March, 1863; and that inasmuch as such acts were not offences against the United States or the law of nations, such acts, and the consequence thereto annexed by the said Act, could not be affected by the general pardon of the President of the 25th December, 1868, and therefore the memorialist could not recover under the said Act.

That it was adjudged that the Act furnished no remedy for the recovery of the proceeds of the cotton; and that the cotton was subject to seizure and confiscation as "booty of war," without power in the Judicial Department of the State to order its restitution (Epit., para. 34).

That Mr. Young solicited the intervention of Her Majesty's Government in support of his claim to restitution of the proceeds of the cotton. That he contended that that decision of the Supreme Court of the United States was in violation of the principles of international law and of justice and equity, as it made discrimination in favour of rebels and traitors to the United States and against Her Majesty's subjects, and laid down the doctrine that the cotton was liable to seizure on land as "booty of war."

That it appeared that that was the only case of the kind which had occurred in which cotton seized at Savannah had not been returned to the owner (Epit., para. 33).

Rejected by Mixed Commission.

That Collie's claim was rejected by the Mixed Commission as not being within its jurisdiction.

Mr Young's objections to decision of United States' Courts.

That it had been rejected by the Tribunals of the United States on technical grounds, and, as Mr. Young contended, contrary to the manifest intention of the Act of Congress and of the President's pardon. That the Supreme Court, however, in its Judgment, held that the cotton had been purchased in exchange for contraband of war which had escaped capture; that it was the intention of Congress to exclude from the benefit of the Statute all persons giving "aid and comfort" to the rebellion, though owing no allegiance to the United States; and therefore to exclude from right of recovery "proceeds realized by exchange of goods run through the blockade" (Epit., para. 40).

That the Supreme Court not only decided that the proceeds of the cotton could not be recovered under the Act, but it declared also that the cotton had been lawfully seized as "booty of war."

That on that point it was urged that by the law of nations the only penalty which attached to the carriage of contraband of war was seizure at sea and confiscation.

That there was no pretence for saying that Collie, at the time of the seizure of the cotton on land, was an enemy of the United States. That it was contended, therefore, by Mr. Young that the seizure as booty of war of Collie's cotton, the private property of a neutral, non-resident at the time in the United States, was illegal by international law (Epit., paras. 38, 39, and 40).

That our opinion was requested as to whether any, and, if so, what, action should be taken by Her Majesty's Government on Mr. Young's Memorial.

In obedience to your Lordship's commands we have the honour to report—

Nothing in Judgment inconsistent with diplomatic intervention.

That there does not appear to be anything in the Judgment of the Supreme Court inconsistent with the propriety of diplomatic intervention on behalf of Mr. Young. It seems clear that, whatever ground may exist for diplomatic intervention, the United States could only be liable to legal process to recover the value of the cotton seized by virtue of the Captured and Abandoned Property Act. It is equally clear that, under the provisions of that Act, the claimant could only recover on proof that he never gave aid or comfort to the rebellion. The Supreme Court have held in several cases that the general pardon of 1868 was equivalent to conclusive proof by any person within its operation that he had never given aid or comfort to the rebellion, however treasonable his conduct in point of fact. But in the present case they came to the conclusion that Mr. Collie was not within the terms of the Proclamation, inasmuch as he had owed neither permanent nor temporary allegiance to the United States, and that therefore he had not committed any of the offences pardoned by it, and could not avail himself of it.

There was consequently nothing to relieve him from the effects of the proof (of which there was ample) that he had given aid and comfort to the rebellion, which was a complete bar to his recovery under the Act.

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* Confidential Print (unnumbered) respecting Consular Convention, &c., with United States, 1881–82.

† Memorial in Mr. Young's Letter of July 3, 1882; Mr. Young (with Epitome), August 11, 1882.

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Not proper to canvass correctness of decision of United States' Courts.

In our opinion, it would not be proper for Her Majesty's Government to canvass the correctness of this decision. But whilst it is by no means clear that the Judgment is erroneous, yet the result is startling and anomalous.

All the principal offenders in the treasonable acts, and even British subjects who by residence owed temporary allegiance to the United States, are restored to the possession of their property, whilst confiscation of private property is enforced only in the case of British subjects not guilty of any legal offence against the United States, and who owed them no allegiance. The grounds upon which the seizure of the cotton, in the first instance, is justified do not appear to us very satisfactory. But looking at the length of time which has elapsed, and the circumstances which have intervened, we do not think it would be expedient to rest any intervention which may be determined upon on this alone.

It seems to us, however, that, seeing that whatever the propriety of the original seizure, the value of the cotton seized has been restored to all United States' subjects engaged in the rebellion, it is neither equitable nor reasonable that an exception should be made to the detriment of a British subject, who assisted them, and that the loss of property should fall upon him alone.

Her Majesty's Government might intervene on grounds (1) of restoration of value of cotton seized to United States' citizens in similar circumstances; (2) of circumstances of original seizure.

We think, therefore, that Her Majesty's Government might properly, on this ground, and also on account of the circumstances of the original seizure, use their good offices with the United States' Government in support of Mr. Young's claim. At the same time, it must be remarked that the facts proved with reference to the transactions between Mr. Collie and the Confederate Government are not calculated to incline the Government of the United States to regard the claim favourably.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 77.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November 11.)*

Claim of Mr. Young, trustee under bankruptcy of A. Collie, for cotton seized in 1864.

My Lord, *Temple, November* 11, 1882.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 2nd instant, stating that, with reference to our Report of the 19th ultimo, he was to transmit to us the draft of a despatch which your Lordship proposed to address to Mr. West, Her Majesty's Minister at Washington, directing him to use his good offices with the Government of the United States in support of Mr. Young's claim (as trustee under the bankruptcy of Alexander Collie) to the restitution by that Government of the proceeds of some cotton belonging to the bankrupt which had been seized and sold by them at Savannah in 1864, under the provisions of the Captured and Abandoned Property Act of the United States' Congress of the 12th March, 1863.

That we were requested to inform your Lordship whether we concurred in the terms of the draft despatch.

Approve draft to Mr. West in favour of claim.

In obedience to your Lordship's commands we have the honour to report—

That we concur in the terms of the proposed draft.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch to Mr. West.*

Sir, *Foreign Office, November* , 1882.

I TRANSMIT to you herewith the papers noted in the margin,* relating to the claim of Mr. Young (as trustee under the bankruptcy of Alexander Collie) to the restitution by the United States' Government of the proceeds of some cotton belonging

to the bankrupt which was seized and sold by them at Savannah in 1864 under the provisions of the Captured and Abandoned Property Act of the United States' Congress of the 12th March, 1863.

The claim for the recovery of the proceeds of the property in question has been the subject of a protracted litigation in the United States, and the final decision of the Supreme Court of the United States, on appeal from the Court of Claims, is against the right to recover the same.

The case of Mr. Young is stated at great length in a voluminous Memorial transmitted by him to this Department on the 3rd August last, and which contains in the Appendix a copy of the Judgment of the Court of Appeal.

An epitome of that Memorial will be found in Mr. Young's letter of the 11th August last, which also contains a brief statement of the case. The principal facts are as follows.

By the Captured and Abandoned Property Act of 1863 persons whose property had been seized under its provisions were entitled to recover the proceeds on proof of ownership, and that the claimant "had never given aid or comfort to the rebellion."

It is admitted that Collie carried on a great trade in contraband of war and blockade-running, and gave "aid and comfort to the rebellion." But on the 25th December, 1868, a general Proclamation was issued by the President granting full pardon to all persons *engaged in the rebellion, or otherwise guilty of any crime or offence in connection therewith.*

The pardon extended without reservation to all persons, and granted full restitution of all rights.

Nevertheless, the Supreme Court of the United States, on appeal, confirming the Judgment of the Court of Claims, held that "Collie's acts were 'aid and comfort' to the rebellion within the meaning of section 3 of the Act of the 12th March, 1863, and that inasmuch as such acts were not offences against the United States or the law of nations, such acts and the consequence thereto annexed by the said Act could not be affected by the general pardon of the President of the 25th December, 1868, and therefore the memorialist could not recover under the said Act."

It was adjudged that the Act furnished no remedy for the recovery of the proceeds of the cotton, and that the cotton was subject to seizure and confiscation as "booty of war," without power in the Judicial Department of the State to order its restitution. (Epitome, para. 34.)

Mr. Young solicits the intervention of Her Majesty's Government in support of his claim to restitution of the proceeds of the cotton. He contends that this decision of the Supreme Court of the United States is in violation of the principles of international law and of justice and equity, as it makes discrimination in favour of rebels and traitors to the United States and against Her Majesty's subjects, and lays down the doctrine that the cotton was liable to seizure on land as "booty of war."

It appears that this is the only case of the kind which has occurred in which cotton seized at Savannah has not been returned to the owner (Epitome, para. 33). Collie's claim was rejected by the Mixed Commission as not being within its jurisdiction.

It has been rejected by the Tribunals of the United States on technical grounds, and, as Mr. Young contends, contrary to the manifest intention of the Act of Congress and of the President's pardon.

The Supreme Court, however, in its Judgment, held that the cotton had been purchased in exchange for contraband of war which had escaped capture; that it was the intention of Congress to exclude from the benefit of the Statute all persons giving "aid and comfort" to the rebellion, though owing no allegiance to the United States; and, therefore, to exclude from right of recovery "proceeds realized by exchange of goods run through the blockade (Epitome, para. 40).

The Supreme Court not only decided that the proceeds of the cotton could not be recovered under the Act, but it declared also that the cotton had been lawfully seized as "booty of war."

On this point it is urged that, by the law of nations, the only penalty which attaches to the carriage of contraband of war is seizure at sea and confiscation.

There is no pretence for saying that Collie, at the time of the seizure of the cotton on land, was an enemy of the United States. It is contended, therefore, by Mr. Young, that the seizure as booty of war of Collie's cotton, the private property of a neutral non-resident at the time in the United States, was illegal by international law (Epitome, paras. 38, 39, and 40).

The facts of the case, as above stated, have been laid before the Law Officers of

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* *List of Papers.*

Memorial in Mr. Young's letter of August 3, 1882.
Mr. Young, August 11, 1882, with Epitome.

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the Crown for their opinion as to whether any, and if so, what action should be taken by Her Majesty's Government on Mr. Young's Memorial.

I have now to state to you that I have been advised that there does not appear to be anything in the Judgment of the Supreme Court inconsistent with the propriety of diplomatic intervention on behalf of Mr. Young. It seems clear that whatever ground may exist for diplomatic intervention, the United States could only be liable to legal process to recover the value of the cotton seized, by virtue of the Captured and Abandoned Property Act. It is equally clear that under the provisions of that Act the claimant could only recover on proof that he never gave aid or comfort to the rebellion.

The Supreme Court have held in several cases that the general pardon of 1868 was equivalent to conclusive proof, by any person within its operation, that he had never given aid or comfort to the rebellion, however treasonable his conduct in point of fact. But, in the present case, they came to the conclusion that Mr. Collie was not within the terms of the Proclamation, inasmuch as he owed neither permanent nor temporary allegiance to the United States, and that, therefore, he had not committed any of the offences pardoned by it, and could not avail himself of it.

There was consequently nothing to relieve him from the effect of the proof (of which there was ample) that he had given aid and comfort to the rebellion, which was a complete bar to his recovery under the Act.

It would not be proper, in the opinion of Her Majesty's Government, to canvass the correctness of this decision; but whilst it is by no means clear that the Judgment is erroneous, yet the result is startling and anomalous.

All the principal offenders in the treasonable acts, and even British subjects, who by residence owed temporary allegiance to the United States, are restored to the possession of their property, whilst confiscation of private property is enforced only in the case of British subjects not guilty of any legal offence against the United States, and who owed them no allegiance. The grounds upon which the seizure of the cotton in the first instance is justified, do not appear to Her Majesty's Government to be very satisfactory; but, looking at the length of time which has elapsed, and the circumstances which have intervened, they do not think it would be expedient to rest their intervention on this alone.

It seems to them, however, that seeing that, whatever the propriety of the original seizure, the value of the cotton seized has been restored to all United States' subjects engaged in the rebellion, it is neither equitable nor reasonable that an exception should be made to the detriment of a British subject who assisted them, and that the loss of property should fall on him alone.

On this ground, therefore, and also on account of the circumstances of the original seizure, I have to request that you will use your good offices with the United States' Government in support of Mr. Young's claim.

I am, &c.

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## No. 78.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November 27.)*

My Lord, *Temple, November* 25, 1882.

**Clayton-Bulwer Treaty. Continental policy of United States.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 17th instant, stating that your Lordship had had under your consideration our Report of the 30th August, relative to the questions raised by Mr. Frelinghuysen in his despatch to Mr. Lowell of the 8th May last, in which he explained the views of his Government with regard to the Continental policy of the United States and to the provisions of the Clayton-Bulwer Treaty. That Sir J. Pauncefote was to transmit to us a draft of a despatch to Mr. West, Her Majesty's Minister at Washington, which had been drawn up in reply to the arguments adduced by Mr. Frelinghuysen in support of the views held by his Government on that question.

**Draft to Mr. West.**

That we should observe that in the proposed draft reference was made to the Memorandum drawn up by Mr. E. Peshine Smith and communicated unofficially to Sir E. Thornton by Mr. Hamilton Fish on the 19th April, 1869.

**Ought unofficial Memorandum by Mr. E. Peshine Smith to be referred to?**

That that document, though communicated unofficially, was handed by Mr. Fish to Her Majesty's Minister in reply to the representations which the latter had been instructed to address officially to the Government of the United States; and that Mr. Fish stated at the time that it contained the general views held by his Government.

It had, therefore, been used in support of the arguments contained in the proposed reply, but that, if it should appear to us that it could not properly be referred to, the draft would be amended accordingly.

That with regard to the second point raised by Mr. Frelinghuysen as to the position of this country in regard to British Honduras, Sir J. Pauncefote stated that the views laid down in the draft despatch, pp. 8-13, had been submitted to Her Majesty's Principal Secretary of State for the Colonies, who had expressed his concurrence in them.*

That Sir J. Pauncefote requested that we would take the proposed despatch to Mr. West into our consideration, and favour your Lordship with any observations we might have to offer upon it.

In obedience to your Lordship's commands we have the honour to report—

That we have considered the proposed despatch to Mr. West.

**Statement of "general principle" and General Cass' admission not in accord.**

It occurs to us that the statement of the "general principle" established by Article VIII of the Clayton-Bulwer Treaty contained in the first paragraph on p. 3 of the draft, is not precisely in accord with the admission by General Cass, referred to in the next paragraph. Unless there is a reason for this variation, it would seem desirable, for the strength of the argument, that the statement should be in as close accord as possible with the admission.

**Importance of Memorandum. Cannot decide as to propriety of referring to it.**

With regard to the reference made to the Memorandum drawn up by Mr. Peshine Smith, we would observe that it is a question of diplomatic propriety and precedent whether it can properly be relied on. If it can be used, it is certainly an important document in support of the argument urged in the despatch. But if any reasonable diplomatic objection could be taken to its use, we think the reference to it had better be omitted.

We are not in a position to judge in what light a document is regarded which is unofficially communicated in answer to official representations.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch from Earl Granville to Mr. West.*

(No. .)

Sir, *Foreign Office*, , 1882.

YOU have already received, with my despatch No. 186 of the 17th June last, a copy of the despatch addressed by Mr. Frelinghuysen to Mr. Lowell on the 8th May, by whom it was communicated to me on the 31st of that month, in which the views of the Government of the United States are expressed in great detail respecting the traditional Continental policy of that Government, and the provisions of the Clayton-Bulwer Treaty.

Her Majesty's Government have not failed to give their most careful consideration to the important questions discussed in Mr. Frelinghuysen's communication, and I now proceed to convey to you the following remarks upon some of the principal points.

You will have observed that three questions are raised by Mr. Frelinghuysen:—

1. The meaning and effect of Article VIII of the Clayton-Bulwer Treaty;
2. Whether such acts have been committed by Great Britain in British Honduras in violation of the Treaty as would entitle the United States to denounce it; and
3. The proposed conclusion of a fresh Agreement between the two countries, having for its object the retention and renewal of certain provisions of the Clayton-Bulwer Treaty, and the definition of the distance from either end of the proposed canal beyond which captures might be made by belligerents in time of war.

As regards the first point, Mr. Frelinghuysen renews Mr. Blaine's contention, that the Clayton-Bulwer Treaty had reference only to the interoceanic routes then in contemplation, and that Article VIII of that Treaty must be read subject to the provisions of the earlier Treaty of 1846 between the United States and New Grenada, which, as he alleges, secures to the United States the sole Protectorate of any route across the Isthmus of Panamá.

Her Majesty's Government are unable to accept that view. The routes in contemplation at the date of the Clayton-Bulwer Treaty were those by way of the River San

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* Colonial Office, received November 10, 1882.

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Juan and either or both of the Lakes of Nicaragua and Managua; and Article I of the Treaty no doubt applied only to those routes. By that Article it was declared that neither the one nor the other of the High Contracting Parties would ever obtain or maintain for itself any exclusive control over any ship-canal which might be constructed between the Atlantic and Pacific Oceans, by the way of the River St. Juan de Nicaragua and either or both of the Lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean.

But by Article VIII the High Contracting Parties, after declaring that they not only desired in entering into the Convention to accomplish a particular object, but also to establish a general principle, agreed "to extend their protection by Treaty stipulations to any other practicable communications (that is to say, other than those mentioned in Article I), whether by canal or railway, across the isthmus which connects North and South America; and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panamá."[*]

This is, in effect, an agreement that all the prior provisions with reference to the protection of the particular ship-canal then in contemplation shall, in principle, be applied to any interoceanic ship-canal thereafter constructed. The contention of Mr. Frelinghuysen, that Article VIII "relates only to those projects *now* (1850) proposed to be established," is opposed to the terms of the Article, which expressly refers to any communications other than those mentioned in Article I, and *especially* to those then projected. It is also contended that Article VIII "contemplates some future Treaty stipulation." But it is none the less an agreement because its application to any canal thereafter made is to be carried into effect by Treaty stipulations.

The general principle established by Article VIII of the Clayton-Bulwer Treaty was that all communications by canal or railway between the Atlantic and Pacific Oceans, "across the isthmus which connects North and South America," should be established on the broad basis that they should be for the general benefit of mankind, and that no country should, on any pretence whatever, reap an advantage which was not enjoyed by all who should be willing to extend their protection to such enterprises.

This "general principle" was not only fully admitted by General Cass in his note to Lord Napier of the 8th November, 1858, as pointed out to you in my despatch of the 14th January last, but it was actually carried out both by Great Britain and the United States in their subsequent Treaties with Honduras and Nicaragua, in which they respectively agreed to extend their protection and guarantee to the interoceanic communications therein mentioned, in order to insure equal treatment to all nations across those public highways, and to prevent the imposition of unfair discriminating duties in matters of commerce, or of unequal transit dues.

I refer to the Treaties between Great Britain and Honduras of the 27th August, 1856,[†] and between Great Britain and Nicaragua of the 11th February, 1860,[‡] and to the Treaties between the United States and Honduras of the 4th July, 1864,[§] and between the United States and Nicaragua of the 21st June, 1867,[‖] which show that Article VIII of the Clayton-Bulwer Treaty had reference to the protection and guarantee to be extended to *all* interoceanic communications, and not to any one particular scheme or schemes.

Moreover, the United States, in their Treaty with Nicaragua, not only "agreed to extend their protection to all such routes of communication (between the Atlantic and Pacific Oceans), and to guarantee the neutrality and innocent use of the same," but did further "agree to employ their influence with other nations to induce them to guarantee such neutrality and protection."

The Government of the United States having, therefore, since the conclusion of its Treaty of 1846 with New Grenada, entered into Treaties of a more recent date with Great Britain and other Powers, carrying out the "general principle" established by the Clayton-Bulwer Treaty, which is opposed to all idea of exclusive advantages in any interoceanic communication which may be constructed, they can hardly now appeal, without inconsistency, to their Treaty with New Grenada, as giving them exclusive rights of protection over the projected canal across the Isthmus of Panamá.

Moreover, there is nothing in the terms of the Treaty of 1846 which confers on the United States any exclusive right of protection,[¶] or which is inconsistent with the

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[*] Print, Part I, p. 39, Confidential No. 4574.

[†] State Papers, vol. xlvi, p. 172.

[‡] Ibid., vol. l, p. 120.

[§] Ibid., vol. liv, p. 1139.

[‖] Ibid., vol. lviii, p. 1167.

[¶] State Papers, vol. xxxvi, p. 994.

joint protection of Great Britain and the United States; and in the view, therefore, of Her Majesty's Government, the guarantee given by the United States to New Grenada in the Treaty of 1846 meant no more than the guarantee given by the United States, jointly with this country, in the Clayton-Bulwer Treaty of 1850,[*] or the guarantees given by this country, by France, and by the United States in their separate Treaties with Honduras and Nicaragua.[†]

That such was also the view entertained by the United States' Government, not many years ago, appears from the following incident:[‡] On the 14th January, 1869, a Treaty was signed between the United States of America and the United States of Colombia (which was not ratified), providing for the survey and location of any interoceanic ship-canal within its territory. The IIIrd Article of that Treaty appearing to be in conflict with the rights of Great Britain under Article VIII of the Clayton-Bulwer Treaty, Sir E. Thornton, at that time Her Majesty's Minister at Washington, in accordance with his instructions, made a representation on the subject to the United States' Government; and on the 19th April of that year Mr. Hamilton Fish unofficially communicated to Sir E. Thornton a Memorandum which had been drawn up by Mr. E. Peshine Smith, employed in the Department of State as Examiner of Claims. This Memorandum, Mr. Fish stated, contained the general views of the United States' Government upon the matter, and it was conceived in the following terms:—

"*Bureau of Claims, April* 15, 1869.

"*Darien Ship-Canal.*

"It is referred to me to examine the IIIrd Article of the proposed Darien Ship-Canal Treaty with Colombia, in connection with the Clayton-Bulwer Treaty, and report if there be any conflict.

"The Treaty with the United States of Colombia, signed January 14, 1869, after providing for the survey and location of an interoceanic ship-canal anywhere within its territory, provides in the IIIrd Article as follows:—

"'Article III. The United States of Colombia stipulate and agree not to undertake or allow the opening of any other interoceanic canal, or of any new railway, through or across their territory from the Atlantic to the Pacific Ocean, without the express consent of the United States of America being first obtained.' The existence of one, the Panamá Railway, is recognized in the Treaty, and provisions made for securing the rights of the Company owning it.

"The Treaty with Great Britain of the 19th April, 1850 (9th Statutes, 995), recites that the two Governments were desirous of setting forth and fixing in a Convention their views and intentions with reference to any means of communication by ship-canal which may be constructed between the Atlantic and Pacific Oceans by the way of the River San Juan de Nicaragua, and either or both of the lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean. The first seven Articles of the Treaty relate only to such a canal, and obviously have no reference to any canal which may be constructed within the territories of Colombia. The VIIIth Article, however, declares that 'the Governments of the United States and Great Britain having not only desired, in entering into this Convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by Treaty stipulation, to any other practicable communication, whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by way of Tehuantepec or Panamá.'

"The discrepancy between the Clayton-Bulwer Treaty and the recent one with Colombia, if any such exists, must be found in the Articles just cited.

"It is to be remarked in the first place that the obligation exacted by the IIIrd Article of the Treaty with Colombia rests exclusively upon that Republic, which, not being a party to the Clayton-Bulwer Treaty, cannot be guilty of a violation of it; and if it could, it would not concern us except as being accessory to such violation, we might contravene obligations which the Government had assumed to that of Great Britain. The most we have done is to make the construction of more than one canal, and the existing railway across the isthmus, impracticable without the consent of this

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[*] Treaty, France and Nicaragua, April 11, 1859, Arts. XXVII to XXXII.

[†] State Papers, vol. l, p. 373.

[‡] See Sir E. Thornton's No. 146, April 1, 1869.

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Government. That consent we are at all times at liberty to give, if good faith or policy shall require it.

"I can see no other discrepancy between the two Treaties than in the supposed effect of the latter one to prevent the construction of interoceanic routes of commerce, which would be otherwise practicable, and may be supposed to be contemplated by the Clayton-Bulwer Treaty, but I do not think that the agreement between this Government and that of Great Britain, that they will 'extend their protection by Treaty stipulations to any other practicable communications, whether by canal or railway, across the isthmus,' imports anything more than that they shall give to such communications, when established and in operation, the same protection which they stipulate to extend to the specific route through Nicaragua, which was the principal subject of the Clayton-Bulwer Treaty. That protection consists in the engagements of both Governments to defend the persons and property employed in making said canal from unjust seizure and violence, and protecting the canal itself, when completed, from seizure and confiscation, and guaranteeing its neutrality and security.

"Our stipulations for protection, neutrality, &c., in the recent Treaty with Colombia, are in fulfilment of the obligation we contracted to Great Britain by the VIIIth Article of the Clayton-Bulwer Treaty. That obligation being reciprocal, the effect of the Article seems to be to entitle us to call upon Great Britain to unite in guaranteeing such protection and neutrality.

"I conclude that there is no present conflict between the two Treaties. If one can arise, it will be when a third canal or railroad across the territory of Colombia being proposed, and the Government of Colombia being willing to allow its construction, their Government, invoking the IIIrd Article of our Treaty, shall refuse its consent and thus obstruct the enterprise. I do not concede, nor think, that we will be bound to grant our assent, but it is sufficient that, if such be our obligation, we have done nothing to impair our ability to discharge it. The construction of one canal and of one railroad is doubtless to some extent an obstruction to the undertaking of other canals or railroads, for they must divert a large portion of the traffic and commerce upon which such new enterprise would rely for its support. But the specific object of the VIIIth Article of the Clayton-Bulwer Treaty was to promote the construction of practicable interoceanic communications across the isthmus, and the partial fulfilment of that purpose certainly cannot be in conflict with the spirit of the Article.

(Signed) "E. PESHINE SMITH, *Examiner, &c.*"

It appears, therefore, from this document, which was stated by Mr. Fish to contain the general views of the United States' Government, that, far from claiming the right to an exclusive Protectorate over any ship-canal across the Isthmus of Panamá, the United States' Government, at that time, recognized the VIIIth Article of the Clayton-Bulwer Treaty as distinctly applicable to such a canal, and even maintained that, the obligations of that Article being reciprocal, they were entitled to call upon Great Britain to unite in guaranteeing its protection and neutrality.

I now pass to the second point raised by Mr. Frelinghuysen, namely, whether such acts have been committed by Great Britain in British Honduras in violation of the Clayton-Bulwer Treaty as would entitle the United States to denounce it. It is alleged that Great Britain has violated, and continues to violate, its provisions by exercising sovereignty over British Honduras, and treating that territory as a British Colony.

On this point it is important to refer to the following correspondence on the subject which took place at the time between Sir Henry Bulwer and Mr. Clayton:—*

On the 29th June, 1850, Sir H. Bulwer handed to Mr. Clayton the following Declaration in writing:—†

"In proceeding to the exchange of ratifications of the Convention signed at Washington on the 19th April, 1850, between Her Britannic Majesty and the United States of America, relative to the establishment of a communication by ship-canal between the Atlantic and Pacific Oceans, the Undersigned, Her Britannic Majesty's Plenipotentiary, has received Her Majesty's instructions to declare that Her Majesty does not understand the engagements of that Convention to apply to Her Majesty's

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* See Sir E. Hertslet's Memorandum of June 9, 1871 (Confidential 2154).

† State Papers, vol. xlii, p. 162.

settlement at Honduras, or to its dependencies. Her Majesty's ratification of the said Convention is exchanged under the explicit Declaration above mentioned.

"Done at Washington, the 29th day of June, 1850.

(Signed) "H. L. BULWER."

To this Mr. Clayton replied, on the 4th July, as follows:—*

"Sir, "*Department of State, Washington, July* 4, 1850.

"I have received the Declaration your were instructed by your Government to make to me respecting Honduras and its dependencies, a copy of which is herewith subjoined.

"The language of Article I of the Convention concluded on the 19th day of April last, between the United States and Great Britain, describing the country not to be occupied, &c., by either of the parties, was, as you know, twice approved by your Government, and it was neither understood by them, nor by either of us (the negotiators) to include the British settlement in Honduras (commonly called British Honduras, as distinct from the State of Honduras), nor the small islands in the neighbourhood of that settlement, which may be known as its dependencies. To this settlement and these islands the Treaty we negotiated was not intended by either of us to apply. The title to them it is now and has been my intention, throughout the whole negotiation, to leave as the Treaty leaves it, without denying, affirming, or in any way meddling with the same, just as it stood previously.

"The Chairman of the Committee on Foreign Relations of the Senate, the Honourable William R. King, informs me that 'the Senate perfectly understood that the Treaty did not include British Honduras.' It was understood to apply to, and does include, all the Central American States of Guatemala, Honduras, San Salvador, Nicaragua, and Costa Rica, with their just limits and proper dependencies. The difficulty that now arises seems to spring from the use, in our Convention, of the term 'Central America,' which we adopted because Viscount Palmerston had assented to it, and used it as the proper term, we naturally supposing that, on this account, it would be satisfactory to your Government; but if your Government now intend to delay the exchange of ratifications until we shall have fixed the precise limits of Central America, we must defer further action until we have further information on both sides, to which at present we have no means of resort, and which it is certain we could not obtain before the term fixed for exchanging the ratifications would expire. It is not to be imagined that such is the object of your Government; for not only would this cause delay, but absolutely defeat the Convention.

"Of course, no alteration could be made in the Convention, as it now stands, without referring the same to the Senate; and I do not understand you as having authority to propose any alteration. But, on some future occasion, a conventional Article, clearly stating what are the limits of Central America, might become advisable.

"There is another matter, still more important, which the stipulations of the Convention direct that we shall settle, but which you have no instructions now to determine, and I desire you to invite the attention of your Government to it:—'The distance from the two ends of the canal within which vessels of the United States or Great Britain, traversing the said canal, shall, in case of war between the Contracting Parties, be exempted from blockade, detention, or capture by either of the belligerents.' The subject is one of deep interest, and I shall be happy to receive the views of your Government in regard to it as soon as it may be convenient for them to decide upon it.

"I avail, &c.

(Signed) "JOHN M. CLAYTON."

Sir H. Bulwer acknowledged the receipt of Mr. Clayton's despatch on the same day in the following words:—†

"Sir, "*British Legation, July* 4, 1850.

"I understand the purport of your answer to the Declaration, dated the 29th June, which I was instructed to make to you on behalf of Her Majesty's Government, to be that you do not deem yourself called upon to mark out at this time the exact limits of Her Majesty's settlement at Honduras, nor of the different Central American States, nor to define what or what are not the dependencies of the said settlement;

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* State Papers, vol. xl, p. 1039.

* Ibid., p. 1040.

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but that you fully recognize that it was not the intention of our negotiation to embrace in the Treaty of the 19th April whatever is Her Majesty's settlement at Honduras, nor whatever are the dependencies of that settlement, and that Her Majesty's title thereto subsequent to the said Treaty will remain just as it was prior to that Treaty, without undergoing any alteration whatever in consequence thereof.

"It was not the intention of Her Majesty's Government to make the Declaration I submitted to you more than a simple affirmation of this fact, and, consequently, I deem myself now authorized to exchange Her Majesty's ratification of the Treaty of the 19th April for that of the President of the United States.

"I shall take the earliest opportunity of communicating to Her Majesty's Government the desire which you express to have determined the distance from the two ends of the canal within which vessels of the United States or Great Britain traversing the said canal shall, in case of war between the Contracting Parties, be exempted from blockade, detention, or capture, by either of the belligerents, and I will duly inform Her Majesty's Government of the interest which you take in this question.

"I avail, &c.
(Signed) "H. L. BULWER."

And, finally, on the 5th July, Mr. Clayton signed the following Memorandum:—[*]

"The within Declaration of Sir H. L. Bulwer was received by me on the 29th day of June, 1850. In reply, I wrote to him my note of the 4th July, acknowledging that I understood British Honduras was not embraced in the Treaty of the 19th April last, but, at the same time, carefully declining to affirm or deny the British title in their settlement or its alleged dependencies. After signing my note last night I delivered it to Sir Henry, and we immediately proceeded, without any further or other action, to exchange the ratifications of said Treaty. The consent of the Senate to the Declaration was not required, and the Treaty was ratified as it stood when it was made.

(Signed) "JOHN M. CLAYTON."

To this Memorandum the following postscript was attached:—

"The rights of no Central American State have been compromised by the Treaty or by any part of the negotiation."

It would seem, then, to be opposed to all sound principle, that the United States should now claim to abrogate the Treaty of 1850 by reason of the existence of a state of things which has prevailed, to their knowledge, before as well as since its ratification, to which the Treaty was never intended to apply, and notwithstanding the known existence of which they have more than once recognized the Treaty as subsisting.

It seems, indeed, to be suggested that, at the time the Clayton-Bulwer Treaty was made, Honduras was only a British Settlement under Spanish-American sovereignty, and that it has since been converted into a British possession, and that to this conversion the United States has never given its assent.

It is true that, during the middle of the last century, the British settlement at Belize owed its existence to the permission of Spain, and that the colonists were gradually allowed to occupy the territory now called British Honduras, for the purpose only of cutting logwood and exporting mahogany;[†] but it is also a matter of history that, when England and Spain were subsequently at war, an attack made by the forces of the latter on the British settlement was successfully repulsed; and, in consequence, from that time British Honduras remained under the dominion of the British Crown.

When peace was signed, most of the British conquests from Spain were restored to her; but the settlement in Honduras, like that of the Falkland Islands, was not given up, and continued on the same footing as any other possession under the British Crown.

At the time of the abandonment by Spain of all her possessions in South America, she made no protest against the rights which the British Crown had acquired over Belize and British Honduras.

It is therefore clear that the sovereignty of British Honduras was acquired by conquest, and was possessed by this country long prior to the time of the Clayton-

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[*] State Papers, vol. xlii, p. 163.

[†] See Mr. Scarlett's Memorandum of October 31, 1872 (Confidential No. 2640).

Bulwer Treaty. I would observe, moreover, that the Preamble of the Postal Convention concluded at Washington on the 11th August, 1869, and in London on the 4th September of the same year, shows that the United States have formally recognized British Honduras as being a "Colony" of Great Britain.[*]

The Preamble of that Convention, which received the formal approval of President Grant on the same day on which it was signed at Washington, runs as follows:—

"The General Post Office of the United Kingdom of Great Britain and Ireland, and the General Post Office of the United States of America, being desirous of establishing and maintaining an exchange of mails between the United States on the one side, and the Colony of British Honduras on the other, by means of the British mail-packet plying between New Orleans and Belize, the Undersigned, duly authorized for that purpose, have agreed upon the following Articles:"—

The contention, therefore, in Mr. Frelinghuysen's despatch, that "a settlement" has been converted into "a possession," and a material change thereby effected, in consequence of the employment of the word "possession" in the Treaty with Guatemala of 1859, cannot be supported consistently with the facts above stated.

As regards the third question,[†] Mr. Frelinghuysen states that "the President is still ready, on the part of the United States, to agree that the reciprocal engagements respecting the acquisition of territory in Central America, and respecting the establishment of a free port at each end of whatever Canal may be constructed, shall continue in force, and to define by agreement the distance from either end of the canal where captures may be made by a belligerent in time of war, and with this definition thus made, to keep alive the IInd Article of the Clayton-Bulwer Treaty."

A similar proposal respecting captures by belligerents, as already shown, was made to Her Majesty's Government by Mr. Clayton shortly after the conclusion of the Treaty of the 19th April, 1850;[‡] in fact, on the very day on which the ratifications were exchanged (4th July, 1850), and no objection was then offered by Her Majesty's Government to the conclusion of such an arrangement.

In a despatch which was addressed to Sir H. Bulwer by Viscount Palmerston on the 4th October, 1850, his Lordship stated:[§] "With reference to your despatch of the 8th July last, requesting to be informed of the views of Her Majesty's Government as to the arrangement which remains to be agreed upon between Great Britain and the United States with regard to the limits within which vessels traversing the ship-canal between the Atlantic and Pacific Oceans are to enjoy exemption from blockade, detention, or capture, I have to acquaint you that the Lords Commissioners of the Admiralty consider that a segment of a circle of 25 nautical miles radius, drawn to seaward from each end of the canal, as from a centre, should be the limits within which vessels should enjoy the exemption in question;" and on the substance of this despatch being communicated to Mr. Clayton at Boston,[‖] he informed Sir H. Bulwer that the proposal appeared to him to be a fair one, although he added that on his return to Washington, after receiving a written communication from Sir H. Bulwer on the subject, he would give him a more decided answer with respect to it.

On the 19th May of the following year, however,[¶] Sir H. Bulwer reported that, although he had had conversations with Mr. Webster respecting the different points which then remained unsettled in regard to the Convention of the 19th April, his mind and time had been so occupied with a variety of other matters that he had frankly confessed to him that he had been unable, up to that time, to give that full attention to those subjects which would enable him to make what he should consider a satisfactory proposal concerning them.

Sir H. Bulwer then suggested to Lord Palmerston a plan for the settlement of some of these disputed questions, and added:—[**]

"Should your Lordship, under all the circumstances, be disposed to consider favourably this suggestion, the course which, after some consideration, I should be disposed to advise would be a new Treaty, supplementary to that of the 19th April, with Mr. Webster, settling, among other things, the distance from the two ends of the proposed canal at which, in case of war, neutrality should be observed."

No result was, however, arrived at.

The conclusions arrived at by Her Majesty's Government, after a careful consideration of the questions raised in Mr. Frelinghuysen's despatch, are that the

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[*] Hertslet's Treaties, vol. xiii, p. 954.

[†] See Sir E. Hertslet's Memorandum of June 16, 1882, Confidential No. 4661.

[‡] State Papers, vol. xl, p. 1040.

[§] Ibid., p. 1044.

[‖] Ibid., p. 1070 (November 18).

[¶] Ibid., p. 1073.

[**] Ibid., p. 1074.

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meaning and effect of Article VIII of the Clayton-Bulwer Treaty are not open to any doubt; that the British Government have committed no act in relation to British Honduras or otherwise which can invalidate that Treaty and justify the Government of the United States in denouncing it; and that no necessity exists for renewing any of the provisions of that Treaty.

There might, perhaps, be advantages in defining by agreement the distance from each end of the canal within which no hostilities should be committed by belligerents, in order to maintain the freedom of the passage through the Panamá Canal, should that route be completed; and when the time approaches for its completion, Her Majesty's Government would, no doubt, be prepared to give its careful attention to the question of concluding an arrangement with that object, should such a proposal be made to them; but in the present stage of the enterprise, they conceive that it would be premature to enter upon negotiations for that purpose.

I have not thought it necessary to allude in this despatch to the "traditional Continental policy" of the United States as laid down in what is commonly called the "Monroe Doctrine," since Mr. Frelinghuysen, in his note of the 8th May last, in which he explained the views which were entertained by his Government on that subject, admitted that Her Majesty's Government were not called upon either to admit or deny the views therein expressed.

You will state to Mr. Frelinghuysen that Her Majesty's Government are animated by the most sincere desire to arrive at an amicable settlement of the questions which have given rise to this correspondence, and that they note with great satisfaction the friendly assurance with which he concludes his despatch, that the diversity of opinion which now exists will not in any wise impair the good understanding happily existing between the people and Governments of the United States and Great Britain.

You will read this despatch to Mr. Frelinghuysen, and, if he should desire it, place a copy of it in his hands.

I am, &c.

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## Uruguay.

### No. 79.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 10.)

My Lord, *Temple, February* 10, 1882.

Mr. Littlejohn's claim.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, stating that he was directed by your Lordship to transmit a despatch* from Her Majesty's Minister at Monte Video upon the subject of Mr. Littlejohn's claim on the Government of Uruguay, which was the subject of our Report of the 27th October last, a copy of which was inclosed.

That in submitting the case of Mr. Littlejohn for our opinion in October last, reference was made to the Treaty of 1842 as being in force.

Treaty of 1842 not in force.

That Mr. Monson, however, pointed out that the Treaty was denounced by the Government of Uruguay in 1854, and that we should perceive from his despatch, and from the Report of the Law Officers of the Crown of the 29th August, 1872,† that the arrangements made at the time for keeping it alive fell through, and that Her Majesty's Government were advised that the rights of British subjects under that Treaty had expired.

That, under those circumstances, your Lordship presumed that Mr. Littlejohn's claim could not be supported officially, and that your Lordship would be glad to be favoured with our opinion upon that point before sending further instructions to Mr. Monson.

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* Mr. Littlejohn, March 31; to Mr. Monson, No. 11, May 14; Mr. Monson, No. 56, June 21; to Mr. Monson, No. 15, August 5; Mr. Monson, No. 61, August 2; to Mr. Monson, No. 18, September 5; Mr. Monson, No. 69, August 16; Law Officers, October 27, Confidential No. 4637; to Mr. Monson, No. 22, November 9; Mr. Monson, No. 89, December 16, 1881; Treaty of the 26th August, 1842, No. 294; Protocol of the 29th April, 1879 ("Uruguay No. 1, 1879"), No. 638.

† Law Officers, August 29, 1872, Confidential No. 4098.

In obedience to your Lordship's commands we have the honour to report—

Claims cannot be supported officially.

That we are of opinion that, under the circumstances, Mr. Littlejohn's claim cannot be supported officially.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 80.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 1.)

My Lord, *Temple, June* 30, 1882.

Murder of Robert Murdoch.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 12th instant, stating that he was to transmit to us a despatch* from Her Majesty's Minister resident at Monte Video, inclosing a résumé of a correspondence which he had had with the Government of Uruguay relative to the murder last year, near Florida, in that country, of a British subject named Robert Murdoch. That from Mr. Monson's Memorandum it appeared that the murderer, a Spaniard, named Felipe Gardé, had, under the circumstances mentioned therein, never been brought to justice, and that Sir J. Pauncefote was to request our opinion as to whether a claim for compensation should be made by Her Majesty's Government on behalf of the father of the deceased against the Oriental Government, based on the failure of justice which had occurred in consequence of the incapacity or misconduct of their officials in releasing the murderer on two occasions contrary to law, and their want of diligence in permitting him to be at large for a whole year.

That if the facts, in our opinion, did not warrant such a claim, your Lordship desired to be informed whether an inquiry into the conduct of the Prefect of Florida should be demanded, or what other action, if any, should be taken by Her Majesty's Government under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

Cannot claim indemnity for.

That although the murderer of Robert Murdoch appears to have been released on bail in a manner not authorized by the law of Uruguay, and although there may have been some want of vigilance on the part of the officials in that country, we do not think the circumstances are such as to justify a claim to an indemnity.

Inquiry into conduct of Prefect of Florida should be demanded.

We think, however, that an inquiry into the conduct of the Prefect of Florida should be demanded.

There seems no doubt that he caused the accused to be released on bail, and that this action on his part amounted to a violation of the law. It may be open to question whether he acted in good faith under the circumstances. And we think that the demand for an inquiry into his conduct would be well warranted.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Venezuela.

### No. 81.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 22.)

My Lord, *Temple, June* 22, 1882.

Venezuelan Law imposing additional duties on imports from the West Indies.

WE are honoured with your Lordship's commands signified in Sir Charles Dilke's letter† of the 26th ultimo, stating that with reference to our Report of the

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* Mr. Monson, No. 71, May 8, 1882.

† Transmitting Law Officers' Report, October 18, 1881, and papers referred to therein; Confidential Print No. 4637, p. 117; Treaty of 1825, Great Britain and Colombia, "State Papers," vol. xii, p. 661; Treaty of 1834, Great Britain and Venezuela, Treaty, No. 244; Colonel Mansfield, No. 1, Commercial, January 10; No. 5, Commercial, March 12; No. 7, Commercial, March 25, 1882; Memorandum (E. H.), April 11, 1882.

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18th October last on the subject of the Law passed last year by the Venezuelan Government, imposing an additional duty of 30 per cent. upon all imports into that country from West Indian islands or Colonies, he was directed to transmit to us a despatch from Colonel Mansfield (No. 1 of the 10th January, 1882), inclosing copy and translation of the reply of the Venezuelan Government to the representation which he was instructed to make to them on the subject, in accordance with the terms of our Report.

That inclosed were two despatches from Colonel Mansfield, the one (No. 5 of the 12th March, 1882), forwarding extract with translation of the annual Report of the Secretary of State lately presented to Congress, which related to the imposition of the duties in question; the other (No. 7 of the 25th March, 1882), forwarding copy and translation of a further note from the Venezuelan Government announcing the imposition of those duties, and inclosing copy of the Law passed on the subject.

That the Venezuelan Government in their reply inclosed in Colonel Mansfield's No. 1 stated the reasons why they considered that the imposition of the differential duties referred to was not in opposition to the stipulations of the Treaty of 1825 between Great Britain and Venezuela. That they pointed out that previous to, and at the time of, the conclusion of the Treaty of 1825, such differential duties were actually in force in Columbia, and continued in operation for several years without eliciting any remonstrance on the part of His Majesty's Government, and in their further note of the 15th March (in Colonel Mansfield's No. 7) they repeated those arguments at greater length, and stated that differential duties on goods coming from the West Indies to the territories of Colombia were established in 1821, that they were again decreed in 1823, and that notwithstanding the conclusion of the Treaty of 1825 between Great Britain and Colombia, the Law of the Colombian Congress of May 1826 again ratified and decreed the differential duties without any remonstrance being made by His Majesty's Government. That they also argued that from 1830, when Venezuela separated from Colombia, until 1834, when she adopted the Colombian Treaty with Great Britain of 1825, there was no Treaty, and that as His Majesty's Government raised no objection before 1834 to the imposition by Colombia of those duties, they could not now object to them.

That a Memorandum by Sir E. Hertslet was inclosed, showing what took place in 1826, when the Law referred to of that year was sent home by His Majesty's Chargé d'Affaires, from which it appeared that the Lords of the Committee of Privy Council for Trade did not at the time consider the levying of the differential duties to be an infraction of the Treaty rights of this country. That the Board of Trade, however, did not seem to have arrived at that conclusion on a consideration of Article IV of the Treaty of 1825. By that Article it was distinctly provided that "any article of the growth, produce, or manufacture of His Britannic Majesty's dominions" should not be subjected to higher import duties than the like articles being the growth, produce, or manufacture of any other foreign country.

That the Venezuelan Government endeavoured to construe that Article as if it were only a most-favoured-nation clause, and argued that as all nations importing goods from the West Indian Islands would have to pay alike the increased duty of 30 per cent., Her Majesty's Government had no ground of complaint.

That it appeared to your Lordship, however, that such an argument was contrary to the express words of the Article, and that Her Majesty's Government were entitled to demand that articles of the growth, produce, or manufacture of the British West Indian Islands, and of any other part of Her Majesty's dominions, though sent in transit through British West Indian Islands, should be admitted into Venezuela on the same terms as the produce, &c., of France, Germany, the United States, and other nations which might be shipped therefrom direct to Venezuela.

That we should observe that Mr. Consul-General Henderson, in his despatch No. 13 of the 26th February, 1828, cited in Sir E. Hertslet's Memorandum (p. 4), ignored Article IV, and dealt only with the question of reciprocity and most-favoured-nation treatment as regarded the flag of importing vessels.

That the differential duties which gave rise to the discussion in 1826-28, and which the Board of Trade considered not to be a violation of the Treaty of 1825, were abolished by the Colombian Government in 1829, and that it was not until 1834 that Her Majesty's Government signed the present Convention with Venezuela, which incorporated the Treaty with Colombia of 1825.

That since 1829 no differential duties had been in force until the recent Venezuelan Decree re-established them.

That our opinion was requested as to whether, under all the circumstances, Her Majesty's Government were entitled to maintain their protest against that Decree, as being in violation of Article IV of the Treaty of 1825.

We are also honoured with a letter from Sir Charles Dilke, dated the 12th instant, inclosing a further despatch* from Her Majesty's Representative at Carácas on the subject of the differential duties imposed by Venezuela.

In obedience to your Lordship's commands we have the honour to report—

Such differential duties contrary to Article IV of Treaty of 1825.

That the view put forward by the Venezuelan Government is, in our opinion, contrary to the express terms of Article IV of the Treaty. If such an argument were admitted to be valid it would be destructive of the provisions contained in that Article, for it would justify the imposition of differential duties in favour of France, for example, upon goods of the same description imported into Venezuela from France and from England. It might in that case also be said that all goods coming from France or England respectively were treated alike.

Some difficulty is, no doubt, created by the fact that similar differential duties to those now in question were imposed, without objection, during the currency of the Treaty with Colombia, which contained a provision precisely similar to that embodied in Article IV of the present Treaty with Venezuela.

But we do not think that this affords any sufficient reason why Her Majesty's Government should not maintain their protest against the Decree, as being in violation of the terms of Article IV of the Treaty.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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## No. 82.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 13.)

My Lord, *Temple, November* 11, 1882.

Venezuelan law, imposing duties on imports from West Indies.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 30th ultimo, stating that, with reference to our Report of the 22nd June, in which we expressed our opinion that Her Majesty's Government were entitled to maintain their protest against the Decree of the Venezuelan Government, imposing an additional duty of 30 per cent. upon all imports into Venezuela from West India Islands and Colonies.

That Sir J. Pauncefote transmitted the draft of an instruction which, in accordance with our Report, your Lordship proposed to address to Her Majesty's Minister in Venezuela on that subject.

That our opinion was requested as to whether the terms thereof were right and proper.

Approve draft to Colonel Mansfield as to repeal of law and repayment of duties.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the terms of the draft are right and proper.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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*Draft of Despatch from Earl Granville to Colonel Mansfield.*

(No. . Commercial.)  
Sir, *Foreign Office, November* , 1882.

HER Majesty's Government have had under their consideration, in consultation with the Law Officers of the Crown, your despatch No. 1, Commercial, of the 10th January last, and your despatch No. 7, Commercial, of the 25th March, on the subject of the Venezuelan Law imposing an additional duty of 30 per cent. upon all imports into that country from the West India Islands.

In his note of the 7th January, inclosed in the first of the above-mentioned despatches, Señor Seijas argues that such additional duty falls equally on the goods of all nations, including even Venezuela itself, which are imported into Venezuela from the West India

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* Mr. O'Leary, No. 8, May 16, 1882.

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Islands. That consequently there is no differential treatment, and no infraction of the Treaty is caused by the Venezuelan Law in question. I have to point out, however, that the above argument affords no answer to the complaint of Her Majesty's Government.

Article IV of the Treaty stipulates that "no higher or other duties shall be imposed on the importation into the territories of Colombia (now Venezuela) of any articles the growth, produce, or manufacture of Her Britannic Majesty's dominions than are or shall be payable on the like articles, being the growth, produce, or manufacture of any other foreign country."

Her Majesty's Government therefore claim that such articles imported into Venezuela from Her Majesty's dominions in the West Indies shall be admitted on the same terms as similar articles, the growth, produce, or manufacture of other countries imported into Venezuela direct from such other countries. The view put forward by the Venezuelan Government is contrary to the express terms of Article IV. If such an argument were admitted to be valid it would be destructive of the provisions contained in that Article, as it would justify the imposition of differential duties in favour of France, for example, by a law declaring that lower duties should be paid on goods imported into Venezuela from France than on similar goods imported from England. In that case it might equally be said that all goods coming from France or from England respectively were treated alike.

Nor can Her Majesty's Government admit the contention of Señor Seijas that Article III of the Treaty was intended to exclude the British Colonies from the benefit of Article IV. His Excellency points out that Article III of the Treaty concedes to Colombia the right to import her produce into the British Colonies, but does not impose any corresponding obligation on Colombia. But that Article could not be made reciprocal, as Colombia had no Colonies; and it was for that reason that while Article III granted to Colombia the same privileges in British Colonies as in the United Kingdom, Article IV, by way of reciprocity, granted the privileges, therein conferred, to goods being the growth, produce, or manufacture of "Her Majesty's dominions," which term invariably includes the British Colonies, and has never been held to apply only to the United Kingdom.

The records of the negociations which preceded the conclusion of the Treaty supports this view of the intention of the High Contracting Parties. Those records show that the Colombian Plenipotentiaries were anxious to foster their shipping by protective measures, and it is highly improbable that the British Plenipotentiaries should have accorded most-favoured-nation treatment to Colombian trade in British Colonies without receiving a reciprocal engagement in favour of British Colonial trade in Colombia; or, if so, that so remarkable a concession to Colombia should not have formed a distinct feature in the discussions which took place. Nothing, however, appears which could lead to the supposition that anything of the kind was intended.

Article IV is clear and explicit, and Her Majesty's Government are at a loss to understand how it can be contended that it refers only (as suggested by Señor Seijas) to the flag under which the goods are imported, and not to the country of their "growth, produce, or manufacture." As regards the fact urged by his Excellency that Great Britain did not protest against a similar though comparatively trifling imposition of differential duties by Colombia in 1826, which was shortly afterwards removed, Her Majesty's Government cannot allow that such omission can be held to preclude them from protesting against the present grave infraction of the Treaty by Venezuela, and against the injuries thereby inflicted on British commerce.

I have, therefore, to instruct you to address a note to the Venezuelan Government in the sense of this despatch, demanding the repeal of the Law imposing a differential duty of 30 per cent. on British imports from Her Majesty's Possessions in the West Indies, and a return of the duties levied in violation of the Treaty.

I am, &c.

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## VENEZUELA.

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### No. 82 A.

[Colonial Office.]

*The Law Officers of the Crown to the Earl of Kimberley.*

My Lord,

*Temple, December* 2, 1882.

Exportation of arms, &c., from Trinidad to Venezuela.

WE were honoured with your Lordship's commands signified in Mr. Meade's letter of the 11th instant, stating that by the Customs Ordinance, 1880, of Trinidad (a copy of which was inclosed), section 82, which corresponded *mutatis mutandis* with the 21st section of the Imperial Customs and Inland Revenue, 1879, the Governor of the Colony was empowered to prohibit by Proclamation either the exportation or the carrying coastwise of arms, ammunition, and gunpowder, and other goods therein mentioned.

2. That in consequence of repeated complaints by the Government of Venezuela of the exportation by Venezuelan refugees of arms and munitions of war from Trinidad to Venezuela for the purpose of being used in attempts to subvert the government of that country, the Governor of Trinidad, acting under instructions from the Secretary of State on the 18th June last, issued a Proclamation, a copy of which was inclosed, prohibiting to be exported from Trinidad to any port or place in Venezuela, or to be carried coastwise, any arms, ammunition, or gunpowder.

3. That the Venezuelan Minister at that (this) Court had recently, in a note addressed to Earl Granville inclosing a copy of a despatch from his Government, translations of which note and despatch were inclosed, requested, on behalf of his Government, that the Governor of Trinidad should except from the above prohibition munitions of war exported from Trinidad to Venezuela for the Government of the Republic, "whether officially by the Consul or by any other functionary duly appointed to perform the act."

4. That it would be seen from an inclosed copy of a letter from the Foreign Office that Lord Granville considered it unreasonable to treat the Venezuelan Government on the same footing as the rebels who used Trinidad as a centre of their unlawful operations, and had suggested that facilities should be afforded for the export of arms, &c., from Trinidad, if required for the use of the Venezuelan Government, on application to the Colonial authorities through the Consul for the Republic.

5. That your Lordship concurred in Lord Granville's opinion, but that you were doubtful whether the Colonial Ordinance empowered the Governor to comply with the request of the Venezuelan Government.

6. That your Lordship also felt some doubt as to the validity of the Proclamation prohibiting exportation to Venezuela only.

That Mr. Meade was therefore directed by your Lordship to request that we would advise:—

1. Whether under the 82nd section of the Trinidad Customs Ordinance, 1880, the Governor was empowered—

(*a.*) To prohibit the exportation of arms, &c., to a particular country or place.

(*b.*) To except from such prohibition, arms, &c., exported for the use of the Government of the country, exportation to which was prohibited.

2. That if the answer to both the previous questions was in the affirmative, whether there was any objection of international law to the modification in favour of the Venezuelan Government of the Proclamation issued by the Governor of Trinidad, in the manner proposed by Lord Granville.

Law Officers' Report, 1873.

We were also honoured with a further letter from Mr. Wingfield of the 23rd instant, stating that, with reference to the letter from your Lordship's Department of the 11th instant respecting the prohibition of the exportation of arms, &c., from Trinidad to Venezuela, he was directed by your Lordship to inform us that, since that letter was written, your Lordship's attention

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had been called to the Report of the Law Officers in 1873 on a somewhat similar question as to the construction of an Imperial Statute, which would be found at p. 76 of the annexed printed paper.

In obedience to your Lordship's commands we have the honour to report—

Governor of Trinidad is not empowered to prohibit the exportation of arms.

That we are of opinion that, under the 82nd section of the Trinidad Customs Ordinance, 1880, the Governor is not empowered either—

(*a.*) To prohibit the exportation of arms, &c., to a particular country or place; or

(*b.*) To except from such prohibition, arms, &c., exported for the use of the Government of the country, exportation to which is prohibited.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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# Zanzibar.

## No. 83.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 24.)*

My Lord,

*Temple, January* , 1882.

Murder of Captain Brownrigg by crew of dhow flying French colours.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th instant, stating that he was directed by your Lordship to transmit to us despatches,* and their inclosures, from the Acting British Agent and Consul-General at Zanzibar, reporting the circumstances under which Captain Brownrigg, of Her Majesty's ship "London," was treacherously attacked and murdered on board one of the boats of his ship, when visiting an Arab dhow flying French colours. That the attack evidently took place within 3 miles of the shores of Pemba, and therefore within the territorial waters of the Sultan of Zanzibar, whose troops had since captured two Arabs, who ~~had~~ confessed to being on board the dhow at the time of the attack, but whether they took part in the attack or not did not appear.

Captain of dhow repudiated by French Consul.

That the French Consul at Zanzibar had categorically refused to recognize that the captain of the dhow was a French subject, or that he had any right to fly the French flag. That the Arabs on board would, therefore, either be the subjects of the Sultan of Zanzibar or would not be entitled to the protection of any nation.

That the question arose as to how the prisoners should be brought to trial.

Question as to trial of criminals.

That, assuming that the crime could be considered to have been committed on board of a British vessel, it might be that it would be justiciable by British Courts in Her Majesty's dominions under the Statutes relating to crimes committed within the jurisdiction of the Admiralty; but that Her Majesty's Consular Court at Zanzibar did not possess the same jurisdiction, either by Treaty or by the Order in Council under which it was established.

That your Lordship apprehended, however, that if the two prisoners could be shown to have been principals, or accessories, in the attack on the steam-pinnace of Her Majesty's ship "London," which resulted in the death of Captain Brownrigg and others, they were guilty of murder, and that, the crime having been committed in the territorial waters of Zanzibar, the Sultan had jurisdiction to deal with it.

Trial by Sultan demanded.

That your Lordship therefore informed† the British Representative at Zanzibar that it was essential that the Sultan should try them, and had instructed him to demand that His Highness should do so. That Colonel Miles had further been told to watch the proceedings and report the result.

That your Lordship would be glad to be informed whether we concurred in the course which had been adopted; and Sir J. Pauncefote was to request that we would also favour your Lordship with our opinion on the following point:—That a difficulty was likely to arise from the religious scruples entertained by the Sultan of Zanzibar to the infliction of capital punishment, and your Lordship was informed that, if the prisoners should be found guilty of murder, the Sultan would decline to execute a sentence of death.

That under those circumstances your Lordship desired to know whether there was any legal objection, in the event of the prisoners being found guilty of murder and sentenced to death, to the execution of such sentence by Her Majesty's Senior Naval Officer at Zanzibar, if such duty be delegated to him by the Sultan. Also whether, in case the Sultan should decline to delegate such duty to Her Majesty's Senior Naval Officer, the prisoners should be left to be dealt with by the Sultan in such manner as he might deem fit, or whether any other course was open under all the circumstances.

That the telegraphic correspondence on the subject was inclosed.

We are also honoured with a further letter from Sir J. Pauncefote, dated the 21st instant, inclosing a copy of a telegram which had been received from the Acting Agent and Consul-General at Zanzibar relative to the murderers of Captain Brownrigg.

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* Colonel Miles. Nos. 146, 149, 151 of 1881; Slave Trade Treaty with Zanzibar.

† To Colonel Miles, telegram, January 18, 1882.

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In obedience to your Lordship's commands we have the honour to report—

Concur in course adopted.

That we concur in the course which has been adopted.

Opinion as to execution of sentence by Naval Officer.

We do not think that there is any legal objection to the delegation by the Sultan of the execution of sentence of death, in case he should pronounce such a sentence, to Her Majesty's Senior Naval Officer. He might, we apprehend, lawfully appoint any person whom he pleased to be the executioner; but learning, as we do from the telegram of the 21st January, that the Sultan declines to pass judgment of death, and that his so declining is in accordance with the general course of law in his country, we think that the capital punishment could not properly be carried out by one of Her Majesty's Naval Officers.

Inasmuch as the Sultan is willing to impose the extreme sentence for the offence according to the law of his country, viz., imprisonment for life, and as Her Majesty's Government had no legal power of bringing the accused to further trial, we think it is impossible for the officials of this country to take part in inflicting a sentence which would not be founded on any legal judgment.

In the present case, the principal offender has already met with his death, and it would seem, therefore, not to be of such paramount importance that the sentence of death should be executed on the other offenders, such execution not being according to the ordinary course of law in Zanzibar.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# APPENDIX.

## General.

### No. 84.

*Case.*

[Received in Letter from Post Office, dated April 6, 1882.]

Proposed telegraphic cable between Vigo Bay and Bermuda. Question as to interference with telegrams, from or to belligerents, by neutrals in neutral territory.

THE Lords Commissioners of Her Majesty's Treasury have been asked by the Colonial Office, the War Office, and the Admiralty to provide a subsidy for a cable between Halifax and Bermuda, for military purposes. As an alternative to the proposed cable between Halifax and Bermuda, it has been proposed to allow the landing at Bermuda, from Vigo Bay, of a cable from whence branches could be made to Jamaica and New York.

In connection with this proposal, the Prime Minister has raised a question as to the power and duty of a neutral country in time of war to stop, intercept, or interfere with telegrams, whether in cypher or not, passing through it, and sent to or from one belligerent country from or to States or persons in alliance with such country or engaged in its service.

In "Le Droit International," by Charles Calvo, it is stated, at p. 497 (paragraph 1131), that despatches addressed to belligerents and relating to the war are included amongst articles "contraband of war;" but in order to satisfy this description it is necessary (1) that the despatch should relate to the war, and (2) that the ship should have been expressly chartered for the purpose of carrying it. The writer goes on to say (p. 498) :—"Despatches which do not relate to the war, and despatches and private letters, may be sent by ships of neutral countries. Custom has established a special exception in favour of correspondence having a purely diplomatic character, the despatches of Agents of a belligerent Power to the Government of that Power: the interests and the rights of neutral countries require that their diplomatic and Consular relations with the belligerents should not be interrupted nor altered by the war." After citing cases of the "Atalanta," the "Madison," the "Hope," the "Caroline," and the "Rapid," the writer goes on to say (paragraph 1132) :—"These decisions do not apply to mail-boats, to which the International Conventions specially intrust the exchange of official and private correspondence. The captain is naturally ignorant of the contents of the letters and packets with which he is intrusted. The Convention of the 14th June, 1833, between France and England, provides, in Article XIII, 'In case of war between the two nations, the mail-boats ("paquebots-poste") of the two offices shall continue their navigation without obstacle or molestation until notification of the cessation of their service is made by one of the two Governments, in which cases they will be permitted to return free and without special protection to their respective ports.'"

M. Charles Calvo is silent on the question of telegrams. According to English law, a telegram is a post letter, and section 23 of "The Telegraph Act, 1869" (32 and 33 Vict., cap. 73) provides (*inter alia*) that "Every written or printed message or communication delivered at a post-office for the purpose of being transmitted by a postal telegraph, and every transcript thereof made by any person acting in pursuance of the orders of the Postmaster-General, shall be a post-letter within the meaning of an Act passed in the first year of the reign of her present Majesty, cap. 36."

The interpretation clause (section 47) of the Act last mentioned (1 Vict., cap. 36) enacts (*inter alia*) that "the term 'post letter' shall mean any letter or packet transmitted by the post under the authority of the Postmaster-General, and a letter shall be deemed a post letter from the time of its being delivered to a post-office to the time of its being delivered to the person to whom it is addressed."

It is to be borne in mind, however, that the Postmaster-General has no monopoly

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in England of the right to transmit international telegrams, and unless such a telegram, after arriving in the United Kingdom, is delivered at a post-office and transmitted by a postal telegraph, it will not come within the definition of a post letter. As a matter of fact, a very large number of foreign telegrams are handed in by the senders direct to the Cable Companies at their own offices, and messages received from abroad are delivered direct by the Companies from their own offices to the addressees. In particular, a large number of telegrams sent from abroad, addressed to the chief Government offices, are delivered direct from the Companies' offices, and do not pass through the hands of the Post Office at all; and it is quite likely that a telegram from Bermuda, addressed to the Commander-in-chief, for example, would be sent from the office of the Eastern Telegraph Company in Old Broad Street direct to the Horse Guards, and the Post Office would know nothing of it. And as a matter of principle, the inclusion of telegrams in the term "post letter" for municipal purposes could hardly be taken as binding the parties to an international system of telegraphy.

Whatever may have been the Law of Nations in relation to post letters (and by analogy it may perhaps be assumed to telegrams) prior to 1879, it would seem that under Articles 7 and 8 of the "International Telegraph Convention with London Revision of Service Regulations and Tariffs," 1879 (copy herewith), any country may "interrupt the system of international telegraphs for an indefinite period if it judges it necessary, either generally or only upon certain lines, and for certain kinds of messages."

The following are copies of Articles 7 and 8 of the "International Telegraph Convention" above referred to.

Article 7. The High Contracting Parties reserve to themselves the power to stop the transmission of any private telegram which may appear dangerous to the security of the State, or which may be contrary to the laws of the country, to public order or decency.

Article 8. Each Government also reserves to itself the power to interrupt the system of the international telegraphs for an indefinite period if it judges it necessary, either generally or only upon certain lines, and for certain kinds of messages, upon condition that it immediately advises each of the other Contracting Governments.

There is, however, no definition in the Convention of what a system of international telegraphs consists. No doubt a cable passing between foreign States would generally come within such definition, but it does not follow that the Rules and Regulations of the International Convention are applied to all cables. The Regulations are by the Convention applicable to cables belonging to Governments or private Companies when the two States in which they land are parties to the Convention. In the present instance Spain is a party to the Convention, but Bermuda is not, and unless the Spanish Government insisted upon it when granting the concession to the Company to land their cable in Spain, the cable might be worked outside the Convention, and, of course, in that case, the provisions of the Convention as to interruption by the Spanish Government would not be applicable.

Again, the cable, if laid, might be worked in Spain by clerks belonging to the private Company, and in that case the Spanish Government would have no cognizance of messages passing over the cable, except such as were handed over to them for further transmission, and it is quite possible that a message from Bermuda for England would not pass at all into the hands of the Spanish Administration, but would be handed by the Spanish-Bermuda Cable Company to the Eastern Telegraph Company for transmission to England.

Even, however, if the Spanish Administration did take cognizance of messages passing over these lines, it would be necessary for them to stop every telegram, whether Government or private, addressed to England, inasmuch as most if not all the messages would be in cypher, and would be addressed to a fictitious name, so that it would be impossible for the Spanish Government to know whether a message was Government or private, that is to say, a message intended for the Commander-in-chief might be addressed "Ajax, London," and a message for a private firm in London might be addressed "Achilles, London." The person for whom "Ajax" and "Achilles" are registered are not known in Spain, and therefore in order to stop Government messages, they would have to stop every message.

It is conceivable of course that the Spanish Government might do this, not only with regard to their own cables, but to cables of private Companies in Spain. But it would appear that in order to stop any messages of the kind referred to by the Prime Minister, practically the whole system of international telegraphy in the neutral country would have to be suspended.

These are considerations rather of fact than of law, but it has been thought well that they should be borne in mind in considering the question raised.

Your advice is requested—

Whether a neutral country, in time of war, can under Articles 7 and 8 of the International Telegraph Convention, or under any other authority, stop, intercept, or interfere with telegrams, whether in cypher or not, passing through it, from and to one belligerent country to and from States and persons in alliance with such country, or engaged in its service?

### *Opinion.*

Neutrals have power to interfere with telegrams of belligerents independently of Convention of St. Petersburgh.

We are of opinion that in time of war a neutral Government has power to prevent the transmission of telegrams passing through its territory relating to the military or naval service of any of the belligerents.

We are of opinion that this power exists independently of the provisions of the International Telegraph Convention of St. Petersburgh, and is not controlled by anything contained in that Convention.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
C. T. SIMPSON.

*April* 3, 1882.

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*Printed for the use of the Foreign Office. June 1884.*

CONFIDENTIAL.

(4974.)

# REPORTS

BY THE

# LAW OFFICERS OF THE CROWN.

1883.

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*(Arranged according to Countries.)*

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| 13 | Attorney- and Solicitor-General | 12, | Detention of the "Sokrates" and "Diogenes." If unavoidable, the warrants of seizure should be executed until proper security can be obtained. Vessels would be released on sale to any unobjectionable purchaser | 13 |
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| 17 | Law Officers | Nov. 24, | Detention of the "Diogenes" and "Socrates." In view of cessation of Chileo-Peruvian war, the active surveillance over these vessels may be relaxed without being abandoned. | 17 |

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| 18 | Law Officers | Feb. 13, 1883 | Mooring of hulks at Chinkiang. Concur in views of Lord Granville as to correctness of Chinese demand for payment of an annual fee in case of Mr. McBain, and as to request for grant of certain reciprocal advantages | 17 |
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CONFIDENTIAL.

# REPORTS BY THE LAW OFFICERS OF THE CROWN: 1883.

## Austria.

### No. 1.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 14.)

My Lord,

*Royal Courts of Justice, June* 14, 1883.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 4th instant, stating that he was to transmit to us a note from the Austro-Hungarian Ambassador,* in which he claimed, on behalf of his Government, exemption from the jurisdiction of the Tribunals of this country in the matter of the administration of the personal estate of the late Prince Batthyany, and the probate of his will, which his Excellency contended appertained to the Tribunals of Austro-Hungary, by reason of the diplomatic status of the deceased.

Personal estate of Prince Batthyany. Claim for its exemption from jurisdiction of British Courts on account of the Prince's diplomatic status.

That the facts of the case were clearly stated in the Ambassador's letter, and that we should observe that his Excellency invoked the assistance of Her Majesty's Government in bringing certain claims on the real estate of the deceased to the knowledge of the Tribunals having jurisdiction over it.

That the late Prince's name was for several years past included in the lists of those attached to the Austro-Hungarian Embassy, and that he was consequently regarded as being entitled to diplomatic privilege; and it was not known at the Foreign Office, until the receipt of Count Károlyi's note, that the Prince had become naturalized as a British subject, in which capacity he could not, according to the invariable rule, have been properly retained upon the list of those forming the Diplomatic Body in England, and who were, consequently, entitled to diplomatic privilege. That a letter from the Treasury† was inclosed, to which Department Count Károlyi's application had been in the first instance referred, and that our opinion was requested as to the reply which might properly be returned to the Ambassador's communication.

The Prince was a naturalized British subject, therefore not entitled to diplomatic status.

In obedience to your Lordship's commands we have the honour to report—

That the question whether, inasmuch as Prince Batthyany procured himself to be naturalized as a British subject, his movable property in this country can, in consequence of his being attached to the Austrian Embassy, be withdrawn from the jurisdiction of the Tribunals here, is one of considerable difficulty. It does not appear to us to be necessarily solved by the consideration that, as between himself and the Austro-Hungarian Government, he could not get rid of his nationality of origin. It is impossible to say with certainty what view the Tribunals would take, and it is with them that the determination of the matter must rest.

Decision as to exemption rests with the Tribunals.

The letter of the Austro-Hungarian Ambassador does not show in whose hands the movable property now is, nor by whom, nor in what way, it is anticipated that steps will be taken with regard to it in this country. It is, therefore, impossible for us to say, at present, in what manner it would be practicable for Her Majesty's Government to intervene. It would, no doubt, be open to the Austro-Hungarian

At present, no grounds for the interference of Her Majesty's Government.

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* Count Károlyi, May 21, 1883.

† Treasury, May 28, 1883.

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Ambassador, should any steps be taken to which he objects, to set up the claim of diplomatic privilege. In case such steps were taken, and the Austro-Hungarian Ambassador should desire that the Foreign Secretary should put before the Court the claim of diplomatic privilege, it would be matter for consideration whether it was expedient and proper for the Law Officers to appear and represent the circumstances to the Court, but at present there seems no ground for the interference of Her Majesty's Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 2.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 17.)

*Royal Courts of Justice, July* 16, 1883.

My Lord,

Estate of late Prince Batthyany.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th instant, stating that, with reference to our Report of the 14th ultimo, he was to transmit to us, by direction of your Lordship, a further note from the Austrian Ambassador at the Court of St. James' respecting the administration of the estate of the late Prince Batthyany;* and that Sir Julian Pauncefote was to request that we would report what course we should recommend should be adopted under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

The will duly made, and probate obtained.

That we gather from the information now before us that Count Batthyany, a naturalized British subject, by a will duly made according to the law of England, appointed a domiciled Englishwoman his executrix, and that she has obtained probate of the will in the English Courts.

Her Majesty's Government cannot interfere.

If these be the circumstances, we do not see how it would be possible for Her Majesty's Government to intervene. The executrix is, in law, the owner of the goods, subject to their administration according to the trusts and provisions of the will. And it appears to us that it would be impossible on the ground of any claim of diplomatic privilege to affect her legal title to the property.

The right was acquired by the voluntary disposition of his property made by Count Batthyany himself, and we are not aware of any principle of international law which affects the right to make such a disposition, or its validity when made.

If there is anything in the municipal law of Austria-Hungary which affects the right of Count Batthyany to make the disposition of his property which he has made, this question will no doubt be determined in the proceedings which have been taken in the Courts of this country by Count Batthyany's relations.

No question of diplomatic privilege involved.

But we do not see that any question of diplomatic privilege is involved.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Belgium.

### No. 3.

*The Law Officers of the Crown to Earl Granville.*—(*Received August* 17.)

*Royal Courts of Justice, August* , 1883.

My Lord,

Inheritance of property by married women.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th instant, stating that he had the honour to transmit to us, by your Lordship's direction, a letter from the Belgian Minister in this country,* asking for information as to the stipulations of English law regulating the capacity of a married woman to inherit property, as well as the rules which obtained on the same subject on the 22nd November, 1881, and the 3rd November, 1882.

That your Lordship proposed, in reply, to furnish the Belgian Minister with a copy of the Act of Parliament 33 & 34 Vict., cap. 93, referring him particularly to section 7, and to add that, subject to the provisions of that statute, all the personal estate of a married woman which was not settled on her by deed for her separate use vested by English law in her husband, *jure mariti*.

That Sir Julian Pauncefote was to request that we would inform your Lordship whether, in our opinion, the proposed reply was right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve reply to Belgian Minister as to English law respecting.

That, in our opinion, the proposed reply is right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## Borneo.

### No. 4.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 15.)

*Temple, March* 15, 1883.

My Lord,

Employment of British vessel "Royalist" in expedition against pirates.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 5th instant, stating that he was to transmit to us a correspondence† relative to the chartering of the British merchant-steamer "Royalist" by the North Borneo Company towards the beginning of last year for the conveyance of a party of armed police upon an expedition against piratical natives.

That it would be seen that Dr. Leys, the officer administering the Government of Labuan, blamed the owner and master of the "Royalist" for allowing the vessel to convey an armed party, whereas Mr. Treacher, the Governor of Sabat, maintained that there was no legal objection whatever to the course pursued by the Government of the Company in chartering the vessel.

That a copy of the Royal Charter ‡ granted to the Company was inclosed, and our opinion was requested as to the instructions which should be sent to Dr. Leys on the subject.

In obedience to your Lordship's commands we have the honour to report—

That it is not quite clear whether the British vessel "Royalist," which was chartered by the British North Borneo Company, was used on the occasion in question for the purpose of conveying a party of armed police for the punishment of pirates outside the territory of the Company, or for the punishment of natives of that territory who had been guilty of acts of piracy.

Owner not guilty of any infraction of law.

But in either case we are of opinion that the owner of the "Royalist" was not guilty of any violation of municipal or international law in permitting his vessel to be so used.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Count Károlyi, May 21; Treasury, May 28; to Law Officers, June 4; Law Officers, June 14; to Count Károlyi, June 22; Count Károlyi, June 27, 1883.

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* Baron Solvyns, July 17, 1883.

† Acting Consul-General Leys, No. 4, January 30, 1882, Confidential Print No. 4774, p. 45; Colonial Office, February 24, 1883.

‡ Charter of the British North Borneo Company of November 7, 1881, Confidential No. 4528.

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## No. 5.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 11.)

My Lord, *Royal Courts of Justice, April* 10, 1883.

Regulation of civil and criminal jurisdiction in the territories of the British North Borneo Company.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th ultimo, stating that, with reference to our Report of the 15th September last, he therewith transmitted papers* relating to the question of the regulation of civil and criminal jurisdiction in the territories of the British North Borneo Company.

Sir F. Reilly's scheme for the establishment of Tribunals by the Company.

That our attention was invited to a Memorandum by Sir F. Reilly, in which he suggested a general scheme for the establishment of Tribunals by the Company without the intervention of Her Majesty's Government, in accordance with the recommendation contained in our Report above referred to, whereby the exterritorial jurisdiction of the Queen in North Borneo would be suspended and justice would be administered in the name of the territorial Sovereign, or in the name of the Company, as his absolute delegate.

That our opinion was requested as to whether there was any objection to the scheme proposed by Sir F. Reilly in paragraphs 12 to 17 of his Memorandum, and with any general observations which we might have to offer on the question under consideration.

In obedience to your Lordship's commands we have the honour to report—

No objection to Sir F. Reilly's scheme.

That we see no objection to the scheme proposed by Sir F. Reilly for the administration of justice by the British North Borneo Company within their territories.

Extra-territorial jurisdiction of the Queen in North Borneo.

We presume, from the circumstances disclosed in the papers before us, that there is not likely to be any serious objection on the part of British subjects who were residents in North Borneo before the date of the Charter to the cessation of the exercise in those regions of the extra-territorial jurisdiction of the Queen.

We do not, indeed, gather quite clearly whether such jurisdiction has, in fact, ever been exercised in the territory now belonging to the North Borneo Company.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Sir F. Reilly to Earl Granville.*—(*Received February* 27.)

My Lord, 21, *Delahay Street, Westminster, February* 26, 1883.

IN the matter of North Borneo,—in pursuance of instructions sent to me by the Solicitor to the Treasury, by direction of the Lords of the Treasury, at your Lordship's instance, I have, in conference with Sir Julian Pauncefote, considered the papers received by me from the Foreign Office on the 16th January, 1883, with reference to the question of the preparation of an Order in Council for the regulation of civil and criminal jurisdiction in the territories of the North Borneo Company; and I have written a Memorandum stating my opinion and views thereon, which is inclosed, and which I submit to your Lordship.

I return the papers sent to me.

I have, &c.
(Signed) FRANCIS S. REILLY.

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* List of Papers:—
- (A.) Parliamentary Papers "Spain No. 1 (1882)," relating to Grant of Charter to the Company. Foreign Office No. 2514.
- (B.) Foreign Office Confidential Print ("Sulu," Part IV), No. 4476.
- (C.) Copy of Company's Charter. Foreign Office Confidential No. 4528.
- (D.) Treaty of 1847 between the Sultan of Borneo and Great Britain. Foreign Office No. 334.
- (E.) Treaty of June 23, 1850, between the Sultan of Borneo and the United States. "State Papers," vol. xxxviii, p. 290.
- (F.) Order in Council for Borneo of November 14, 1854. Confidential No. 584 A.
- (G.) Order in Council repealing the same (August 13, 1855). "State Papers," vol xliv, p. 1111.
- (H.) Provisional Agreement with the Sultan of Borneo of November 1856 (see I, Confidential No. 4654, p. 7).
- (I.) Memorandum thereon by Sir E. Hertslet, August 4, 1882. Foreign Office Confidential No. 4654.
- (J.) Foreign Jurisdiction Act (6 & 7 Vict., c. 94).
- (K.) Foreign Jurisdiction Act Amendment Act (29 & 30 Vict., c. 87).
- (L.) Foreign Jurisdiction Act, 1875 (38 & 39 Vict., c. 85).
- (M.) Foreign Jurisdiction Act, 1878 (41 & 42 Vict., c. 67).
- (N.) Act 28 & 29 Vict, c. 63 (Colonial Laws Validity Act).
- (O.) Letter of British North Borneo Company, July 5, 1882. Confidential No. 4774, p. 78*.
- (P.) Draft Order in Council submitted by the Company. Confidential No. 4774, p. 94.
- (Q.) Translation of Title-Deeds of the Company. Foreign Office Confidential No. 4528*.

Law Officers, September 18, 1882 (Confidential No. 4783, p. 4); North Borneo Company, November 10, 1882 (Confidential No. 4774, p. 93); Sir F. Reilly, February 26, 1883.

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### Inclosure in Sir F. Reilly's Letter of February 26, 1884.

### ADMINISTRATION OF JUSTICE IN NORTH BORNEO.

#### *Memorandum.*

1. THERE have been two instruments purporting to grant to the Queen extra-territorial jurisdiction in the dominions of the Sultan of Borneo—(1) the Additional Article to the Treaty of the 27th May, 1847, and (2) the Agreement of the 26th November, 1856. Whatever difficulties of a diplomatic character there may be respecting these two instruments, I assume that, for legal purposes, the Agreement of 1856, and that alone, is to be regarded as now in operation.

2. The Agreement is so framed that no practical legal effect can be given to it, especially in the present circumstances. It would have been almost unworkable in the original state of things; it is completely so now.

3. The Agreement provides, in effect, that there shall be, both for criminal and for civil cases, Mixed Courts, each consisting of a British officer and a Borneon officer, distinct persons. It is impracticable to constitute such Courts now. British authority and Borneon authority cannot be separately represented.

4. If, however, by any contrivance, such Mixed Courts could be constituted, they would have jurisdiction in criminal cases over British subjects only, and in civil cases over British subjects and Borneons only, with the addition of foreigners submitting to the jurisdiction. For all others Borneon Courts would have to be established side by side with the Mixed Courts. Yes, the jurisdiction of these Borneon Courts would now necessarily be exercisable by representatives of the Company. Therefore, substantially, the two kinds of jurisdiction would be exercised by the same persons sitting in different capacities.

5. There would be an appeal to some British Court outside Borneo in all cases for British subjects, and in civil cases also for Borneons and foreigners submitting to the jurisdiction of the Mixed British-Borneon Courts; but there would be no such appeal for others.

6. The stipulations in the Agreement, purporting to give to a Mixed British-Borneon Court jurisdiction in all civil cases, as between British subjects and foreigners, is beyond the powers of the Contracting Parties, repugnant to international law, and void.

7. The stipulation in the Agreement that all civil cases are to be determined by the Mixed British-Borneon Courts according to the customs of Borneo, is inconsistent with the rights of Her Majesty's subjects, repugnant to constitutional law, and void.

8. There is a stipulation in the Agreement providing in effect as to the judgments (sentences, they are called) of the Mixed British-Borneon Courts in civil cases, instead of their being executed by or under direction of the Courts themselves, that the Sultan of Borneo is to receive them and carry them out. Whatever effect might have been given to this stipulation in the original state of things, it is plainly unworkable now.

9. On the whole, therefore, I am clearly of opinion that no use can now be made of the Sultan's grant to the Queen of extra-territorial jurisdiction, and, consequently, that no ground for an Order in Council exists.

10. Possibly the Foreign Office will think fit not to stop at this negative result, but to give to the Company some indication of the course which might be taken by the Company in the circumstances.

11. It seems to me that the Company must proceed to organize their own Courts, and to administer justice to all inhabitants of their territories, including British

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subjects, in the name of the territorial Sovereign, or in the name of the Company, as his absolute delegate.

12. Some such plan as the following might be adequate, and not beyond the resources of the Company. The Company would appoint some of their higher resident officers to be Justices or Magistrates, or Judges, to hold Courts, one, for example, at each of two ports, and would appoint a professional lawyer of some experience as Chief Justice, or Chief Judge, for North Borneo. Serious sentences would, before execution, be examined and confirmed by the Chief Justice. Capital cases would be tried by the Chief Justice and one of the other Justices. The Chief Justice would sit at the two ports alternately, and with the Justice of that port would form a Court of Review for civil and criminal cases arising at the other port, the opinion of the Chief Justice always prevailing. Whether there should be in any cases, criminal or civil, assessors, or small juries, would depend mainly on local circumstances.

13. The law to be administered should be some form of British law (as the law of Singapore, or of India, or of England), specified in some authoritative way, subject to modification required by local circumstances, and regard being had to Borneon customs, as prescribed by Article 9 of the Charter.

14. The Company might probably, with great advantage, obtain the services of a professional lawyer as official adviser, with the title of Advocate-General, or the like.

15. I do not think that there need be, or ought to be, any declaration of waiver or suspension of the Queen's extra-territorial jurisdiction in favour of the Company. The Company must proceed under the powers of their Borneon grants and British Charter, on their own responsibility, the Foreign Office being quiescent, in accordance with the policy of the Charter, unless and until reason appears for interference.

16. At the same time it might be well that the Foreign Office should be informed by the Company of the arrangements, when settled, and that the Company should receive from the Foreign Office an expression of general satisfaction therewith, subject to the consideration of any questions to arise from time to time in the working of the arrangements.

17. The United States' grant of extra-territorial jurisdiction will require attention on the part of the Company, and also on the part of the Foreign Office, under Article 6 of the Charter. At present the grant is in abeyance, and it may be a question for the Company, with reference to United States' citizens in the Company's territories, whether a previous understanding should be come to with the United States' Government as to the jurisdiction over them, or whether any difficulties should be left to be met, if and when they arise.

18. It should be noted that when the Charter was drawn and passed the Agreement of 1856 and the Orders in Council of 1854 and 1855 were not known to those concerned.

(Signed) FRANCIS S. REILLY.

*February* 26, 1883.

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## No. 6.

*The Law Officers of the Crown to Earl Granville.—(Received September* 7.)

Jurisdiction in North Borneo. Proposal that Her Majesty should waive.

My Lord, *Royal Courts of Justice, September* 5, 1883.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th June last, stating that, with reference to our Report of the 10th April last on the subject of civil and criminal jurisdiction over British subjects in North Borneo, he had the honour to transmit to us, by your Lordship's direction, the further papers noted in the accompanying list,* which related to the same question, and that he was to draw our attention to the request contained in the letter of the North Borneo Company of the 17th May last, that some public notifications should be made of the waiver of Her Majesty's jurisdiction in the territories of the Company.

* 1. Treaty, May 27, 1847. No. 334.
2. Agreement, November 26, 1856. "State Papers," vol. lxv, p. 1170.
3. Charter of North Borneo Company, November 7, 1881. Confidential No. 4528.
4. Law Officers' Report of April 10, 1883.
5. To North Borneo Company, May 8, 1883.
6. North Borneo Company, May 17, 1883.
7. Draft Notification.

That your Lordship would be glad to be favoured with our opinion as to whether there was any objection to complying with the request of the Company, and if not, whether the form of notification (which accompanied Sir Julian Pauncefote's letter), might properly be adopted with or without modification.

In obedience to your Lordship's commands we have the honour to report—

Approve form of notification, but opposed to its issue.

That if there is to be a notification of the waiver by Her Majesty of her exterritorial jurisdiction in North Borneo, we think the proposed draft is proper.

But we much doubt the expediency of issuing such a notification unless it be necessary so to do, and we are not satisfied that such necessity exists.

The Agreement of 1856 has never been practically acted upon, and the present state of things is essentially different to that to which it related.

We do not think any difficulties can arise of the nature suggested in the letter from the North Borneo Company. The exercise by them of the territorial jurisdiction which they possess, as representing the Sultan of Brunei, would be beyond question, even notwithstanding Her Majesty possessed the exterritorial rights conferred by the Agreement of 1856, unless she chose to exercise them. We think, therefore, it would suffice if a communication were made to the North Borneo Company simply to the effect that so long as Her Majesty was satisfied with the provision made for the administration of justice by the North Borneo Company, Her Majesty did not intend to exercise such exterritorial jurisdiction as is vested in her under the Agreement of 1856. And we think that no notification of this in the "Gazette" or otherwise would improve the legal position of the Company or its officers.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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### Annex.

*Draft Notification.*

### CIVIL AND CRIMINAL JURISDICTION IN NORTH BORNEO.

WHEREAS, by an Agreement dated the 26th day of November, 1856, entered into between Her Majesty the Queen and His Highness the Sultan of Brunei, it was provided that Her Majesty should exercise civil and criminal jurisdiction over British subjects, jointly with the Sultan, throughout the dominions of His Highness in North Borneo;

And whereas no Order of Her Majesty in Council has been issued for the exercise and regulation of the said jurisdiction;

And whereas by certain grants and commissions made and issued by the Sultan, bearing date the 29th day of December, 1877, and by other deeds and instruments, a part of His Highness' dominions in North Borneo has become vested in the British North Borneo Company, with full power to the said Company, by delegation from His Highness, to govern the same, and to exercise therein all powers and rights appertaining to His Highness as Sovereign Ruler thereof, as more fully appears in the Royal Charter of Incorporation of the said Company, dated the 1st day of November, 1881, and published in the "London Gazette" of the 8th November, 1881;

And whereas the said Company have made suitable provision for the administration of justice in their territories in North Borneo;

It is hereby notified that Her Majesty the Queen has been pleased to waive Her rights of jurisdiction in the territories of the British North Borneo Company, under the said Agreement of the 26th day of November, 1856, until Her further pleasure be signified; and that all British subjects within the said territories are amenable to the jurisdiction of the Courts established therein by the said Company for the purpose of administering justice to the inhabitants thereof.

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# Brazil.

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## No. 7.

*The Law Officers of the Crown to Earl Granville.*—(*Received August* 16.)

My Lord, *Royal Courts of Justice, August* , 1883.

Transfer of Brazilian Government bonds to representatives of deceased British subjects.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 9th instant, stating that he had the honour to transmit, by your Lordship's direction, papers* (of which no list was inclosed) relating to the difficulties experienced by the legal representatives of deceased British subjects in obtaining the transfer into their names of Brazilian Government bonds standing in the names of the testators or intestates, in consequence of the formalities required by the Brazilian Government before the transfer is allowed.

Brazilian law as to.

That it appeared that the Brazilian Regulations required the British Consul to certify that the documents presented fulfilled the requirements of British law for vesting the property in the parties claiming the transfer into their names.

That your Lordship would be glad to be informed whether there would be any objection to the Consul granting such certificate on receipt through the Foreign Office of a certified copy of the probate or letters of administration showing the title of the legal personal representative to the Government bonds.

That if we should not consider that course advisable, Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to the best mode of meeting the difficulty.

In compliance with the request contained in Sir Julian Pauncefote's letter, and in obedience to your Lordship's commands, we have the honour to report—

No objection to Consul granting a certificate that requirements of British law have been fulfilled.

That we are of opinion that there will be no objection to the Consul granting the certificate referred to upon the receipt of the probate or letters of administration showing the title of the legal personal representative of the testator or intestate to the Government bonds.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 8.

*The Law Officers of the Crown to Earl Granville.*—(*Received October* 2.)

My Lord, *Royal Courts of Justice, September* 29, 1883.

Right of British subjects to hire slaves for domestic employment, or to let them out for hire.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 7th September instant, stating that, by direction of the Secretary of State, he had to transmit to us a despatch, as marked in the margin of his letter, from Her Majesty's Minister at Rio, relating to the right of British subjects in Brazil to hire slaves from their masters for domestic employment, or to let out for hire slaves of whom they may be legally possessed, together with a draft of the reply which your Lordship proposed to address to him.

That Mr. Lister was to request that we would take the papers transmitted therewith into our consideration, and that we would inform your Lordship whether the instructions contained in that draft were right and proper, or required any amendment.

In obedience to your Lordship's commands we have the honour to report—

Approve draft to Her Majesty's Minister at Rio.

That, in our opinion, the instructions contained in the draft are right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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* Consul Ricketts, No. 3, Consular, March 24; to ditto, No. 5, Consular, April 28; ditto, No. 7, Consular, June 11, 1883.

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# Brazil.

[Home Office.]

## No. 6*.

*Law Officers to Home Office, June* 18, 1883.

(*Extract from Appendix to Report of Civil Service Commission for* 1883. *Foreign Office No.* 2854, *p.* 16.)

Sir, *May* 18, 1883.

Status of children, born in Brazil, of a widow, British by origin, of a Brazilian subject, upon her readmission to British nationality;

I SHALL be obliged if you will be good enough to give me information under the following circumstances:—

Mrs. *A. B*.., the widow of a Brazilian subject, is about to apply for a certificate of readmission to British nationality, she having before marriage been a natural-born British subject. Of her children, two sons are infants, one being now educated at Harrow. They were both born in Brazil. Mrs. *A. B.* wishes to be advised whether, having regard to "The Naturalization Act, 1870," sec. 10, sub-sec. 4, such infant children will, upon the readmission to British nationality of their mother, be deemed in law natural-born British subjects; and, as such, be eligible for Commissions in the Army or for the Civil Service.

I am, &c.
(Signed) C. D.

The Right Hon. the Secretary of State
for the Home Department.

Provision of Act as to.

Reference should be made to section 10 of 33 Vict., cap. 14, the Naturalization Act, the whole of which section seems to me more or less applicable.

Mrs. *A. B.* is by English law, 33 Vict., cap. 14, sec. 10 (1, 2), and, no doubt, by Brazilian law also, a Brazilian subject.

It is presumed that the children of Mrs. *A. B.* have always been, and are now, Brazilians, and never have been British subjects—33 Vict., cap. 14, sec. 10 (3). The same section further prescribes:—

"Sub-sec. (2). A widow, being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may, as such, at any time during widowhood obtain a certificate of readmission to British nationality in manner provided by this Act."

"Sub-sec. (4). Where the father, or the mother being a widow, has obtained a *certificate of readmission* to British nationality, every child of such father or mother who during infancy has become resident in the British dominions with such father or mother shall be deemed to have *resumed the position of a British subject* to all intents."

"Sub-sec. (5). Where the father, or the mother being a widow, has obtained a *certificate of naturalization* in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom, shall be deemed to be a *naturalized* British subject."

The Secretary of State desires to be advised by the Law Officers whether, in the event of the mother obtaining a certificate of readmission to British nationality, her children, who previously to her obtaining such certificate

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were Brazilian subjects, but who during infancy have become resident in the British dominions with the mother, are to be deemed to be—

(*a*.) British subjects;
(*b*,) Naturalized British subjects; or,
(*c*). Aliens.

*Opinion*

Construction of Statute doubtful. Children probably British subjects.

Great difficulty arises in the construction of section 10, sub-section (4) of the Naturalization Act in consequence of the use of the word "resumed." The present case, if within the section at all, is governed by sub-section (4), and taking into consideration all the provisions of section 10, we think that in the event of the mother obtaining a certificate of readmission to British nationality, her children, who during infancy have become resident with her in the British dominions, would probably be deemed to be British subjects. But we repeat that the construction of the Statute is exceedingly doubtful.

(Signed) HENRY JAMES.
FARRER HERSCHELL.

*Royal Courts of Justice, June* 18, 1883.

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Annex.

*Draft of Despatch to Mr. Corbett.*

Sir, *Foreign Office*, , 1883.

I HAVE received your despatch No. 18, marked Commercial, of the 9th May last, and I have to point out to you that, as it relates to a labour question, it should have been numbered in the Consular series.

In reply to your inquiry as to the right of British subjects to hire slaves from their masters for domestic employment, I have to state to you that, so long as such employment does not involve a dealing, or trading, in, or the purchase, sale, barter, or transfer, carrying away, removing, &c., of the slave, it does not constitute an offence against the Slave Trade Acts. But difficult questions may arise as to whether a contract for the services of a slave amounts to a "transfer" within the meaning of the Statute. This depends on the particular circumstances of each case, and there are many contracts which might be entered into for the employment of slaves which, upon their face, might not appear to violate British law, and the carrying out of which, however, might involve the British subject in an infringement of the Statutes. I am unable, therefore, to lay down any general rule for your guidance.

As regards your inquiry, whether it is lawful for British subjects to let out for hire slaves of whom they may be legally possessed, there is, unfortunately, some uncertainty as to the question how far it may be lawful, since the passing of the Act 6 & 7 Vict., cap. 98, for British subjects to hold slaves in Brazil where slavery is permitted; but by section 5 of that Act, it is provided that "in all cases in which the holding or taking of slaves shall not be prohibited by this or any other Act of Parliament, it shall be lawful to sell or transfer such slaves, anything in this or any Act contained notwithstanding."

I am, &c.

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No. 9.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 22.)

My Lord, *Royal Courts of Justice, December* 21, 1883.

Anglo-Brazilian claims.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 10th September, stating that he transmitted to us papers* relating to the Anglo-Brazilian claims.

That Her Majesty's Minister at Athens, Mr. Ford, who formerly held the same position at Rio de Janeiro, and who was thoroughly conversant with the question, had lately been employed at the Foreign Office in an examination of the papers relating to that long-standing matter.

Proposed draft Agreement.

That annexed to the Memorandum (F) was a draft Agreement which it was proposed to negotiate with the Brazilian Government, by which each Government would undertake the payment, subject, as regarded this country, to the consent of Parliament, of the claims of its own subjects.

That we should perceive from the Treasury letter of the 5th May (H) that the Lords Commissioners had suggested that our opinion should be obtained on the question whether, assuming the assent of Parliament to have been obtained, a Convention, in the terms proposed, would irrevocably bind the Brazilian Government, and debar it from subsequently opening any question upon statements made in the course of obtaining that assent.

That our opinion was requested on that question, and also as to the sufficiency, or otherwise, of the draft Agreement proposed by Mr. Ford to carry out the object in view, which was annexed to his Memorandum of the 12th April.

That Mr. Currie was also to transmit to us two despatches from Her Majesty's Minister at Rio de Janeiro, from which it would be seen that the Brazilian Government were, to all appearances, favourable to the settlement of that question by means of the payment by each Government of the claims of their own countrymen, for which

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* (A.) Mr. Ford's Report on British Claims, February 8, 1883, Confidential No. 4739; (B.) Summary of above, Confidential No. 4740; (C.) Memorandum by Mr. Ford on the Aberdeen Act, March 8, Confidential No. 4771; (D.) to Treasury, March 19; (E.) Treasury, April 9; (F.) Memorandum by Mr. Ford, April 12; (G.) to Treasury, April 26; (H.) Treasury, May 5; (I.) Mr. Corbett, No. 17, Confidential, April 23, 1883; (J.) ditto, No. 20, Confidential, April 26, 1883; (D. to J., in Confidential Print No. 4927).

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purpose it was proposed that a sum of money should be placed at the disposal of that Government by the Chamber of Deputies.

In obedience to your Lordship's commands we have to report—

Would debar Brazil from making further claims.

Approve draft with slight alterations.

That we think a Convention in the proposed terms, as altered by us in ink on the draft attached to Mr. Ford's Memorandum of the 12th April, 1883, would irrevocably bind the Brazilian Government, and debar it from subsequently opening any question upon statements made in the course of obtaining the assent of Parliament. And we think that the draft Agreement proposed by Mr. Ford will, with the slight alterations we have made, suffice to carry out the object in view.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Annex.

*Draft Agreement between the British and Brazilian Governments for the Settlement of Outstanding Claims.*

*Signed at Rio de Janeiro,*

THE Undersigned, , Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary at the Court of Rio de Janeiro, and , being duly authorized on the part of their respective Governments, have agreed as follows:—

### ARTICLE I.

The Government of Her Britannic Majesty and the Government of His Imperial Majesty agree that the question of all claims on the part of Corporations, Companies, or private individuals, subjects of Her Britannic Majesty, upon the Government of His Majesty the Emperor of Brazil, and all claims on the part of Corporations, Companies, or private individuals, subjects of His Majesty the Emperor of Brazil, upon the Government of Her Britannic Majesty, which may have been presented to either Government for its interposition with the other, since the date of the Declaration of Independence of the Brazilian Empire, and which yet remain unsettled, shall be mutually looked upon as entirely closed between the two Governments concerned, and that the claims advanced by either party are hereby considered as a set-off to those advanced by the other; and that each Government shall proceed to take such steps as they may deem necessary in order to satisfy the just claims of their own subjects respectively.

It is further agreed that the present arrangement shall not be valid unless Her Britannic Majesty shall be authorized by the assent of Her Parliament to execute the engagements contracted by Her in the present Article.

In witness whereof the respective parties have signed the present Agreement, and affixed their seals thereto.

Done in duplicate at Rio de Janeiro the day of , 18 .

(L.S.)
(L.S.)

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# Chile.

## No. 10.

*The Law Officers of the Crown to Earl Granville.—(Received January 1.)*

*Temple, January* 1, 1883.

My Lord,

Detention of the "Diogenes" and "Socrates."

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 20th December, stating that he was directed by your Lordship to transmit to us a correspondence as marked in the margin,* relative to two steam-ships named the "Diogenes" and "Socrates."

German embargo on and subsequent sale to Mr. Lambert, and release on security.

That it would be seen that those vessels, while in course of construction at Neumühlen near Kiel, were placed under embargo by the German Government in the month of July of last year, owing to a suspicion that they were intended for the use of the Peruvian Government.

That they were now said to have been sold to Mr. H. Lambert of 51, Lime Street, London, and the embargo had been raised on condition that Mr. Lambert should deposit the sum of 25,000*l.* sterling, and should engage that the ships should proceed at once to Southampton.

That provisional certificates were issued to the two vessels for the voyage to England by the British Vice-Consul at Kiel. That the vessels had now arrived at Southampton, and Mr. Lambert had applied to have them registered as British ships.

That Mr. Currie was to request that we would take the papers into our immediate consideration and favour your Lordship at our earliest convenience with our opinion as to whether, in view of the circumstances to which Lord Ampthill called attention in his Secret despatch of the 13th December, and to the statement made by the Collector of Customs at Southamptom as to the peculiar construction of those vessels, any steps should be taken to detain them, pending the production by Mr. Lambert of satisfactory evidence as to their ultimate destination.

We were also honoured with a further letter from Mr. Currie of the 22nd December, stating that with reference to his letter of the 20th instant relative to the vessels "Socrates" and "Diogenes," he was directed by your Lordship to transmit to us a letter from the Treasury, forwarding a Report from the Board of Customs inclosing correspondence with Mr. Lambert, the alleged purchaser of the vessels.

Alleged intention to sell them to French Government.

That Mr. Lambert stated that he was in treaty with the French Government for the sale of the vessels to them, and that a telegram had been sent to Her Majesty's Ambassador at Paris instructing him to ascertain privately whether that statement was true.

That Mr. Currie was also to inclose a minute of a conversation which he had had that morning with the First Secretary of the Chilean Legation, who made a verbal request that the vessels might be detained, and stated that he would send in a note containing a formal request to that effect in the course of the afternoon.

Temporary detention ordered.

That the Board of Trade had given private orders for the temporary detention of the vessels on technical grounds under the powers vested in them by "The Merchant Shipping Act."

We were also honoured with a Memorandum from Mr. Currie, stating that with reference to his letter of the 22nd December, he had the honour to transmit a further letter from the Board of Trade† relative to the two vessels "Socrates" and "Diogenes."

In obedience to your Lordship's commands we have the honour to report—

Their use against Chile should be prevented.

That we think steps should be taken to prevent the vessels leaving English waters without security being obtained that they will not be used against Chilean forces or commerce.

Suspicious character of vessels.

It seems almost certain that the original construction at Kiel was on Peruvian behalf. This appears to be established by the submission to the detention on the suggestion of the Chilean Representative for eighteen months without protest, so far as is known.

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* List of Papers:—Sir J. Walsham, No. 341, August 5; ditto, No. 342, August 5; Mr. Annesley, No. 12, Consular, August 6, 1881; Lord Ampthill, No. 437, December 2; ditto, No. 455, December 9; ditto, No. 464, December 13; Board of Trade, December 13; Count Münster, December 12; Treasury, December 19; ditto, December 20, 1882.

† Board of Trade, December 22, 1882.

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The vessels are warlike in construction, and the only States likely to afford employment for warlike purposes at the present time are Peru or Chile. Some weight also must be given to the representations of the Chilean Minister.

Moreover the circumstances of the supposed purchase by Mr. Lambert and his alleged intended use of them afford ground for suspicion. It seems very improbable that Mr. Lambert should have purchased such vessels at his own risk and without some definite purchaser in view. The demand for vessels of that description must be so extremely limited that the speculation would be most hazardous. It is suggested that they are to be taken to a French port with a view to sale to the French Government. But it appears that no negotiations are now on foot with that Government.

Should issue warrant, but not seize them except to prevent their sailing.

We think, therefore, on the whole that the Secretary of State's warrant should be issued and placed in the hands of the Custom-house officers at Southampton; but the vessels need not absolutely be seized until there is danger of their putting to sea, which must of course be prevented.

And inform Mr. Lambert that they must not be used against a friendly State.

Mr. Lambert should be communicated with, and informed that it is the intention of Her Majesty's Government to prevent the vessels being employed against a friendly State.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 11.

*The Law Officers of the Crown to Earl Granville.—(Received January 4.)*

Detention of the "Socrates" and "Diogenes."

My Lord, *Temple, January* 3, 1883.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th December last with reference to previous correspondence on the subject of the detention of the steam-ship "Socrates," and stating that he was directed by your Lordship to transmit to us the accompanying copy of a letter from the Collector of Customs at Southampton,* pointing out that the vessel's name should be spelt in the warrant "Sokrates," that form of spelling the name appearing upon the vessel's stern.

That your Lordship presumed that that slight difference in the spelling of the vessel's name was immaterial, but that your Lordship would be glad to be informed whether we concurred in that view.

We were also honoured with Sir Julian Pauncefote's letter of the 28th ultimo, transmitting to us a translation of a further note from the Chilean Legation,† containing additional information as to the character of the vessels "Socrates" and "Diogenes."

That Sir Julian was to say that the warrants necessary to enable the local authorities to detain the vessels had been forwarded to the Collector of Customs at Southampton, with instructions, however, not to execute them except in case it should appear that the vessels were about to be dispatched, and your Lordship presumed that we were of opinion that the measures of precaution so taken should not for the present be relaxed.

In obedience to your Lordship's commands we have the honour to report—

Misspelling of name of vessel in warrant immaterial.

That we concur in the view that the slight difference in the spelling of the vessel's name is immaterial. There is no possible question as to what vessel the warrant refers to.

Measures of precaution not to be relaxed.

That we are of opinion that the measures of precaution taken should not for the present be relaxed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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* Mr. J. King, December 24, 1882.

† M. Martinez, December 27 1882.

## No. 12.

*The Law Officers of the Crown to Earl Granville.—(Received April 12.)*

Detention of the "Diogenes" and "Sokrates" under the Foreign Enlistment Act.

My Lord, *Royal Courts of Justice, April* 12, 1883.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 6th instant, stating that, with reference to our Report of the 3rd January last, he was directed by your Lordship to state to us that the vessels "Diogenes" and "Sokrates" had been detained under surveillance since that date on suspicion of a contemplated breach of the Foreign Enlistment Act.

That we would perceive from the inclosed correspondence* with the Treasury that some difficulty had arisen with regard to the mooring of those vessels being so arranged as to insure that that surveillance should be efficiently continued; and Mr. Lister was then directed by your Lordship to request our opinion as to whether it would be proper, under the circumstances of the case, to relax the measures of precaution which had been taken on condition that the owner of the vessels should agree to enter into a bond giving substantial security that they should not be used in contravention of the Foreign Enlistment Act.

In obedience to your Lordship's commands we have the honour to report—

Conditions under which precautionary measures may be relaxed.

That if in the circumstances which now exist it is improbable that Peru would purchase the ships, or find the means of paying for them, we think that it would be proper to relax the measures of precaution which have been taken, on condition that the owner should enter into such a bond as is suggested. Whether this is so or not we are hardly in a position to judge. If Peru were in the market for such vessels it might very well be worth her while, in order to get possession of the ships, to pay a large additional sum to indemnify the present owner against any pecuniary liability incurred under the bond. In any view the amount of security required ought to be so fixed as to render it reasonably certain that the Foreign Enlistment Act will not be infringed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 13.

*The Law Officers of the Crown to Earl Granville.—(Received April 12.)*

Detention of the "Sokrates" and "Diogenes."

My Lord, *Royal Courts of Justice, April* 12, 1883.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 11th instant, stating that with reference to his letter of the 6th instant he was directed by your Lordship to transmit to us correspondence, as marked in the margin of his letter, from which we would perceive that the Admiralty and Customs authorities at Southampton appeared to be unable to guarantee that the vessels "Sokrates" and "Diogenes" should be so guarded as absolutely to prevent their escape, if such were meditated, unless the warrants which were issued on the 23rd December last were executed.

That we would recollect that the warrants in question were addressed to the Collector of Customs at Southampton; but with orders not to execute them unless he had reason to suppose that the vessels were preparing to put to sea.

That under those circumstances your Lordship requested that we would favour you with our immediate opinion as to whether there was sufficient cause to justify the execution of the warrants and the detention of the vessels until it could be ascertained what steps could be taken to obtain sufficient security from the owners that they should not be used in contravention of the Foreign Enlistment Act, or whether there was any other course which we would recommend to be followed under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

If unavoidable, warrants of seizure should be executed, until proper security is obtained.

That it would be desirable, if possible, to endeavour to avoid executing the warrants, and to obtain security from the owner that the vessels should not be used in contravention of the Foreign Enlistment Act. But if the circumstances are such that the escape of the vessels cannot now be prevented except by execution of the warrants, and the alternation is between their execution and leaving the vessels free to depart,

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* Treasury, April 3; Treasury, April 4, to Treasury, April 4, 1883.

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we think the latter course would not be proper until security is obtained, and that the warrants ought to be executed.

Vessels should be released on sale to any unobjectionable purchaser.

Looking at what has passed with the agent of the owner, we do not think this seizure would make much practical difference so far as they are concerned. The vessels are, in effect, being detained at the present time, and if the sale to the Japanese Government, or any other unobjectionable purchaser, should take place, the vessels would, of course, be at once released.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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### List of Papers.

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## No. 14.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 27.)*

My Lord, *Royal Courts of Justice, June 26, 1883.*

Bond respecting vessel built for Chile, but now purchased by Japan.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st instant, stating that he was to transmit to us papers which related to a request made by Messrs. Armstrong for the cancellation of a bond given

by them in 1881 in respect of a vessel then building for the Government of Chile, but now stated to have been purchased by the Government of Japan.

That we should find amongst the papers a copy of the bond, and that we should learn from the letter from the Treasury, dated the 21st January, the course which the Solicitor to the Treasury recommended should be pursued under the circumstances.

That the question was one of considerable importance with a view to the course to be followed in future in similar cases, and that our opinion was requested as to whether, under the circumstances, the bond should be cancelled, or whether the course recommended by the Treasury Solicitor should be pursued.

That our Report was desired at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

It should not be cancelled. Should follow course recommended by Treasury.

That we think that, under the circumstances, the bond should not be cancelled, but that the course recommended by the Treasury should be pursued.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers to accompany reference to the Law Officers, June 21, 1883.*

Bond, copy of; Messrs. Armstrong and Co., May 29; Treasury, June 2; to Messrs. Armstrong and Co., June 9; Jushie Mori, June 11; to Treasury, June 14; ditto, June 15; ditto, June 16; Treasury, June 16; ditto, June 19; to ditto, June 19; Messrs. Armstrong and Co., June 20; Treasury, June 21, 1883.

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## No. 15.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 17.)*

My Lord, *Royal Courts of Justice, July 16, 1883.*

Chilean blockade of the Peruvian ports of Chala and Lomas.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was to transmit to us, by direction of your Lordship, the papers† which related to the blockade by the naval forces of Chile of the Peruvian ports of Chala and Lomas, and that he was to request our opinion as to whether instructions might properly be sent to the British Naval Commander-in-chief on the Pacific Station, directing him to inform the Chilean Commander-in-chief that Her Majesty's Government protest against any seizure of British vessels for breach of that blockade, so long as it shall not be effective within the meaning of the Article of the Declaration of Paris of the 16th April, 1856, respecting blockades, to which Chile had given her adhesion.

In obedience to your Lordship's commands we have the honour to report—

Approve instructions to protest against seizure of British vessels whilst blockade is ineffective.

That we think the proposed instructions may properly be sent.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 16.

*The Law Officers of the Crown to Earl Granville.—(Received October 1.)*

My Lord, *Royal Courts of Justice, September 29, 1883.*

Detention of the "Diogenes" and "Sokrates" under the Foreign Enlistment Act.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 14th September instant, stating that, by direction of the Secretary of State, he had to transmit to us the papers noted in the accompanying list,* which

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* Mr. A. St. John, No. 31, April 2; ditto, No. 39, April 23; Admiralty, June 14, 1883; Declaration of Paris, April 16, 1856, Treaty, No. 403; Memorandum (Sir E. Hertslet), Qy May 5, 1876; Letter of Chilean Minister (Accession to Declaration of Paris), August 14 (Qy. 13), 1856; State Papers, vol. xlviii, p. 139.

† Law Officers' Reports, April 12; to Treasury, April 13; from Customs, April 13; ditto, April 16; ditto, April 20; from Admiralty, April 21; to Treasury, April 24; to Admiralty, April 24; from Treasury, May 5; from Admiralty, July 20; to Treasury, July 21; to Admiralty, July 21; from Treasury (A), July 30; ditto (B), July 30; ditto, August 10; to Señor Martinez, August 18; from Señor Martinez, September 1; ditto, September 4, 1883.

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related to the detention of the vessels "Diogenes" and "Sokrates" on suspicion of a contemplated breach of the Foreign Enlistment Act.

Inconvenience caused to the public service by the employment of Her Majesty's ships of war in maintaining an efficient surveillance over them.

That Mr. Currie was, in the first place, to state that, since the date of our Reports of the 12th April last, those vessels had been guarded by one of Her Majesty's ships of war; but that, as would be seen on reference to the letters from the Customs of the 13th, 16th, and 20th April, and to the Admiralty letter of the 21st April, there was some difficulty in maintaining an efficient surveillance over them. That it would be further seen, on reference to the Admiralty letter of the 20th July, that great inconvenience was caused to the public service by the employment of Her Majesty's ships of war for that purpose.

That Mr. Currie was also to state that, on the receipt of our second Report of the 12th April last, in which we advised that it would be desirable, if possible, to endeavour to avoid executing the warrants, and to obtain security from the owner that the vessels should not be used in contravention of the Foreign Enlistment Act, your Lordship requested the Treasury to communicate with Mr. Lambert, the broker in whose hands the vessels were, as to the execution of a bond.

That on the 5th May the Treasury, in reply, forwarded a letter from their solicitor, in which he stated that, after conference with us, Mr. Lambert had been invited to execute a bond for 20,000*l*.

Refusal of Mr. Lambert to execute a bond.

That no definite reply to that proposal was returned by Mr. Lambert till the 31st July. That a copy of his letter of that date was forwarded to the Foreign Office in the Treasury letter of the 10th August. That he stated that he had fully respected, and intended to respect, the undertaking he gave not to remove the vessels without giving due notice to Her Majesty's Government; that his principals were not the Peruvians, and that he could not agree to give the bond asked for.

That, under those circumstances, it appeared to your Lordship that, while the execution of the warrants against those vessels should, if possible, be avoided, some definite action was required in order to relieve Her Majesty's ships of war from the duty of maintaining a surveillance over them.

But before taking any further steps in the matter your Lordship thought it advisable to communicate a copy of Mr. Lambert's lett'er to Señor Martinez, the Chilean Minister at this Court, and at the same time to inform him that, under existing circumstances, Her Majesty's Government had no reason to believe that the Peruvian Government were in treaty for those vessels, and that unless from any circumstances which had come to his knowledge since the date of his last communication he had cause to apprehend a breach of the Foreign Enlistment Act by the owners of the "Diogenes" and "Sokrates," Her Majesty's Government proposed to discontinue the guard over the vessels which entailed considerable trouble and expense.

Peruvian Government still believed to be the real owners.

That Señor Martinez sent a reply to that communication on the 1st September, in which he stated that his Government still firmly believed that the Peruvian Government were the real owners of the vessels, and adduced various reasons in support of that belief, and on those grounds he requested that the guard over the vessels might still be maintained.

That Mr. Currie was to draw our attention to the remarks in the concluding paragraph of Señor Martinez' note relative to the question of the bond.

Repairs superintended by Peruvian officers.

That in a further note dated the 4th September, Señor Martinez stated that he had ascertained that two Peruvian naval officers were superintending the repairs then being carried out on the "Diogenes" and "Sokrates."

That Mr. Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to the course that should now be taken with regard to those vessels, in view of the statements made by the Chilean Minister, and of Mr. Lambert's refusal to execute a bond.

In obedience to your Lordship's commands we have the honour to report—

Precautions against their departure should not be abandoned.

The present supervision should be continued, or the warrants executed.

Risks attending the execution of the warrants.

That, in view of the letters of M. Martinez of the 1st and 4th September, and of the refusal of Mr. Lambert to give the proposed bond, we think it clear that the Secretary of State could not properly abandon further precautions against the departure of these vessels from British waters. If he were to do so, and they should afterwards be used by Peruvian subjects against Chile, a most serious responsibility would be incurred by this country. The choice, therefore, seems to lie between continuing the present supervision and executing the warrants. If the latter course were adopted, there would be a risk of the Court holding that there was not reasonable and probable cause for the detention, in which case the owner would be entitled, under section 22 of the Foreign Enlistment Act, to be indemnified by the payment of costs and damages. On the other hand, the supervision at present exercised appears to cause considerable trouble and inconvenience. Which of these courses is likely to be the less onerous we are hardly in a position to advise, though we still think that the execution of the warrants should be avoided, unless there be very strong grounds indeed for departing from the procedure hitherto adopted.

Circumstances under which the warrants might safely be executed.

If, however, evidence could be obtained to show that the statement contained in M. Martinez' letter of the 4th instant, that the recent repairs of the vessels were superintended by Peruvian naval officers, is accurate, we think the warrants might safely be executed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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### No. 17.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November 24.)*

My Lord, *Royal Courts of Justice, November* 24, 1883.

Detention of the "Diogenes" and "Socrates."

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th instant, stating that, with reference to our Report of the 29th September last, he was to transmit to us correspondence* on the subject of the vessels "Diogenes" and "Socrates" under surveillance at Southampton.

Cessation of Chileo-Peruvian War.

That the further communications were inclosed from the Chilean Minister at this Court respecting the termination of hostilities between Chile and Peru.

That your Lordship would be glad to learn our opinion whether, in view of the circumstances set forth in those papers, we were of opinion that the active surveillance maintained over those vessels by Her Majesty's ship "Hector" might be relaxed without being quite abandoned, or might be discontinued until further notice from the Board of Customs.

In obedience to your Lordship's commands we have the honour to report—

Surveillance may be relaxed without being abandoned.

That we think that, in view of the circumstances set forth in these papers, the active surveillance maintained over these vessels by Her Majesty's ship "Hector" may be relaxed without being quite abandoned.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## China.

### No. 18.

[After recapitulation of the following Reference, they report as on p. 19:—]

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

Gentlemen, *Foreign Office, February* 1, 1883.

Mooring of hulks at Chinkiang.

I HAVE the honour to transmit to you, by direction of Earl Granville, the accompanying despatch No. 121 of the 8th November last, with nine inclosures, recently received from Mr. Grosvenor, Her Majesty's Chargé d'Affaires at Peking.

Refusal of Chinese Government to allow in case of Mr. McBain without payment of fee.

In that despatch a question is raised whether the Chinese Government are justified in declining to allow a British subject, who has purchased a plot of ground abutting on the River Yang-tsze, in the vicinity of the British Concession at Chinkiang, to moor a hulk opposite to his land except on payment of an annual fee.

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* To Treasury, October 4; ditto, October 11; to M. Martinez, November 3; to Treasury, November, 3; to Admiralty, November 3; M. Martinez, November 6, 1883.

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The facts of the case are stated in Mr. Grosvenor's despatch, and more fully in the letter addressed to Sir T. Wade by Mr. Bristow, the British Acting Consul at Chinkiang, which forms Inclosure 1.

It has been the practice of the Chinese authorities to allow foreign merchants at the Treaty ports to moor hulks and put out jetties for facilitating the landing of goods, provided that no obstruction to the navigation and no damage to the foreshore is likely to be caused thereby. Permission to moor a hulk is obtained from the Chinese Customs (the Imperial Maritime Customs), and an annual fee is paid to the Foreign Municipality, and is applied towards the municipal expenses of the Foreign Settlement.

Mr. Duff is the agent of Mr. McBain, the owner of a line of steamers, who was unable to obtain the privilege of mooring a hulk within the Settlement, there being no vacant berth.

Mr. Duff purchased, on behalf of Mr. McBain, a piece of land abutting on the river outside the Settlement, and asked for permission to moor a hulk opposite to his premises. This request was refused except on the condition of his paying an annual fee of 1,000 taels for the privilege.

Inclosure 2 in Mr. Grosvenor's despatch contains a further letter from Mr. Bristow to Sir T. Wade and a correspondence between the Acting Consul, Mr. Duff, and Shen Ta-jên, the Superintendent of Customs at Chinkiang, and a rough plan showing the position of the piece of land in question.

Inclosure 3 contains a further letter from the Acting Consul to Sir T. Wade, inclosing the reply of the Inspectorate of Customs, through the Chief Secretary Mr. McKean, to Mr. Duff's complaint. That reply sets out the grounds on which the action of the Chinese authorities is defended.

Inclosure 4 contains the opinion of Mr. Wilkinson, Her Majesty's Crown Advocate at Shanghae, on the question.

Inclosure 5 contains further correspondence on the same subject, and the Acting Consul in his letter to Mr. Grosvenor (No. 15 of the 30th September) lays stress on the fact that the Chinese authorities have provided no jetties, moorings, or landing places for the use of the public, so that the mooring of private hulks is a matter of necessity.

Inclosures 6 and 7 are not material, but Inclosures 8 and 9, which complete the series, contain the representation made by Mr. Grosvenor to the Prince of Kung, on the subject of Mr. Duff's complaint, and the Prince's reply, in which His Highness disposes of the case by stating that the request of Mr. Duff to moor a hulk in that part of the river, and a similar request by a British steam-ship Company, have been refused because their hulks if moored in that locality would be in the way of the public ferry and of the native shipping, and that the request being refused it was unnecessary to enter into the question of the annual fee.

You will observe that reference is made in the course of the correspondence to the case of the hulk "Cadiz," which occurred in 1877. I am to inclose a printed Memorandum on that case;* also a printed Statement, prepared on behalf of the Imperial Maritime Customs,† and a printed Case and Opinion of Counsel, furnished by the Chinese Minister;‡ and two Reports of the Law Officers of the Crown.§

I am also to inclose Hertslet's Treaties between Great Britain and China.

Of opinion that action of Chinese Government is correct;

You will perceive from the above documents that the question of the right of China to control the use of the river by the foreign shipping was fully considered in the case of the "Cadiz," and resolved in favour of the claim of the Chinese Government. As regards the present case, which seems to depend on the same principles which governed the opinion of the Law Officers of the Crown in the case of the hulk "Cadiz," Lord Granville apprehends that the position taken up by the Inspectorate of Customs in Mr. McKean's letter of the 16th June last (Inclosure No. 3), is strictly correct; that the Chinese Government, in exercise of the sovereign rights of China, can prohibit all persons from mooring a hulk in the river without the permission of the proper authorities; that the sovereign rights of China in this respect have not been restricted by Treaty in favour of foreigners; that foreigners are entitled to the same rights, and subject to the same obligations in this respect, as natives; that if it be in the power of the Chinese Government to grant or withhold such privilege, they have the right to demand a fee as the condition of its enjoyment; that the right of the Chinese Government to impose a fee for the privilege outside the British Settlement is not affected by the fact that no such fee is imposed by them within it; and finally, that assuming the right of imposing such fee to exist, it is immaterial whether it be imposed by the Chinese Customs or any other Department of the State, that being a matter of Departmental convenience which does not concern the foreigner.

At the same time, it appears to Lord Granville that, so long as the Chinese Government neglect to provide jetties, landing stages, and other conveniences sufficient for the necessities of the trade, it is unreasonable to tax the riparian proprietors for the use of appliances which they are compelled to furnish at their own cost, by reason of such neglect.

Within the foreign Settlement the land-owners pay no fee to the Chinese Government for the use of jetties and hulks, but they pay a fee to the foreign Municipality of the Settlement, and such fee goes to defray the expenses of roads, lighting, police, and other public conveniences established and organized by the foreign community at its own cost, and for its own use and comfort.

The Chinese Government now propose to impose a fee equal in amount to that levied by the Municipality in the Settlement for the mooring of hulks outside of the Settlement without providing any reciprocal advantages as in the case of the Municipality.

but that certain reciprocal advantages should be granted.

Lord Granville is disposed to think that the Chinese Government might reasonably be urged to issue some Regulations on the subject providing, among other things, that the riparian proprietors should not be exposed to have the hulk of some other person moored opposite to his land (this being one of the complaints preferred by Mr. Duff), but that the riparian proprietor should have the first claim to that privilege (if not injurious to the foreshore or obstructive to the navigation) on payment of a reasonable fee, applicable to the construction of works for the convenience of trade in the locality, and calculated with some reference to the expenditure incurred for that purpose.

I am to request that you will be good enough to inform Lord Granville whether you concur in the above views, and in case you should consider that the Chinese Government have no legal right to exact any fee from Mr. Duff as a condition of the privilege of mooring a hulk opposite to his piece of ground, his Lordship would be glad to be favoured with your opinion as to the nature of the instructions which should be given to Mr. Grosvenor on the subject of Mr. Duff's complaint.

(Signed) JULIAN PAUNCEFOTE.

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*Report by the Law Officers.*

*Temple, February* 13, 1883.

Concur in Lord Granville's views.

In obedience to your Lordship's commands we have the honour to report—

That we concur in Lord Granville's views as expressed in the above letter.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J PARKER DEANE.

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## No. 19.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February* 28.)

My Lord, *Temple, February* 27, 1883.

Mooring of hulks at Chinkiang.

Draft to Peking as to Chinese demand for annual fee.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd instant, stating that, with reference to our Report of the 13th instant, he was to transmit to us a draft of an instruction which your Lordship proposed to address to Her Majesty's Chargé d'Affaires at Peking on the question raised by Mr. Duff as to the legality of the demand made by the Commissioner of Customs at Chinkiang for the payment of an annual fee of 1,000 taels before permission could be granted to berth a hulk opposite to some land which had been leased by him on the banks of the River Yang-tsze at that port.

That your Lordship desired to be informed whether we concurred in the proposed instructions to Mr. Grosvenor.

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* Memorandum by Sir J. Pauncefote, No. 3355, August 1877.

† In Tao Jen's letter of July 20, 1877.

‡ In Tao Jen's letter of September 14, 1877.

§ Law Officers, December 11, 1877, Confidential No. 4216, p. 9; Ibid., January 25, 1878, Confidential No. 4280, p. 11.

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Concur in instructions to Mr. Grosvenor.

In obedience to your Lordship's commands we have the honour to report—
That we concur in the proposed instructions to Mr. Grosvenor.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex to No. 19.

*Draft of Despatch to Mr. Grosvenor.*

Sir, *Foreign Office*, , 1883.

I HAVE carefully considered, in consultation with the Law Officers of the Crown, your despatch No. 121 of the 8th November last, with its inclosures, in which the question is raised whether the Chinese Government are justified in declining to allow a British subject who has become the owner of a plot of ground abutting on the River Yang-tsze, in the vicinity of the British Concession at Chinkiang, to moor a hulk opposite to his land except on payment of an annual fee.

This question must be determined on the same principles as those which governed the opinion of the Law Officers of the Crown in the case of the hulk "Cadiz," referred to in the Report of the Crown Advocate at Shanghae, which forms part of Inclosure 4 in your despatch.

I am advised that the position taken up by the Inspectorate of Customs in Mr. McKean's letter to Mr. Duff of the 16th June last is strictly correct. The Chinese Government, in the exercise of the sovereign rights of China, can prohibit all persons from mooring a hulk in the river without the permission of the proper authorities. The sovereign rights of China in this respect have not been restricted by Treaty in favour of foreigners, and the latter, therefore, are entitled to the same rights and subject to the same obligations as natives.

If it be in the power of the Chinese Government to grant or withhold such privilege, they have the right to demand a fee as the condition of its enjoyment; and the right of the Chinese Government to impose a fee for the privilege outside the British Settlement is not affected by the fact that no such fee is imposed by them within it. Assuming, however, the right of imposing such fee to exist, it is immaterial whether it be imposed by the Chinese Customs or any other Department of the State, that being a matter of Departmental convenience which does not concern the foreigner.

At the same time, as the Chinese Government neglect to provide jetties, landing-stages, and other conveniences sufficient for the necessities of the trade, it is unreasonable to tax the riparian proprietors for the use of appliances which they are compelled to furnish at their own cost for the purposes of their business.

Within the foreign Settlement the land-owners pay no fee to the Chinese Government for the use of jetties and hulks, but they pay a fee to the foreign Municipality of the Settlement, and such fee goes to defray the expenses of roads, lighting, police, and other public conveniences established and organized by the foreign community at its own cost, and for its own use and comfort.

The Chinese Government now propose to impose a fee equal in amount to that levied by the Municipality in the Settlement for the mooring of hulks outside of the Settlement without providing any reciprocal advantages such as are afforded by the Municipality in return for such payment.

I am of opinion, therefore, that you may properly urge on the Chinese Government the expediency of issuing some Regulations which will place this matter on a more satisfactory footing, providing, among other things, that the riparian proprietor should not be exposed to have the hulk of some other person moored opposite to his land (this being one of the complaints preferred), but that the riparian proprietor should have the first claim to that privilege (if not injurious to the foreshore or obstructive to the navigation), and that the amount of the fee should be more reasonable, and should be calculated with some reference to the expenditure incurred by the Government in the construction of works in the vicinity necessary for the purposes of trade.

I am, &c.

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# Denmark.

## No. 20.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 31.)

Right of the Danish Government to impose the oath of allegiance on British subjects trading in Danish Colonies.

My Lord, *Temple, March* 30, 1883.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th instant, stating that, with reference to our Report of the 28th April, 1880, relative to the right of the Danish Government to impose the oath of allegiance on British subjects trading in Danish Colonies, he was to transmit despatches from Her Majesty's Minister at Copenhagen containing the views of the Danish Government in regard to that question.*

That the draft of a reply which it was proposed to address to Mr. Vivian was inclosed, and that our opinion was requested as to whether the reply was right and proper. That it was assumed in the draft that the "oath of allegiance" referred to in the first proviso of section 18 of "The Merchant Shipping Act, 1854," meant an oath of allegiance imparting foreign nationality.

In obedience to your Lordship's commands we have the honour to report—

Approve draft to Mr. Vivian in reply to the views of the Danish Government, but suggest a slight alteration in it.

That, in our opinion, the proposed reply is right and proper. But we would suggest that, in the sentence relating to Consular protection, the words, "as Danish subjects are entitled to claim," should be substituted for the words, "as is claimed by Danish subjects."

The point is so important a one that it is well to avoid an expression which might conceivably give rise to controversy hereafter.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Draft of Despatch to Mr. Vivian.*

(No. . Consular.)
Sir, *Foreign Office*, , 1883.

I HAVE to acknowledge the receipt of your despatches of this series, Nos. 2, 3, and 4, of the 8th and 12th February last respectively, containing the view taken by the Danish Government of the status of a foreigner who has taken the oath of allegiance to the King of Denmark in the Danish West Indies.

In reply, I have to request that you will state to the Danish Minister for Foreign Affairs that Her Majesty's Government take note with satisfaction of the assurance contained in the Memorandum inclosed in your despatch No. 3, that the oath of allegiance does not impart Danish nationality, and that its language will be modified to render this point more clear.

Her Majesty's Government conclude from this assurance that British subjects who may take the oath in Danish Colonies will not be thereby debarred from enjoying the same measure of protection from their Consular Representatives as Danish subjects are entitled to claim at the hands of their Consular Representatives in British Colonies. If so, the inconveniences arising from the provisions of the the Merchant Shipping Act of 1854 and the Naturalization Act of 1870 referred to in the previous correspondence will not arise, and the question may now be considered settled.

I am, &c.

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* Mr. Vivian, No. 2, Consular, February 8; ditto, Nos. 3 and 4, Consular, February 12, 1883.

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# Egypt.

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## No. 21.

*The Law Officers of the Crown to Earl Granville.*—(*Received January* 1.)

My Lord,

*Temple, January* 1, 1883.

Abolition of the Dual Control.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th ultimo, stating that he was to transmit to us papers* with reference to the proposal of the Egyptian Government for the abolition of the Control established under the Khedivial Decrees of 18th November, 1876, the 4th September and the 15th November, 1879.

That we were referred in the first place to the Memorandum by Sir E. Hertslet (paper A), in which we should find an account of the events and of the negotiations which led to the first establishment of the Control in 1876, and to its revival in a modified form in 1879. That in the Appendix to that paper we find the Decrees of 1876 and 1879 printed *in extenso*. That Part III of the Decree of 1876 was that which related to the Control.

That papers (B) contained the correspondence which had recently passed between the British and French Governments respecting the proposed abandonment of that institution, and the substitution of another system of financial administration in Egypt. That the views of Her Majesty's Government had not been favourably entertained by the French Government, who contended that they were entitled to insist on the maintenance of the Control, as being an institution founded on an International Agreement between Egypt, England, and France, and terminable only by consent of the three Powers.

That paper (C) was a Memorandum in which the position taken up by the French Government in regard to the permanency of the Control was discussed, and the following questions were raised:—

1. Is the arrangement respecting the Control an International Agreement binding on the Khedive, or a voluntary arrangement revocable by him at his discretion?

2. If binding on the Khedive, is it also binding on England and France, or may they or either of them withdraw from it?

3. If either England or France can withdraw from it, is it competent to the Khedive, on such withdrawal, to treat the Agreement as no longer obligatory on him?

That the correspondence marked (D) contained the communications which passed between the British and French Governments on the subject of the re-establishment of the Control under the Khedivial Decrees of 4th September and 15th November, 1879.

That regarding the first of the three questions, we were referred to the documents set out in the margin.†

That those documents (especially No. 1154) showed that in the opinion of Her Majesty's Government the revival of the Control in 1879 was "a diplomatic engagement, from which the Khedive could not possibly recede." And that Lord Salisbury laid great stress, in his communications with the French Government, on the importance of resting the title of the two Governments to the Control as based on the Decree of 1876, and of maintaining the continuity of that title (Vol. I, No. 959, p. 579).

That as regarded the second question, it would be observed that the action of the British and French Governments, as disclosed in the above correspondence, was separate, though tending to the same object, and that there appeared no trace of any compact between them which could fetter their independent action in the future, though there was an understanding to maintain the same attitude towards the Khedive and to pursue a similar policy and course of action for the protection of their respective interests.

That as regarded the third question, Sir J. Pauncefote was to point out that the Decree of 1876 provided by Article 14 for the case of the British Government refusing to appoint a Controller (A, p. 6). But that that Decree was not the result of any International Agreement, and therefore contemplated the refusal of Her Majesty's Government to appoint a Controller, an eventuality which actually occurred; whereas the Agreement under which the Control was revived in 1879 was based on the necessity, in certain events, of a British and French Controller being appointed by their respective Governments.

That the appointment of a British and French Controller was therefore an implied condition of the Agreement for the revival of the Control.

That our attention was invited on the three questions raised in the letter to the observations thereon contained in Memorandum (C), and that Sir J. Pauncefote was to request our opinion on those three questions at our earliest convenience, and any observations which we might have to offer generally on the legal aspect of the case.

In obedience to your Lordship's commands we have the honour to report—

That the first question submitted to us is one of some difficulty.

It is clear that the establishment of the Control, in November 1876, was a purely voluntary act on the part of the Khedive, and was not the result of any international compact either with England or France.

This state of things continued unchanged, as far as we can see, down to the appointment of Sir Rivers Wilson and M. de Blignières as Ministers, and the consequent suspension of the Control.

On the day following the Decree of the 10th December, 1878, determining the attributes of the Ministers, Nubar Pasha addressed a letter to the Ministers stating that the Control would become re-established *ipso facto* in case the arrangement whereby an Englishman and Frenchman were appointed Ministers was modified.

The British and French Governments appear to have considered (though on what ground does not clearly appear) that the Khedive had come under an engagement to them that in the event specified the Control should be revived, and they required an official communication conveying the assurance that this should be done.

Accordingly, the Egyptian Minister, on the 31st March, 1879, conveyed this assurance, prefacing it by the declaration that it was "conformément aux arrangements intervenus l'année dernière entre la France et l'Angleterre d'une part, et le Gouvernement du Khédive d'autre part."

On the 31st August, 1879, Lord Salisbury expressed the opinion that the note of the 31st March constituted a diplomatic engagement, from which the Khedive could not possibly recede.

We think it may therefore be taken that there was an Agreement to this extent, "that the Control should revive *ipso facto* in case the European Ministers were dismissed." But it is not clear that it amounted to more than this. It is one thing to say that the pre-existing institution was to revive, subject to all its pre-existing qualities; it is quite another to assert that what passed amounted to an engagement that the Control should not only revive, but that it should for the first time become perpetual and unchangeable, except with the consent of England and France. It seems a strong thing to evoke an international engagement of so momentous a character from such slight materials.

Next came the Decree of the 4th September, 1879, re-establishing the Control, which purported, it must be observed, to be a mere carrying out of the Decree of 1876.

It is to be noted, too, that Lord Salisbury, in his correspondence with the French Government, dwelt on the importance of basing the renewed existence of the Controllers on the Decree of 1876, and the promise with regard to the revival of the Control made in 1878. And in his letter to the Italian Ambassador of the 8th November, 1879, he bases the position of England and France and their rights in relation to the Control on the Decree of 1876.

The only other document requiring consideration is the Decree of the 15th November, 1879.

That purports to be a Decree pursuant to an undertaking with England and France for defining the attributes of the Controllers-General, and it contains a provision that they should not be dismissed without the consent of their respective

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* (A) Memorandum by Sir E. Hertslet, November 9, 1882, Confidential No. 4677; (B) Correspondence as to abolition of Control, Confidential No. 4759; (C) Memorandum by Sir J. Pauncefote, December 18, 1882, Confidential No. 4759, p. 92; (D) "Finances of Egypt," vol. i, Confidential No. 4031, vol. ii, Confidential No. 4115; (E) Decrees, &c., Confidential No. 4763, November 7, 1882.

† Vol. i, No. 498, p. 344; No. 827, p. 502; No. 839, p. 505; No. 857, p. 516; No. 867, p. 524; No. 868, p. 525; No. 877, p. 528; No. 880, p. 529; No. 916, p. 548; No. 946, p. 561; No. 957, p. 577; No. 959, p. 579.

Vol. ii, No. 988, p. 599; No. 989, p. 600; No. 922, p. 602; No. 1004, p. 609; No. 1007, p. 609; No. 1125, p. 673; No. 1126, p. 673; No. 1154, p. 685; No. 1158, p. 687; No. 1160, p. 688.

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Governments. It may be doubted whether this amounts to more than an Agreement that so long as the Control existed the Controllers should not be changed without the required consent, and whether it can be construed as an undertaking that the Decree of November 1876 should be perpetual.

If consistent with their past policy, Her Majesty's Government can contend that Khedive has right to revoke arrangement as to Control.

Upon the whole, then, it seems to us to be open to doubt whether the Khedive has by international obligation renounced the right to modify the system voluntarily created by the Decree of 1876. And if it should be deemed expedient and consistent with the past action of Her Majesty's Government (on which we are not in a position to form an opinion) to contend that the Khedive has not renounced this right, we think that view well open to argument.

Great Britain and France may withdraw from arrangement.

2. We entertain no doubt that either England or France is entitled to withdraw from the arrangement relating to the Control. Whatever undertaking the Khedive gave to them, they certainly gave none to him. The arrangement was procured at their instance and for their benefit, and may be renounced by them at any time so far as the Khedive is concerned. And we cannot see a trace of any engagement between England and France that each should perpetually adhere to the arrangement, or that it should be relinquished only with their joint concurrence.

If England or France withdraw, arrangement no longer binding on Khedive.

3. The third question put involves somewhat more difficulty. But we think that if either England or France withdraw, it is competent for the Khedive to treat the Agreement (assuming one to exist) as no longer obligatory.

The Agreement, if it exists, was made in 1878-79, and it was, we think, of the essence of the arrangement then come to, that there should be a Joint Anglo-French Control by means of Controllers whose appointment had the sanction and support of their respective Governments.

We do not think the Khedive ever agreed with either Power that it should have a sole control, or that the Control, as constituted, should continue, supposing the other Power did not desire its continuance.

Recent events have destroyed the Control.

4. As regards the aspect of the case generally, we think the position is materially affected by the events which have recently occurred. The Control was *de facto* at an end.

Under these circumstances, France was invited by this country to join her in restoring order in Egypt. This she refused to do. If we had taken no further steps the Control was dead, and the engagement of the Khedive practically abrogated. France, by her action, was content to acquiesce in this new state of things. England, however, intervened, restored her influence, and rendered government by the Khedive again possible. But it is even now only possible by reason of the continued presence of British forces in Egypt. In order to establish a stable Government there which can maintain itself without foreign support, the entire system in Egypt requires reorganization.

Under these circumstances, it cannot, we think, justly be contended that former arrangements, applicable to a different state of things, are still obligatory and must necessarily be restored, even though experience has shown, in the opinion of Her Majesty's Government, that in the condition of things which now exists, or which is to be established, they would be inexpedient, if not actually dangerous.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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### *Separate Report of Dr. Deane.*

In obedience to your Lordship's commands I have the honour to report—

That by the Decree of the 18th November, 1876, Tit. 3, the Khedive appointed, without reference to either France or England, the two Controllers-General.

Articles 13 and 14 of this Decree provide that one Controller-General shall be French, the other English; that the choice and nomination of both Controllers shall belong to the Khedive, who, however, in order to secure responsible persons as Controllers, will officially* communicate with the French and English Governments, and appoint none but persons whose appointment should be authorized and acquiesced in by their respective Governments.

But if no such authorization or acquiescence should be given by one or the other of the French and English Governments, the Khedive will himself choose from the higher functionaries (whether in actual employment or not) of the two countries a person to act as a Controller-General, and by Article 15 the appointment of Controller was to be for five years.

This Decree is in no sense an International Agreement, binding on the Khedive as between himself and the Governments of France and England. The English Government did not nominate a Controller. And the Khedive would,* at any time, revoke the Decree, subject probably to compensating the discharged Controllers.

The duties of the Controllers were financial; hence, when in 1878 an European Finance Minister was appointed, the Control was suspended.

Mr. Rivers Wilson was nominated by the Khedive Finance Minister and M. de Blignières Minister for Public Works.

The action of the French and English Governments at this time has a material bearing upon the questions submitted to us by your Lordship.

Nubar Pasha, on the 11th November, 1878, speaking of the Control, writes to the Commissioners saying that the Control will be *ipso facto* re-established in the event of the Ministerial organization instituted by the Khedive by his Decree of the 29th August, 1878, happening to be modified under the heads of Finance or Public Works.

Upon this the British and French Agents, by the direction of their respective Governments, addressed an identic note to the Egyptian Minister for Foreign Affairs, who, on the 31st March, 1879, replied that in conformity with the arrangements made in 1878 between France and England on the one part and the Government of the Khedive on the other part the Control should be restored, as established by the Decree of November 18, 1876, in the event of the Ministerial organization being modified in the direction of Finance or Public Works.

This letter, in my opinion, bound the Khedive, on the change in the Ministry, to revive and maintain the Controllers-General, and he was no longer at liberty, as before, to revoke the Decree of November 1876.

And when, in 1879, Mr. Rivers Wilson and M. de Blignières were superseded, the Decree of November 1876 came into operation, though with some alterations, and, by force of Nubar Pasha's letter, bound the Khedive.

Some further communications then passed between the several Governments, and on the 4th September, 1879, a new Decree was issued by the Khedive re-establishing the Control under the conditions stipulated in the Decree of November 1876, and naming Mr. Baring and M. de Blignières, the latter under protest against his appointment by the French Government, Controllers.

And ultimately the Decree of the 17th November, 1879, was issued.

The material parts of this Decree are :—

1. The consideration that it is made on an understanding between the Khedive and the Governments of France and England with reference to the duties assigned to the Controllers.

2. Article 3 recites the consent of the French and English Governments to the non-interference of the Controllers in the Financial and Administrative services, and their being limited to making observations to the Khedive or his Ministers.

3. The provision, in Article 6, that the Controller shall not be displaced without the consent of their respective Governments.

There is also the difference between the Decree of November 1876 and that of November 1879, that in the former the duties of each Controller are distinctively assigned to him; in the latter, the Controllers are left to arrange their duties as they may agree between themselves.

Arrangement as to Control binding on Khedive;

1. I am therefore of opinion that the arrangement respecting the Control made in November 1879 is an International Agreement binding on the Khedive, and not a mere voluntary arrangement revocable by him at his discretion.

but not on England or France.

2. There is nothing either in the terms of the Decree of November 1879 nor in the reason of the thing which, in my opinion, makes the Decree binding on France or England, and either Government may withdraw from the arrangement.

Still binding on Khedive if either England or France withdraw from it.

3. I have some doubt on the answer which should be given to question 3, considering the Khedive bound by his Decree to France and England: is he bound to both of them, so that if France or England withdraw from the arrangement, the Khedive is no longer bound to the other Power; or has the Khedive entered into the arrangement with each Power separately in fact, though by the terms of the Decree itself jointly with both?

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* Qy. "officiously." See draft of Dr. Deane's Report of January 1, 1883, and "Egypt No. 2 (1879)," p. 30, Article 14, Parliamentary No. 2159.

* *Qy.* "could;" see draft of Dr. Deane's Report of January 1, 1883.

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I find it very difficult to say that if France or England should, for reasons applicable to, and arising from, their own interests, give up their own part of the arrangement made with the Khedive, he will, by such surrender on the part of the one Government, be relieved from his obligation to the other Government. And, after the best consideration which I can give to the question, I consider that if either France or England withdraw from the arrangement, it is not competent to the Khedive to treat the Agreement as no longer obligatory upon him as respects the other Power which has not withdrawn.

Were this not so, it would be in the power of either Government, by merely withdrawing from the arrangement, to annul and defeat all the advantages which the other Goverment might expect and have the right to obtain under the arrangement.

I have, &c.
(Signed) J. PARKER DEANE.

*List of Print, Confidential No.* 4759 (*Abolition of Control*), *sent to Law Officers, December* 28, 1882.

Sir E. Malet, No. 730, one Inclosure; Viscount Lyons, No. 1141; to Viscount Lyons, No. 1226; to Viscount Lyons, No. 1198; Viscount Lyons, No. 1120, one Inclosure; to Viscount Lyons, No. 1207 A; Viscount Lyons, No. 1183; Viscount Lyons, No. 1158, Inclosure (n. v.); to Viscount Lyons, No 1264; Viscount Lyons, No. 1215, Inclosure; to Viscount Lyons, No. 1347; to Viscount Lyons, No. 1363; Viscount Lyons, No. 1244; to Viscount Lyons, No. 1444; M. Duclerc to M. Tissot (communicated December 15).

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## No. 22.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 13.)

*Temple, January* 12, 1883.

My Lord,

Rebellion in Egypt.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 26th ultimo, stating that in the last paragraph of our Report of the 2nd August last on British claims of indemnity arising out of the rebellion in Egypt, we advised that Her Majesty's Government could not properly put forward a claim for compensation to those who had sustained damage owing to their voluntary abandonment of Egypt, though such abandonment was caused by the fear not unnaturally engendered by the occurrences of the 11th June.

Expenses incurred for the transport of destitute refugees, and for their maintenance at Malta.

That the Lords Commissioners of Her Majesty's Treasury* had suggested that Her Majesty's Government should claim from the Government of Egypt the expenses incurred for the transport of destitute refugees from Egypt, and for their maintenance at Malta after the events of the 11th June.

That our opinion was now requested as to whether, under the circumstances and consistently with the principles of international law, Her Majesty's Government could claim, as of right, the repayment by the Egyptian Government of the expenses so incurred.

In obedience to your Lordship's commands we have the honour report—

Her Majesty's Government cannot claim, as of right, the repayment by the Egyptian Government of such expenses.

That, under the circumstances, and consistently with the principles of international law, we do not think Her Majesty's Government can claim, as of right, the repayment by the Egyptian Government of the expenses in question.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 23.

*The Law Officers of the Crown to Earl Granville.*—(*Received January* 22.)

*Royal Courts of Justice, January* 22, 1883.

My Lord,

Anglo-French Financial Control.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th January instant, submitting to us the accompanying draft of a despatch which your Lordship proposed to address to Her Majesty's Ambassador at Paris dealing with that part of a despatch from the French Government, of which a copy was also inclosed, in which M. Duclerc questioned the right of England and of Egypt to withdraw from or to modify the arrangement which led to the institution of the Anglo-French Control without the consent of France.

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* Treasury, July 28, 1882.

Right of England and Egypt to withdraw from, or modify, the arrangement without the consent of France.

That Sir Julian Pauncefote was to request that we would inform your Lordship whether we concur in the terms of the proposed draft, and if not, that we would favour your Lordship with any observations which we might desire to offer upon it.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed draft to Lord Lyons, but suggest certain alterations.

That we concur in the terms of the proposed draft, subject to the following observations, which we venture to submit for consideration:

At the beginning of the last paragraph, on p. 3 of the draft, the following sentence occurs: "Something further must be said as to the nature of the institution that was created by the Decree of 1879."

It is perhaps scarcely accurate to speak of the institution as "created" by the Decree of 1879, and bearing in view the argument of the earlier part of the despatch, advantage might be taken of the expression. It might, perhaps, be well to substitute the words, "Something further must be said as to the nature of the institution that existed under the Decree of 1879," or some other like expression.

Towards the close of the despatch the paragraph beginning "The intentions, &c.," contains the statement that the Control had the effect of placing Egypt "in a state of dependence upon foreign Powers. It occurs to us that this language might be construed in a sense not altogether consistent with the leading argument of the despatch. And we would suggest for consideration whether that paragraph and the one which immediately follows it might not with advantage be omitted without diminishing the force of the arguments used.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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### Annex.

*Draft of Despatch from Earl Granville to Viscount Lyons.*

(No. .)

*Foreign Office, January* , 1883.

My Lord,

Abandonment of the French Financial Control.

THE French Ambassador communicated to me on the 5th instant M. Duclerc's reply to my despatch No. 1514 of the 30th December, 1882, on the subject of the abandonment of the Anglo-French Financial Control in Egypt. It is unnecessary for me to forward to your Excellency a copy of this document, as M. Duclerc has been so good as to supply you with one.

Right of England and Egypt to withdraw from or modify the arrangement without the consent of France.

In view of the desire which both Governments have expressed to avoid anything in the nature of unnecessary controversy, I abstain from touching upon several of the points mentioned in the despatch which might otherwise call for reply. I only think it necessary to refer to that portion of it in which M. Duclerc questions the right of England and of Egypt to withdraw from, or to modify the arrangement, without the consent of France. In regard to this question, it will be convenient to state the view which Her Majesty's Government take of the nature of the obligations contracted by the Khedive towards England and France upon this matter, and of the manner in which those obligations have been affected by recent occurrences.

Decree of November 1876.

It is clear, in the first place, that the establishment of the English and French Controllers-General by the Decree of November 1876 was a purely voluntary act on the part of the Khedive, and was not the result of any international compact either with England or with France. The Decree was issued with the view of restoring the Khedive's credit in financial circles, and of introducing order into his finances. Its result and natural corollary, as regards the English and French Governments, was an application from His Highness that they would consent to nominate two persons for the appointments. This request was at the time refused by the English Government, and the English Controller-General was nominated by the Khedive independently, according to the alternative method provided in the Decree.

Control suspended.

This state of things continued until December 1878, when Sir Rivers Wilson and M. de Blignières having been appointed to seats in the Egyptian Ministry, the Control was suspended.

An assurance given on this occasion in a letter addressed by Nubar Pasha to the Commission which had been appointed to inquire into the finances of Egypt, was subsequently repeated in an official note to the English and French Agents on the 31st March, 1879.

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Decrees of November 18, 1876, and August 28, 1878.

This note stated: "Que conformément aux arrangements intervenus l'année dernière entre la France et l'Angleterre d'une part, et le Gouvernement du Khédive d'autre part, le Contrôle des Finances Égyptiennes actuellement suspendu, rentrerait *ipso facto* en vigueur, tel qu'il a été établi par le Décret du 18 Novembre, 1876, dans le cas où l'organisation Ministérielle instituée par le Décret du 28 Août, 1878, viendrait à être modifié dans la direction des Finances ou des Travaux Publics."

This no doubt constituted an engagement on the part of the Khedive to the extent that the Control should revive *ipso facto* in case the European Ministers were dismissed. But it is one thing to say that a pre-existing institution shall revive subject to all its pre-existing qualities; it would be quite another to assert that what passed amounted to an engagement that the Control should not only revive, but that it should, for the first time, become perpetual and unchangeable, except with the consent of England and France. It would be a strong measure to evoke an international engagement of so momentous a character from such slight materials.

Dismissal of Sir Rivers Wilson and M. de Blignières.

Upon the dismissal of Sir Rivers Wilson and M. de Blignières from the Egyptian Ministry in April 1879, the late Khedive applied to the former English and French Controllers-General to resume their functions, but these latter declined to do so, and the Control remained suspended until the abdication of Ismaïl Pasha on the 26th June.

Appointment of Controllers-General with limited powers.

The present Khedive on his accession decided to have a purely native Ministry. The President of the Council, Chérif Pasha, informed the English and French Agents that if the Governments of England and France would nominate Controllers-General under the Decree of November 1876 the Khedive would also agree to appoint them, but that their powers would be limited to investigation and verification, and that they would not exercise any administrative or executive functions.

The English and French Governments agreed to nominate Controllers-General on these terms, but stipulated that, in place of the administrative authority which was to be withdrawn from them, a great extension should be given to their functions of inspection and supervision; and, further, an undertaking was required that neither Controller should be removed without the consent of his respective Government.

Decree of November 15, 1879.

The result of these discussions was the Decree of the 15th November, 1879.

Her Majesty's Government are unable to see in what passed during the negotiation, or in the terms of the Decree itself, anything which can be considered as amounting to an engagement on the part of the Khedive that the Control should be maintained in perpetuity; while, on the other hand, they consider that an obligation to continue, under all circumstances, to submit the whole administrative system of a country to the inspection of two officials of foreign nationality, selected by two foreign Governments and removable only with their consent, is one that could be asserted only on the evidence of diplomatic engagements of the most explicit and formal character.

Something further must be said as to the nature of the institution that existed under the Decree of 1879. It was of the essence of the arrangement then come to that there should be a joint Anglo-French Control, by means of Controllers whose appointment had the sanction and support of their respective Governments. The joint action of the two Controllers has, in practice, always been considered necessary to give validity to their proceedings. There was no agreement on the part of the Khedive with either Power that it should have a sole Control, or that the Control as constituted should continue, supposing that either of the two Powers did not desire its continuance.

The Control virtually abrogated by the insurrection.

Finally, the aspect of the case must be regarded as having been materially affected by recent events. The result of the military insurrection was virtually to abrogate the Control. It has only been by military intervention, in which France declined to take part, that the Khedive's power has been re-established; and it is by the presence of British troops in Egypt that His Highness' authority is maintained pending the reorganization of a stable Government.

Under these circumstances, it cannot justly be contended that former arrangements applicable to a different state of things are still obligatory and must necessarily be restored, even though experience has shown, in the opinion of Her Majesty's Government, that in the condition of things which now exists or which is to be established they would be inexpedient, if not actually dangerous.

We earnestly desire that French interests should be scrupulously secured by the Egyptian Government. We believe that our objects are the same, namely, the peace and prosperity of Egypt, and we see no reason why both countries should not cordially join their efforts and exert their influence to that end.

Your Excellency is authorized to read this despatch to M. Duclerc, and to give him a copy of it.

I am, &c.

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*Minute by the Lord Chancellor.*

Draft approved by the Lord Chancellor.

I ENTIRELY approve of this draft despatch, which (as modified in accordance with the suggestions of the Attorney-General and Solicitor-General) appears to me to put the argument for the view taken by Her Majesty's Government in the most forcible manner.

(Signed) SELBORNE.

*Blackmoor, West Liss, Hants, January* 22, 1883.

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## No. 24.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 10.)

My Lord,

*Temple, February* 8, 1883.

Antonio Eynand Petition for remission of sentence for complicity in murder.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us a Petition* from an inmate of the Corradino Prison, Malta, named Antonio Eynand, asking for the remission of the sentence of twenty years' imprisonment, with hard labour, that he was undergoing on account of his complicity in a murder committed by Paolo Lans, also an inmate of the above-mentioned prison.

That Eynand, whose case, in conjunction with Lans, was before our predecessors in 1876, and whose appeals had since been the subject of reference to Her Majesty's Consul at Alexandria, based his renewed application upon the fact that Lans, his accomplice in the crime, had recently obtained a remission of ten years' imprisonment on condition of his discharging the office of public executioner at Malta.

His good conduct in prison.

That the most substantial ground, however, for the exercise of clemency in his case would seem to be that it appeared from the various reports on the case that he became an accessory before the fact owing to the influence gained over him, and the terror inspired by the principal criminal Paolo Lans, a notorious and dreaded ruffian.

That he belonged to a highly respectable family, and that his conduct in prison had been exceptionally good. That in those circumstances Sir Julian Pauncefote was to request us to be so good as to take the matter under our consideration, and to favour your Lordship with our opinion as to what reply should be returned to Eynand's present application.

That the more recent correspondence† with the Colonial Office and Her Majesty's Consul was inclosed for convenience of reference, as well as the correspondence with the Law Officers of the Crown in 1876, and from that correspondence Sir Julian was to refer us in particular to the Report from Consul-General Francis (No. 58, Judicial, of the 13th June, 1876), containing the notes of the trial, and Mr. Cookson's despatches No. 10 of the 15th March, 1880, and of the 12th August, 1882.

That Sir Julian Pauncefote was further to direct our attention to the Law Officers' Report of the 5th July, 1876.

In obedience to your Lordship's commands we have the honour to report—

Sentence ought to be remitted after completion of seven years imprisonment.

That, looking at all the circumstances, we think that this is a case in which the Royal clemency might fitly be exercised. Assuming, as we think we ought after the finding of the jury, that the petitioner took no actual part in the murder, and inasmuch as there appears ground for believing that he became an accessory owing to the terror imposed by the principal criminal, we are of opinion that the ends of justice will be satisfied by his enduring a punishment considerably less severe than that imposed upon him.

Taking into consideration all the facts, including the petitioner's exceptional

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* In Colonial Office letter of July 26, 1882.

† Consul-General Francis, No. 58, Judicial, June 13, 1876; Law Officers, July 5, 1876, Confidential No. 4028, p. 82; Colonial Office, February 21; to ditto, March 5; to Mr. Cookson, March 5; Mr. Cookson, No. 10, March 15; to Colonial Office, August 18, 1880; Colonial Office, July 26; Mr. Cookson, August 12, 1882.

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good conduct whilst in prison, we suggest that the remainder of his sentence might properly be remitted when he has completed a term of seven years' imprisonment.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 25.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 28.)*

*Royal Courts of Justice, February 27, 1883.*

My Lord,

Claims on account of losses caused by British military authorities in Egypt.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd instant, submitting to us, by your Lordship's direction, the accompanying letter from the War Office,[*] explaining the manner in which the Secretary of State for War proposed to deal with the various classes of claims for compensation made by the owners of property in Egypt for losses sustained by them through the action of the British military authorities in that country; and stating that he was also to inclose a Memorandum on the subject,[†] by Lieutenant-Colonel Ardagh, showing what had been done in such cases in recent wars, and a copy of the Egyptian Decree[‡] constituting a Mixed Commission to award indemnities to the sufferers from the outbreak in Egypt.

That Sir Julian Pauncefote was to request that we would take those proposals into our consideration, and favour your Lordship with our opinion regarding them at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

Approve views of Secretary for War as to.

That we concur generally in the view taken by the Secretary of State for War respecting the manner in which the various claims for compensation should be dealt with.

Suggestions as to assessment of indemnities.

But we submit, for consideration, the following observations in relation thereto:—

Where the premises taken possession of were vacant owing to the flight of the owners, it seems reasonable enough that the compensation should date only from the period when the owner returned, and was desirous of resuming possession. Down to that time he sustained no loss by the occupation of his premises. He was in no worse, and was perhaps in a better, position than his neighbours whose premises were not taken possession of by the British troops. It would appear, however, from Colonel Ardagh's Report (p. 9), that some of the business premises were first taken at a time when they are, under ordinary circumstances, left empty by the owners, and that the occupation continued during the season when their use is specially important for business purposes. In these cases, particularly, it would not be fair to pay for the time of occupation by the British, subsequent to the return of the owners, only at the rate per month which the premises let at taking one month with another all the year round. The owner would reasonably demand that having been taken from him during the valuable months he should receive much more than a mere proportion of the year's rent, corresponding to the time of occupation by the troops.

It is suggested by Colonel Ardagh that if the entire time of occupation were allowed for, and the proportion of the annual rent due to that time were paid, it would be generally accepted as a fair compromise.

If there are many cases of this description it might be advantageous, on the whole, to adopt this course, as inquiries which would sometimes be of great nicety would be avoided, and the total result might not be very different from that which would be arrived at if the alternative course were pursued.

This, however, is a financial question which we are not in ourselves in a position to deal with. But we suggest it for consideration, as we think the class of cases to which we have alluded will require to be dealt with in an exceptional way, for the reasons we have pointed out, if the general course of procedure proposed by the Secretary of State for War be carried out.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] War Office, February 19, 1883.

[†] Inclosure in War Office letter, February 19, 1883.

[‡] January 14, 1883 (Confidential Print, "Correspondence respecting the Riots at Alexandria," Part II, p. 7).

## No. 26.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 21.)*

*Temple, March 20, 1883.*

My Lord,

E. Zammit. Petition for remission of sentence for attempt to murder F. Sacco.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 2nd instant, stating that he was to transmit to us a Petition from E. Zammit, who had been sentenced by the Consular Court at Alexandria, in 1878, to ten years' imprisonment on conviction of attempting to murder Francesco Sacco, praying for a remission of a portion of his sentence. That Sir Julian Pauncefote also inclosed a despatch from Mr. Cookson, the Judge of the Consular Court, inclosing copy of his notes of evidence in the case.[*]

That Mr. Cookson pointed out that the attempt to assassinate was very deliberate and unprovoked, and stated that he was not able to recommend Zammit as a fit object for the exercise of Her Majesty's clemency.

That our opinion was requested as to the answer which should be returned to the prayer of the petitioner.

In obedience to your Lordship's commands we have the honour to report—

That we have some difficulty in forming an opinion upon the proper course to be pursued in this case.

The crime committed by the prisoner was of an aggravated character, and no doubt is of a nature which requires to be checked as much as possible by exemplary punishment.

Owing to character and conduct of prisoner, his sentence may be reduced by two and a-half years.

The prisoner, however, before the commission of the crime appears to have been of good character, and during his imprisonment his conduct is reported as having been "very good." We are unaware whether any mitigation of the sentence (similar to that allowed in this country) is earned by this good conduct, but we think some effect ought to be produced by it, and in the absence of any regulation on the subject, we would suggest that a period of two years and six months should be deducted from the sentence, which will cause the prisoner to be released on the 19th January, 1886.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 27.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 28.)*

*Royal Courts of Justice, May 26, 1883.*

My Lord,

Claim of Suez Canal Company to sole right of constructing canals from the Red Sea to the Mediterranean.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 15th May instant, stating that he was directed to transmit to us the papers[†] with reference to a claim put forward by the Suez Canal Company to the exclusive right of constructing a maritime canal through Egypt, between the Mediterranean and Red Seas.

That Mr. Currie was to refer us, in the first place, to the preamble to the Concession of the 30th November, 1854, by which the Viceroy of Egypt granted to M. de Lesseps exclusive power to form and direct an Universal Company to pierce the Isthmus of Suez, and to work a canal between the two seas, from which it would appear that the power thereby granted did not extend beyond the isthmus.

That that view seemed to have been held at the time by M. de Lesseps, who, in his Report to the Viceroy of the 30th April, 1855,[‡] recognized the desire of His Highness to limit the area through which the canal was to pass, and stated that, after reviewing all the schemes put forward during the preceding fifty years, full liberty had been given to make a communication between the Red Sea and the Mediterranean, but cutting the Isthmus of Suez at a point to the east of the Nile; but that His Highness had declared that he would not authorize the Company to take a line which would start from a point on the Mediterranean to the west of the Damietta branch and cross the river.

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[*] In Colonial Office letter of July 26, 1882; Mr. Cookson, No. 13, February 13, 1883.

[†] Concessions of Suez Canal Company, "Egypt No. 6 (1876)," No. 1761; Colonel Stanton, No. 71, September 14, 1872, Confidential No. 2503, p. 49; Suez Canal Directors, No. 16 Commercial, October 17, 1882, Confidential No. 4829, p. 6.

[‡] Page 3, Parliamentary Paper, "Egypt No. 6 (1876)."

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That the second Concession of the 5th January, 1856, alluded in the preamble (p. 4, Parliamentary Paper) to the first Concession granted above as giving to M. de Lesseps exclusive power to pierce the Isthmus of Suez, and described the duty of the Company to be the construction of a maritime canal between Suez on the Red Sea and the Gulf of Pelusium in the Mediterranean, which description was repeated in the second Article of the Statutes of the Company (p. 8, Parliamentary Paper).

That again, at the commencement of the Convention between the Company and the Egyptian Government (p. 19, Parliamentary Paper) relative to the construction of a fresh-water canal, reference was made to the two Concessions of 1854 and 1856 for the construction of a maritime canal across the Isthmus of Suez.

That our attention was invited to Article 56 of the Statutes (p. 13, Parliamentary Paper), which laid down that the approval of the general assembly of the shareholders was necessary in questions of fresh concessions or of combining with other schemes, from which it might be inferred that other concessions were considered possible, and that the concessionnaires only took the necessary precautions to prevent any interference with the concessions obtained by them so far as the Suez Canal was concerned.

That the accompanying despatch from Her Majesty's Agent and Consul-General in Egypt in 1872 showed that the Khedive then entertained the project of constructing a fresh-water maritime canal from Alexandria to Suez through the agency of a British Company, and that although M. de Lesseps had made representations on the subject, claiming for his own canal the exclusive right of ship communication between the two seas, His Highness refused to admit that pretension, as he maintained that no such construction could be attached to the Concession, and that there could be no doubt of his own right to make canals through Egyptian territory.

That we were referred, on the other hand, to a despatch from the British Directors of the Suez Canal Company, who were consulted with reference to a scheme for cutting a second canal between the Mediterranean and the Gulf of Suez, in which they stated their opinion that the Concessions to M. de Lesseps gave him the exclusive power of working a canal or canals between the two seas.

Question as to extent of Company's monopoly, and right of Khedive to construct canal east of Damietta.

That our opinion was requested as to whether the Company's monopoly extended to any canal uniting the two seas, or only to any canal uniting the two seas across the Isthmus of Suez; and if, in our opinion, such exclusive right only applied to the Isthmus of Suez and the Gulf of Pelusium, whether the Khedive had a right to make a second canal, starting from the east of the Damietta branch of the Nile, or only from the west of that branch.

We are also honoured with a further letter, marked Confidential, from Mr. Currie of the 15th instant, stating that, with reference to his other letter of that day's date on the above subject, he was to transmit to us, by direction of your Lordship, an opinion on that subject by M. Émile Ollivier, the legal representative of the Egyptian Government on the Council of the Suez Canal Company.

That M. Ollivier's letter* to the Egyptian Minister for Foreign Affairs, containing the opinion in question, had been confidentially communicated to your Lordship.

In obedience to your Lordship's commands we have the honour to report—

The monopoly applies only to Isthmus of Suez.

That, in our opinion, the Company's monopoly does not extend to any canal uniting the two seas, but only to any canal piercing the Isthmus of Suez.

Topographical information not sufficient for forming opinion as to Khedive's right.

Whether the Khedive has a right to make a second canal, starting from a point to the east of the Damietta branch of the Nile, depends, we think, upon whether such a canal would be properly described as piercing "the Isthmus of Suez," and whether its Mediterranean mouth would be within the "Gulf of Pelusium."

We have not in our possession topographical information enabling us to express an opinion on this point.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* M Emile Ollivier, May 7, 1883.

## No. 28.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 30.)*

My Lord, *Temple, May* 29, 1883.

Egyptian duties on import of tobacco. Proposed changes as to.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he had the honour to transmit to us, by your Lordship's direction, the papers noted in the accompanying list,* which related to certain proposals made in 1881 by the late British and French Controllers-General in Egypt for the admission of tobacco from all countries on payment of a very low and, if possible, uniform rate of duty.

That it was estimated that those proposals, if carried out, would result in a large increase of the revenue of Egypt, and that that question, which was suspended for a time owing to the military rebellion, was now once more under consideration.

That Sir Julian Pauncefote was, in the first place, to invite our attention to the "Projet de Note" (A) prepared by the Controllers, which dealt with the various points arising in the case under the following headings:—

1. The existing régime, under which the importation of tobacco into Egypt was regulated, and the system of "raftiehs."
2. The right of the Khedive to regulate the import, export, sale, and consumption of tobacco for the benefit of the Egyptian Exchequer without being bound to carry out the Turkish Regulations respecting tobacco duties.
3. The right of the Khedive to conclude Commercial Treaties directly with foreign Powers.

That the Memorandum of the Controllers stated that before the date of the Commercial Treaties concluded in 1861 by the Porte with foreign Powers the importation of foreign tobacco into the Ottoman dominions was not prohibited. That the Turkish Government, however, determined to impose a heavy excise duty on tobacco, and in order the better to protect that revenue arranged by those Treaties that tobacco should be excepted from the articles which might be imported into the Turkish Empire, including Egypt, which thus became dependent for its supply on Egyptian- or Ottoman-grown tobacco.

That it appeared that the Ottoman excise duty in question was protected by a regulation to the effect that no tobacco might be moved from one part of the Empire to another unless accompanied by a "raftieh," or receipt for the duty, and the Egyptian Administration had hitherto refused to permit tobacco to be brought into the country unless accompanied by the "raftieh." That on entering Egypt a further duty was levied for the exclusive benefit of the Khedive's Treasury.

That those two duties constituted a duty so heavy as to encourage smuggling, which was also favoured by the Egyptian coasts being of such a nature as to be difficult to guard.

That the Memorandum proceeded to urge the cessation of any furthur expenditure on the preventive service.

That it pointed out that the large sums already spent by Egypt in the preventive service were spent in a great measure for the advantage of the Ottoman Treasury by preventing the admission into Egypt of tobacco which had not paid the Turkish excise duty and so obtained the "raftieh." That it suggested that Egypt, being now administratively independent, and having her own financial organization separate from that of Turkey, was under no obligation to assist Turkey in collecting those dues, and that the Egyptian Government having, in their opinion, the right to regulate the importation of tobacco into Egypt in such manner as might be most beneficial to the country and its revenues, would do best to permit the importation of all tobacco, Ottoman or otherwise, at such low rate of duty as would effectually remove any incentive to smuggling. That it proposed, therefore, that the Khedive should issue a Decree regulating the importation of tobacco in the manner desired.

That, so far as Her Majesty's Government were directly concerned, the only question raised would seem to be that arising under the XIVth Article of the Treaty with Turkey of the 29th April, 1861, which, by the express stipulation of the XXth Article, was binding on the Government of Egypt. That by the former Article Her Majesty's Government consented that tobacco, the produce or manufacture

* Mr. Malet, No. 21, April 25, 1881, and Memorandum thereon by Sir E. Hertslet of June 22, 1881; Lord Dufferin, No. 40, Commercial, December 11, 1882; Memorandum by Sir E. Hertslet, March 30, 1883; Firmans 1841–1879; Confidential No. 4747.

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of Her Majesty's dominions, should be excluded from Turkey, and that Her Majesty's subjects should be prohibited from importing any tobacco at all into that Empire.

That it would seem evident that although the Sultan had no power to alter the terms of the Treaty of 1861 by municipal legislation in a manner which would be injurious to British interests, yet that if he were by such legislation to restore to Her Majesty's subjects and to the produce of Her Majesty's dominions the privileges of which they were respectively deprived by consent in 1861, that act, although constituting an alteration of the Treaty, would be one to the advantage of Great Britain, and one to which Her Majesty's Government would of course offer no objection; but that a similar action on the part of the Khedive with regard to the introduction of foreign tobacco into Egypt would in all probability be objected to by Turkey as diminishing the consumption of Turkish tobacco, and diminishing proportionately the revenue derived by Turkey from the excise. That a question was thus raised as to how far the Egyptian Government had the right to take the action proposed in the Memorandum of the Controllers if it were opposed by the Porte.

That the authority of the Khedive was derived from the Firmans granted from time to time to the various Rulers of Egypt, and that the Firman of the 2nd August, 1879, contained the following words:—

"Tous les impôts de cette province seront perçus en mon nom. Les habitants d'Égypte étant de mes sujets et ne devant comme tels subir la moindre oppression ni acte arbitraire à cette condition, le Khédivat d'Égypte, auquel est confiée l'administration civile, financière, et judiciaire du pays, aura la faculté d'élaborer et d'établir d'une manière conforme à la justice, tous règlements et lois intérieurs nécessaires à cet égard."

That it would indeed seem that that Firman gave to the Khedive as full authority to alter the Customs Laws in Egypt as the Sultan possessed in other parts of the Ottoman Empire.

That by the same Firman the Khedive was authorized in the following words to conclude Commercial Conventions with foreign Powers:—

"Le Khédive sera autorisé à contracter et à renouveler, sans porter atteinte aux Traités politiques de mon Gouvernement Impérial ni à ses droits Souverains sur ce pays, les Conventions avec les Agents des Puissances étrangères pour les Douanes et le commerce et pour toutes les transactions avec les étrangers concernant les affaires intérieures, et cela dans le but de développer le commerce, l'industrie, et l'agriculture, et de régler la police des étrangers et tous leurs rapports avec le Gouvernement et la population. Ces Conventions seront communiquées à ma Sublime Porte avant leur promulgation par le Khédive."

That it would thus appear that the Khedive was entitled to enter into an international arrangement with that and other countries putting the tobacco trade of Egypt on the desired footing, and in view of the above authority contained in the Firman, it was difficult to see how the Porte could object to the proceeding.

Questions as to power of Khedive :—
1. To adopt new customs duties.

That the following questions arose:—

1. Whether it was competent for the Khedive, under the Imperial Firmans and in view of the Treaty of 1861, to abandon without the authority of the Porte the existing Regulations concerning the collection of the Turkish duty on Turkish tobacco imported into Egypt, and to substitute new customs duties and Regulations respecting tobacco?

2. To conclude Treaties for admission of foreign tobacco.

2. Whether it was competent to the Khedive without the assent of the Porte to conclude Treaties with foreign Powers for the admission of foreign tobacco into Egypt at such rates of duty as might be stipulated therein?

3. To carry out proposed changes without Sultan's consent.

3. Whether it was competent to the Khedive, without the assent of the Porte, to carry out the proposals suggested in the Memorandum of the Controllers by a legislative Decree only?

That Sir Julian Pauncefote was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion on the questions submitted, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Questions as to import of Turkish and foreign tobacco distinct.

That in considering the matters submitted to us two questions must, we think, be kept entirely distinct, viz., the question of the obligations of the Egyptian Government in relation to the importion of Turkish tobacco, whether it is bound to insist on the production of "raftiehs," or can refuse any longer to do so, and the question whether it is competent for that Government to sanction the importation of other tobacco, either free or on such terms as it may impose.

We will deal with the latter question first.

Egypt cannot alter provisions of Treaty of 1861;

Apart from such power as the Egyptian Government may possess of entering into Commercial Treaties, we do not think it is within its competency to interfere with the provisions of the Treaty of 1861. That Treaty is made applicable to Egypt, and must be looked at as a whole. By that Treaty the import of tobacco into Egypt by British subjects is forbidden, and we do not think the Government of that country could by mere device relax that prohibition. We think the Porte might take well-founded objections to such a course. But the Firmans certainly appear to give very extensive powers to the Egyptian Government of making commercial arrangements with foreign Powers. And it appears to us that that Government might enter into a new Commercial Treaty with this country in substitution, so far as Egypt is concerned, for the existing Treaty of Commerce, and that one of the Articles of such Treaty might provide for the admission of tobacco imported by British subjects on any terms that might be agreed upon.

but might admit foreign tobacco under a new Treaty.

The production of "raftiehs" depends on relations between Egypt and Turkey.

The question whether the Egyptian Government is bound to insist upon the production of "raftiehs" in the case of tobacco imported from Turkey has no connec- with the Commercial Treaties existing between the Porte and foreign Powers, and it would not be affected by any fresh commercial arrangements which Egypt might make. It depends entirely upon the relation in which that country stands to the Porte, and the obligations which she has either taken upon herself or which arise out of that relation.

We observe that in the Vizirial letter of the 31st March, 1881, which is set out in the Memorandum of the Controllers, the following passage occurs in relation to the seizure of certain tobacco at Port Saïd:—

"La saisie opérée à Port-Saïd étant en parfaite convenance avec la promesse du Gouvernement Khédivial de ne pas tolérer aucun acte contraire aux dispositions des Traités et Règlements en vigueur . . . . le Ministre des Finances demande qu'avis soit donné au Gouvernement Égyptien de ne pas se dessaisir au profit de leurs propriétaires des tabacs dont il s'agit ou de toutes autres marchandises similaires pour lesquelles des pièces officielles constatant l'acquittement des droits à Constantinople ne seraient pas exhibées."

Cannot give opinion as to Egyptian obligations without further information.

It is to be noted that the Turkish Minister here relies upon some promise of the Government of the Khedive not to tolerate any act contrary to the Treaties and Regulations in force, and by implication alleges that there results from them the obligation to seize and hold tobacco imported without the production of "raftiehs." We feel that we are hardly in a position to advise how far Egypt is under obligations to the Porte in respect of this matter without some further information as to the foundation upon which the practice which has been pursued by the Egyptian Government rested, what are the "Traités et Règlements" referred to in the Vizirial letter, and what undertakings have been given by Egypt to the Porte. It certainly seems open to grave objection that the Egyptian Government should be compelled to be at great expense to prevent the Turkish fiscal laws being evaded, and looking at the complete financial and administrative control which has been accorded to Egypt, it seems unreasonable that she should incur such expense, from which her resources derive no benefit.

But it must be borne in mind that the Government of Egypt has rendered this service down to the present time without objection, and that the very delicate questions of the relation in which Egypt stands towards the Porte, and the duties she owes her, appear to be involved in considering the matters submitted to us.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 29.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July* 31.)

[After recapitulating the following Reference, they report as below:—]

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*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.**

Charges against the Khedive made by Lord R. Churchill.

Gentlemen, *Foreign Office, July* 21, 1883.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the papers noted in the accompanying list,† which relate to the charges of complicity in the massacres at Alexandria which have been brought against the Khedive of Egypt by the noble Lord the Member for Woodstock.

I am to request that you will take these papers into your consideration, and favour Earl Granville with your opinion whether the conclusions arrived at on the Memoranda furnished by Lord R. Churchill in support of his charges against the Khedive, and expressed in the accompanying draft of a proposed despatch to Sir E. Malet, meet with your concurrence, or whether the draft contains anything which is not justified by the contents of the Memoranda in question.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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*Report.*

Approve conclusions as to Lord R. Churchill's Memoranda, and Draft to Sir E. Malet on the subject.

The conclusions arrived at on the Memoranda furnished by Lord R. Churchill in support of his charges against the Khedive, and expressed in the proposed despatch to Sir E. Malet, meet with our concurrence; and we think the draft despatch contains nothing which is not justified by the contents of the Memoranda.

H. J.
F. H.
J. P. D.

*July* 30, 1883.

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## No. 30.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 19.)

Murder of J. Alison by A. Lacomb.

My Lord, *Royal Courts of Justice, September* 18, 1883.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 30th August last, stating that he had to transmit to us, by direction of the Secretary of State, the accompanying papers,‡ which related to the case of Regina *v.* Augustus Lacomb, a private in the Duke of Cornwall's Light Infantry, convicted before Her Majesty's Court for Egypt of the wilful murder of his comrade, John Alison.

That Mr. Lister was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to the sentence which should be imposed on that case, taking into especial consideration the Memorandum of the Adjutant-General, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Want depositions before giving opinion as to sentence in case.

That it appears from the notes of evidence that the depositions of Trooper Mills and Trooper Smith, taken before the coroner, were put in at the trial by the counsel

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* The Law Officers' Report on this subject could not be found when this collection was made; it was therefore necessary to print the draft of the Report, in the form retained by the Law Officers, together with the Foreign Office letter to which it is a reply.

† Lord R. Churchill's Memoranda, see "Egypt No. 4 (1884)," (Foreign Office No. 2786); Foreign Office Memorandum of July 6, 1883, as to misleading nature of Blue Book quotations; Draft to Sir E. Malet, see "Egypt No. 4 (1884)," (Foreign Office No. 2786, p. 1); Blue Books Nos. 7, 16, and 17, of 1882 (Foreign Office Nos. 2560, 2598, and 2607).

‡ Mr. Fawcett, No. 55, July 25; to War Office, August 9; War Office, August 18, 1883.

for the prisoner, and relied upon by him. We think we ought to see these depositions before expressing our opinion upon the question submitted to us.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 31.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 22.)

[After recapitulation of the following Reference, they report as on p. 40:—]

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*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

Suez Canal. Right of Turkey to control arrangements between the Khedive and any Company.

Gentlemen, *Foreign Office, August* 27, 1883.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the papers noted in the accompanying list,* which relate to the question whether the right claimed by the Sultan of Turkey to control any arrangement which the Khedive of Egypt may make with the Suez Canal Company, or with any other Company or person, in relation to that Canal, or to any new Canal uniting the Mediterranean with the Red Sea, still exists, or has ceased by reason of the powers accorded to the Khedives of Egypt by the Firmans of 1866, 1867, 1873, and 1879.

Position of Suez Canal Company.

The Suez Canal Company is established under Concessions granted to M. de Lesseps by the Viceroy of Egypt in 1854, 1856 (to which the sanction and ratification of the Sultan was expressly required), and under the Convention of the 22nd February, 1866, between the Viceroy and the Company, which recites the two Concessions, and which was ratified and confirmed by a Firman of the Sultan dated the 19th March, 1866. ("Egypt No. 6, 1876," pp. 1, 4, and 34.)

M. de Lesseps also obtained from the Viceroy a Concession for the construction of Fresh-water Canals and extensive grants of land.

The following are the circumstances which led to the Convention of 1866:—

Interference of Turkey, and negotiations leading to Convention of 1866.

On the 6th April, 1863, the Turkish Government addressed a note to the Courts of London and Paris, objecting to some of the terms of the Concessions granted to M. de Lesseps.

It considered the Concession of the Fresh-water Canals and of the lands adjacent thereto a menace to its independence, and the stipulations for the providing of native workmen by forced labour a contravention of the laws of the Ottoman Empire, and it therefore declared its opposition to the continuance of the work of making the Canal. Copies of that note and of its inclosure are transmitted herewith. (Paper 6.)

The same notification was made to the Viceroy, who, submitting himself to the authority of his Sovereign, accredited Nubar Pasha to come to an understanding with the Suez Canal Company on certain propositions to be submitted. ("Egypt No. 5, 1876," p. 34.)

The Council of Administration of the Company rejected the propositions, and the Viceroy thereupon wrote to the Emperor Napoleon, begging him to pronounce on the questions pending between the Egyptian Government and the Company.

The Emperor accepted the reference, and appointed a Commission to make a preliminary examination into the questions in dispute. The parties appeared before the Commission and adopted and signed a submission to arbitration. ("Egypt No. 6, 1876," p. 22.)

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* 1. "Egypt No. 5 (1876)." Parliamentary No. 1760.
2. "Egypt No. 6 (1876)." Parliamentary No. 1761.
3. Printed Collection of Firmans, 1841–1879. Confidential No. 4747.
4. Correspondence relating to the Revocation of the Firman of 1873 and the issue of the Firman of 1879. Confidential Nos. 4031 and 4115.
5. Note from Musurus Pasha, July 16, 1883.
6. Turkish note of April 6, 1863, and inclosure. Confidential No. 1404, p. 190.
7. Memorandum by Sir E. Hertslet on Lighthouses in the Red Sea. Confidential No. 4310.
8. Correspondence relating to Suez Canal Dues, "Commercial No. 19 (1874)." Parliamentary No. 1635.
9. Memorandum on Papers laid before Parliament since 1876 relating to the Suez Canal. Confidential No. 4832.

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The questions submitted related to (1) the employment of Egyptian workmen; (2) the Fresh-water Canals; (3) lands; (4) compensation to be allowed to the Company on the withdrawal of the advantages granted and Concessions made.

By the Award of the Emperor it was decided that an indemnity should be paid to the Company for the discontinuance of the forced employment of Egyptian workmen, and that the Fresh-water Canal and certain lands should be retroceded by the Company to the Viceroy, for which retrocession a further indemnity should be paid by the Viceroy to the Company.

The total sum awarded by the Emperor to the Company was 84,000,000 fr. ("Egypt No. 6, 1876," pp. 22, 32), and an Agreement was come to with the Egyptian Government in execution of the Emperor's Award. This Agreement is dated the 22nd February, 1866. ("Egypt No. 5, 1876," p. 36, and "No. 6, 1876," p. 34.)

On the 19th March, 1866, the Sultan issued his Firman ("Egypt No. 6, 1876," p. 44) confirming this Agreement and granting his authorization for the execution of the Canal by the Company on the conditions prescribed in the Agreement.

At that time no question arose as to the rights of the Porte in relation to the Suez Canal, on the grounds stated in the Turkish note of the 6th April, 1863. (Paper 6.)

**Powers of Khedive, under Sultan's Firmans 1841–73, as to Treaties, &c.**

The powers granted to the Khedive of Egypt will be found in the accompanying printed collection of Firmans issued between 1841 and 1879. These Firmans, as observed by M. Waddington when French Minister for Foreign Affairs in 1879 constitute the Charter of Egypt. (Correspondence, Paper 4, p. 450, No. 715.) The Firman granted to Mehemet Ali in 1841 was an International Act, inasmuch as it was issued under the auspices of the Great Powers, and it has been contended by the British and French Governments that the Firmans now in force have also an international character.

It will be observed that the Firmans of 1841 were very restrictive as regards the powers of government intrusted to the Khedives. But in 1866 Ismaïl Pasha agreed to raise the yearly tribute of Egypt to the Porte from 80,000 purses to 150,000 purses, that is to say, from about 376,000*l.* to 720,000*l.*, and thereby obtained a modification in the order of succession, and other important advantages. The privilege of hereditary succession was accorded to him by the Firman of the 27th May, 1866 (Firmans, p. 21), and, by the Firman of the 8th June, 1867 (Firmans, p. 25), the internal administration of Egypt was confided to him in terms which (to use once more the language of M. Waddington) amount to "legislative, administrative, and financial autonomy" (Correspondence, Paper 4, p. 473, No. 776, and p. 535, No. 891). This fact is recited in the subsequent Firman of the 10th September, 1872 (Firmans, p. 27), in the following terms: "Par notre Firman Impérial en date du 5 Safer, 1284 (8th June, 1867), l'administration intérieure de l'Égypte et par conséquent ses intérêts financiers matériels et autres sont dévolus au Gouvernement Égyptien. Notre faveur Impériale lui a accordé tout ce qui se rattache au développement de l'organisation intérieure et du progrès en général."

The next Firman, dated the 25th September, 1872 (Firmans, p. 28), states that the "administration matérielle et financière de l'Égypte" had, by virtue of previous Firmans, devolved on the Khedive "en tout et pour tout," and it authorizes him to contract loans without the authority of the Sultan.

On the 8th June, 1873, the Sultan granted to Ismaïl Pasha a new Firman purporting to supersede previous Firmans by uniting them all in one instrument. (Firmans, p. 29.) This document contains two paragraphs concerning the Khedive's powers of government which have an important bearing on the question under consideration. They are as follows:—

"J'attache la plus grande importance à la prospérité de l'Égypte, au bien-être, à la tranquillité, et à la sécurité de sa population, et comme ce sont des objets qui reposent sur l'administration civile et financière du pays, ainsi que sur le développement des intérêts matériels et autres du pays qui sont du ressort du Gouvernement Égyptien, nous mentionnons comme suit, en les modifiant et les élucidant, tous les privilèges que mon Firman Impérial, soit anciennement, soit à nouveau, a accordés au Gouvernement Égyptien pour qu'ils soient possédés à toujours par les Khédives qui se succéderont.

"L'administration civile et financière du pays et tous les intérêts, matériels et autres, sous tous les rapports, sont du ressort du Gouvernement Égyptien, et lui sont confiés, et comme l'administration, le bon ordre de tout pays, le développement de la richesse, et de la prospérité de la population proviennent de l'harmonie à établir entre les faits, les relations générales, la condition et la nature du pays, ainsi que le caractère et les mœurs des habitants, le Khédive d'Égypte est autorisé à faire des règlements intérieurs et des lois toutes les fois qu'il sera nécessaire."

It will be observed that this Firman also conferred upon the Khedive the right of concluding Conventions with foreign Powers, provided they did not clash with the political Treaties made by the Sublime Porte, and of maintaining armies.

**Similar rights conferred by Firman of 1879, on condition of non-alienation of territorial or Sovereign rights.**

In 1879 the affairs of Egypt were in so ruinous a condition owing to the maladministration of Ismaïl Pasha that the British and French Governments arrived at the conclusion that the removal of the Khedive had become a necessity. While measures to procure his abdication were under consideration, the Sultan, without previous communication with the Powers, suddenly deposed Ismaïl Pasha, appointed his son Tewfik Pasha to the Khediviate, restored the ancient Turkish order of succession, and revoked the Firman of 1873, and thereby all the Firmans issued since 1841. This step was taken by the Sultan in pursuance of a Report of his Ministers (Ibid., p. 543, No. 909), and was communicated to Her Majesty's Government by the Turkish Ambassador on the 26th June, 1879, with a copy of his telegraphic instructions. (Ibid., p. 441, No. 695.)

This communication, which was also made to the French Government, was received with great displeasure. The British and French Governments disputed the right of the Sultan to revoke, *proprio motu*, the Firman of 1873, which had been obtained at the cost of great pecuniary sacrifices, and had been communicated officially to all the Powers. They objected to a return to the ancient order of succession; they viewed the act of the Sultan as an attempt to resume the administrative control of Egypt, and they determined that the revocation of the Firman of 1873 should be annulled, or that a new Firman should be issued, of which the draft should be previously communicated to and approved by them, and which should contain all the essential points of the Firman of 1873, except as regards the maintenance of unlimited military and naval forces.

It was found impracticable to annul the revocation of the Firman of 1873 (Ibid., p. 490, No. 807), and long negotiations ensued as to the terms of the new Firman, the result of which was communicated to Her Majesty's Government in Sir H. Layard's despatch No. 693 of the 3rd August, 1879 (Ibid., p. 623, No. 1037), together with a copy of the new Firman agreed upon, and of the explanatory declarations annexed thereto.

The Firman bears date the 2nd August, 1879 (Firmans, p. 33), and its substance was telegraphed to Her Majesty's Ambassadors at Berlin, Rome, and Vienna, in the following terms:—

1. Present succession rule maintained.
2. No further loans permitted.
3. No armaments above number sanctioned in 1841.
4. All Conventions to be communicated to Porte before promulgation.
5. No territory to be alienated or prerogatives of Khedive given up to a third Power.

Otherwise former privileges confirmed. (Ibid., Paper 4, p. 591, No. 980.)

But in the notes annexed to the Firman it is expressly declared, as regards the non-alienation of privileges or of territory, that "le présent Firman ne restreint en rien, sauf ce qui y est expressément relaté, les droits, privilèges, et prérogatives précédemment et personnellement accordés aux Khédives d'Égypte;" and as regards Conventions, it is provided that the sanction of the Porte is not required previously to their being promulgated and put in force.

It will be seen, therefore, that subject to the express restrictions contained in the Firman of 1879, the full powers of Government granted to Ismaïl Pasha by the Firman of 1873 are still vested in the present Khedive.

I am now to invite your attention to the accompanying copy of a note from the Turkish Ambassador at this Court, forwarding copy of a note from the Sublime Porte referring to the recent negotiations between Her Majesty's Government and the Suez Canal Company.

In this communication it is alleged that any modification or extension of the privileges accorded to M. de Lesseps must receive the assent of His Majesty the Sultan before taking effect.

**Is Turkish claim to right of interference, admitted in 1863, compatible with powers since granted?**

The question therefore arises, whether the claim now put forward by the Porte, and which Her Majesty's Government fully admitted in 1863, is compatible with the larger powers of internal administration and government which have since been conferred by the Sultan on the Khedives of Egypt; and, in relation to that question, I am to draw your attention to the considerations of national safety and Imperial

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policy set forth in the Turkish note of the 6th April, 1863, and particularly in its inclosure, on which at that time the claim of the Porte to exercise a control over the construction of canals, railroads, and other works of that character in Egypt was based.

I am also to refer you to a Memorandum by Sir E. Hertslet, in relation to the construction of lighthouses in the Red Sea. (Paper 7.)

Right of Turkey to interfere, with reference to Suez Canal dues in 1872–76, was admitted.

I am, further, to point out that in the correspondence relating to the Suez Canal dues (Paper 8) it appears clearly throughout the controversy which arose respecting the dues, and which continued from 1872 to 1876, that the supreme authority of the Sultan over the subject-matter in dispute was recognized by all parties (see Parliamentary Papers 13, 15, 16, 20, 22, 23, 24, 42, 49, 55, 67, 71, 122, 123, 124, 140, 154, 155, 156, 158; and Lord Derby's despatch to Sir H. Elliot of the 7th July, p. 163).

It is presumed that the clause in the Firman of 1879 against the alienation of territory applies only to the case of alienation to a third Power, as stated in the telegraphic summary above referred to. (Ibid., Paper 4, p. 591.)

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Earl Granville with your opinion on the questions submitted in this letter, and with any general observations which you may have to offer on the case.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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[After recapitulation of the above Reference, the Law Officers report as follows:—]

Claim of Porte to control modification of arrangements with Suez Canal Company not well founded.

In obedience to your Lordship's commands we have the honour to report—

That we do not think the claim of the Porte that any modification or extension of the privileges accorded to M. de Lesseps must receive the assent of the Sultan before taking effect is well founded.

The question turns upon the construction of the Firman of 1879, and the extent of the independent power which by that instrument is conferred upon the Khedive.

The civil and financial administration of the country is thereby entrusted to the Khedive, and he is empowered to make all necessary laws and regulations in relation thereto. Beyond this, he is enabled to make Conventions with the Agents of foreign Powers for all that concerns the internal affairs of the country, with the view of developing its commerce, industry, and agriculture.

It seems almost impossible to contend that a modification or extension of the privileges of M. de Lesseps and the Canal Company, having for its object the improvement of the navigation through the Isthmus of Suez, would be in excess of such large powers as these.

The only limitation upon these powers which it is necessary to consider is to be found in the provision of the Firman, which forbids the Khedive to abandon to others, in whole or in part, the privileges accorded to Egypt, which are entrusted to him, or any part of his territory.

It would seem that this restriction was insisted upon by Carathéodory Pasha, "as on more than one occasion the late Khedive was about to make over a large portion of his territory, and even the management of his army, to a foreign Company without consulting the Porte." (See Sir A. H. Layard to Lord Salisbury of the 21st July, 1879, p. 583.)

It appears to us that it would be no breach of the provision of the Firman now under consideration if the Khedive granted a Concession to a Company empowering them to construct or improve a canal, railway, or other work of public utility, even though the Concession should involve the grant of the use of land belonging to him within his territory, provided that the sovereignty of the Khedive were preserved over any part of his territory so used, and none of his sovereign rights were parted with. For it is only if his sovereignty were thus parted with that we think that he could be said to "abandonner à d'autres . . . . . aucune partie du territoire."

As long as no alienation of territory or Sovereign rights is made.

At the same time, if a grant were made to a foreign Company of vast tracts of land beyond what was essential for the public work authorized (as was the case in the original Suez Canal Concession), so that the sovereignty of the Khedive over such territory would be practically, even though not nominally, interfered with, we are by no means prepared to say that the Sultan might not with good ground insist that the Khedive had exceeded his powers.

Our opinion is therefore limited to the case of a Concession for an industrial undertaking of an ordinary description to hold and make use of land, and does not extend to a grant open to the objections above pointed out.

Explanation of admission of right of Turkey to interfere in 1872–76 as to Suez Canal dues.

We may observe that the position with respect to the question before us is considerably embarrassed by what took place between 1872 and 1876 in relation to the Suez Canal dues. The authority of the Sultan over the subject-matter in dispute was recognized by all parties, and yet, under the Firman then existing, the independent power and authority which had been granted to the Khedive did not differ substantially from that now possessed by him.

The Government of the Sultan will no doubt rely strongly upon this circumstance. Probably the best explanation may be that the Suez Canal Concession having emanated from the sovereign authority of the Sultan, without which it could not at that time have been obtained, it was natural to appeal to him in an international controversy concerning the rights arising out of it.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*Royal Courts of Justice, November* 21, 1883.

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*Note by the Lord Chancellor.*

Question a special and not an abstract one.

I cannot help thinking that this is a question which must be considered rather with reference to the terms of any particular Concession which the Egyptian Government may be disposed to grant to the Suez or any other Company than in an abstract way.

Agree with Law Officers in rejecting claim of Sultan to control arrangements which do not affect his or Khedive's rights.

I should certainly agree with the Law Officers in rejecting as preposterous the claim of the Sultan to a veto on any additional grant of land for the enlargement or improvement of the present Canal which left untouched the present territorial sovereignty both of the Sultan as the paramount power and of the Khedive as exercising the rights of internal government and administration under the Firmans.

(Signed) SELBORNE.

30, *Portland Place, W.*

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## No. 32.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 29.)

*Royal Courts of Justice, November* 27, 1883.

My Lord,

Murder of J. Alison by A. Lacomb.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 9th instant, stating that, in accordance with the request contained in our letter of the 18th September, he was to transmit to us a despatch from Her Majesty's Judge and Consul-General at Constantinople,* inclosing the depositions of Troopers Mills and Smith, in the case of Regina *v.* Lacomb.

In obedience to your Lordship's commands we have the honour to report—

That the inferences we draw from the facts proved on the trial are, that the prisoner shot the deceased without premeditation, and that from the effects of drink his mind was in such a state that he probably did not think or care whether the rifle he used was, or was not, loaded.

He should be sentenced to penal servitude for life, and be released after seven years if his conduct be good.

Doubtless it is necessary by severity of punishment to show that drunkenness is no excuse for such an act as that under consideration, and therefore we think that, at the present time, the sentence should be to the extent of subjecting the prisoner to penal servitude for life. But we suggest that a Minute should be made that if the prisoner's conduct in the meantime be good, he should, at the termination of seven years' imprisonment, be released.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Consul-General Fawcett, No. 78, October 31, 1883.

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## No. 33.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 6.)

My Lord, *Royal Courts of Justice, December* 5, 1883.

Suez Canal: claim of Sultan to control arrangements as to.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 20th ultimo, stating that, with reference to his letter of the 27th August, relative to the question of the right of the Sultan of Turkey to control any arrangement which the Khedive might make in regard to the Suez Canal, he had the honour to inclose a copy of a despatch which had been communicated to your Lordship by the Turkish Ambassador,* in which the Porte reasserts its right to such control. That Sir J. Pauncefote was to request that we would take that despatch into our consideration, together with the papers which were already before us on that question.

In obedience to your Lordship's commands we have the honour to report—

Maintain opinion as to non-necessity of Sultan's sanction to proposed arrangement.

That the points raised by the despatch communicated by the Turkish Ambassador appear to be all of them dealt with in our former Report.

We observe that although the despatch admits that in recent years certain new powers have been conferred upon the Khedive, and notably by the Firman of 1879, it puts a very limited construction upon the rights thus conferred.

It is alleged that such a work as the making of a canal cannot be regarded as an affair of "internal order," falling within the category of those rights belonging to the Khedive.

But it is obvious, upon a perusal of the Firmans, that the power of legislation and of making Conventions committed to the Khedive are not confined to matters of internal order, but have a much wider scope.

The despatch concludes with a reference to a despatch written by Lord Granville two years ago, and relies upon a passage quoted from it. We have not this despatch before us, and it certainly should be considered before replying to the Turkish Ambassador, but the passage quoted is probably explained by the context.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 34.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 15.)

[After recapitulating the following Reference, the Law Officers report as on p. 44:—]

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

Gentlemen, *Foreign Office, November* 25, 1883.

Import of tobacco into Egypt.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the papers noted in the accompanying list,† which relate to the question of the right of the Khedive of Egypt to enter into Conventions with foreign Powers respecting the admission of tobacco into Egypt at a low and uniform rate of duty, and to invite your attention to a question which has been raised in connection with this subject, and which was not submitted for your consideration in my letter of the 1st May last.

In your report above referred to you advised that in view of the very extensive powers given to the Khedive by the Imperial Firmans‡ of making commercial arrangements with foreign Powers, it was competent to the Egyptian Government to enter into a new Commercial Treaty with this country, in substitution, so far as Egypt is concerned, for the Treaty of Commerce between Great Britain and the Porte of 1861, and that one of the Articles of such Treaty might provide for the admission of tobacco imported by British subjects on any terms that might be agreed upon. You also referred to the Vizirial letter of the 31st March, 1881, from which it would appear that some promise had been given by the Government of the Khedive not to tolerate any act contrary to the Treaties and Regulations in force. Lord Granville gathers from your observations on that document that, in your opinion, the promise therein referred to only affects the question, whether the Khedive is bound to insist on the production of "raftiehs" on the importation of Turkish tobacco, or can refuse to do so any longer, but that it has no bearing on the main question of the power of the Khedive to enter into Conventions with foreign Powers in relation to the importation of tobacco into Egypt.

Do Treaties with Porte preclude Great Britain from concluding a Convention on subject?

The question which has now presented itself is whether Great Britain is precluded from entering into such a Convention with the Khedive by the provision contained in the Treaties between the Porte and foreign Powers against the importation of tobacco, in any shape whatever, into any part of the Ottoman dominions.

Article XIV of the British Treaty of 1861* is as follows:—

"ARTICLE XIV.

"An exception to the stipulations laid down in the Vth Article shall be made in regard to tobacco, in any shape whatsoever, and also in regard to salt, which two articles shall cease to be included among those which the subjects of Her Britannic Majesty are permitted to import into the Ottoman dominions.

"British subjects, however, or their agents, buying or selling tobacco or salt for consumption in Turkey, shall be subject to the same regulations, and shall pay the same duties, as the most favoured Ottoman subjects trading in the two articles aforesaid; and furthermore, as a compensation for the prohibition of the two articles above mentioned, no duty whatsoever shall in future be levied on those articles when exported from Turkey by the subjects of Her Britannic Majesty.

"British subjects shall, nevertheless, be bound to declare the quantity of tobacco and salt thus exported to the proper Custom-house authorities, who shall, as heretofore, have the right to watch over the export of these articles, without thereby being entitled to levy any tax thereon on any pretence whatsoever."

That Treaty has recently expired, and, pending the conclusion of a new one, Her Majesty's Government have claimed for British trade most-favoured-nation treatment under the Capitulations.

But all the existing Treaties between the Porte and foreign Powers concluded since the date of the British Treaty of 1861 contain stipulations in relation to tobacco similar to those of Article XIV of that Treaty.

Tobacco does not appear in the Tariff of Imports in the Treaties between the Porte and foreign Powers, but its importation into any part of the Ottoman dominions is by the terms of those Treaties absolutely prohibited; and in consideration of this prohibition, and by way of compensation, the exportation of tobacco from Turkey to other countries is permitted free of duty.

It appears, however, that this prohibition has been modified as regards cigars, snuff, &c., by a Regulation of the Porte, referred to in the inclosed Memorandum by Sir E. Hertslet.

Subject, however, to that Regulation, tobacco is an article of trade which, like salt, has been reserved as an Imperial monopoly under the Treaties of the Porte, and it may be urged that foreign Powers, having bound themselves by those Treaties not to import tobacco into Egypt, cannot enter into a Convention with the Khedive for that object without committing a breach of their engagement towards the Porte, which must necessarily entail severe loss on the Turkish revenue.

On the other hand, it must be borne in mind that the Firmans of 1873 and 1879, the latter of which was issued in communication and agreement with Great Britain and France, grant to the Khedive the most ample powers with respect to the conclusion of Commercial Conventions, and that no reservation whatever can be found therein with respect to tobacco.

As regards the powers of the present Khedive under the Firman of 1879, I am to invite your attention to the inclosed printed copy of a Reference addressed to you in the month of August last, which deals with the rights of the Sultan in relation to the Suez Canal, and in which a brief account is given of the negotiations which preceded the issue of that Firman. It is there shown that all the Powers which were granted by previous Firmans are now vested in the present Khedive; and in relation to the particular

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* Porte to Musurus Pasha, November 10 (communicated November 16, 1883). Confidential No. 4876, p. 64.

† To Law Officers, May 1; Law Officers, May 29; to Law Officers, August 27; Memorandum by Sir E. Hertslet on Egyptian Tobacco Convention, November 15, 1883.

‡ Firmans, 1841–79. Confidential No. 4747.

* Treaty No. 453.

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question now under consideration, I am to refer to the following extract from the Firman addressed to Ismaïl Pasha, dated the 8th June, 1867:—

"In like manner, whilst all the Treaties of the Sublime Porte must be respected in Egypt, an exception is made only as regards the customs duties, and as regards foreigners in matters relating to the police, postal, and transit services, for which full powers are given to thee to enter into special arrangements with foreign agents. But such arrangements must not take the form of Treaties or Conventions having any political signification or purport."

That Firman proceeds to declare that where any doubts arise as to such commercial arrangements being opposed to the sovereign rights of the Sultan, or to the principles therein laid down, the matter shall be referred to the Porte previously to the conclusion of the arrangement. But it is pointed out in the above-mentioned Reference of August last that this condition was waived in the notes annexed to the Firman of 1879.

It is of the utmost importance to the material interests of Egypt, that special Conventions for the admission of tobacco into that country should be concluded. Indeed, negotiations have been actually commenced for such a Convention with Greece, and Her Majesty's Government are pressed for their opinion as to whether the Porte could take exception to it. It has become necessary, therefore, to consider the proposal once more from every point of view, and before arriving at a final decision Lord Granville desires me to submit to you the further considerations contained in this letter, in case they should modify in any way the conclusions arrived at in your Report of the 29th May last as to the right of Her Majesty's Government and of the Khedive to enter into a Convention for the importation of tobacco into Egypt. I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Granville with your opinion on the question submitted in this letter, and with any general observations which you may have to offer on the case.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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[After recapitulation of preceding Reference, the Law Officers report as follows:—]

In obedience to your Lordship's commands we have the honour to report—

Extent and purpose of Firmans granted to Egypt as affecting Treaties with foreign Powers.

That we think that the financial and administrative autonomy which has been conferred by Turkey upon Egypt, coupled with the right, also conferred upon her, of making Commercial Treaties with foreign Powers, would authorize Egypt to enter into a Treaty providing for the import of tobacco, on payment of such duty as might be agreed upon.

But it may no doubt be the case that certain foreign Powers might, by the provisions of a Treaty with Turkey, by which they were bound, be precluded from entering into such a Treaty with Egypt, and at the same time claiming the benefit of their Treaty with Turkey.

There can be no doubt that the Firmans are to be regarded as operating primarily as between Turkey and Egypt, and therefore, not necessarily warranting, as regards foreign Powers, every Treaty they might make with Egypt.

With reference to the question now before us, it might on the one hand be urged by the Porte, that any foreign Power which had agreed that the importation of tobacco by its subjects into the Ottoman dominions, including Egypt, should be strictly prohibited, could not claim the benefit of other provisions of the Treaty, for which this was, in fact, the consideration, whilst they, by arrangement with Egypt, to which the Porte had given, so far as they were concerned, no sanction, set aside the prohibition so far as it related to that part of the Ottoman dominions.

On the other hand, it may be said that it was the very purpose of the Firmans to grant a complete right of independent action in the Egyptian Government in all that affected its customs duties and commercial interests, and thus to withdraw Egypt, for all such purposes from, and to cause her no longer to be treated, so far as these matters were concerned, as part of the Ottoman dominions.

Unadvisable to enter into a Convention as proposed.

There is much to be said in support of each of these conflicting contentions, and we have great difficulty in determining between them; but on the whole we incline to the opinion that the balance of argument and policy is in favour of the former view, and that therefore it would be unadvisable to enter into the Convention with the Khedive referred to in your Lordship's letter of the 23rd ultimo.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*Temple, December 15, 1883.*

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## No. 35.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December 20.)*

My Lord, *Royal Courts of Justice, December 18, 1883.*

Right of Egyptian Government to refuse to allow Mr. W. Blunt to land in Egypt

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 1st instant, stating that he had the honour to transmit to us, by direction of your Lordship, the papers noted in the accompanying list,* which related to the question of the right of the Egyptian Government to refuse permission to Mr. Wilfrid Blunt to land in Egypt on his return journey from Ceylon and India.

That the grounds of the objections of the Egyptian Government to the presence of Mr. Blunt in Egypt were stated in the note from the Egyptian Minister for Foreign Affairs, inclosed in Sir E. Baring's despatch No. 457 of the 13th October last.

That, with reference to that question, Mr. Lister was to invite our attention to the Reports of the Law Officers of the Crown respecting the right of the Porte to expel from the dominions of the Sultan the subjects of a foreign country which enjoyed the privileges of the Capitulations, and the conditions under which the exercise of this right should be admitted in the case of a British subject.

That in the instructions sent to Her Majesty's Ambassador at Constantinople on the 18th July, 1860 (No. 330), and which were founded on the Law Officers' Reports of the 16th May and the 7th July of that year, it was stated by Lord John Russell that Her Majesty's Government were of opinion that the Turkish Government had, unaffected by any Treaty stipulation, the inherent sovereign right of expelling foreigners from Turkey, not, indeed, capriciously and without any cause whatever, but upon reasonable cause, the existence of which was a matter for discussion and settlement with the Government of the foreigner in each case as it might arise.

That in the later despatch to Sir H. Bulwer (No. 433 of the 23rd August, 1860), his Excellency was instructed that, in the opinion of Her Majesty's Government, whenever the Porte desired to banish from the Ottoman dominions any foreigner under British protection, it should communicate its reasons for so doing to the proper British authority; that, if the ground assigned were not conduct amenable to criminal law, the sufficiency of the reasons should be the subject of discussion between the British and Turkish authorities; that, but if the ground assigned were anything cognizable by the criminal jurisdiction, the Porte should first prosecute the suspected persons to conviction; and that, until that were done, Her Majesty's Government would not consent that they should be punished merely because they were suspected.

And that Her Majesty's Ambassador was authorized to consent, subject to the principles laid down above, to the expulsion by the Porte of persons under British protection, whose continued residence in the Turkish dominions should be shown, to his Excellency's satisfaction, to be incompatible with the public safety, but against whom no specific charge, such as would bring them within reach of criminal jurisdiction, could be established.

That two recent letters from the Colonial Office, which would be found among the papers, gave an account of the excitement created among the Mussulman population in Ceylon by Mr. Blunt's visit to that colony.

That Mr. Lister was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether the grounds assigned by Chérif Pasha in his note inclosed in Sir E. Baring's despatch (No. 457 of the 13th October last) were sufficient to justify Her Majesty's Representative in Egypt in assenting to the proposal of the Egyptian

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* Sir E. Baring, No. 457, October 13, 1883; Law Officers, May 16; ditto, July 7, 1860; ditto, October 19, 1862; to Sir H. Bulwer, No. 330, July 18; ditto, No. 433, August 23, 1860; Colonial Office, February 21 ditto, November 27, 1883.

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Government, that Mr. Blunt should be prohibited from landing in Egypt on his return journey from Ceylon and India.

In obedience to your Lordship's commands we have the honour to report—

Should abstain from opposing proposed action of Egyptian Government.

That the grounds assigned by Chérif Pasha in his note proposing that the Egyptian Government should prohibit Mr. Blunt from landing in Egypt are such that we think Her Majesty's Representative in Egypt would be justified in abstaining from offering any opposition to the proposed action of the Egyptian Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## France.

### No. 36.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 31.)

*Temple, March* 30, 1883.

My Lord,

L. Paulet, deserter from the "Imerina."

Suit at Réunion for recovery of wages and clothes.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th instant, stating that he was to transmit despatches from Mr. Annesley, Her Majesty's Consul at Réunion,* reporting the case of a French seaman named Louis Paulet, who, being on the Articles of the British steamer "Imerina," deserted at Réunion, and subsequently sued the master of the vessel in the local Courts for the balance of wages alleged to be due to him, and for the recovery of clothes left on board the vessel at the time of his desertion. That Mr. Annesley, as we should observe, protested against the exercise of jurisdiction in the case by the local Tribunals, but that his protest was disregarded by the Governor of the Colony, to whom it was addressed. That the Court gave Judgment against the master, and the Judgment was confirmed on appeal.

The owner of the "Imerina" resided in London, but had made no complaint, and that it was not known whether he intended to prosecute a further appeal to the Court of Cassation in Paris. That your Lordship apprehended that, in the absence of any Treaty provision to the contrary, the French Tribunals were strictly entitled to exercise jurisdiction in the case, and that Sir J. Pauncefote inclosed a letter from the Colonial Office, forwarding correspondence relative to a converse case which occurred at Penang, where the Vice-Admiralty Court, notwithstanding the protest of the French Consul, entertained a suit for wages against the French vessel "Washi," by the English engineer belonging to her.

That Sir J. Pauncefote was to request our opinion as to the instructions which should be given to Consul Annesley in reply to his despatches respecting the case of the "Imerina."

In obedience to your Lordship's commands we have the honour to report—

French Tribunals entitled to exercise jurisdiction.

That, in our opinion, Mr. Annesley should be informed that, in the absence of any Treaty provision to the contrary, the French Tribunals were strictly entitled to exercise jurisdiction in this case, and that no exception can be taken to such exercise of jurisdiction.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Consul Annesley, No. 33, September 6; ditto, No. 37, October 2; ditto, No. 44, November 27; ditto, No. 48, December 27; Colonial Office, December 1, 1882.

### No. 37.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May* 10.)

*Royal Courts of Justice, May* 9, 1883.

My Lord,

Declaration between Great Britain and France relative to proceeds of wrecks.

WE are honoured with your Lordship's commands signified in Lord Edmond Fitzmaurice's letter of the 24th ultimo, stating that he had the honour to transmit the papers* respecting the Declaration between Great Britain and France relative to the proceeds of wrecks, and to request our opinion whether the draft answer transmitted therewith met with our approval, and might properly be sent to the Board of Trade in reply to their letter of the 21st March.

In obedience to your Lordship's commands we have the honour to report—

Approve draft answer to the Board of Trade.

That, in our opinion, the accompanying draft answer may properly be sent to the Board of Trade in reply to their letter of the 21st March.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Sir J. Pauncefote to Mr. Farrer.*

*Foreign Office, May* , 1883.

Sir,

I HAVE laid before Earl Granville your letter of the 21st March (H. 1818), on the subject of the question raised by Her Majesty's Consul at Havre in connection with the Declaration between Great Britain and France relative to the proceeds of wrecks. The Board observe that the Declaration does not say at what time the French authorities have a right to intervene with a view of taking charge of any wrecked property.

Action of Consuls in salvage cases.

Interference of French authorities in cases of wrecks.

In reply, I am to request you to state to the Board of Trade that, as Lord Granville understands the question, the Declaration does not purport to alter the law of France relating to salvage, to which all vessels wrecked or stranded within French jurisdiction are subject. The Declaration only entitles Her Majesty's Consular Representatives to co-operate in the salvage; and the question as to the precise time at which the local authorities have a right to interfere in French waters for salvage purposes must be governed by the French law cited by Consul Bernal, which gives them the right to interfere as soon as there is a breaking up ("bris"). This is a quite distinct question from that of the time at which, according to our maritime law, the master ceases to be agent of the ship-owner and other parties interested in the ship and cargo.

I am, &c.

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### No. 38.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June* 20.)

[After recapitulation of the following Reference, they report as on p. 51:—]

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

*Foreign Office, June* 6, 1883.

Gentlemen,

Question raised by the French Government as to the title of the British Crown to the Ecréhos and exclusive right of fishery within 3 miles of them.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the papers noted in the accompanying list,† which relate to a question raised by the

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* Declaration (Great Britain and France), Proceeds of Wrecks, June 16, 1879, Treaty No. 636; Board of Trade, February 13; to ditto, February 28; Board of Trade, March 21, 1883; draft reply to above.

† A. Convention with France, August 2, 1839. Map. No. 261.
B. Act of Parliament 6 & 7 Vict., cap. 79, 1843 (Regulations, May 24, 1843).
C. Convention with France, November 11, 1867. Map. No. 502.
D. Act of Parliament 31 & 32 Vict., cap. 45, 1865.
E. " 40 & 41 Vict., cap. 42, 1877.
F. Memorandum (E. H.), May 31, 1883. Confidential No. 4810.
G. " " November 1, 1881. Confidential No. 4811.
H. " " May 26, 1883. Confidential No. 4809.
I. " (Law Officers of Jersey). ? May 14. Inclosure 25 in Home Office of May 25, 1883.
J. M. Tissot, April 25, 1883.
K. Lieutenant-Governor of Jersey to Home Office, May 16, 1883.
L. Ditto, May 21, 1883
M. M. Tissot, May 26, 1883.
N. Wrapper volume containing letters from Customs and Attorney-General of Jersey of June 1876.
Further papers sent to Law Officers June 13, 1883:—To Admiralty, June 8; Admiralty, June 12, 1883.

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French Government as to the title of the British Crown to the Ecréhos Islets as dependencies of the Island of Jersey, and as to the exclusive right of general fishery within 3 miles of those islets, which is claimed by the Jersey authorities.

The facts of the case are briefly as follows :—

Convention of August 2, 1839.

Limits of the oyster fishery between Jersey and France.

General fishery limits.

On the 2nd August, 1839, a Convention (document A) was signed between Great Britain and France, the object of which, as explained in the preamble, was to prevent the recurrence of disputes by defining the limits within which the subjects of the two countries respectively should be at liberty to fish for oysters between the Island of Jersey and the neighbouring coast of France, and also the limits within which "the general right of fishery on all parts of the coasts of the two countries shall be exclusively reserved to the subjects of Great Britain and of France respectively."

Limits of French oyster fishery.

A Chart was attached to the Convention, on which lines were drawn between certain points along the French coast, and by Article I it was agreed that those lines should define the limits of the French *oyster* fishery which was thereby reserved exclusively to French subjects.

Limits of British oyster fishery.

No line was drawn on the Chart to define the limits of the British oyster fishery; but it was declared by Article II that the oyster fishery "within 3 miles of the Island of Jersey" should be reserved exclusively to British subjects. By Article III it was declared that the oyster fishery outside of the above exclusive limits should be common to the subjects of both countries.

General right of fishery.

The general right of fishery was defined by Article IX, which declared that British subjects should enjoy the exclusive right of fishery within 3 miles "along the whole extent of the coasts of the British islands," and that French subjects should enjoy the exclusive right of fishery within 3 miles "along the whole extent of the coasts of France."

Regulations for guidance of fishermen.

6 & 7 Vict., cap. 79.

Article XI provided that Regulations should be drawn up for the guidance of the fishermen of the two countries in the seas between the coasts of Great Britain and France, to which effect should be given by legislative measures. Regulations were accordingly drawn up and agreed to, and the Act 6 & 7 Vict., cap. 79, was passed to give effect to them (document B). The Regulations will be found in the Act, and it is to be observed that Article 85 provides that "the fishing-boats of the one country shall not approach nearer to any part of the coasts of the other country than the limit of 3 miles specified in Article IX of the Convention of 1839."

Convention of November 11, 1867.

In 1867 a new Fishery Convention was signed between Great Britain and France (document C), which, when brought into effect, will supersede the Convention of 1839.

By Article XXXVIII of the new Convention it is declared that the expression "British Islands" shall include the Islands of Jersey, Guernsey, Alderney, Sark, and Man, "with their dependencies."

By Article XXXIX it was provided that the new Convention should come into operation on a day to be fixed by the High Contracting Parties, after a British Act of Parliament should have been passed to enable Her Majesty to carry out such of its provisions as required legislative sanction.

"Sea Fisheries Act, 1868," 31 & 32 Vict., cap. 45.

"The Sea Fisheries Act, 1868" (31 and 32 Vict., cap. 45), (document D), was passed to give effect, *inter alia*, to the new Convention, and a notification was published in the "Gazette" of the 22nd January, 1869, that the day fixed for the coming into force of the Act was the 1st February, 1869; but on the 9th February, 1869, a further Notification was published in the "Gazette," which will be found in Hertslet's Treaties, vol. xiv, p. 1200, to the effect that the Convention not having been brought into operation in the manner prescribed by Article XXXIX thereof, so much of "The Sea Fisheries Act, 1868," as related thereto should not, until the Convention had duly come into operation, apply to French subjects and French vessels.

Cause of delay in carrying the Convention of 1867 into effect.

The cause of the delay in carrying the Convention of 1867 into effect is that the French Government have not up to the present date passed the Law necessary to enable them to bring it into operation. (See Hertslet, vol. xiv, p. 1200, *supra*.)

"Fisheries (Oyster, Crab, and Lobster) Act, 1877," 40 & 41 Vict., cap. 42.]

By "The Fisheries (Oyster, Crab, and Lobster) Act, 1877," (40 & 41 Vict., cap. 42, sec. 15), (document E), the Act 6 and 7 Vict., cap. 79, giving effect to the Convention of 1839, was temporarily revived and continued in force until the Convention of 1867 shall come into operation.

Fisheries still regulated by Convention of 1839 and 6 & 7 Vict., cap. 79.

French Government dispute title of British Crown to the Ecréhos as dependencies of Jersey.

It follows, therefore, that the fisheries in question are still regulated by the Convention of 1839 and the Act 6 and 7 Vict., cap. 79. Of late years there has been a disposition on the part of the French Government to dispute the title of the British Crown to the Ecréhos Islets as dependencies of Jersey.

On this point I am to invite your attention to the three printed Foreign Office Memoranda by Sir E. Hertslet, and to a printed Memorandum furnished by the Attorney-General of Jersey (documents F, G, H, and I).

Treasury Order declaring the Ecréhos to be comprised within the limits of the port of Jersey.

In 1875, as you will perceive from the correspondence referred to in the Foreign Office Memorandum of the 1st November, 1881 (document G), the French Government took exception to a Treasury Order establishing the Island of Jersey as a Channel port, and declaring the Ecréhos Islets to be comprised within its limits.

The French Government were furnished, in reply, with the grounds on which the islets were claimed as an undoubted dependency of the Island of Jersey, and it was stated that Her Majesty's Government did not doubt that the French Government would readily admit that the facts adduced constituted undeniable evidence of the title of the British Crown. No rejoinder was made by the French Government to the above reply.

Aggressions by French fishermen.

French smugglers.

Since that time, however, French fishermen have been in the habit of resorting to the Ecréhos for the purpose of the general fishery, which it is stated that they carry on with destructive gear, in defiance of the laws of Jersey for the protection of the British fisheries, and therefore to the injury of those fisheries, as well as to the annoyance and detriment of the Jersey fishermen. The islets are also the resort of French smugglers, and the Jersey authorities are naturally apprehensive lest the French fishermen should also resort to the Minquiers and other dependencies of Jersey beyond the 3-miles limit, and thereby revive the mischief which it was the object of the Convention of 1839 to prevent.

Instructions asked for by Commander of Her Majesty's hip "Dasher."

In August 1881 the Commander of Her Majesty's ship "Dasher," a cruizer on the Jersey Station charged with the enforcement of the Fishery Regulations (see 6 & 7 Vict., cap. 79), applied to the Admiralty for instructions as to whether the Fishery Regulations respecting territorial limits apply to the Ecréhos (meaning, probably, Article 85 above referred to), and, if so, whether it was desirable to enforce them.

Complaint of the French Government against the Act prohibiting to French fishermen access to the Ecréhos.

Projet de Loi explained to be merely a Petition from Jersey fishermen.

This inquiry was prompted by a complaint he had received from the Customs authorities of Jersey that the Ecréhos were made a smuggling depôt by French fishing-boats. A correspondence ensued between the Lieutenant-Governor of Jersey, the Admiralty, the Home Office, the Foreign Office, and Her Majesty's Ambassador in Paris, which resulted in a decision by Her Majesty's Government "that the existing state of things at the Ecréhos was to be left undisturbed, apart from any steps which it might be necessary to take to protect the revenue of the Channel Islands." Such was the position of the case in 1881. On the 25th April last the French Ambassador in London addressed a letter to Earl Granville (document J) complaining that the States of Jersey were about to pass an Act prohibiting to French fishermen access to the Ecréhos, in violation of the existing usage and of the Fishery Convention of 1839, and expressing the hope that Her Majesty's Government would recognize the justice of the protest of the French Government, and take steps to prevent any disturbance of the existing state of things. The letter contains various statements which are clearly inaccurate, as will presently be shown, but it does not raise the question of the title of Great Britain to those islets, resting the French case on the Convention of 1839, and on the words of Article II, which defines the limits of the exclusive British oyster fishery to "3 miles from the Island of Jersey," whereas the Ecréhos are beyond that limit. It is hardly necessary, however, to point out that Article II applies solely to the oyster fishery, and not to the general right of fishery. The letter makes allusion to the terms of the new Convention of 1867, under which the exclusive British fishery is expressly fixed at 3 miles from the coast of Jersey and *its dependencies*, and deprecates any argument being drawn in favour of Her Majesty's Government from this difference in the text of the two Conventions, thereby admitting by implication that the Ecréhos are a dependency of Jersey. The letter of the French Ambassador was referred, through the Home Office, to the Lieutenant-Governor of Jersey, whose Report thereon will be found in his letter of the 16th May last (document K), together with a Report by the Law Officers of the Island, commenting on the letter of M. Tissot, and explaining that the Projet de Loi referred to by his Excellency was merely a Petition presented by the Jersey fishermen to the States, praying that steps may be taken to prevent French fishermen from fishing in the waters of the Ecréhos contrary to the Convention of 1839.

Petition to the Queen from the States of Jersey.

In a further letter, dated the 21st May, 1883 (document L), the Lieutenant-Governor of Jersey transmitted a printed copy of the Petition, and also of a Petition from the States to Her Majesty the Queen in Council to the same effect, and reported a very recent instance of aggression by French fishermen on the Ecréhos.

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Further complaint of the French Government against the Projet de Loi voted by the States of Jersey.

On the 26th ultimo the French Ambassador addressed a further letter to Lord Granville (document M), complaining that since the date of his previous communication the Projet de Loi had been voted by the States of Jersey, and reiterated the hope that Her Majesty's Government would not permit a departure from the *status quo* which they had maintained in 1881 against similar attempts on the part of the inhabitants of Jersey to disturb it.

French Government suggest that the Ecréhos are neutral territory.

In this letter his Excellency insists on the rights claimed by France under the Convention of 1839, and on the illegality of the proposed measure, which, he states, tends to ignore the character of neutrality impliedly imposed on those islets by the Conventions concluded between Great Britain and France. This letter for the first time suggests that the Ecréhos are neutral territory, a proposition which has no foundation whatever in any Convention or correspondence between the two Governments.

The questions which arise in this case are the following:—

Title of the British Crown to the Ecréhos.

1. Is the title of the British Crown to the Ecréhos Islets, as dependencies of Jersey, sufficiently established by the evidence furnished in the accompanying papers to justify Her Majesty's Government in maintaining the British right of sovereignty thereto?

Right of French fishermen to the oyster fishery or the general fishery within 3 miles of the Ecréhos.

2. Assuming the British right of sovereignty to be established, are French fishermen entitled to participate either in the oyster fishery or in the general fishery within 3 miles of the Ecréhos Islets, having regard to the provisions of the Convention of 1839; to Article 85 of the Regulations agreed to by the French Government, and contained in the Act 6 & 7 Vict., cap. 79; and to Article XXXVIII of the Convention of 1867, for the purposes of interpretation.

Documents showing that the Ecréhos are British territory.

As regards the first question, I am to refer you to the Reports furnished by the Principal Officer of Customs and the Attorney-General of Jersey in 1876 (document N), as well as to the four printed Memoranda before mentioned (documents F, G, H, and I), which would appear to show conclusively that the Ecréhos are British territory.

French arguments respecting the three distinct "zones," and the limit of the British zone being fixed at 3 miles from the Island of Jersey, and not 3 miles from British territory.

As regards the second question, it is to be observed that the French Ambassador, in his letter of the 25th April (document J), argues that the question must be governed solely by the terms of the Convention of 1839; that three distinct "zones" were established by Articles I, II, and III of the Convention of 1839, the first reserved exclusively to French fishermen, the second to British fishermen, and the third intermediate zone to the fishermen of both countries; that, apart from any territorial question, the fishery in the intermediate zone was, by Article III of the Convention, declared to be common to the subjects of both countries; and that the limit of the British zone being fixed by Article II at 3 miles from the Island of Jersey (and not 3 miles from British territory), the Ecréhos are within the common fishery.

His Excellency further argues that, if the limit of the British zone were taken at 3 miles from the Ecréhos, it would entirely absorb in that locality the intermediate zone provided for in Article III of the Convention.

Limit of 3 miles from the Ecréhos would not absorb the intermediate zone.

It is manifest that the above arguments, so far as they may have any weight, can apply only to the oyster fishery, the limits of which are, as stated by his Excellency, regulated by Articles I, II, and III of the Convention. But the limits of the general fishery are regulated by Article IX, and the British limit, within which British fishermen have the exclusive right of fishery, is fixed by that Article at "3 miles from low-water mark along the whole extent of the coasts of the British Islands." Moreover, it is not the fact that the limit of 3 miles from the Ecréhos would, as stated by his Excellency, absorb the intermediate zone, as those islets are situated about 5¾ miles from the coast of Jersey, and 8¼ miles from the coast of France.

British limits of the oyster fishery.

Argument in favour of the exclusive general right of fishery for British fishermen within 3 miles from the Ecréhos.

In view of the marked distinction in the terms used in Articles II and IX of the Convention for defining the British limits of the oyster fishery and of the general fishery respectively, it may be difficult to contend that the limit of the British oyster fishery extends beyond 3 miles from the Island of Jersey; but if that limit for the oyster fishery be conceded, the result will be of no practical importance, as Lord Granville is informed that the oyster fishery is not carried on at the Ecréhos; and it would afford a strong argument in support of the contention that, under Article IX, the general right of fishery is reserved exclusively for British fishermen to a distance of 3 miles from the Ecréhos.

Statement in the *procès-verbal* of the second sitting of the Fishery Commission.

The French Ambassador refers in his letter to the *procès-verbal* of the second sitting of the Fishery Commission which drew up the new Convention of 1867, and

draws an inference in favour of his argument from the statement found therein that Articles II and III of the Convention of 1839 had become useless, in view of the general principle established by Article I of the new Convention. But that Article abolished all distinction between the oyster fishery and the general fishery, and fixed the limit of 3 miles from the coast of France and of the British Islands respectively for all kinds of fishery, and the inference to be drawn from the word "unnecessary" would seem rather to be that Articles II and III of the Convention of 1839 were considered unnecessary because their real meaning and effect was practically carried out by Article I of the new Convention.

Question whether the Ecréhos are in the "mer commune" or within the exclusive British fishery limits depends on the construction of the Convention of 1839, and cannot be solved by reference to the Chart attached thereto.

His Excellency further argues that no change was made by the Commission of 1866 in the Chart attached to the Convention of 1839, and that in that Chart the Ecréhos are comprised "dans la mer commune."

But a reference to the Chart will show that the lines drawn thereon apply only to the French oyster fishery, and that the question whether the Ecréhos are in the "mer commune," or within the exclusive British fishery limits, cannot, unfortunately, be solved by reference to the Chart, but depends entirely on the construction of the Convention.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Granville with your opinion on the questions submitted in this letter and with any general observations which you may have to offer on the case.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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[After recapitulation of the above Reference, the Law Officers report as follows:—]

IN obedience to your Lordship's commands we have the honour to report—

Title of the British Crown to the Ecréhos is sufficiently established by the evidence.

That we think the title of the British Crown to the Ecréhos Islets, as dependencies of Jersey, is sufficiently established by the evidence furnished in the accompanying papers to justify Her Majesty's Government in maintaining the British right of sovereignty thereto.

Right of French fishermen to the oyster fishery within 3 miles of the Ecréhos is open to contention.

2. We think it is open to contention that French fishermen are entitled to participate in the oyster fishery within 3 miles of the Ecréhos Islets, having regard to the provisions of the Convention of 1839. We think it was probably not the intention of the Convention to confer or acknowledge this right, but looking at the language used in Articles II and III of the Convention, as compared with Article IX, the argument in favour of the right is a forcible one.

French fishermen are not entitled to the general fishery within 3 miles of the Ecréhos.

We do not think that French fishermen are entitled to participate in the general fishery within 3 miles of the Ecréhos Islets. The terms of Article IX appear to us, on the assumption that these islets are British territory, expressly to give the exclusive right within these waters to the subjects of Her Majesty.

French claim to the neutrality of these waters.

The French Ambassador seems to base his claim to the neutrality of these waters entirely upon the construction of the Convention of 1839. The later Convention certainly does not assist his contention.

The practice with regard to fishing within 3 miles of the islets should be ascertained.

It may be important to ascertain what has been the practice with regard to fishing within 3 miles of the islets. The French Ambassador assumes, apparently, that the French fishermen have always, in fact, exercised the privilege, and that it is now attempted to deprive them of what they have always heretofore enjoyed, and the correctness of this statement should be ascertained.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*Royal Courts of Justice, June* 19, 1883.

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## No. 39.

*The Law Officers of the Crown to Earl Granville.*—(*Received September* 8.)

*Royal Courts of Justice, September* 6, 1883.

My Lord,

Prohibition of import of arms into Annam.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th August, 1883, stating that he had, by direction of your

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Lordship, to transmit to us therewith a letter from the French Ambassador at this Court* referring to the importation of arms and munitions of war into Annam, in connection with the military operations undertaken by France in Tonquin, and stating that the Commanders of the French naval forces had been instructed to exercise a strict surveillance in the Gulf of Tonquin, and to search all suspected vessels which might approach the Annamite ports; whilst all vessels attempting to land arms, or to break through the blockade, after due notification that such traffic was interdicted, should be liable to seizure.

That reference was made in the French Ambassador's note to the Treaty of Commerce between France and Annam of the 31st August, 1874,† which stated, in Article II, "cependant, les armes et les munitions de guerre ne pourront être ni importées ni exportées par le commerce;" whilst Article XV contained stipulations in regard to the penalties attached to the illicit importation of arms into Annam, including seizure of the vessel in certain circumstances.

French request for publication of notice.

That we would observe that the French Ambassador requested that the necessary orders might be given for notifying to the owners and captains of British merchant-vessels the temporary prohibition of the importation of arms on the coast of Annam.

That Sir Julian Pauncefote annexed a copy of a Notification which was inserted in the "London Gazette" of the 10th April, 1863, of a Turkish Ordinance prohibiting the importation of arms and munitions of war into the Turkish Empire; and Sir Julian was to request that we would favour your Lordship with any observations which we might have to offer in regard to M. Waddington's note, and with our opinion whether, on the present occasion, it would be the proper course to publish a translation of that document in the "London Gazette."

That Sir Julian Pauncefote was to inclose copies of a correspondence‡ on that subject between the French Government and the Chinese Minister, which had been privately communicated to your Lordship by the Marquis Tsêng, from which we would perceive that the intention of the French Government was therein explained, and they declared that their object was not only to enforce the stipulation of the Treaty as regarded the prohibition of the importation of munitions of war, but also to establish a belligerent blockade within the meaning and conditions of the Declaration of Paris of the 16th April, 1856.§ No mention was made of a blockade *jure gentium* in the letter of M. Waddington to your Lordship, and Sir Julian Pauncefote was further to request that we would favour your Lordship with our opinions whether, in view of the unusual character of that Notification, and of the particular circumstances of the case, inquiry should be made whether the interdict which they had issued was in the exercise of belligerent rights, and was to be enforced by an effective blockade within the meaning of the Declaration of Paris. Assuming that the provisions of the Treaty between France and Annam relating to munitions could properly be enforced by France against foreign nations, it would seem that the Treaty was suspended by the fact of the war.

In obedience to your Lordship's commands we have the honour to report—

Should inquire as to nature of interdict and as to its enforcement.

That we think inquiries should be made as to the nature of the interdict which has been issued, and whether it is to be enforced by an effective blockade within the meaning of the Declaration of Paris.

France entitled, assuming a state of war, to stop import of arms without a blockade.

If it be intended so to blockade the ports of Annam, we think a public notification of the fact should at once be given. Even if no such blockade be intended, the French would be entitled, assuming a state of war to exist, to seize as contraband of war all munitions of war intended for the enemy; and persons shipping such munitions, and forwarding them to Annam, would do so at their own risk. But we are somewhat embarrassed by the fact that we do not quite understand in what light the military operations now proceeding are to be regarded.

Difficulty as to nature of French operations, and their effect on validity of French Treaty.

M. Waddington in his letter speaks of the French Government having occupied Tonquin to re-establish order there, and refers to the forces "of the rebels against whom it is fighting;" and it would rather seem as though the French Government were purporting to enforce, on the part of the Government of Annam, the provisions of the Treaty of the 31st August, 1874, prohibiting the importation of munitions of war. We do not see in what other view France could insist, as regards third nations, upon such a stipulation in a Treaty of Commerce, which could obviously have never been intended to operate as against Annam when the two nations who were parties to it were at war.

We think this affords additional ground for further inquiry from the French Ambassador, in order that the position taken up by the French Government may be more clearly defined.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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[*] M. Waddington, August 9, 1883.

[†] Confidential No. 2698.

[‡] M. Challemel-Lacour to Marquis Tsêng, August 10; Marquis Tsêng to M. Challemel-Lacour, August 17; M. Challemel-Lacour to Marquis Tsêng, August 18, 1883. See Confidential Print No. 4909, pp. 86, 87.

[§] Treaty No. 403.

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## No. 40.

*The Solicitor-General to Mr. Lister.—(Received September 20.)*

(Telegraphic.) *Inverness, September* 20, 1883.

Import of arms into Annam. Approve note to French Representative as to prevention of.

I AM sending back the papers to-day. I concur in the proposed despatch to M. Waddington.

### Annex.

*Draft of Letter to Count d'Aunay.*

M. le Chargé d'Affaires, *Foreign Office, September* , 1883.

French request for notification of interdict to British vessels.

IN my note of the 27th ultimo I had the honour to acknowledge the receipt of M. Waddington's communication of the 9th of the same month, in which his Excellency acquainted me with certain measures that have been adopted by the French Government to prevent the importation of arms and munitions of war into Annamese territory, and requested that the necessary orders might be given for notifying the temporary prohibition of such commerce on the coast of Annam, to the owners and captains of British merchant-vessels.

I hasten to assure you that Her Majesty's Government have not failed to give this matter their attentive consideration. But before issuing directions in the sense desired by the French Government, I desire to lay before you the following observations, which are occasioned by the particular circumstances of the case, and by the somewhat unusual character of the notification suggested.

Doubts as to character of interdict.

M. Waddington states that the Commanders of the French naval forces have been instructed to exercise a strict surveillance in the Gulf of Tonquin, and to search all suspected vessels that may approach the Annamese ports, and his Excellency adds that all such vessels as may attempt to land their cargo or to break the line of blockade after having been separately notified of the interdict placed on the commerce in arms, would be held liable to seizure.

His Excellency proceeds to refer to the Treaty of Commerce concluded in 1874* between France and Annam, pointing out that whilst its object was to open certain ports to foreign commerce without distinction of nationality, yet it formally provides (by Article II) that "les armes et les munitions de guerre ne pourront être ni importées ni exportées par le commerce," and his Excellency then states that the French Commissary at Tonquin, and the Commander of the French squadron, have been ordered to take steps for insuring the strict observance of the said clause.

The above statement of the circumstances of the case causes Her Majesty's Government some embarrassment, as they do not fully understand in what light the military operations now proceeding are to be regarded.

His Excellency speaks in his note of the French Government having occupied Tonquin to re-establish order there, and he refers to the "forces of the rebels against whom it is fighting."

No mention is made of a blockade *jure gentium*, and it would rather seem as though the French Government were purporting to enforce on the part of the Government of Annam the provisions of the Treaty of the 31st August, 1874, prohibiting the importation of munitions of war. Her Majesty's Government do not see in what other view France could insist as regards third parties upon such a stipulation in a Treaty of Commerce, which could obviously never have been intended to operate as against Annam when the two nations who were parties to it were at war.

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[*] Confidential No. 2698.

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Is it to be enforced by an effective blockade?

Under such circumstances, Her Majesty's Government hope that the position taken up by the French Government may be more clearly defined, and they would accordingly be glad to learn the nature of the interdict which has been issued, and whether it is to be enforced by an effective blockade within the meaning of the Declaration of Paris of the 16th April, 1856.

If so, a notification will be issued.

I have the honour to add that if it be intended so to blockade the ports of Annam, Her Majesty's Government would be prepared at once to issue a public notification of the fact.

I have, &c.

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## No. 41.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October 17.)*

My Lord, *Royal Courts of Justice, October* 17, 1883.

Title of the British Crown to the Ecréhos as dependencies of Jersey, and claims of French fishermen to fish within 3 miles of them.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 29th ultimo, stating that, with reference to our Report of the 19th June last, he was directed by your Lordship to transmit to us further correspondence* on the subject of the title of the British Crown to the Ecréhos Islets as dependencies of Jersey, and of the claims urged by the French Government on behalf of French fishermen to fish within 3 miles of those islets.

Proposed reply to the French Ambassador.

That it would be seen that at the suggestion of Her Majesty's Secretary of State for the Home Department certain amendments bearing upon that latter point had been introduced into the answer which it was proposed to return to the French Ambassador, in accordance with our above-mentioned Report, and that Mr. Lister, under those circumstances, was to request that we would favour your Lordship with our opinion as to whether the amended reply, as now drafted, would be right and proper, as well as with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed reply to the French Ambassador.

That, in our opinion, the amended reply, as now drafted, would be right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch from Earl Granville to M. Waddington.*

M. l'Ambassadeur, *Foreign Office*, , 1883.

Claims of French fishermen to fish within 3 miles of the Ecréhos.

SINCE I had the honour to acknowledge the receipt of M. Tissot's notes of the 25th April and 26th May last on the subject of the claim of French fishermen, under the Convention of 1839, to fish within 3 miles of the islets called the Ecréhos, near Jersey, Her Majesty's Government have very fully considered the representations of the French Government therein contained, and I have now the honour to communicate to your Excellency the conclusions at which they have arrived.

Alleged Act prohibiting to French fishermen access to the Ecréhos was only a Petition from Jersey fishermen.

In the first of M. Tissot's communications above referred to, complaint was made that the States of Jersey were about to pass an Act prohibiting to French fishermen access to the Ecréhos, in violation of the existing usage, and of the Fishery Convention of 1839; and the hope was expressed that Her Majesty's Government would recognize the justice of the protest of the French Government, and take steps to prevent any disturbance of the existing state of things.

Before proceeding further, I desire to correct a misapprehension which appears to have arisen as to this supposed legislative measure of the States of Jersey. It was not a "Projet de Loi" in the sense understood by M. Tissot, but only a Petition presented to the States by the Jersey fishermen, praying that steps might be taken to

protect the exclusive right of fishery which they claim within 3 miles of the Ecréhos under the Convention of 1839.

In his second letter of the 26th May M. Tissot, while complaining that the supposed "Projet de Loi" had been since voted by the States of Jersey, reiterates the hope that Her Majesty's Government will not permit a departure from the *status quo* of 1881, which Her Majesty's Government had then decided conditionally to leave undisturbed.

No foundation for the suggestion that the Ecréhos are neutral territory.

His Excellency insisted on the character of neutrality which he held to be impliedly imposed on the Ecréhos by the Conventions between the two countries, thus suggesting for the first time the fact that those islets are neutral territory, a proposition which I may be permitted to observe has no foundation in any Convention or correspondence between the two Governments.

Right of the British Crown to the sovereignty of the Ecréhos.

I can hardly believe, M. l'Ambassadeur, that M. Tissot intended seriously to call in question the right of the British Crown to the sovereignty of the Ecréhos. Those islets have always been treated as a dependency of Jersey; the soil belongs entirely to Jerseymen—chiefly fishermen who have dwellings and own small tracts of land there —and the islets for administrative purposes form part of the Parish of St. Martin's, in the Island of Jersey.

Treasury Order declaring the Ecréhos to be comprised within the limits of the port of Jersey.

Moreover, when, in October 1875, as stated by M. Tissot, the Lords Commissioners of Her Majesty's Treasury issued an Order constituting the Island of Jersey a Channel port, and mentioning the Ecréhos as being included in the limits of that port, the Earl of Derby, then Secretary of State for this Department, in reply to a representation from the French Ambassador on this subject, and after consultation with the Law Advisers of the Crown, furnished his Excellency with a statement of facts which, in the view of Her Majesty's Government, presented conclusive evidence of the title of the British Crown to the Ecréhos as dependencies of Jersey, and those statements the French Government did not attempt to controvert.

Not necessary to discuss the question of sovereignty, but only the right of French fishermen to fish within 3 miles.

Her Majesty's Government, therefore, do not consider it necessary to discuss the question of the sovereignty of Great Britain over those islets; and the only question which arises is whether, the Ecréhos being British territory, French fishermen are entitled, under the terms of the Convention of 1839, to participate either in the oyster fishery or in the general fishery within 3 miles of those islets.

French arguments respecting the three "zones," and the limit of the British zone being fixed at 3 miles from the Island of Jersey, and not 3 miles from the Ecréhos.

M. Tissot, in his letter of the 25th April, argues that the question must be governed solely by the terms of the Convention of 1839; that three distinct "zones" were established by Articles I, II, and III of that Convention, the first being reserved exclusively to French fishermen, the second to British fishermen, and the third, or intermediate zone, to the fishermen of both countries; that, apart from any territorial question, the fishery in the intermediate zone was, by Article III of the Convention, declared to be common to the subjects of both countries; that the limits of the British zone are fixed by Article II at 3 miles from the Island of Jersey, and not at 3 miles from the Ecréhos; and that, the latter islets being more than 3 miles from Jersey, they are within the intermediate zone, and therefore within the common fishery.

M. Tissot further argues that if the limit of the British zone were taken at 3 miles from the Ecréhos, instead of 3 miles from Jersey, it would entirely absorb in that locality the intermediate zone provided for in Article III of the Convention.

Above arguments can only apply to the oyster fishery.

It is manifest that the above arguments cannot apply to the general fishery, but only to the oyster fishery, the limits of which are, as stated by M. Tissot, regulated by Articles I, II, and III of the Convention; and that even if the French claim were admitted as regards the oyster fishery, it would be clearly untenable as regards the general fishery, for the limits of the *general fishery* are regulated by Article IX of the Convention, and the British limit within which British fishermen have the exclusive right of fishery is fixed by that Article at 3 miles from low-water mark, not "from the Island of Jersey," but "along the whole extent of the coasts of the British Islands."

Provisions in Article 65 of the Fishery Regulations of May 1843.

I may observe also that Article 65 of the Fishery Regulations agreed to by the British and French Governments in May 1843 (and which are carried into effect, so far as British cruizers are concerned, by the Act 6 & 7 Vict., cap. 79, sec. 18) provides that "the Commanders of cruizers of both countries shall exercise their judgment as to the causes of any transgressions committed by British or French fishing-boats in the seas where the said boats had the right to fish *in common*," and that Article 85 of those Regulations enacts that "the fishing-boats of the one country shall not approach nearer to any part of the coasts of the other country than the limit of 3 miles specified in Article IX" of the Convention of 1839.

British and French zones do not overlap.

These very positive and unambiguous declarations could not be affected by the

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* Admiralty, June 12; to Home Office, June 23; Home Office, June 29; to Home Office, August 7; Home Office, August 15; to Home Office, September 11; Home Office, September 24, 1883.

Further letter sent to Law Officers, October 15, 1883:—Home Office, October 9, 1883.

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circumstance that the British and French zones described in M. Tissot's letter happened, at one particular point, to overlap one another. But his Excellency would seem to be in error as to the fact, as the Ecréhos are situated about $5\frac{3}{4}$ miles from the coast of Jersey, and $8\frac{1}{4}$ miles from the coast of France; consequently the zones could not overlap.

Convention of 1867.

In the same letter M. Tissot refers to the Fishery Convention of 1867, which has not yet come into operation, and the terms of which are rendered still more precise and conclusive by the definition given in Article XXXVIII of the words "British Islands" as including the Islands of Jersey, Guernsey, Alderney, Sark, and Man, "*with their dependencies.*" His Excellency deprecates any argument being drawn from that provision adverse to the French claim; but it would be impossible, in the discussion of this question, to leave out of consideration the terms of the Convention of 1867, which did not purport to make any change in the fishery limits, and must be considered, therefore, as containing a more precise exposition of the meaning of the Convention of 1839 as regards the limits of the general right of fishery reserved to each nation. Indeed, as observed by M. Tissot, the British and French Commissioners in 1866 declared that there was no occasion to make any alteration in the Chart attached to the Convention of 1839. With reference to this Chart, however, his Excellency states that it reproduces as precisely as possible the limits of the British and French "zones," and notably those of the intermediate zone; but a reference to the Chart will show that the only limits delineated on it are those of the French oyster fishery, that is to say, the French zone. Neither the British zone nor the intermediate zone are delineated on the Chart, and therefore the question whether the Ecréhos are in the "mer commune," or within the exclusive British fishery limits, cannot be solved by reference to the Chart, but depends entirely on the construction of the Convention.

Question whether the Ecréhos are in the "mer commune" or within the exclusive British fishery limits depends on the construction of the Convention of 1839, and cannot be solved by reference to the Chart.

Intention of the Contracting Parties with regard to the oyster fishery the same in 1839 as it was in 1867.

As regards the oyster fishery, Her Majesty's Government consider the words in Article II of the Convention of 1839, "within 3 miles of the Island of Jersey," should be construed as indicated in Article XXXVIII of the Convention of 1867, that is to say, as including the Ecréhos, which are "dependencies" of Jersey. It appears to them that, notwithstanding the language used in Articles II and III of the Convention of 1839, as compared with that of Article IX, the intention of the High Contracting Parties on this point was precisely the same in 1839 as it was in 1867.

No doubt as to the right of general fishery within 3 miles of the Ecréhos being reserved exclusively to British subjects.

As regards the right of general fishery within 3 miles of the Ecréhos, Her Majesty's Government consider that the terms of Article IX of the Convention of 1839, and of the Fishery Regulations above referred to, admit of no doubt as to its being reserved exclusively to British subjects. The claim of French fishermen to participate in it appears to put in question the sovereignty of Great Britain over those islets, and I trust, therefore, M. l'Ambassadeur, that your Government will appreciate the difficulty felt by Her Majesty's Government in making any concession on this point consistently with the territorial rights of this country.

I have, &c.

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## No. 42.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November* 3.)

My Lord, *Royal Courts of Justice, November* 1, 1883.

Privileges of mail-packets plying between British and French ports.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 15th September, stating that he had the honour to transmit to us, by your Lordship's direction, the papers noted in the accompanying list, which related to the status of British and French steam-ships chartered or subsidized by the British or French Governments to carry letters, and plying between British and French ports.

Mr. Rothery concedes them only to packets plying between Dover and Calais.

That we would observe that Mr. Rothery, the Registrar of the Court of Admiralty, was of opinion that the privileges of men-of-war mentioned in Article V of the Convention were to be conceded only to the steam-ships performing the postal service between Dover and Calais, as any other interpretation would grant those privileges to all steamers receiving a postal subsidy from either Government, and plying between any ports of the British and French dominions—a result which Mr. Rothery did not consider to have been in the contemplation of the Parties to the Convention.

Court of Hong Kong to packets between Great Britain and France.

That the Supreme Court of Hong Kong was also of opinion that the privileges of men-of-war were confined under the Convention to the packets "employed by either Government in carrying mails between the two countries—Great Britain and France."

Law Officers, in 1872, to French packets touching at Hong Kong.

That in 1872, however, the Law Officers of the Crown, who were consulted on the point by the Colonial Office, did not concur in Mr. Rothery's opinion, and advised that the privileges in question were conceded to a steamer subsidized by the French Government, and plying between Marseilles and Shanghae, and touching at Hong Kong.

That Her Majesty's Government had acted on that view of the Postal Convention, but that the Judgment of the Supreme Court of Hong Kong had reopened the question, and as it was desired, if possible, to obtain the abrogation or a modification of Article V of the Convention (as to which we were referred to Print, No. 76, p. 66), that Mr. Lister was to request us to take the papers transmitted to us into our consideration, and to favour your Lordship with our opinion as to whether the privileges and exemptions mentioned in Article V of the Convention could be claimed by steam-ships other than those performing the postal service between Dover and Calais, or between Great Britain and France, and with any observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Do not differ from opinion of Law Officers in 1872.

That we are not prepared to differ from the view taken by the Law Officers in 1872, though the other view, viz., that Article II refers only to alternative routes between England and France, is susceptible of argument, and we do not feel that the point is free from doubt.

Must adhere to interpretation of Convention adopted in 1869.

If it be the fact, as stated in Comte de Montebello's letter of the 25th June, 1880 (see p. 22), that the interpretation of the Convention accepted by the French Government is the same as that stated in a letter written by Lord Clarendon to the French Ambassador on the 12th May, 1869, it would seem difficult to contend for any other construction now.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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*List of Papers.*

Confidential Print respecting privileges of mail packets.  
Postal Convention with France, September 24, 1856, Treaty No. 412.  
Judgment of Supreme Court of Hong Kong of January 10, 1880, in Colonial Office Letter of March 10, 1880, p. 3 of Print.  
Extract from Mr. Rothery's Report of July 31, 1872, Confidential Print.  
Law Officers to Colonial Office, September 16, 1872, Confidential Print.

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## No. 43.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November* 29.)

My Lord, *Royal Courts of Justice, November* 27, 1883.

Intestate estate of J. Halpin.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th instant, stating that he was to transmit to us papers* relating to an inquiry made by the French authorities at Havre as to the English law applicable to the distribution of the estate of John Halpin, a British subject deceased, at Rouen, in April last, together with a Report thereon by the Treasury Solicitor, who raised the question whether, having regard to the principle of the decision in Simonin *v.* Mallac, and other cases, the illegitimate children of John Halpin were not legitimized by his subsequent marriage at the British Consulate at Rouen.

That your Lordship would be glad to be favoured with our opinion as to whether it was necessary to express any opinion on that point, or whether it would suffice, in reply to the inquiry, to state that, by the Statute of Distributions, where a man died intestate leaving a widow and children, the widow is entitled to one-third of his personalty, and his children to the remainder in equal shares.

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* Consul Bernal, No. 37, September 26; to Treasury, October 4; Treasury, October 18, 1883.

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In obedience to your Lordship's commands we have the honour to report—

Sufficient to state law as to distribution apart from question of legitimacy of children.

That we concur in thinking that Mr. Consul Bernal might be informed that, apart from any question of legitimacy, the English law provides that in case of the death of an intestate leaving a widow and children, the widow is entitled to one-third of his personalty, and his children to the remainder in equal shares.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 44.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 8.)

My Lord, *Royal Courts of Justice, December* 6, 1883.

Prohibition of import of arms, &c., into Annam, and search of neutral vessels.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th ultimo, stating that, upon the receipt of our Report of the 6th September last on the subject of the letter from the French Ambassador at this Court of the 9th August, referring to the importation of arms and munitions of war into Annam, and the instructions issued to the Commanders of the French naval forces to exercise a strict surveillance and to search all suspected vessels which might approach the Annamite ports, the French Chargé d'Affaires was, in accordance with our recommendation, requested to furnish a further explanation as to the nature of the position taken up by the French Government in its operations against Annam, and also as to the nature and extent of the interdict in regard to the importation of munitions of war.

That Sir Julian Pauncefote inclosed the letter to Count d'Aunay to which he had referred, and his reply.*

Uncertainty as to establishment of a blockade, *jure gentium*.

That M. Waddington's note of the 9th August, and our Report† thereon, were also annexed. That it would be observed in Count d'Aunay's note of the 10th October it was stated that no blockade would be established, except under the conditions laid down in the Declaration of Paris. That it was not clear from that that a blockade, *jure gentium*, had been, or was intended to be, established. That it would rather appear from the two French notes that the right which was claimed, and intended to be exercised, was to search vessels suspected of carrying contraband of war to Annamese ports, under the usual belligerent right conceded by the law of nations, and also to enforce on neutral vessels the prohibition against the importation of munitions of war, agreed to in the Treaty of 1874 between France and Annam.

That, as regarded the exercise of the belligerent right, no notification would appear necessary, and that, as regarded the claim to enforce on neutral vessels the provisions of the Treaty of 1874 respecting munitions of war, your Lordship gathered from our previous Report that it should not be admitted.

That under these circumstances it seemed doubtful whether any notification was expedient, at all events without a further reference to the French Government, in order to ascertain whether a blockade, *jure gentium*, under the conditions of the Declaration of Paris, had been established, and, if so, from what date.

That Sir Julian Pauncefote was further to annex an extract from the "Journal Officiel" of the 31st October, in which we would find, marked, that portion of a speech of the French Minister for Foreign Affairs which treated of the matter now under consideration.

That we were requested to favour your Lordship with our opinion as to the course which should be pursued under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

Notification of doubtful expediency.

That we concur in thinking it doubtful whether any notification is expedient.

No notification appears necessary of the intention, if the claim be to exercise the belligerent right of preventing the import of munitions of war into hostile territory.

Refuse French claim to enforce Treaty of 1874 as to neutral vessels.

We think that the claim to enforce, as against the vessels of third nations, in the manner proposed, the provisions of the Treaty of 1874, should not be admitted, and that this should be intimated to the French Government.

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* To Count d'Aunay, September 21, 1883. From Count d'Aunay, October 10, 1883. See Confidential Print No. 4909, pp. 123 and 140*.

† Law Officers, September 6, 1883. Confidential Print No. 4909, p. 97.

Inquire as to establishment of blockade.

It might be well to inquire of the French Government whether a blockade, *jure gentium*, has been, or is about to be, established.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## General.

### No. 45.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 27.)

My Lord, *Temple, January* 26, 1883.

Codification of private international law.

Italian proposal.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 5th instant, stating that he was directed to transmit a note from the Italian Ambassador at this Court,* inquiring the intentions of Her Majesty's Government in regard to certain proposals that had been made by the Italian Government with a view to the codification, by Convention, of private international law, together with a Mémoire of the Italian negotiations upon the subject.

That our views were requested as to the reply which should be returned to the Italian Ambassador.

In obedience to your Lordship's commands, we have the honour to report—

Codification advantageous, but difficult.

Answer depends on intentions of Her Majesty's Government as to negotiations.

That we have some difficulty in making any suggestion as to the reply which should be returned to the Italian Ambassador, inasmuch as the question is entirely one of policy. The codification of private international law, if it could be accomplished, would no doubt be of considerable advantage. But it would be a work involving no little difficulty. The answer to be returned to the Italian Ambassador must depend upon whether Her Majesty's Government are disposed to enter into negotiations with a view to the codification proposed by the Italian Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 46.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 1.)

My Lord, *Temple, February* 28, 1883.

Protection of submarine telegraph cables.

Draft of proposed Treaty.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 24th ultimo, stating that he was directed by your Lordship to state to us that your Lordship would be glad to be favoured with our opinion on the draft of a proposed Treaty for the protection of submarine telegraph cables.

That the different Governments concerned having come to the conclusion that it was advisable to consider the expediency of adopting measures more effectual for that purpose than could be taken under existing Treaties and legislation, a Conference was held at Paris on the subject last October, the proceedings of which were set forth in the volume of *procès-verbaux* inclosed,† and in the copy of the Report of the British Delegates. That it would be seen (pp. 179–187 of the *procès-verbaux*) that the Conference drew up and submitted to the Governments represented the draft of a Convention to secure the maintenance of telegraphic communication by means of

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* General Menabrea, September 26, 1882, transmitting Mémoire by M. Mancini.

† *Procès-verbaux*, Foreign Office Library, folio No. 1322.

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submarine cables. That that draft had been considered in consultation with the different Departments concerned, and that your Lordship now desired to refer it to us.

That the Articles to which our attention was more particularly requested were Nos. VIII, IX, and X, to which, under instructions from Her Majesty's Government, the British Delegates at the Conference took exception when they were proposed to and adopted by the Conference. That, taking Articles VIII and X together, it would seem that, under the circumstances of the discussion recorded in the *procès-verbaux* (pp. 155–162), Her Majesty's Government might accept Article VIII, provided more definite provisions were substituted for the present wording of Article X, which as it now stood appeared to be incomplete. That it should be stated, however, that the Board of Trade* were willing to accept Articles VIII and X as now drafted, but that the Colonial Office† pointed out that that latter Article required modification. That a new version of that Article had accordingly been drafted with the view to give effect to the remarks of the Colonial Office and the statements of the British Delegates at the Conference at Paris, and that that new version was submitted for our opinion. That it was founded, as would be seen, on Articles XXIX, XXX, and XXXI of the Convention relative to the police of the North Sea fisheries signed at the Hague on the 6th May last, but not yet ratified, for which we were referred to Blue Book "Commercial No. 24," pp. 168, 169, which was inclosed.

That, as regarded Article IX of the proposed Convention for the protection of submarine telegraphs, the opinion of the Departments more immediately concerned with its provisions, viz., the Post Office‡ and the Board of Trade, was that it should either be expunged entirely from the draft of Convention, or else that its application should be made optional in each country party to the Convention.

That copies of letters from the Departments concerned, giving their views on the above-mentioned points, were inclosed, together with two letters in which the Board of Trade§ forwarded statements respecting the provisions of English law with regard to injuries to submarine telegraph cables.

**Draft of Additional Article as to Treaty taking effect only in time of peace.**

That Mr. Lister was further to submit to us the draft of an Additional Article, which appeared to be necessary in order to carry out the understanding arrived at, that the Convention should only take effect in time of peace. That that Article would enable any Power to withdraw from it if engaged in war.

That it would further appear desirable, in the communication to the Powers in which the assent of Her Majesty's Government to the proposed Convention was given, to call attention to the necessity of providing, by legislation in each country (where such provision might not already exist), for the punishment of offenders breaking or causing injury to a submarine cable within foreign territorial waters, and escaping from those waters before means could be taken to bring them to justice in the territorial Courts.

That, as the proposed Convention was limited exclusively to offences committed beyond territorial waters, it was conceived that that subject might more properly be dealt with by a separate arrangement among the Powers.

That in transmitting to us these papers Mr. Lister was to request that we would be so good as to favour your Lordship, at our earliest convenience, with such observations as we might have to offer on the draft of the proposed Convention, and the amended Article X, and the Additional Article respecting the power to withdraw in time of war, and proposed arrangement respecting the punishment of offences committed within territorial waters, more especially as regarded the new legislation which might be required in this country to give them effect.

We were also honoured with your Lordship's further commands contained in a letter from Sir Julian Pauncefote of the 3rd instant, stating that, with reference to the letter from your Lordship's Department of the 24th ultimo, he was directed by your Lordship to transmit to us a note from the Italian Ambassador at this Court‖ containing observations on the part of the Italian Government on Articles X and XII of the proposed Convention for the protection of submarine telegraph cables.

That, as regarded Article X, an amended version of which was submitted for our consideration in the above-mentioned letter of the 24th ultimo, we would observe that the Italian Government proposed that the *procès-verbaux* referred to in the Article drawn up by naval officers should be "authenticated in such a way as to make it quite clear that the reporting Commander had been specially deputed for the purpose, so that the document should have the value of evidence in Court." That it was to be remarked, however, that naval officers would seldom be "specially deputed" to attend to the protection of submarine telegraph cables, and that the preferable course might be, as seemed to be contemplated in Article X, to confer the powers to be exercised under that Article in general terms on officers commanding the ships of war, or ships specially commissioned for the purpose, of the Powers parties to the Convention.

That, as regarded Article XII, it would appear that the Italian Government thought it advisable that "common rules should be adopted by the several Contracting Governments" with respect to the penalties to be imposed under the provisions of that Article.

That it was to be observed, however, on that proposition, that while advantage would arise from an interchange of views on the subject, in order to establish some degree of uniformity of treatment, it would hardly be practicable to establish by Treaty definite and precise punishment for each offence. That the Treaty would provide in general terms that the penalty should be fine or imprisonment, or both, and that the Powers might, with advantage, discuss details under that general provision, to be kept in view in legislation necessary to give effect to the Convention, but that it would hardly be possible in an arrangement of that nature, to which many Powers might be parties, to make full and complete provisions for punishment of offences, and that much, it would seem, must be left to the legislation and the Courts of each nation.

That, in transmitting the note (which was inclosed), together with the foregoing observations, for our consideration, Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion on the points thus raised, with our Report on the subject generally, as stated to us in Mr. Lister's letter of the 24th ultimo.

In obedience to your Lordship's commands we have the honour to report—

That, having regard to the views taken by the other Powers represented at the Conference, it does not seem likely that any arrangement more satisfactory than that contained in Article VIII would be agreed to.

**Opinion on Articles VIII, IX, and X.**

That, as regards Article IX, we would observe that its meaning is not very clear. If the Article is confined to proceedings taken for the purpose of enforcing penalties of some kind for offences against, or contraventions of, the Convention, there would not seem to be any great objection to providing that such proceedings should be by the State *or* in its name. This does not appear necessarily to impose upon the State the costs of such proceedings, or the obligation to initiate them. We are not clear that the language used would include the case of a claim by a person injured under Article VII, though possibly the non-payment of a sum claimed under that Article might be deemed a contravention of the Convention, and so within Article IX.

If the Article were confined to what we should term prosecutions, viz., the enforcement of a penalty for an offence, there would seem to be considerable ground for throwing the obligation upon the Contracting States if the Convention is to be made really effective.

We are not quite sure that we understand the purpose of the proposed Article X, so far as regards its operation in this country. The Article, as it at present stands in the Convention, does not provide that the *procès-verbaux*, taken as prescribed therein, are to be used as evidence before the Tribunals of any of the Contracting Parties in support of proceedings instituted for an offence against the Convention. And this is not provided for in the proposed Article.

Is it intended that these *procès-verbaux* are to be used as evidence before the Tribunals of this country? Unless it is, we do not see much advantage in the variations with respect to them between Article X of the Convention and the proposed Article. If the idea is that these *procès-verbaux* should be made available as evidence before any Tribunal, this could only be accomplished by legislation, and we doubt very much whether the Legislature could be induced to go the length of enacting that all *procès-verbaux*, taken under the conditions prescribed by the proposed Article, should be admissible in evidence.

We doubt, too, whether the Legislature would be prepared to give the somewhat arbitrary and serious powers which are conferred upon vessels of war by the provisions of the proposed Article, which not only gives an extensive right of search, but enables a vessel or its crew, if believed guilty of an offence against the Convention, to be forcibly taken into port. For the prevention of some offences the Legislature might be prepared to give such powers, but we are not satisfied that it would be willing to do so merely for the purpose of protecting submarine cables.

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* Board of Trade, December 12, 1882.
† Colonial Office, December 8, 1882.
‡ Post Office, December 22, 1882, and January 5, 1883.
§ Board of Trade, May 6 and August 16, 1882.
‖ Count Nigra, January 28, 1883.

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We agree in thinking that the question of the punishment of those offending within territorial waters had better be dealt with separately.

We think that legislation would be necessary in this country for the purpose of making the offence described in Article II of the Convention a punishable offence in this country, whether committed within or without territorial waters.

Injuring a submarine cable by "culpable negligence" is not at the present time an offence, but only renders the person guilty of it liable to an action for damages. "Wilful" injury to a cable, if occurring in this country, would probably be in general within the provisions of the Acts providing against malicious injury to property. But as legislation will be necessary, both heads of the offence should be treated alike, and comprised in one enactment.

**Proposed modification of Additional Article.**

We would suggest a modification of the proposed Additional Article I. It might, we think, perhaps be better to frame it as follows:—

"The High Contracting Parties further agree that the present Convention shall not be obligatory as regards any Power if and whilst it is engaged in war, provided that notice has been given by such Power to the other Powers of its withdrawal during the time of such war.

"The Convention shall remain," &c. (as in draft submitted to us).

Without some such change in the wording, the Convention would not revive at the conclusion of the war, and we gather that it is only during a time of war that it is desired that the Convention should not operate.

With regard to the points raised by the Italian Government which are communicated to us in Sir J. Pauncefote's letter of the 3rd February, we concur in the view suggested upon those points in his letter, and have no further observations to add thereon.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## (New.) ARTICLE X.

LORSQUE les officiers commandant les bâtiments de guerre ou les bâtiments spécialement commissionnés à cet effet de l'une des Hautes Parties Contractantes ont lieu de croire qu'une infraction aux mesures prévues par la présente Convention a été commise, ils peuvent exiger du patron du navire auquel une contravention est ainsi imputée d'exhiber la pièce officielle justifiant de sa nationalité. Mention sommaire de cette exhibition est faite immédiatement sur la pièce produite.

Les officiers commandant les dits bâtiments ne peuvent pousser plus loin leur visite ou leur recherche à bord d'un navire qui n'appartient pas à leur nationalité, à moins, toutefois, que cela ne soit nécessaire pour relever les preuves d'une infraction de la présente Convention.

Ils apprécient la gravité des faits de leur compétence parvenus à leur connaissance et constatent le degré de l'infraction commise, et, le cas échéant, du dommage éprouvé.

Ils dressent, s'il y a lieu, procès-verbal de la constatation des faits telle qu'elle résulte tant des déclarations des parties intéressées que du témoignage des personnes présentes.

Si le cas lui semble assez grave pour justifier cette mesure, le Commandant d'un des dits bâtiments aura le droit de conduire le navire en contravention dans un port de la nation du Tribunal compétent. Il pourra même prendre à son bord une partie des hommes de l'équipage pour les remettre entre les mains des autorités de cette même nation.

Le procès-verbal prévu au présent Article est rédigé dans la langue du Commandant du bâtiment de guerre ou du bâtiment spécialement commissionné et suivant les formes en usage dans son pays.

Les inculpés et les témoins ont le droit d'y ajouter ou d'y faire ajouter, dans leur propre langue, toute mention ou témoignage qu'ils croiront utile. Ces déclarations devront être dûment signées.

## ADDITIONAL ARTICLE.

The High-Contracting Parties further agree that any Power may withdraw from the present Convention if engaged in war, upon giving notice of such intention to the

# General.

## No. 46*.

*Memorandum by the Lord Chancellor.*

**Anglican Bishopric for the north of Europe.**

AS the law now stands, this cannot be done under the Suffragan Bishops Act (26 Henry VIII, cap. 14), because the Bishop of London has already one Suffragan Bishop, and the Act allows only one for the same diocese.

**Appointment and jurisdiction of.**

The authority exercised by the Bishops of London over British clergymen, &c., on the continent of Europe being not diocesan, or legal, but merely customary, and entirely voluntary on the part of those who submit to it, I do not think that it would be consistent with the principles of our legislation to ask Parliament for any new powers in aid of it. Even if Parliament could be expected to authorize the consecration of a titular Bishop of Southampton to assist the Bishop of London in the superintendence of British clergy, &c., on the continent, he would not *really* be a Suffragan of the diocese of London in any sense hitherto known to the law. I do not think it would be wise to make such a proposal to Parliament, especially as the same thing, in substance (though not in form), might be done if it were thought desirable under the powers of the Jerusalem Bishopric Act (5 Vict., cap. 6), but to me it seems to be contrary to sound policy and to the amity of nations for the British Parliament to legislate concerning the performance of episcopal functions within the dominions of other civilized European States; and I should be averse, not only to any such new legislation, but to the use, for that purpose, of the Jerusalem Bishopric Act.

It is of course quite possible (and *theoretically* unobjectionable) to create a Bishopric of Heligoland, with powers to exercise a voluntary episcopal superintendence over British congregations (without legal jurisdiction) in the north of Europe similar to that exercised by the Bishop of Gibraltar in the south. Whether there are any valid political reasons against it (assuming that the State were not called upon to provide a stipend) is a point on which I have no information enabling me to judge. From a *domestic* (*i.e.*, British) point of view I do not perceive any.

(Signed) SELBORNE.

*June* 4, 1883.

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other Powers parties to it. The Convention shall remain in force as between these other Powers, unless determined as provided in Article XV.

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*List of further Papers submitted to Law Officers in Foreign Office Letter of January* 24, 1883.

Report of British Delegates, No. 6, November 3, 1882.
Further Letters showing views of Departments concerned on Articles VIII, IX, and X of proposed Convention, viz.: Board of Trade, January 5, 1883; Admiralty, December 4, 1882.
Blue Book, North Sea Fisheries, "Commercial No. 24 (1882)," No. 2556.

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## No. 47.

### *Memorandum by the Lord Chancellor.*

Codification of private international law.

Concur in terms of note as to.

I AGREE in the general substance of Sir Julian Pauncefote's note, though I confess I am not particularly sanguine as to any very useful result.

Obstacles presented by differences between British and foreign marriage laws.

Foreign Judgments appear to offer the most hopeful ground. Marriage and divorce are both attended with greater difficulties, unless the rule of domicil (as distinguished from nationality, or simple residence) is adopted as the basis. What I fear is that the countries which have adopted the Code Civil will not accept that basis, while we, on the other hand, in this country, are not likely to accept that of nationality. It would, I think, be out of the question to recognize foreign marriages or divorces, when the parties were subject, as to their personal status, to English law, as having effects inconsistent with the law of England; and it would be very difficult to lay down any rule, to have effect in England, which would make the validity of marriages *boná fide* contracted in England between persons, either of whom was at the time properly subject to English law, dependent upon positive conditions imposed by some foreign law (*e.g.*, that of France) to which the other party might be subject. Uniformity of laws and conditions, on all these subjects, in all civilized countries, would be most desirable. But, at present, we have not such uniformity even between England and Scotland, though it was recommended, and the means of arriving at it were pointed out by the elaborate Report of a Royal Commission, many years since—a Report which has been absolutely neglected. The passing of the Wife's Sister Bill (should it pass) will be but a single, and comparatively small, step towards the assimilation of our law of personal capacity to contract marriage to that of the Continent or of America; and our divorce law is equally different from theirs, nor is it at all probable (even if it were desirable, which I do not think) that we should, for a long time to come, endure the laxity and facility of Continental or American laws on the subject of divorce.

(Signed) SELBORNE.

*June* 21, 1883.

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*List of Papers.*

M. de Ressmann, October 3 (communicated October 5), 1881.
Memorandum (Sir E. Hertslet), November 14, 1881.
General Menabrea, December 8, 1881.
To ditto, December 15. 1881.
General Menabrea, September 26, 1882.
Memorandum (Sir R. Phillimore), October 14, 1882.
Ditto (Sir Travers Twiss), November 13, 1882.
Law Officers, January 26, 1883.

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## Germany.

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### No. 48.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 20.)*

My Lord, *Temple, January* 20, 1883.

Nationality of son, born at Breslau, of Mr. J. Mosenthal, naturalized in Cape Colony, after release from German nationality.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th ultimo, stating that he was to transmit to us a correspondence* relative to the claim of Mr. J. Mosenthal, who had obtained a certificate of British naturalization in the Cape Colony, after having been legally released of his former allegiance as a German subject, to have his son, recently born at Breslau, registered as a British subject.

That our opinion was requested as to whether we concurred in the terms of the reply which it was proposed to return to Mr. Mosenthal's representation, or whether, in view of the fact that Mr. Mosenthal's son had apparently no nationality except in the Cape Colony, and that his nationality in that part of Her Majesty's dominions was British, we considered that he might properly be registered as a British subject.

That a copy of the General Instructions for Her Majesty's Consular officers was inclosed, and that our particular attention was called to paragraph 14, p. 29, "Registration of Births and Deaths, &c."

In obedience to your Lordship's commands we have the honour to report—

He is entitled to British nationality.

That inasmuch as Mr. Mosenthal's son has no nationality except in the Cape Colony, and that he is entitled to be treated as a native in that Colony, which is a part of Her Majesty's dominions, we think that he might without impropriety be registered asa British subject.

We understand that Mr. Mosenthal is only temporarily residing in Germany, and that his German nationality is not revived by such residence, and that the fact of the child's birth in Germany does not make him, according to the law of that Empire, a German subject.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 49.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 5.)*

My Lord, *Royal Courts of Justice, May* 5, 1883.

Registration, as a British subject, of the son, born at Breslau, of Mr. Mosenthal.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 27th ultimo, stating that, with reference to our Report of the 20th January last, he was to transmit to us a despatch which your Lordship addressed to Her Majesty's Ambassador at Berlin on the subject of the registration as a British subject of Mr. Mosenthal's son, born at Breslau, and also to inclose a despatch, in reply, from Lord Ampthill,† stating his reasons for having instructed the Consular authority to refuse the registration in this case.

That Mr. Lister also transmitted a draft of the reply which your Lordship proposed to make to Lord Ampthill's despatch, and requested our opinion as to whether it was right and proper. That the previous papers,‡ together with certain despatches alluded to by Lord Ampthill in his despatch No. 14, Treaty, were inclosed for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Approve despatch to Lord Ampthill, but suggest additions.

That we think the proposed draft despatch is right and proper. But we would suggest the addition at the end of the second paragraph of the words "differing in its terms from the Imperial Act," and at the end of the despatch of the words "and his son."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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Annex.

*Draft of Despatch from Earl Granville to Lord Ampthill.*

(No. . Treaty.)

My Lord, *Foreign Office, May* , 1883.

I HAVE had under my consideration your Excellency's despatch No. 14, Treaty, of the 26th February last, relative to the claim of Mr. Mosenthal to have his son, born at Breslau, registered as a British subject.

In reply, I have to observe that the precedents furnished by your Excellency appear to me to have arisen in cases of naturalization under the Imperial Act, 1870, which is not applicable to the present case, as Mr. Mosenthal was naturalized, not under that Act, but at the Cape under a Local Act, differing in its terms from the Imperial Act.

If, therefore, it is clear that neither the father nor the son are by German law deemed German subjects, I am of opinion that there is no objection to the registration of the birth of Mr. Mosenthal's son at the British Vice-Consulate at Breslau.

As, however, there seems to be a doubt on this point, I should be glad to learn your Excellency's opinion as to the exact bearing of the German law as to the nationality in Germany of Mr. Mosenthal and his son.

I am, &c.

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### No. 50.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 3.)*

My Lord, *Royal Courts of Justice, July* , 1883.

Registration, as British subject, of the son born at Breslau of Mr. Mosenthal.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st ultimo, stating that with reference to our Report of the 5th May he was to transmit to us, by direction of your Lordship, a despatch from Her Majesty's Chargé d'Affaires at Berlin, on the subject of the registration as a British subject of Mr. Mosenthal's child.

That Sir J. Pauncefote was also to inclose a draft of the reply which your Lordship proposed to make to that despatch, and that he was to request our opinion as to whether it was right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve draft to Sir J. Walsham.

That, in our opinion, the proposed despatch is right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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Annex.

*Draft of a Despatch to Sir J. Walsham.*

Sir, *Foreign Office, June* , 1883.

I HAVE considered, in communication with the Law Officers of the Crown, your despatch No. 30, Treaty, respecting the registration as a British subject of Mr. Mosenthal's child, and I have, in reply, to state to you that the reason why the instruction to Lord Odo Russell, No. 44, of the 12th February, 1873, was issued is explained in that despatch. Her Majesty's Representative was instructed to register the children

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* Mr. Mosenthal, October 30; to Colonial Office, November 23; Colonial Office, December 2; to Mr. Mosenthal, December , 1882; General Instructions for Her Majesty's Consuls.

† Lord Ampthill, No. 14, Treaty, February 26, 1883.

‡ To Lord Ampthill, No. 4, Treaty, February 1; to Mr. Mosenthal, January 31; Lord Ampthill, No. 14, Treaty, February 26; Proposed draft to Lord Ampthill, May ; Law Officers' Report, January 20, 1883; Mr. Mosenthal, October 30; to Colonial Office, November 23; Colonial Office, December 2 (1 Inclosure), 1882; Lord Odo Russell, No. 446, September 28, 1880 (3 Inclosures); ditto, No. 78, February 11, 1881 (2 Inclosures); to Lord Odo Russell, No. 89, February 23, 1881; Naturalization Act, 1870, 33 & 34 Vict., cap. 14.

of naturalized British subjects as such, and not as "British subjects," because it was uncertain whether such children would fulfil the conditions of section 10 (5) of "The Naturalization Act, 1870," and thereby acquire the status of British subjects. If they should not fulfil such conditions, they would retain their nationality of origin, and, although the mere fact of registration at a Mission or Consulate has no legal effect as regards the status of the child, it is more convenient that the question of nationality should be left open on the register. But, in the present case, if by German law Mr. Mosenthal's son is not a German subject, he has no nationality except that derived from his father's British nationality in the Cape Colony, and therefore no inconvenience could arise from registering him as a British subject. There is no objection, however, to the instruction No. 44 of the 12th February, 1873, being followed in this instance, and to Mr. Mosenthal's son being registered as the son of a naturalized British subject.

I am, &c.

*List of Papers accompanying Letter of June* 21, 1883.

Proposed draft to Sir J. Walsham, June ; Sir J. Walsham, No. 36, Treaty, June 8; Law Officers, May 5; to Lord Ampthill, No. 13, Treaty, May 15; Lord Ampthill, No. 14, Treaty, February 26; to ditto, No. 4, Treaty, February 1; to Mr. Mosenthal, January 31; Law Officers, January 20, 1883; Colonial Office, December 2; to ditto, November 23, 1882; Mr. Mosenthal, October 30, 1882; Lord Odo Russell, No. 446, September 28, 1880; ditto, No. 78, February 11; to ditto, No. 89, February 23, 1881; Naturalization Act, 1870, 33 Vic., cap. 14.

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# Haïti.

## No. 51.

*The Law Officers of the Crown to Earl Granville.—(Received July* 17.)

My Lord, *Royal Courts of Justice, July* 16, 1883.

Blockade of port of Jérémie in hands of insurgents.

Decree of Haitian Government.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th instant stating that he had the honour to transmit to us, by direction of your Lordship, the papers noted in the margin[*] which related to the publication by the Government of Haïti of a Decree dated the 5th June, declaring the port of Jérémie to be in a state of blockade.

That it was presumed that as Jérémie was in the possession of the insurgents, the Decree was not intended as a municipal law closing the port to foreign commerce, but as a Notification of a blockade *jure gentium*.

Blockade not enforced.

That your Lordship proposed to insert a copy and translation of that Decree in the next issue of the "London Gazette;" but that inasmuch as Mr. Hunt reported that at the date of his despatch the blockade had not been enforced by the presence of any Haïtian vessel of war, your Lordship further proposed, with our concurrence, to call on Mr. Hunt to inquire and report at once whether the blockade was (as was presumed) one *jure gentium*, and, if so, whether it was now effectively maintained by the presence of ships of war in sufficient number to prevent ingress and egress.

That on receipt of Mr. Hunt's reply it would be laid before us for our advice as to whether the blockade was lawful as against neutrals, or whether it would be necessary to insert a further notice in the "London Gazette."

That on that point Sir Julian was to inclose a copy of a Notification issued in the case of the Texan blockade of Tampico and Vera Cruz in 1842.

That the draft of the proposed instruction to Her Majesty's Representative at Port-au-Prince was inclosed, together with a copy of the Notification proposed to be inserted in the "Gazette;" and that Sir Julian was to request that we would take those papers into our immediate consideration and favour your Lordship with our early opinion as to whether the course proposed was right and proper under the circumstances, or whether the fact should be published simultaneously with the Decree that at the date of the latest reports no Haïtian vessel of war had appeared at Jérémie.

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[*] Mr. Hunt, No. 18, May 26; ditto, No. 20, June 11, 1883; Decree of the Haïtian Government of June 5, 1883; Notification of the Texan blockade of Vera Cruz and Tampico in 1842, dated September 21, 1842 (State Papers, vol. xxxiv, p. 1262).

In obedience to your Lordship's commands we have the honour to report—

Approve proposed instructions to Mr. Hunt.

That we think the course proposed to be taken is correct. It may be well to explain more explicitly to Mr. Hunt the difference between a blockade *jure gentium* and one existing under municipal regulation.

Notification in "Gazette" sufficient.

The Notification in the "Gazette" is sufficient, and we think should contain no reference to the absence of Haïtian vessels of war.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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Annexes.

(1.)

*Draft of Despatch to Mr. Hunt.*

(No. .)
Sir, *Foreign Office, July* , 1883.

I HAVE received your despatch No. 20 of the 11th ultimo, with its inclosures, announcing that the Haïtian Government have declared (1) that the district of Grand'Anse is in a state of siege; and (2) that the port of Jérémie is in a state of blockade.

You state, however, that the reports which have reached you from the masters of British vessels show that the blockade was not effectively maintained, there being no Haïtian war-vessel near Port Jérémie.

I have therefore to instruct you to inquire and report at once whether the blockade is (as I presume it is intended to be) one *jure gentium*, and, if so, whether it is effectively maintained by the presence of ships of war in sufficient number to prevent ingress and egress.

Can only recognize an effective blockade *jure gentium*, and not one established by a municipal law.

If the blockade should not be effective, Her Majesty's Government could not recognize its validity; nor could they do so if the Decree is intended to operate only as a municipal blockade closing the port of Jérémie to foreign commerce by a municipal law. Jérémie being in possession of the insurgents, the only valid blockade that can be lawfully established as against neutrals is one recognized by international law as a blockade *jure gentium*, and such blockade must be effectively maintained as a condition of its validity.

I am, &c.

(2.)

*Draft of Proposed Notification to be inserted in the "London Gazette."*

IT is hereby notified that Her Majesty's Principal Secretary of State for Foreign Affairs has received a despatch dated the 11th June last, from Mr. Hunt, Acting British Consul-General in Haïti, stating that the port of Jérémie had, by a Decree of the Haïtian Government dated the 5th June, a copy and translation of which is annexed, been declared to be in a state of blockade.

*Foreign Office, July* , 1883.

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(Translation.)

### Republic of Haïti.

*Decree.*

Salomon, President of Haïti.

In pursuance of our Decree dated the 4th instant, which places the district of the Grand'Anse in a state of siege;

With the recommendation of the Council of the Secretaries of State,

Decrees as follows:

Art. 1. The port of Jérémie is declared to be in a state of blockade.

Art. 2. This Decree shall be printed and published, and the Secretaries of State for War and for the Navy are charged with its execution.

Published at the National Palace at Port-au-Prince, the 5th June, 1883, the eightieth year of Independence.

(Signed) SALOMON.

By the President:
The Secretary of State for Justice and Worship,
charged, *ad interim*, with the Departments
of War and Marine,
(Signed) MADIOU.

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## No. 52.

*The Law Officers of the Crown to Earl Granville.—(Received October* 1.)

Blockade of the Ports of Jeremie and Jacmel not likely to be effective.

My Lord, *Royal Courts of Justice, September* 29, 1883.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 10th instant, stating that with reference to the letter from the Foreign Office of the 14th July, and to our reply of the 16th of the same month, relative to the blockade of the port of Jeremie in Haiti, he had the honour to transmit to us, by direction of the Secretary of State, the despatch ,noted in the margin* of his letter from Her Majesty's Representative at Port-au-Prince, forwarding a notification received by him from the Haitian Government of the blockade of Jacmel, and stating that it was not likely to be an effective one, and that the port of Jeremie was still open. That Mr. Currie was at the same time to transmit to us, as by the accompanying list,† a correspondence which had taken place with the Atlas Steam-ship Company, and also a letter,‡ which, by your Lordship's direction, had been addressed to the Board of Admiralty, requesting them to instruct the British officer commanding Her Majesty's ships in Haitian waters to report whether the blockade of Jacmel and Jeremie was effective or not, and if it was clearly not effective to warn the Haitian authorities that Her Majesty's Government protested against any interference with British vessels proceeding to those ports.

That Mr. Currie was to request that we would take those papers into our consideration, and report to your Lordship our opinion as to whether Her Majesty's Government would be justified, if the blockade was clearly non-effective, in preventing by force the seizure of British vessels, having regard to the small prospect of any remedy in a Haitian Prize Court.

That a Memorandum,§ drawn up by the Librarian of the Foreign Office, was annexed, bearing upon the question of the forcible prevention of seizure for violation of blockade; and Mr. Currie was at the same time to ask to be favoured with our opinion whether the reply to the Atlas Steam-ship Company was a sufficient one.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government would not be justified in preventing by force the seizure of British vessels.

That, in our opinion, Her Majesty's Government would not be justified, under the circumstances, in preventing by force the seizure of British vessels. If the Haitian Prize Courts should act in clear defiance of law and justice, Her Majesty's Government would be entitled to insist upon redress on behalf of any British subjects injured by such action.

Approve reply to Atlas Steam-ship Company.

We think the reply to the Atlas Steam-ship Company is a sufficient one.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

### Annex.

*Draft of Letter to the Atlas Steam-ship Company.*

Gentlemen, *Foreign Office, September* , 1883.

WITH reference to your letter of the 25th ultimo, I am directed by Earl Granville to state to you that if the blockade of the ports of Jeremie and Jacmel, notification of which has been received from the Haitian Government, is not effective, it must be held to be invalid.

But there is no reason, because the blockade is not effective on one day, that it should not be effectively carried out on the next day.

The fact of the proper maintenance of the blockade can only be ascertained at the time, when the question arises, and on the spot, and in case of capture of a vessel for breach of the blockade, it is a question for the decision of a Prize Court.

Meanwhile, instructions will be sent to the officer in command of Her Majesty's forces in Haitian waters to report whether the blockade of these ports is effective or not effective, or doubtful, and, if clearly not effective, to warn the Haitian authorities, both civil and naval, that Her Majesty's Government protest against any interference with British vessels proceeding to those ports. On receipt of a reply to these inquiries, a further communication will be addressed to you.

I am, at the same time, to forward to you copies of the notices inserted in the "London Gazette" of the three ports of Miragoane, Jeremie, and Jacmel.*

I am, &c.

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## No. 53.

*The Attorney-General to Earl Granville.*

No alteration in Report needed.

THE inclosed copy of telegram was received after Report had been prepared. The Attorney-General states that no alteration in Report is needed.

*October* 1, 1883.

### Annex.

*The Secretary to the Admiralty to Sir J. Pauncefote.*

THE Secretary to the Admiralty presents his compliments to the Under-Secretary of State for Foreign Affairs, and begs to transmit, for the information of the Secretary of State, copy of a telegram, dated the 18th September, No. 3, from the Commodore at Jamaica:—

Blockade not effective.

"'Mallard' returned; reports blockade not effective. Protests have been lodged. Brings twenty-seven refugees from Jeremie. No cause for anxiety."

With reference to Foreign Office letter dated the 8th instant.

*Admiralty, September* 18, 1883.

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* Mr. Hunt, No. 28, July 26, 1883.

† Atlas Steam-ship Company, August 25; to ditto, August 30; Atlas Steam-ship Company, August 31; to ditto, September 8, 1883.

‡ To Admiralty, September 8, 1883.

§ Memorandum (Sir E. Hertslet), September 3, 1883.

* Confidential Nos. 4854*, 4855*, 4856*.

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## No. 54.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 11.)

My Lord, *Royal Courts of Justice, October* 10, 1883.

Haïtian revolution. Alleged breach of the Foreign Enlistment Act.

WE were honoured with your Lordship's commands, signified in Mr. Currie's letter of the 31st August last, stating that by direction of the Secretary of State he had to transmit to us the papers noted in the accompanying list,* which related to an alleged breach of the Foreign Enlistment Act in connection with the revolutionary movements at present in progress at Haïti.

That the circumstances were briefly as follows:—

Revolutionary expedition alleged to be fitting out in the Island of Inagua (Bahamas).

That in consequence of representations addressed to the Colonial authorities by the Haïtian Government (Inclosure in Colonial Office letter of the 6th June, 1883), that the British Island of Inagua (one of the Bahama Islands in the West Indies) was being used for the purpose of fitting out a revolutionary expedition to overturn the existing state of things in Haïti, Her Majesty's ship "Foam" was ordered to proceed to the island in question to investigate the facts (Inclosure in Admiralty letter of the 1st May, 1883). That on her arrival Lieutenant and Commander Baker found some fifty or sixty Haïtian exiles residing there, ill provided with money and without arms or ammunition. That two days after the arrival of the man-of-war appeared the American steamer "Tropic," ostensibly bound to Port Antonio for fruit. That her master boarded the "Foam," and requested permission to embark the refugees, to which Captain Baker, entertaining no suspicion as to the object in view, gave his consent. That later in the same day the British steamer "Alvo," of the Atlas line, arrived at Inagua with another batch of Haïtian refugees from Kingston, General Boyer Bazelais, one of the revolutionary party, being their leader.

That the "Tropic," which had previously left Inagua, reappeared, and thereupon Captain Baker sent an officer on board the "Alvo" to say that he would not permit the transshipment of her passengers to the "Tropic," but that they might be landed, and having sent for the master of the latter vessel, he inquired the reason of his return, and was told that it was to receive the "Alvo's" passengers. That Captain Baker explained that he could not allow this, and the "Tropic" again left.

That General Bazelais, the leader of the refugees who had been landed from the "Alvo," wished to charter a vessel to sail at once for Navassa, but Captain Baker advised Mr. Sargent, the Acting Resident Justice, not to permit him to leave until twenty-four hours after the sailing of the "Tropic," and there being then nothing further to be done, the "Foam" left for Turk's Island.

Transshipment on the high seas of Haïtian refugees from the British vessel "Lizzie Wall" to the United States' steamer 'Tropic."

That it appeared (Inclosure No. 2 in Colonial Office letter of the 6th June, 1883) that General Bazelais subsequently managed to charter the British vessel "Lizzie Wall," belonging to Nassau, Bahamas, in which he and his party left Inagua, and effected a transshipment to the "Tropic" on the high seas. That they were supplied on board that vessel with arms and accoutrements and subsequently effected a hostile landing in Haïti (Consul Clipperton, No. 10 of the 13th June, and Colonial Office of the 28th June).

Condemnation of the master and chief officer of the "Tropic" for a breach of the Neutrality Laws.

That on the return of the "Tropic" to the United States proceedings were instituted against the master and chief and second officer for a breach of the Neutrality Laws, which resulted in the condemnation of the two former (Mr. West's despatch No. 170 of the 25th May, and Consul Clipperton's despatches Nos. 10 and 12 Consular, of the 31st May and 16th July, 1883).

Power of the local authorities at Inagua, or one of Her Majesty's ships, to prevent such transshipment.

That Mr. Currie was then to refer us to a letter from Sir E. Commerell, Her Majesty's Naval Commander-in-chief on the North American Station, to the Admiralty (Inclosure in Admiralty letter of the 13th August, 1883), in which he asked instructions for his future guidance, as to whether it would have been legally competent to the local authorities at Inagua, or to one of Her Majesty's ships to have prevented the transshipment of the refugees from the British ship "Lizzie Wall" to the United States' steamer "Tropic" on the high seas.

That Mr. Currie was to refer us to sections 11 (1) and (2), and 21 (4), of the Foreign Enlistment Act, of which a copy was inclosed, and to request that we would favour your Lordship with our opinion as to the reply which might properly be returned to the inquiry contained in the last paragraph of the Admiralty letter of the 13th August.

That we would observe from the despatch of the Governor of the Bahamas, contained in the Colonial Office letter of the 6th June, that evidence was at that date being collected with a view to proceedings being taken against the "Lizzie Wall," but no information had since been received of the result.

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* Admiralty, May 1; Mr. West, No. 170, May 25; Consul Clipperton, No. 10, Consular, May 31; Colonial Office, June 6, June 28; Consul Clipperton, No. 12, Consular, July 16; Admiralty, August 13, 1883.

In obedience to your Lordship's commands we have the honour to report—

That the question raised in the last paragraph of the Admiralty letter of the 13th August is not free from difficulty.

British officers, &c., would have no right to interfere with the vessels or subjects of a foreign Power, though acting in concert with a vessel and subjects of Her Majesty engaged in a breach of the Foreign Enlistment Act, but British officers could compel the British vessel to return to a British port.

The Foreign Enlistment Act contains no provisions expressly dealing with such a case, and we think that neither British naval officers nor civil officials would have any right to interfere with the vessels or subjects of a foreign Power though acting in concert with a vessel and subjects of Her Majesty engaged in a breach of the Foreign Enlistment Act. But inasmuch as any British ship engaged in an expedition prepared in Her Majesty's dominions in contravention of that Act is by section 11 forfeited to Her Majesty, we think that the officers of one of Her Majesty's ships would be warranted in resisting the object of such expedition being attained, and could interfere upon the high seas and compel the vessel to return to a British port.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 55.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 23.)

My Lord, *Royal Courts of Justice, October* 23, 1883.

Sale of the "Eider," a British vessel, to Haïtian insurgents.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 29th ultimo, stating that he was to transmit to us the papers relating to the sale to the Haïtian insurgents of the Royal Mail Steam Packet Company's vessel "Eider;"* and that he was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether action should be taken by Her Majesty's Government in the matter.

In obedience to your Lordship's commands we have the honour to report—

Should warn authorities of British ports,

That we think it would be expedient to put the authorities at any of the neighbouring British ports to which the "Eider" might be taken for the purpose of being equipped on their guard, in order that any breach of the Foreign Enlistment Act by the arming or equipping the ship in such ports may be prevented.

and make inquiries into the case.

We think, too, that a searching inquiry should be made into the circumstances connected with the sale and dispatch from a British port of the "Eider," in order to see whether proceedings should not be instituted for a breach of the Foreign Enlistment Act. It seems to be suggested that the "Eider" was, in fact, used as a transport.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 56.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 23.)

My Lord, *Royal Courts of Justice, October* 23, 1883.

Status of the "Eider after sale to insurgents.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 10th instant, stating that he was to transmit to us a letter from the Admiralty,† inquiring, with reference to the case of the "Eider," what status a ship purchased by rebels in those circumstances would have if met with on the high seas.

That our opinion was requested on that point.

That Mr. Currie was at the same time to inclose, for our further information, a despatch received that day from Her Majesty's Consul at Port-au-Prince, reporting that the "Eider" had been seen by the Commander of Her Majesty's ship "Fantôme" in the port of Jacmel, under the Haïtian flag.[*]

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* Mr. Hunt, No. 32, August 30; to Consul Zohrab (Telegraphic), September 27; Admiralty, September 27; to Admiralty, September 27: Consul Zohrab (Telegraphic), September 28; to Admiralty, September 29, 1883.

† Admiralty, October 8, 1883.

In obedience to your Lordship's commands we have the honour to report—

That it is not possible to express a positive opinion upon the point raised by the Admiralty without further information than we possess.

Status of vessel is Haïtian,

The vessel purchased was an unarmoured merchant-vessel, and she, no doubt, became the lawful property of those who purchased her. She appears to be now flying the Haïtian flag, and if, as is presumably the case, she is the property of Haïtian subjects, she is entitled to the status of a Haïtian vessel. If she should hereafter be used for belligerent purposes on the high seas, her status would depend upon the position of those who so used her.

and she should be treated as belonging to a belligerent.

We gather that the rebel party in Haïti are recognized and treated by the Haïtian Government as belligerents, and in that case they, and any vessels they may employ, should be so treated by us, just as the Confederate Government and their cruizers were during the time of the civil war in the United States.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 57.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October 25.)*

My Lord, *Royal Courts of Justice, October* 24, 1883.

Blockade of Haïtian ports.

Search of the British schooner "Research" by Haïtian officers.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 28th ultimo, stating that, with reference to the letters from the Foreign Office of the 10th and 21st ultimo, he was to transmit to us, by direction of your Lordship, the letter from the Colonial Office,[†] forwarding a despatch from the Officer Administering the Government of the Bahamas relative to the proceedings of a Haïtian war-vessel in boarding and searching the schooner "Research," belonging to the port of Nassau, commanded by a British subject named Erskine J. Stuart, when 10 miles distant from the port of Jeremie, the schooner being at the time on a voyage from Jamaica to Nassau.

That Mr. Currie was to request that we would take that paper into our consideration with those then before us relating to the blockade of the Haïtian ports, and that we would favour your Lordship with our opinion as to what action, if any, should be taken in the matter.

In obedience to your Lordship's commands we have the honour to report—

As the rebels appear to have acquired the position of belligerents, the action of the Haïtian officers, though unnecessarily rude, was probably warranted by international law, but Haïtian Government should be asked for an explanation.

That the rebel force appears to be in complete possession of a part of Haïti, and to have acquired such a position as to be treated by the Government of Haïti as belligerents.

If such a state of war exists, the vessels of war belonging to the Haïtian Government would have a right to seize any contraband of war destined for the enemy, and to search any vessel near the enemy's shores which might be supposed to contain such contraband.

The Haïtian officers seem to have acted with unnecessary rudeness, and to have made use of unjustifiable threats; but their action in searching the vessel was probably, in strictness, warranted by international law.

It would be well, however, to call the attention of the Government of Haïti to the matter, and ask for an explanation.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] Mr. Hunt, No. 34, September 8, 1883.

[†] Colonial Office, September 22, 1883.

## No. 58.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December 5.)*

My Lord, *Royal Courts of Justice, December* 4, 1883.

Sale of the "Eider" to Haïtian insurgents

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th ultimo, stating that, with reference to Mr. Currie's letters of the 29th September last, and to our replies of the 23rd October, he had the honour to transmit to us, by direction of your Lordship, papers relating to the case of the "Eider."[*]

That Consul Zohrab had sent home an account of the circumstances under which the sale of the "Eider" to Mr. Lamb was effected, and of the action of the Haïtian Consul at St. Thomas in order to prevent the departure of the vessel from the island. (Mr. Zohrab, Consular, No. 18, and extract of private letter to Mr. Lister.)

That information had also reached Her Majesty's Government that the "Eider" had been sold to the Haïtian insurgents at Jacmel, and was lying at that port under the Haïtian flag. (Mr. Hunt, No. 32, and Admiralty, No. 34, [*sic*] September 27.)

Proposed reply to complaint of Haïtian Government as to conduct of British Colonial authorities and Consul at St. Thomas.

That the Haïtian Minister at this Court (M. Villevaleix, October 9) having forwarded to your Lordship a complaint from his Government as to the attitude of the British Colonial authorities in Jamaica and Inagua during the rebellion in Haïti, and also as to the conduct of Her Majesty's Consul at St. Thomas in the matter of the "Eider," a reply had been drawn up, addressed to the Haïtian Chargé d'Affaires, M. Apollon, the draft of which was forwarded therewith.

That our opinion was requested as to whether the letter to M. Apollon was right and proper.

That Sir Julian Pauncefote was also to point out that, with reference to our Report of the 23rd October, that the "Eider" was sold at, and cleared from, the Danish Island of St. Thomas, and not from a British port. It appeared that her transfer had been legally completed to Haïtian subjects, and she was now under the Haïtian flag, her British certificate of registry having been given up to Her Majesty's Consul (Inclosure 10 in Mr. Zohrab's No. 18, and private letter of the 21st October). That under these circumstances your Lordship desired to know whether we still considered it necessary, as suggested in our former Report, to caution the authorities at any of the neighbouring British ports to which the "Eider" might be taken for the purpose of being equipped, in order that any breach of the Foreign Enlistment Act, by the arming or equipping the ship in such ports, might be avoided.

In obedience to your Lordship's commands we have the honour to report—

Approve reply to Haïtian Government. Should warn British authorities against breaches of the Foreign Enlistment Act.

That, in our opinion, the letter to M. Apollon is right and proper.

As it appears highly probable that it is intended to equip the "Eider" for war-like purposes, we still consider it very desirable that the authorities at neighbouring British ports, where the equipment is likely to be attempted, should be put on the alert, so as to avoid the risk of a breach of the Foreign Enlistment Act being committed within Her Majesty's dominions.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Letter to M. Apollon.*

M. le Chargé d'Affaires, *Foreign Office,* , 1883.

Justification of conduct of British authorities—

REFERRING to my letter to M. Villevaleix of the 16th October, I have the honour to state to you that, having now received a Report from Her Majesty's Consul at St. Thomas in regard to the circumstances under which the transfer of the British steamer "Eider," lately the property of the Royal Mail Steam Packet Company, was made to Mr. James Lamb, I am in a position to enter fully into the several questions raised by M. Fouchard in his despatch to M. Villevaleix of the 9th September last, of which a copy was communicated to me on the 9th October.

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[*] Mr. Hunt, No. 32; to Mr. Zohrab (Telegraphic), September 27; Admiralty, September 27; to Admiralty, September 27; Mr. Zohrab (Telegraphic), September 20; to Admiralty, September 29; Mr. Hunt, No. 34, September 8; M. Villevaleix, October 9; to M. Villevaleix, October 16; Mr. Zohrab, No. 18, Consular, September 28; Mr. Zohrab to Mr. Lister (Private), October 21, 1883; draft to M. Apollon.

I now beg leave to state that Her Majesty's Government have received with surprise the complaints and accusations brought by the Haïtian Minister for Foreign Affairs against the British Colonial authorities and Her Majesty's Consul at St. Thomas, and they can only attribute the unmeasured language and the unfriendly tone adopted by his Excellency to a misapprehension of the facts to which he refers, and to the excitement caused by the regrettable incidents which are now disturbing the peace of Haïti.

Her Majesty's Government deny altogether the imputation of "persistent hostility" on the part of the British Colonial or Consular authorities towards the Haïtian Government, or of a disregard by them of the prescriptions of international law and of the mutual obligations of friendly States.

M. Fouchard has failed to adduce a single instance in which they have omitted to observe and enforce, wherever it has been possible to do so, the prescriptions of municipal and international law for the maintenance of the neutrality of this country during the contest which has unfortunately arisen in the Republic. The allegations of M. Fouchard are couched in such general terms that they cannot be answered more precisely; but as his Excellency refers to the case of the "Lizzie Wall" at Inagua, it is proper that he should be informed that proceedings were taken against that vessel for a breach of the Foreign Enlistment Act, which resulted in her condemnation and forfeiture, a proof that the Colonial authorities do not neglect their duty.

in case of the "Lizzie Wall"

As regards the case of the "Eider," also referred to by M. Fouchard, Her Majesty's Government are at a loss to understand in what respect Mr. Zohrab, Her Majesty's Consul at St. Thomas, has failed in his duty, or has laid himself open to the strong terms of condemnation in which he is assailed by the Haïtian Minister for Foreign Affairs.

The "Eider" was a merchant-vessel belonging to a British Company, and was sold at St. Thomas, a Danish Colony, to Mr. Lamb, a British subject. It is alleged by M. Fouchard that the latter had ceased to be a British subject by reason of his having become a burgher of St. Thomas; but Her Majesty's Government are of opinion that he did not lose his British nationality on that account. All the formalities prescribed by the British Merchant Shipping Act were duly observed, and Her Majesty's Consul had no power to prevent the sale of the vessel to Mr. Lamb, and much less to prevent her departure from St. Thomas. The "Eider" carried no armament, and Her Majesty's Government are informed that it is not the fact, as stated in M. Fouchard's despatch, that she took Haïtian rebels on board.

nd of the "Eider."

Even if the "Eider" had been fitted and equipped for warlike purposes, and was about to clear from St. Thomas on a hostile expedition against the Haïtian Government, the duty of stopping her would have devolved on the local authorities, and not on Her Majesty's Consul, who had no power to do so. But the Governor of St. Thomas refused the application of the Haïtian Consul to detain her, thus supporting the view of Her Majesty's Consul that no breach of municipal or international law had been committed.

It is unnecessary to state that if the "Eider" had attempted to clear from a British port on any hostile expedition against the Government of Haïti, or to violate in any way the Foreign Enlistment Act, she would have been immediately seized and dealt with according to law.

I trust, M. le Chargé d'Affaires, that the above explanations will satisfy your Government that the protest of M. Fouchard against the action of Her Majesty's Consul at St. Thomas is not well founded, and that there is no real ground for the grave charges which his Excellency brings against the British Colonial authorities, who, on the contrary, are all anxious, to the fullest extent of their powers, to enforce the duty of neutrality within their respective jurisdictions.

Any attempt on their part to evade this international obligation would meet with the severe censure of Her Majesty's Government; and I can only add, M. le Chargé d'Affaires, that either M. Fouchard does not give sufficient consideration to the fact that British officers, in the exercise of their powers, are bound to keep within the limits of strict legality, or that his Excellency entertains views as to the rights and obligations of neutrals at variance with those of Her Majesty's Government.

I have, &c.

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## No. 59.

### *The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December 15.)*

My Lord, *Royal Courts of Justice, December* 15, 1883.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 8th instant, stating that he was to transmit to us a despatch[*] from Her Majesty's Consul at Port-au-Prince, in Hayti, inclosing a printed Circular addressed by the President of Hayti to the foreign Representatives accredited to the Republic relative to the closing of ports hitherto open to foreign commerce, and the right of asylum in foreign Legations and Consulates.

**Haïtian Circular as to: (1.) Closing of ports; (2.) Right of asylum in Legations and Consulates.**

That Sir J. Pauncefote also transmitted a draft of a despatch which your Lordship proposed to address to Consul Hunt in reply thereto, together with copies of our Reports[†] on the closing of the ports of Jacmel and Jeremie. That Sir Julian Pauncefote was to request our opinion as to whether the proposed instructions to Consul Hunt were right and proper.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the proposed instructions to Consul Hunt are right and proper.

**Approve proposed reply.**

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch to Mr. Hunt.*

(No. .)
Sir, *Foreign Office, December* , 1883.

I HAVE received your despatch No. 44, Political, of the 29th October, transmitting a printed Circular addressed to the foreign Representatives at Port-au-Prince by the President of Haïti, together with a separate note annexed thereto, vindicating the right of the Government of the Republic during the state of civil war now existing, to close the Haïtian ports hitherto open to foreign commerce, and complaining of the abusive exercise of the right of asylum by foreign Legations. As regards the closing of the ports, Her Majesty's Government do not dispute the proposition laid down by President Salomon if it be intended to apply to ports in the possession and under the control of the Government of the Republic.

But Her Majesty's Government must protest against the doctrine that ports which, like those of Jacmel and Jeremie, are no longer in the possession and under the control of the Haïtian Government, can be closed to foreign commerce by a municipal Decree.

Her Majesty's Government hold that in such cases an effective blockade is necessary to warrant the seizure of neutral vessels resorting thereto.

As regards the right of asylum, Her Majesty's Government are not aware that its exercise by Her Majesty's Legation and Consulates in Haïti has been carried beyond the limits prescribed by humanity, and as President Salomon admits the propriety of its exercise to that extent, I have no further observations to offer upon that part of the Circular.

I have to instruct you to address a communication to the Haïtian Government in the above sense.

I am, &c.

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[*] Mr. Hunt, No. 44, October 29, 1883.

[†] Law Officers, July 16 ditto, September 29; ditto, October 24, 1882.

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### No. 60.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December 22.)*

*Royal Courts of Justice, December* 21, 1883.

My Lord,

Claims on Haïtian Government of Maxwell Savage and Son, and White and Co. Damages by troops.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th instant, stating that he had the honour to transmit to us, by direction of your Lordship, a letter from Messrs. Field and Weightman* relating to the claims of Messrs. J. Maxwell Savage and Son, of Liverpool, and Messrs. Arthur B. White and Co., of London, against the Haïtian Government, on account of the destruction by Haïtian Government troops of certain buildings in Port-au-Prince, held by those firms as owners or mortgagees, during the disturbances which occurred at Port-au-Prince on the 22nd and 23rd September last.

That Sir Julian Pauncefote was also to lay before us the accompanying draft of a despatch which your Lordship proposed to address to Her Majesty's Consul at Port-au-Prince, directing him to present the claim in question to the Haïtian Government. That copies of several Reports† of the Law Officers of the Crown on claims of that nature were annexed; and that you were to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether the proposed instructions to Consul Hunt were right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed instructions to Consul to present these claims.

That, in our opinion, the proposed instructions to Consul Hunt are right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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Annex.

*Draft of Despatch to Mr. Hunt.*

(No. .)

*Foreign Office, December* , 1883.

Sir,

I TRANSMIT to you herewith copy of a letter from Messrs. Field and Weightman,* in which a claim is preferred against the Haïtian Government for indemnity to the amount of 6,440*l.*, on behalf of their clients, Messrs. J. Maxwell Savage and Son of Liverpool and Messrs. Arthur B. White and Co., of London, on account of the wanton destruction of buildings in their possession, as owners or mortgagees, by the Haïtian troops, acting by order of the President and Government officials of the Republic, during the disturbances which occurred at Port au-Prince on the 22nd and 23rd September, and which were reported in your despatch No. 37, Political, of the 26th September last.

I have to instruct you to inquire into the matter, and should you be satisfied of the general accuracy of the statement of facts put forward in support of the claim, you will demand of the Government of the Republic that the claimants be indemnified by them to the extent of the losses they may be proved to have sustained in consequence of the destruction of their property by the officers and troops of the Haïtian Government.

I am, &c.

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* Messrs. Field and Weightman, November 26, 1883.

† Law Officers (United States), October 21, 1861; ditto, May 9, 1863; ditto, February 8, 1864; ditto, July 4, 1865; ditto (Haïti), April 6, 1869; ditto (Argentine Republic), January 25, 1868. Confidential No. 1123.

## Honduras.

### No. 61.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 16.)*

*Temple, March* 15, 1883.

My Lord,

Compulsory service of British subjects in civil capacities.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th instant, inclosing a despatch from Her Majesty's Minister in Central America,* with copies of correspondence between himself and Her Majesty's Consul at Puerto Cortes, on the subject of the right asserted by the Government of the Republic of Honduras, of compelling British subjects resident within its territory to serve the State in a civil capacity, such as that of Justice of the Peace or member of a Municipality, if elected to such a post. That Mr. St. John referred to a correspondence annexed therewith, which took place upon the subject in 1859,† and requested to be furnished with instructions for his guidance in the event contemplated.

That accordingly Sir Julian Pauncefote was to request our opinion as to whether the position assumed by Mr. Wyke in 1859, upon which no further action was taken at the time, could be maintained.

That there was no Treaty in existence between Great Britain and Honduras to which an appeal could be made, all such having been denounced by the latter in 1877.

In obedience to your Lordship's commands we have the honour to report—

In the absence of Treaty rights British subjects, resident in Honduras, cannot claim exemption.

That in our opinion the position assumed by Mr. Wyke in 1859 cannot be maintained, in the absence of any Treaty rights securing the immunity claimed.

British subjects resident in a foreign State subject themselves, whilst so resident, to all the laws of that State.

And if those laws impose upon all residents, natives and foreigners alike, the duty of filling civil offices if duly elected thereto, no exemption from this liability can, on principles of international law, be claimed for British subjects.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

## Italy.

### No. 62.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 23.)*

*Royal Courts of Justice, May* 23, 1883.

My Lord,

Custody of the children of Mr. E. Binyon.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 16th instant, stating that he was to transmit the papers which related to an application made to your Lordship by Messrs. Smiles and Co., who requested assistance to enable certain guardians appointed by the High Court of Justice to obtain custody of three minors, children of the late Mr. Edward Binyon, now residing at Capri, Italy, under the care of their mother, Mrs. M. C. Binyon.

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* Mr. F. St. John, No. 88, November 28, 1882.

† Correspondence between Mr. Wyke and Minister for Foreign Affairs of Honduras, January 23 to May 4, 1859. Note from Mr. Wyke to Government of Guatemala of January 4, 1859, and Decree of President of Guatemala of April 5, 1859 (see "State Papers," vol. lxiii, pp. 274–280).

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That the facts of the case would be found in the letters from Messrs. Smiles, dated the 4th August, 1882, and the 10th instant. That our special attention was directed to the Report contained in the despatch from Her Majesty's Ambassador at Rome, No. 387 of the 29th October last, as to the form of procedure required by Italian law to give effect to the request of the Judge of the Court in which the suit in question is pending with a view to its communication through the Diplomatic channel.

That it appeared to your Lordship that some doubt arose as to the extent and nature of the support to be accorded to the guardians in that case; whether the action of Her Majesty's Ambassador should be limited to the communication to the Italian Government of the documents forwarded by Messrs. Smiles, with a request that effect be given to the Order in Chancery attached to them; or whether his Excellency should be instructed to press the matter strongly upon their attention, and formally apply for the delivery of the children to the custody of their legal guardians.

That our opinion was requested on the questions submitted in that letter, and with any general observations which we might have to offer upon the case.

In obedience to your Lordship's commands we have the honour to report—

Order in Chancery to be enforced either through Italian Ambassador or Italian Courts.

That we think the documents should be handed by Her Majesty's Ambassador to the Italian Minister for Foreign Affaires, with a request for his assistance, in order that effect may be given to the Order. If, as is probable, the Italian Minister replies that the proper mode of enforcing the Order is through the Italian Tribunals, we see no reason why this course should not be followed, and we do not think that his Excellency should be instructed, in that case, to apply formally for the delivery of the children to the custody of their legal guardians. He might, however, bespeak such aid as the Italian Minister could properly render in the proceedings.

This seems to be all that Messrs. Smiles and Co. ask, and in this country certainly a similar object could only be attained by an appeal to the Tribunals.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

Smiles and Co., August 4 and 11; Sir A. Paget, No. 344, August 16; to Mr. Fraser, No. 329, October 20; Sir A. Paget, No. 387, October 25; to Smiles and Co., November 4; Smiles and Co., November 7; to Smiles and Co., November 10; Smiles and Co., November 13; to Smiles and Co., November 20; Smiles and Co., December 14, 1882; Smiles and Co., January 2; to Smiles and Co., January 10; Smiles and Co., January 12; to Smiles and Co., January 19; Smiles and Co., March 1; to Smiles and Co., March 6; Smiles and Co., March 7; to Smiles and Co., March 9 and 11; Smiles and Co., March 21; to Count Nigra, March 26; Count Nigra, March 27; to Smiles and Co., March 29; Smiles and Co., March 30; Sir R. Alcock, May 8; to Sir A. Paget, May 9; to Mr. Binyon, May 9; Mr. Binyon, May 10; Smiles and Co., May 10, 1883.

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# Madagascar.

## No. 63.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 11.)*

My Lord, *Royal Courts of Justice, May* 9, 1883.

Assault by Mr. Reid on Quasimodo, a French subject, at Marancetra.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 30th ultimo, stating that, with reference to our Report of the 4th September last, relative to the charge brought against Mr. Reid, of an attempt to murder a French subject in Madagascar, he had the honour to transmit to us further correspondence* which had taken place with Mr. Pakenham, Her Majesty's Consul at Tamatave, on the case, together with the draft of the reply which it was proposed to address to him, and that our opinion was requested as to whether the proposed draft could properly go forward.

In obedience to your Lordship's commands we have the honour to report—

That we think the proposed draft can properly go forward.

Suggesting additions in despatch to Consul Pakenham as to jurisdiction of French Consuls in Madagascar, and his conduct with regard to the trial of Mr. Reid.

But we would suggest that in the last sentence, after the words "miscarriage of justice," there should be inserted: "supposing Mr. Reid to be guilty of the offence charged against him," and that at the end of the draft the following sentence should be added:—

"And if Mr. Reid be innocent of the offence charged, the course taken was such as to inflict serious hardship upon him."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft Despatch to Consul Pakenham.*

(No. . Africa.)
*Foreign Office, May* , 1883.

Sir,

I AM directed by Earl Granville to acknowledge the receipt of your despatches No. 26, Slave Trade, of the 24th October last, and Nos. 4 and 5, Slave Trade, of the 22nd February and 12th March respectively, regarding the charge against Mr. Reid of attempted murder.

Her Majesty's Government will not lose sight of the inconvenience caused by the fact that French Consular Officers in Madagascar are not invested with the necessary powers to exercise civil and criminal jurisdiction over French subjects on the spot. With regard, however, to your conduct in this case, Earl Granville regrets that you appear to have acted with little discretion.

It was within your competency to deal with the case yourself, with assessors, under sections 14 and 16 of the Order in Council of the 4th February, 1869; and this was the proper course under the circumstances. The step taken by you in sending the accused for trial to Mauritius, well knowing that the French witnesses could not, or would not, appear there to give evidence, and that there must necessarily be a miscarriage of justice, supposing Mr. Reid to be guilty of the offence charged against him, could only tend to complicate matters, and if Mr. Reid be innocent of the offence charged, the course taken was such as to inflict serious hardship upon him.

I am, &c.

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## No. 64.

*The Law Officers of the Crown to Earl Granville.—(Received August 30.)*

My Lord, *Royal Courts of Justice, August* 28, 1883.

Proceedings of Admiral Pierre

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 17th instant stating that he had the honour to transmit to us, by your Lordship's direction, the papers noted in the accompanying list which related to the recent proceedings of Admiral Pierre, commanding the French naval force at Tamatave.*

That the questions which appeared to arise were:—

1. Whether, having regard to the absolute powers of a Commander in the case of a military occupation, there had been any act on the part of Admiral Pierre which

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* To Consul Pakenham, No. 5, Slave Trade, September 12; Consul Pakenham, No. 26, Slave Trade, October 24, 1882; Consul Pakenham, No. 4, Slave Trade, February 22; Consul Pakenham, No. 5 Slave Trade, March 12, 1883. Order in Council, February 4, 1869, Confidential, No. 1624.

* A. Tamatave Papers.
B. Further correspondence. Confidential No. 4847.
C. Admiralty Memorandum (Lord Northbrook), August 13, 1883. Confidential No. 4857, p. 65.
D. ,, (Lord Alcester), Confidential No. 4857, p. 78.
E. Foreign Office Memorandum (J. P.), August 14, 1883. Confidential No. 4857, p. 74.
F. Memorandum on the Pritchard case at Tahiti (E. H.), July 12, 1883. Confidential No. 4881
G. Despatch to Mr. Plunkett.
H. Foreign Office Memorandum on property of neutrals in a bombardment, Confidential No. 4857, p. 78.
I. Correspondence as to neutral property during Franco-German war, Parliamentary No. 1355.

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constituted a violation of British rights or an insult to the British flag, entitling Her Majesty's Government to demand reparation.

2. Whether Admiral Pierre exercised the strict rights of a belligerent with such unnecessary or unreasonable harshness as to afford grounds of complaint to Her Majesty's Government.

That the facts were so fully set forth in the correspondence, and commented upon in the Memoranda marked C, D, and E, that it was unnecessary to offer any further observations thereon.

That Sir Julian Pauncefote was to request that we would take the papers transmitted to us into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in Sir Julian's letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

There is grave reason to complain of his conduct.

That the perusal and consideration of the documents submitted to us have caused us to come to the conclusion that there is grave reason to complain of the conduct of the French Admiral.

Treatment of Consul Pakenham.

The treatment to which it was intended to subject Mr. Pakenham, as shown by the letter of Admiral Pierre, dated the 21st June, is open to much observation, but it is possible he was not aware of the extent of Mr. Pakenham's illness, and as his death occurred before the time mentioned for his removal, we think that this ground of complaint should not be prominently relied upon.

Arrest of Mr. Shaw and other British subjects.

We also feel that it would not be expedient, without further information, to make any serious complaints on account of the arrest of Mr. Shaw and the other British subjects. The latter were promptly released, and although it may be that if Mr. Shaw's innocence be established serious representations may have to be made in consequence of the treatment he has received, yet the information at present in the hands of Her Majesty's Government does not appear to us to establish that the French Commander has exceeded his possible rights of action. Full liberty of action in respect of all these arrests should, however, be reserved until Her Majesty's Government are in complete possession of the facts relating to them.

French Government should be requested to afford Mr. Shaw every facility for preparing his defence, &c.

We think that the course pursued towards Mr. Shaw justifies Her Majesty's Government in requesting from the French Government that a full opportunity shall be afforded to Mr. Shaw to prepare for and present his defence, and that for that purpose he should have every facility afforded him to enable him to communicate with legal advisers.

Conduct of Admiral Pierre towards Commander Johnstone.

But the cause of complaint which the present information establishes against the French Admiral exists in the tone assumed and the language employed by him towards Commander Johnstone. As Commander of one of Her Majesty's ships stationed at Madagascar, it was the duty of Captain Johnstone to afford protection and the means of safety to any of Her Majesty's subjects who were in danger, and, therefore, apart from the natural claim to courtesy, which sprung from his position as Commander of one of Her Majesty's ships, he deserved every consideration in consequence of his being, under the circumstances, the protector of British interests.

But Admiral Pierre seems entirely to have overlooked all these considerations, and, in an apparent tone of great irritability, employed language of an undignified character which amounted to insult towards Commander Johnstone. We refer especially to the contents of the letters of the 4th, 8th, 10th, 17th, 18th, 20th, 21st, and 23rd June, and that of Lieutenant de Préville of the 23rd.

Proclamation of June 21.

The Proclamation of the 21st June, being a formal official document, and published to persons of all nations, containing serious reflections upon British officers, deserves especial reference in any representation which may be made to the French Government.

It is true that Commander Johnstone showed great zeal in the performance of his duties which might have caused irritation upon the part of the French Admiral, but in all the representations and requests he made he maintained a most courteous tone, and it is to be observed that Admiral Pierre appears to have been sensible of this courtesy when, in writing Commander Johnstone on the 4th June, he refers to "la distinction de votre langage."

The omission of Commander Johnstone to remove his ship as requested may have caused some not unnatural irritation. But we do not think there was either in this or in any other conduct of Commander Johnstone, a justification for the tone and language adopted by the French Admiral.

Bombardment of Fenoarivo without notice.

The bombardment of Fenoarivo without affording any notice to Commander Johnstone, or the inhabitants of the town, appears to deserve grave consideration.

No doubt, in one sense, the Commander of a hostile force has the right to regulate the manner in which he will conduct his hostilities, and to call upon him at all times to give notice of his intended operations would be absurd. But when an unarmed town is about to be bombarded, we conceive that humanity has created a practice which ought not to be deviated from to the effect that those residents who are non-belligerents should have an opportunity afforded to them of removing themselves and their property out of the danger created by the warlike operations in which they take no share.

Can express no opinion on the refusal to allow a British soldier to wear his sword, and the course pursued with regard to the mails.

We are not in a position to judge whether the refusal to allow a British soldier to wear his sword would be regarded as so contrary to practice as to amount to an act of discourtesy. For a like reason, and also on account of the want of information as to the facts, we express no opinion as to the course pursued in reference to the receipt and delivery of the mails.

The treatment of Commander Johnstone and the bombardment of Fenoarivo, should be represented to the French Government.

It is not for us to advise to what extent "reparation" should be demanded from the French Government, but we submit that Admiral Pierre's conduct towards Commander Johnstone, and the bombardment of Fenoarivo without giving any notice to the inhabitants, should be represented to the French Government in terms which should obtain at least a clear admission of error and expression of regret.

Claims of British subjects for loss or injury should be reserved for further consideration.

Any claims which British subjects may have to make in consequence of personal loss or injury by arrest or otherwise should be reserved for further consideration.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 65.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 18.)

*Royal Courts of Justice, October* 17, 1883.

My Lord,

Imprisonment of Mr. Shaw.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a selection of papers which had been received at the Foreign Office relative to the arrest and imprisonment of Mr. Shaw by the French Admiral at Tamatave,* and Mr. Lister was to request that we would take those papers into our consideration and favour your Lordship, at our early convenience, with our opinion as to whether the facts as therein presented furnished any case for a claim on the French Government for compensation.

That the matter had already been incidentally brought before us in connection with the general proceedings of the French Admiral, and was touched upon in our Report of the 28th August.

That a copy of the Report given in the "Times" of a speech made by Mr. Shaw at Exeter Hall was also inclosed, as, though it had not been communicated officially, it contained a fuller account of the case than that furnished in Mr. Shaw's other statement.

In obedience to your Lordship's commands we have the honour to report—

That if the French authorities had reasonable grounds for believing that Mr. Shaw had been guilty of a crime, and if he had been treated whilst imprisoned without unnecessary harshness, and had not been detained longer than was necessary for a due legal

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* "Further Correspondence respecting the Affairs of Madagascar" (Confidential 4847):—Inclosure in No. 109, p. 57; No. 113, p. 58; No. 155, p. 80; Inclosure in No. 157, first two paragraphs on p. 83 and other paragraphs marked, p. 83; Inclosure 2 in No. 165, letter from Mr. Shaw of the 16th June, before his arrest, p. 89.

"Further Correspondence respecting the Affairs of Madagascar" (Confidential 4857):—Inclosure 26 in No. 7 (paragraph marked), p. 18; Inclosure 31 in No. 7, p. 21; Inclosure 32 in No. 7, p. 21; Inclosure 33 in No. 7, p. 21; Inclosures 38, 39, and 40 in No. 7, p. 24; Inclosure 53 in No. 7, p. 30; Inclosure 55 in No. 7, p. 32; Inclosures 66 and 67 in No. 7, p. 38; Inclosure 70 in No. 7, p. 39; Inclosures 1, 2, 3, 4, and 13 in No. 14, pp. 49–55; Inclosures 1, 2, and 3 in No. 20, pp. 70–74; No. 23, p. 78; No. 26, p. 81; Inclosure in No. 29 (paragraphs marked), p. 83; No. 31, p. 84; No. 42, p. 89; No. 46 (paragraph marked), p. 93; No. 50, p. 100; No. 53, p. 103; No. 54, p. 103; No. 62, p. 105; Nos. 63 and 64, p. 106; No. 72 (Law Officers' Report), p. 108; No. 74, p. 110.

Sir J. Kirk (Telegraphic), September 1, 1883; Rev. J. Whitehouse, September 11 (with Mr. Shaw's letter of August 12, 1883); to Count d'Aunay, September 17; Colonial Office, September 17, Inclosures 3 to 10.

Admiralty letter of the 25th September and Inclosures (Mr. Shaw's account as given to Admiral Hewett). Confidential No. 4880.

"Times" of the 28th September with Mr. Shaw's speech at Exeter Hall.

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investigation of the case, there would, of course, be no ground for claiming compensation. The question submitted to us may therefore be conveniently considered in three aspects: first, the cause of the arrest; secondly, Mr. Shaw's treatment whilst under arrest; and, thirdly, the duration of his detention.

1. The ground of arrest alleged in the first instance was either the having harboured, or the not having produced, two Hovas who were at his residence. But the cause of his continued detention apparently was that alleged for the first time after he had been fifteen days in confinement, viz., that he had dispersed in the vicinity of his house some bottles of claret and other liquids which had been poisoned, with the intention of injuring the French picquet which was to be stationed in his house. On the 23rd July the charge appears to have been somewhat altered; the allegation of the intent to poison was dropped, and the accusation against Mr. Shaw was limited to his not having used sufficient prudence, after he knew that his cellar had been broken open, and the bottles dispersed, to prevent the French sailors from being injured by such as might be lying about. We are not fully informed as to the facts which were before the French authorities, and which led to the imprisonment; but it would seem that one or more of the soldiers stationed in Mr. Shaw's house did drink wine that was found in his garden, and became intoxicated, either in consequence of this alone, or of their also drinking the contents of some of the medicine bottles. The explanation given by Mr. Shaw of the presence of these bottles in his garden is a perfectly natural one. There can be no doubt that his premises had been broken into, and the bottles found in the cellar scattered about. He states that he informed the officer in command of the troops of the pillage of the cellar and dispensary, and the officer was thus put on his guard.

Cause of arrest preposterous.

Under these circumstances, and in view of its improbability, the charge of the intent to poison appears a preposterous one, and we do not think there was any substantial case of criminal imprudence fairly to be inferred from the facts.

Grounds for French action should be asked for.

At the same time, we think the charge ought not to be assumed to be wholly unfounded without affording the French authorities an opportunity of stating the evidence in their possession which caused the charge to be preferred. In considering the sufficiency of that evidence—if it should be communicated—it must be remembered that the charge against Mr. Shaw is now abandoned.

Treatment of Mr. Shaw too harsh.

2. Mr. Shaw's treatment certainly appears to have been unnecessarily and exceptionally harsh. He was awaiting his trial. All that was necessary or proper was to secure his safe custody until the trial took place; yet he was confined in a cabin unfit for constant habitation. His food was meagre in quantity and miserable in quality, and served in a manner wholly unsuitable to a person accustomed to civilized modes of life. All intercourse with the outside world was strictly denied him; he was not allowed to receive a visit even from his wife. Even if there had been stronger evidence of guilt than existed, this treatment appears to us to have been uncalled for and cruel, the more so considering the position of Mr. Shaw, both as a British subject, who happened to be residing in a place attacked by a foreign Power, and also as a missionary.

His detention too long.

3. The detention, too, was prolonged for a period greater than would seem necessary for a preliminary investigation. The witnesses were all on the spot, the facts lay in a narrow compass, and it is not easy to see why the "Ordonnance de non-lieu" was not arrived at long before.

Should reserve question of compensation until receiving explanations.

We submit, therefore, that the attention of the French Government should be directed to the whole facts connected with Mr. Shaw's arrest, and with his treatment during that detention, and the duration of it, and full explanation should be asked upon all these points.

If the course we have suggested should be determined upon, it would be for Her Majesty's Government to consider, after they have received such explanations as the French Government may offer, whether any, and, if so, what demand of compensation or redress should be made. In the meantime, care should be taken fully to reserve these questions, for, as the facts are now presented, it appears to us that a British subject has been subjected to treatment by the French authorities which was unwarranted, cannot be justified, and which entitles him to compensation.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 66.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October 24.)*

My Lord,
*Royal Courts of Justice, October* 24, 1883.

Action of French Admiral in case of the "Taymouth Castle."

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 17th ultimo, stating that he was directed by your Lordship to transmit to us the papers from Sir D. Currie on the subject of the action of the French Admiral towards the mail-steamer "Taymouth Castle" at Tamatave,* and that he was to request that we would take the papers into our consideration, and favour your Lordship with our opinion as to whether the circumstances gave ground for making any representations to the French Government in the matter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Despatches for enemy contraband of war.

That despatches carried by a neutral vessel to the enemy would be contraband of war, and there would be a right to search for and seize them.

We think, therefore, that the French Admiral was probably acting within his rights in requiring to see the contents of the mail.

Explanations as to French sentries on board.

We do not understand on what grounds French sentries were placed upon a British vessel and instructed to search any persons coming on board. We think, with regard to this, some explanation should be demanded of the French Government.

We observe that Sir Donald Currie states in his letter that Captain Hay took on board the Admiralty despatches against the wish of the French naval authorities and under protection of the "Dryad's" guns. The Captain does indeed state in his letter that he informed Captain Johnstone that he would have to send his despatches first on the French Admiral's ship. But we cannot find, in his account of what transpired, any trace of such an intimation having been received from the French Admiral, or of any request to the French Admiral to permit him to receive direct from him Captain Johnstone's despatches.

Should ascertain facts as to French demand to see despatches of "Dryad" before making representations.

If the French Admiral did insist on receiving the despatches before they were put on the "Taymouth Castle," it would be matter for grave representations to the French Government. But before making any such representations it would be expedient to ascertain the exact facts more accurately.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 67.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November 3.)*

My Lord,
*Royal Courts of Justice, November* 1, 1883.

Position of neutrals during an invasion. Instructions.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th October last, stating that he had to transmit to us, by direction of the Secretary of State, the accompanying Memorandum† as to the position of the subjects of a neutral State residing in the country of a belligerent during a hostile invasion, which had been drawn up for the guidance of Mr. Graves and Mr. Pickersgill, who had been appointed respectively Her Majesty's Consul for Madagascar and British Vice-Consul at Antananarivo, and who were to start for their posts on the 28th October.

That Sir Julian Pauncefote was to request that we would take the Memorandum into our consideration, and that we would favour your Lordship with our opinion, whether it was correct in point of law or whether it called for any amendment.

In obedience to your Lordship's commands we have the honour to report—

Memorandum correct.

That we think the Memorandum is correct in point of law.

Necessity of explanation as to intervention of naval officers.

We think, however, that the statement in the Law Officers' Report of 1879 that "Her Majesty's Naval Commander may be instructed to take every measure short of actual intervention by force for the protection of British life and property" may be liable to misconstruction if taken without qualification. This definition would include a threat of force. So, too, it would include the placing one of Her Majesty's ships in

* Sir D. Currie, September 7, 1883, Confidential No. 4880, p. 6 A.
† Memorandum by Sir J. Pauncefote, October 20, 1883 (Confidential No. 4872).

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such a position that the rights of the belligerent could only be enforced at the risk of damage to the ship or her crew. The measures taken must be of a peaceful character, and consistent with the exercise of a strict neutrality. We have no doubt that this is what the Law Officers meant. But it is possible that their language, if communicated to a naval officer without qualification, might lead to misapprehension.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 68.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December 26.)*

*Royal Courts of Justice, December* 24, 1883.

My Lord,

Action of the French Admiral towards the mail steamer "Taymouth Castle."

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he had the honour to transmit to us, by direction of your Lordship, the accompanying letter, which, on the receipt of our Report of the 24th October respecting the action of the French Admiral towards the British mail-steamer "Taymouth Castle" at Tamatave, was addressed to Sir D. Currie, asking for the further information which we stated it would be expedient to obtain before a representation could be made to the French Government on the subject, together with the reply which had then been received from Sir D. Currie.*

Question as to representation to French Government.

That Sir D. Currie's previous letter and our Report above referred to were also inclosed for reference,† if necessary; and Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion as to whether the facts therein stated afforded grounds for a representation to the French Government in relation to the complaint made by Sir D. Currie, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Insufficiency of information as to despatches from the "Dryad."

That is not even now clear, from the letter of Sir Donald Currie, what were the exact facts with regard to the alleged refusal of the French Admiral to permit the "Dryad's" despatches to be carried by the "Taymouth Castle" unless they were first put on board his ship.

Sir Donald Currie states in his letter that "it is perfectly true, not only that the Admiral intimated the wish, but distinctly ordered, that the mails should be sent on board his ship," but he does not state whether this order was communicated to Captain Hay by the French Admiral, or in what other way the order was given, or whether it was merely inferred by Captain Hay that the order as to the outward mail applied to the "Dryad's" letters.

Sir Donald Currie reports that in answer to a question put by Captain Hay to the French officer in charge, after getting his clearance and bill of lading, that officer replied that Captain Hay could only take the "Dryad's" letters on condition that they were first put on board the Admiral's ship. But it does not appear what was the rank or position of this French officer, and we do not gather that when Captain Hay, shortly afterwards, went on board the French Admiral's ship, he made any inquiry or request with reference to carrying the despatches of the Captain of the "Dryad."

Importance of exact information on certain points.

We submit that it would be well to point out to Sir Donald Currie that Her Majesty's Government are not in a position to make any demand of the French Government with reference to this matter unless they are in possession of the exact facts relating to it. It is important to know whether the Admiral himself gave the order complained of, or, if not, by whom it was given, and whether the person giving it was in such a position that his act may fairly be presumed to have been the act of the Admiral.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* To Sir D. Currie, November 8; Sir D. Currie, December 7, 1883.

† Sir D. Currie, September 7; Law Officers, October 24, 1883. See Confidential No. 4880, pp. 6A and 89.

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# Monte Video.

## No. 69.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 25.)*

*Royal Courts of Justice, May* 23, 1883.

My Lord,

Deposit of documents with Consular officers.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 11th instant, stating that he was to transmit to us papers* which related to the question of whether any obligation rested upon officers of Her Majesty's Consular Service to accept the deposit of, and be responsible for, the safe keeping of wills and other important documents belonging to British subjects, and that your Lordship requested our opinion as to whether the annexed draft despatch might be properly addressed to Her Majesty's Minister and Consul-General at Monte Video, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed instructions.

That in our opinion the proposed despatch may properly be addressed to Her Majesty's Minister and Consul-General at Monte Video.

No obligation to accept deposit.

But we would suggest that he should be informed in addition that there is not any obligation upon the Consul-General to accept the deposit of wills, deeds, or any such documents.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch to Mr. Monson.*

(No. . Consular.)

*Foreign Office, May* , 1883.

Sir,

Circular of the 24th December, 1875, applies to custody of documents.

IN reply to the inquiry contained in your despatch No. 12 of this series of the 30th March last, as to whether any obligation rests on Her Majesty's Consulate-General to accept the deposit and be responsible for the safe keeping of wills and other important documents belonging to British subjects, I have to inform you that on the 24th December, 1875, a Circular was addressed to Her Majesty's Consuls abroad,† inclosing a notice to masters, seamen, and others defining the extent to which Her Majesty's Government held themselves responsible for money and valuables deposited in Her Majesty's Consulates.

Not responsible for documents deposited for private convenience.

After specifying the sums of money for which Her Majesty's Government would hold themselves responsible, the notice went on to say, "With regard to all other sums of money or property deposited with Her Majesty's Consular officers for private convenience, Her Majesty's Government admit no responsibility whatever," and as it appears that no special instructions have been given to Her Majesty's Consuls with regard to the custody of wills, such documents would come under the category of articles meant by the word "property," which is used in the Circular above referred to.

No obligation to accept deposit.

I am, however, to add that there is no obligation upon you to accept the deposit of wills, deeds, or any such documents.

I am, &c.

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* List of papers sent to Law Officers, May 11, 1883:— Mr. J. White, February 15; to Mr. Monson, No. 1, Consular, February 20; Mr. Monson, No. 12, March 30; to Mr. Monson, No. , 1883 (draft for approval); General Consular Instructions (*vide* p. 159).

† *Vide* General Consular Instructions, p. 159.

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## Morocco.

### No. 70.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 11.)

My Lord,

*Royal Courts of Justice, April* 10, 1883.

Flogging of Jewesses at Dar-el-baida,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th ultimo, stating that he was to transmit to us a despatch from Her Majesty's Minister in Morocco, reporting the steps which he had taken with reference to the recent flogging of several Jewish women at Dar-el-baida, by order of the Governor of that place.

at instigation of J. Amiel, interpreter to British Vice-Consul.

That it would appear that that punishment was inflicted at the instigation and in the presence of Mr. Joseph Amiel, a native Jew, who filled the post of Interpreter to the British Vice-Consul, Mr. Lapeen, at Dar-el-baida, and enjoyed British protection.

That Sir J. D. Hay directed Vice-Consul Lapeen to dismiss Amiel from his employment, but, for the reasons stated in his despatch, to continue British protection to Amiel for a limited time, until his departure from the country.

United States' Consul protests and demands his trial by British Tribunal.

That we should observe that Colonel Matthews, the United States' Consul, protested against Amiel being allowed to quit Morocco until he had given adequate redress for having caused the servant of "an American protégé" to be flogged, and requested that he should be tried by a British Consular Tribunal, before the withdrawal of British protection.

That it was understood that Amiel has since removed, with his family, to Jerusalem, viâ Gibraltar. That Sir J. Pauncefote observed that Her Majesty's Consul had no legal power to detain him in Morocco, under the Order in Council of the 27th August, 1857, unless he had committed a criminal offence, and that, as pointed out by Sir J. D. Hay, Article IX of the Madrid Convention was adverse to the claim of the United States' Consul to intervene on behalf of Ester Amar, who was the servant of the partner of Mr. Isaac Benzaquin, a Moorish Jew under American protection as clerk to the United States' Vice-Consul at Dar-el-baida.

That our opinion was requested as to whether, on the facts stated, Amiel committed any offence punishable by British law, and whether the protest of the United States' Consul was justified.

In obedience to your Lordship's commands we have the honour to report—

That the despatch of Vice-Consul Lapeen does not disclose precisely the nature of the occurrences which took place.

But we gather that Amiel appealed to the Moorish authorities to put the law in force against the women who were flogged, and that the chastisement was inflicted by officials acting under the authority of the Moorish Governor.

Amiel not punishable by British law.

If this was the case, we do not think Amiel, however improper his conduct, committed any offence punishable by British law.

Protest of United States' Consul not justified.

We do not think the protest of the United States' Consul was justified, as he had no authority to intervene officially in relation to the flogging of the women.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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***List of Papers.***

Sir J. Drummond Hay, No. 18, March 10, 1883.
Order in Council, August 27, 1857. Confidential No. 1516.
Madrid Convention, July 3, 1880. "Morocco No. 1 (1880)," No. 2335.

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## Nicaragua.

### No. 71.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May* 9.)

My Lord,

*Royal Courts of Justice, May* 7, 1883.

Mosquito Arbitration. Greytown duties.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 24th April, stating that he was to transmit to us papers[*] which related to questions connected with the Award of the Emperor of Austria in the matter of the Mosquito Arbitration, which formed the subject of our Reports of the 5th April and 6th June, 1882, together with the papers on which they were founded.

That our opinion was requested as to whether Her Majesty's Minister in Central America might be authorized to accept the settlement of the matters at issue as proposed by the Nicaraguan Minister for Foreign Affairs in his letter to Mr. Hall, the United States' Minister at Guatemala. (Inclosure 3.)

Settlement proposed by Nicaraguan Government.

That in that letter Señor Medina proposed the official publication, periodically, of the amounts raised by local taxation in the port of Greytown, and of the purposes to which those sums were applied, under the condition, however, for which the Nicaraguan Government stipulated, that no fresh questions or claims would be raised by the British Government on account of duties levied at Greytown, prior to the promulgation of the Decree of the 9th February, 1882, publishing the Award of the Emperor of Austria.

That we should observe that that mode of settlement was suggested at the close of Lord Granville's despatch to Mr. St. John No. 50 of the 27th September, 1882, on the grounds therein explained.

In obedience to your Lordship's commands we have the honour to report—

Should accept settlement,

That we think that Her Majesty's Minister in Central America should be authorized to accept the settlement of the matters at issue as proposed by the Nicaraguan Minister for Foreign Affairs in his letter to Mr. Hall.

and abandon claims prior to Decree of 1882.

The claim on account of duties levied prior to the promulgation of the Decree of the 9th February, 1882, were of so unsubstantial a character, that they should not be allowed to prevent the proposed satisfactory settlement of the question involved.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Persia.

### No. 72.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 11.)

My Lord,

*Royal Courts of Justice, April* 10, 1883.

Protection of Persians, naturalized in Great Britain, in Persia and Turkey. Case of O. Arsenian.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th ultimo, stating that he was to transmit to us papers relating to the case of Mr. O. Arsenian, which was the subject of our Report of the 30th November last and of previous Reports.

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[*] To Mr. St. John, No. 50, September 27, 1882; Mr. St. John, No. 33, March 8, 1883; Law Officers, April 5, 1882, Confidential, No. 4783; ditto, June 6, 1882, Confidential, No. 4783.

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That, in our Report of the 30th November, we suggested that, in order to guide the action of Her Majesty's Government in the future, inquiry should be made of Mr. Thomson whether the question of the right of Persians naturalized in Russia to Russian protection in Persia had ever been distinctly raised between the Russian and Persian Governments, and, in what class of cases naturalized Persians have, in Persia, received Russian protection as against Persian authorities, and whether such cases had frequently arisen.

That Mr. Thomson was instructed accordingly, and the inclosed despatch with inclosures had been received in reply.

That that despatch appeared to leave no doubt as to the fact that Russia claimed and exercised the right of protecting, in Persia, Persian subjects who had obtained Russian naturalization.

That copies of the replies of Her Majesty's Consul-General at Tabreez and the Russian Chargé d'Affaires at Tehran to communications addressed to them by Mr. Thomson on that subject would be found in Inclosures 3 and 4 of his despatch, and that Inclosure 6 contained the names of Persians who had become naturalized Russian subjects, and were then residing in Persia under Russian protection.

That our attention was requested to the letter from Messrs. Fox of the 15th ultimo, in which they asked, for the reasons stated by them, that Mr. Arsenian might receive the protection of Her Majesty's Legation at Tehran.

That the practice followed by Her Majesty's Government as to granting protection, in Persia, to persons born in British India of parents being subjects of Persia, was explained at p. 71 of the Report of the Naturalization Commission (inclosed).

That that practice, as it existed in 1850, was opposed to the grant of British protection in Persia to such persons, though natural-born British subjects, and *à fortiori* to Persians who had obtained British naturalization.

But that the instructions contained in Lord J. Russell's despatch of the 25th August, 1860, were subject to the course adopted by the other European Governments, which at that time was unknown at the Foreign Office (paragraphs 3 and 7).

That our opinion was requested as to whether the Report furnished by Mr. Thomson, on the question referred to him, would justify Her Majesty's Government in claiming the right to grant protection as against the Persian authorities, both in Persia and in Turkey, to Mr. O. Arsenian, as a naturalized British subject, under the Article IX of the Treaty between Great Britain and Persia, which secured most-favoured-nation treatment to this country.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government justified in protecting Mr. O. Arsenian.

That we think the Report furnished by Mr. Thomson on the question referred to him would justify Her Majesty's Government in claiming the right to grant protection as against the Persian authorities both in Persia and Turkey to Mr. Arsenian as a naturalized British subject, under Articles IX and XII of the Treaty between Great Britain and Persia.

But it will be a matter of delicacy and requiring care, owing to the course which has hitherto been taken by Her Majesty's Government, in ignorance of the circumstances now established, of allowing the Persian authorities at Constantinople to assume jurisdiction over Mr. Arsenian's property.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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List of Papers to accompany reference to Law Officers :—

Law Officers, April 8; ditto, June 9, 1880, Confidential No. 4539, pp. 80 and 81; ditto, November 22, 1881, Confidential No. 4637, p. 100; ditto, November 30, 1882, Confidential No. 4783, p. 56; Paper marked (A); Mr. Ronald Thomson, No. 1, "Treaty," January 23, 1883, Paper marked (B); Messrs. Fox, March 15, 1883, Paper marked (C); Report of the Naturalization Commissioners, 1869, Parliamentary, No. 1188; Copy of Treaty with Persia, March 4, 1857, No. 420.

# Peru.

## No. 73.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December 5.)*

My Lord, *Royal Courts of Justice, December 4, 1883.*

Seizure by Chileans of notes belonging to a British bank in Lima.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list,[*] which related to the seizure by the Chilean authorities, during their occupation of the city of Lima, of the sum of 1,465,000 soles in notes of 500 soles each, belonging to the branch of the London Bank of Mexico and South America (Limited), established in Lima, under the circumstances stated in their letter of the 10th January last (*vide* Mr. St. John's No. 41).

Conditional surrender of notes into Mr. St. John's custody.

That a Memorandum on the facts of the case and of the action taken in the matter by Her Majesty's Legation at Lima, had been drawn up, dated the 24th November, from which we would perceive that the Chilean authorities were persuaded by Mr. A. St. John, who was in charge of Her Majesty's Legation at that place, to surrender the notes to his custody, and that they were subsequently deposited by him with the London Bank in a separate sealed safe, of which he retained the key (Mr. St. John, Nos. 59, 66, 68).

That Mr. St. John had now applied for instructions by telegraph as to what course he should take in the event of his receiving an application from the manager of the Lima branch of the bank, after the evacuation of Lima by the Chilean troops, and its reoccupation by the Peruvians under General Yglesias, an event which had already taken place[†] for the return of the notes which were in the possession, as described above, of Her Majesty's Legation (Mr. St. John, No. 99).

That Mr. St. John had obtained the custody of the notes from the Chilean authorities on the express condition set out in his written receipt for them (a copy of which formed Inclosure 2 in his despatch No. 68 of the 31st July), that he would retain them until the conclusion of the judicial inquiry which had been instituted into the alleged fraudulent issue of the notes.

That Sir Julian Pauncefote was to request that we would take these papers into our consideration and favour your Lordship with our opinion whether Mr. St. John should be directed not to part with the notes without the consent of the Chilean authorities, from whom he had received them, and of the *de facto* Government of Peru which might be established after the withdrawal of the Chilean forces, and if so, whether application should be made at once to the Chilean Government for their consent.

That Mr. St. John having asked for telegraphic instructions, your Lordship would be glad to receive our report at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

Conditions must be adhered to.

That we are of opinion that the terms upon which Mr. St. John received the notes, and which are embodied in his receipt of the 24th July, 1883, must be adhered to.

The notes should be returned only with consent of Chilean Government.

Mr. St. John ought therefore not to part with the notes pending the conclusion of the judicial inquiry without the consent of the Chilean Government. We see no

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[*] List of Papers :—
1. Bank of Mexico and South America, January 10, 1883.
2. Sir S. St. John, January 22, 1883.
3. To Bank of Mexico and South America, February 6, 1883.
4. To Mr. St. John, No. 7, February 6; *ibid.*, No. 47, August 28; *ibid.*, No. 54, September 22, 1883.
5. Mr. St. John, No. 41, April 23; *ibid.*, No. 59, July 13; *ibid.*, No. 68, July 31; *ibid.*, No. 99, October 13, 1883.
6. Memorandum (F. H. V.), November 24, 1883.

[†] Mr. St. John's telegram of the 23rd October, 1883.

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objection to his making application at once to that Government to know whether they are willing that he should now hand the notes over to the bank, from whom they were originally received.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

## Portugal.

### No. 74.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 4.)

*Royal Courts of Justice, April* 3, 1883.

My Lord,

Collision between "City of Mecca" and "Insulano."

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 23rd February, stating that he was to transmit to us, together with previous correspondence on the subject, a copy of a despatch from Her Majesty's Chargé d'Affaires at Lisbon,* containing the answer of the Portuguese Government to the communication which, in accordance with the opinion expressed in our Report of the 21st September last, was addressed to them on the part of Her Majesty's Government. That that communication contained the arguments which were urged by Her Majesty's Government, in reply to the objections of the Portuguese Government to their proposal, that the question of the liability of Portugal for the consequences of the disregard by the Portuguese Tribunals of the International Sailing Rules in the case of the collision between the "City of Mecca" and the "Insulano" should be submitted to arbitration.

Rejection by Portugal of proposal for arbitration.

That we should perceive, from Senhor de Serpa's note of the 9th December, that the Portuguese Government again declined to entertain that proposal as being derogatory to the sovereign rights and dignity of Portugal. That his Excellency endeavoured to explain away the passage in the Judgment of the Portuguese Court, in which it was implied that the "City of Mecca" ran down the "Insulano" through the criminal fault of the captain of the former vessel, and still maintained that the Portuguese Courts were perfectly justified in making the "City of Mecca" bear the whole damages, in spite of the facts that the captain of the "Insulano" failed to comply with Article 14.

Proposed draft to Her Majesty's Minister, recording protest against Portuguese action.

That, under those circumstances, it appeared to your Lordship that the only course left to Her Majesty's Government was to record their protest against the attitude adopted by the Portuguese Government in that case, and that Sir J. Pauncefote was accordingly to transmit to us, for such observations as we might have to offer thereupon, the draft of an instruction which, with our concurrence, your Lordship proposed to address to Her Majesty's Minister at Lisbon on the subject, for communication to the Portuguese Minister for Foreign Affairs.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed instructions.

That we concur in the proposed draft instruction.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr. Baring, No. 91, Commercial, December 17, 1882; Confidential Print, No. 4782; case of "City of Mecca," Part I, Confidential, No. 4243; and Part II, Confidential, No. 4781*.

### Annex.

*Draft of Despatch to Sir C. Wyke.*

(No. . Commercial.)

*Foreign Office*, , 1883.

Sir,

I HAVE to acknowledge the receipt of Mr. Baring's despatch No. 91, Commercial, dated the 17th December last, relative to the case of the collision between the "City of Mecca" and the "Insulano," and transmitting the reply of the Portuguese Government to the communication contained in my despatch No. 66, Commercial, of the 27th September.

In that reply the Portuguese Government once more reject the friendly proposal of Her Majesty's Government to refer the whole question in difference to arbitration.

The Portuguese Foreign Minister nevertheless declares in his note that it is his most earnest and sincere wish that a good understanding should be maintained between the two countries, and he expresses his conviction "of the advantages and justice of arbitration as a means of settling any disputed question between friendly and allied nations."

In view of those assurances, I have to express the surprise and regret of Her Majesty's Government at the decision arrived at. The case is one which, as before pointed out, involves not merely private rights, but the general interests of navigation, and it is a matter of especial concern to this country, as one of the great maritime nations of the world, that the International Sailing Rules should be jealously guarded and scrupulously observed in the decision of collision cases by the Tribunals of the nations which have subscribed thereto.

It is manifest that if any of those Tribunals ignore the violation of an important Sailing Rule by the Commander of a vessel who seeks reparation for the damage he may have sustained in a collision and award him full compensation, without reference to his share in the responsibility for the disaster, the efficacy of the Rules will be seriously impaired, and great laxity will result in their observance apart from the injustice of such an application of them.

For this reason the Legislature of this country has declared, by enactment in section 17 of the "Merchant Shipping Act, 1873," that if in any case of collision it is proved to the Court that any of the Rules have been infringed, the ship by which such Rule has been infringed shall be deemed to be in fault, unless it be shown that the circumstances of the case made a departure from the Rule necessary. Now in the case of the "Insulano," it is admitted that the commander, owing to his erroneous interpretation of Rule 14, violated that Rule by persisting in his attempt to cross the bows of the "City of Mecca," instead of getting out of her way, as he was bound to do, and there is not a vestige of evidence to show that the circumstances of the case rendered a departure from Rule 14 necessary. He was therefore clearly to blame, and though the Portuguese Code declares that where there is blame on both sides each party shall bear his own damages, the Portuguese Tribunals awarded him full compensation for the damage he sustained from the collision which ensued, on the ground that the "City of Mecca" was to blame for not taking timely measures to avert the catastrophe to which the original violation of Rule 14 by the "Insulano" undoubtedly gave rise.

In reply to the question, why the Article of the Portuguese Code was not applied, which declares that where there is blame on both sides each party shall bear his own damages, it is answered that the "City of Mecca" did not set up that defence. It follows, therefore, that the salutary enactment of the Portuguese Code above referred to is rendered inoperative, and a plaintiff in a collision case, who has violated an important Sailing Rule, escapes the consequence of his fault because the defendant has not admitted in his pleadings that there was blame on both sides, but seeks to throw the whole blame on the plaintiff. Her Majesty's Government consider that there has been a grave miscarriage of justice, not only to the prejudice of the British ship-owners, but also to the detriment of the general interests of navigation.

I do not propose, however, to prolong the discussion, in view of the attitude of the Portuguese Government in relation to this case. It only remains for me to add, that Her Majesty's Government fully appreciate the effort made by Senhor Serpa to remove the painful impression created by the unjustifiable attack made from the Bench on the captain and crew of the British vessel; but in the opinion of Her Majesty's Government the language complained of, taken in conjunction with the statement of the Judge, that the collision occurred "evidently through the criminal fault of the captain," hardly leaves room for explanation.

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I have to request that you will read this despatch to the Portuguese Minister for Foreign Affairs, and leave a copy of it with him.

I am, &c.

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### No. 75.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 26.)

My Lord, *Royal Courts of Justice, April* 25, 1883.

Collision between the "City of Mecca" and the "Insulano."

Publication of correspondence.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 19th instant, stating that he was directed by your Lordship to inform us that a question had arisen as to the proper course to be taken (under the circumstances thereinafter stated) with regard to the correspondence relative to the case of the "City of Mecca."

Action brought against owners of the "City of Mecca."

That it would be perceived that at p. 8 of the First Revise for Parliament of "Further Correspondence," marked B, it was said that a personal action "is still pending before the English Courts of Justice." That a statement on that point on behalf of Lloyd's was given at p. 130 of the Final Revise for Parliament (marked A), "Commercial No. 46 (1882)." That that personal action, it appeared from those papers, was that brought by Lloyd's (the underwriters) against the owners of the "City of Mecca," to recover the amount of the Judgment obtained by them before the Portuguese Tribunal.

That it was, in fact, an action on a foreign Judgment.

That questions having been asked in the House of Commons on that case, a promise was given that the correspondence relative to it should be laid before Parliament, and accordingly, last December, the paper "Commercial No. 46 (1882)," (A), was presented to Parliament. That before, however, it could be distributed, the Portuguese note which formed the inclosure in the first letter in the further correspondence (B) was received, and it was thought more expedient to defer publication until the whole correspondence could be issued. That on the receipt of our Report of the 3rd instant, in which we expressed concurrence in the reply about to be made to the note above referred to, the despatch of the 9th instant was sent off, and that continuation paper was thereupon prepared for Parliament.

That in considering the whole correspondence, however, a question had been raised as to whether the distribution of the papers would prejudicially affect the interests of the plaintiffs in the personal action above referred to, and still pending; and, if so, whether that would involve the Secretary of State in any responsibility.

That a Minute on the point whether these papers came within the Acts of Parliament passed for the protection of persons employed in the publication of Parliamentary papers, and its inclosures, were likewise transmitted.

That our opinion was requested as to whether there was any objection to laying and issuing those two Parliamentary papers relative to the case of the "City of Mecca" under the circumstances above mentioned.

In obedience to your Lordship's commands we have the honour to report—

No objection to publication of the correspondence. It will not involve the Secretary of State in any responsibility.

That we do not think that there is any substantial objection to laying and issuing the two Parliamentary papers relative to the case of the "City of Mecca."

We do not think that their publication can involve the Secretary of State in any responsibility.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

"City of Mecca" Case, "Commercial No. 46 (1882)," Parliamentary No. 2672.
Ditto, Further Correspondence, "Commercial No. 13 (1883)," Parliamentary No. 2673.
Minute, Sir E. Hertslet, April 18, 1883.

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## Portugal.

### No. 76*.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received August* 4.)

My Lord, *Royal Courts of Justice, August* 3, 1883.

Collision between the "City of Mecca" and the "Insulano."

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th June last, stating that with reference to our Reports dated the 3rd and 25th April last, he had the honour to transmit to us, by direction of your Lordship, the papers* which relate to the case of the "City of Mecca."

Portuguese protest against British observations on case.

That we should observe that in the note, of which a copy and translation were inclosed in Sir C. Wyke's despatch of the 19th ultimo, the Portuguese Minister for Foreign Affairs protested generally against the tenour of the observations on the case, which, in accordance with the opinion expressed in our Report of the 3rd April, were embodied in your Lordship's despatch to Sir C. Wyke dated the 9th of that month, and that it remained a matter for consideration whether any rejoinder on the part of Her Majesty's Government to Senhor Serpa's note would be either necessary or expedient.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion on the question submitted in that letter, and with any further observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

No detailed answer expedient.

That we do not think it would be expedient to make any detailed answer to the despatch of Senhor Serpa of the 15th May, 1883. The discussion may well be treated as concluded.

Should refuse to admit validity of objections to arbitration.

It might be desirable, however, in acknowledging the receipt of that despatch, to state that Her Majesty's Government cannot admit the validity of the objections to arbitration, and regret they should have been put forward, inasmuch as the question which Her Majesty's Government suggested should be referred to arbitration was the responsibility of Portugal for a disregard by her own Tribunals of the International Sailing Rules.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Sir C. Wyke, No. 36, Commercial, May 19, 1883 (Printed Correspondence, Confidential No. 4782).

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## No. 76.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May* 11.)

My Lord, *Royal Courts of Justice, May* 9, 1883.

Release of Miss F. Preston from lunatic asylum in Lisbon.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 1st instant, stating that he was to transmit to us papers* relating to the case of a Miss Flora Preston, a British subject, then confined in a lunatic asylum in Lisbon.

That her step-father, Mr. H. Betts, and her mother, were anxious that she should be restored to them, and had requested the assistance of Her Majesty's Government to obtain her release.

That our opinion was requested as to what answer should be returned to Mr. Betts, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Should apply to competent Portuguese Tribunal.

That we think Mr. Betts should be informed that the proper course to be pursued is to make application to the competent Portuguese Tribunal.

No ground for interference.

At present we do not think there is any ground for the interference of Her Majesty's Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 77.

[After recapitulating the following letter, the Law Officers report as below:—]

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*†

Gentlemen, *Foreign Office, November* 15, 1883.

British and Portuguese claims and relations on the West Coast of Africa and in the Congo.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the papers noted in the accompanying list,‡ which relate to the negotiations between Her Majesty's Government and that of Portugal for the conclusion of a Treaty to regulate and define their claims and relations on the West Coast of Africa and in the Congo.

Drafts of Treaty and note to Portuguese Minister for opinion.

These papers consist of a revised draft of the Treaty, and the draft of a note which his Lordship proposes to address to the Portuguese Minister, communicating the former to him for submission to his Government, together with certain observations thereupon; and I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Granville with your opinion, at your earliest convenience, as to whether there is anything in the draft Treaty or the draft note to M. d'Antas which is open to objection in point of law, and with any general observations which you may have to offer on the drafts generally.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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*Report.*

Approve note and Treaty, except Article XI, conferring on Portuguese vessels right of search and detention of British vessels in British waters.

That, in our opinion, there is not anything in the draft note or Treaty which is open to objection in point of law except Article XI of the Treaty.

That Article purports to confer upon Portuguese vessels of war the rights of detention and search of British vessels within British territorial waters. We are not satisfied that such powers can be validly conferred by Treaty alone. If a British

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[*] Consul Brackenbury, No. 16, April 19; Mr. Betts, April 24, 1883.

[†] The Law Officers' Report on this subject could not be found when this collection was made; it was, therefore, necessary to print the draft of the Report in the form retained by the Law Officers, together with the Foreign Office letter to which it is a reply.

[‡] Draft Treaty (see Article XII of final Treaty of February 26, 1884, Parliamentary No. 2796); draft to M. d'Antas (see note to M. d'Antas of January 7, 1884).

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vessel were seized under such circumstances in British waters, we do not feel clear that the Treaty would be a sufficient warrant for such an act and render it lawful.

Not clear as to power to grant such rights by Treaty. Information not sufficient for general opinion on drafts.

We are not in possession of sufficient information to enable us to express any opinion upon the drafts generally.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*December* 3, 1883.

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## Russia.

### No. 78.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 5.)

*Temple, January* 5, 1883.

My Lord,

Case of the "Trevilley." Suit for breach of charter-party.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 20th ultimo, stating that he had the honour to transmit to us, by your Lordship's direction, a further correspondence in the case of the "Trevilley,"* which formed the subject of our Report of the 16th October last, which was inclosed.

Indemnity granted to Consul.

That on the 26th October the Secretary of the Steam-ship Owners' Mutual Protection and Indemnity Association forwarded to your Lordship's Department a written guarantee on behalf of the Association to indemnify Consul Wooldridge against any claims arising out of his retention of the deposit pending further instructions.

Further proceedings as to deposit.

That Mr. Wooldridge was accordingly instructed not to part with the deposit, and he was to refer us to his despatches numbered 18 to 25 respectively for a narrative of the subsequent proceedings.

That a copy of the Agreement under which the deposit was made formed Inclosure 2 in his No. 19, and we would observe that it stipulated that the deposit should remain in the Consulate "until the case in question is settled by final decision according to the Russian Law," and that if, at the expiration of six months (from the 8th April last), the decision in favour of Mr. Smith should not be reversed, the case should be considered as finally settled, and the Consul should be bound to pay the deposit to Mr. Smith.

That the six months expired on the 8th October last. That the Senate of St. Petersburgh on the 6th October (O.S.) (18th, N.S.), reversed the decision, not on the merits, but entirely on technical grounds, and ordered a new trial (Mr. Wooldridge's No. 21). That it was stated by Mr. Smith that the new trial came on in Court, but was suspended because no one appeared to represent the defendant (the captain of the "Trevilley"), and that he was therefore debarred by the conduct of the defendant from pursuing his remedy (Consul Wooldridge's No. 25).

That Mr. Smith claimed the deposit under the Agreement on the ground that the decision in his favour was not reversed "within six months." That, on the other hand, the Association claimed the deposit on the ground that the decision having been quashed, Mr. Smith was not entitled to the money.

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* Mr. Mitcalfe (Telegraphic), October 7; ditto (letter), October 7; to Consul Wooldridge, October 7; to Mr. Mitcalfe, October 7; Mr. Mitcalfe, October 9; Consul Wooldridge, No. 18, October 10; Law Officers' Report, October 16; to Mr. Mitcalfe, October 17; to Consul Wooldridge, October 18; Mr. Mitcalfe, October 18; Consul Wooldridge, No. 19, October 21; to Mr. Mitcalfe, October 25; Mr. Mitcalfe, October 26; ditto (Telegraphic), October 27; to ditto, October 27; Mr. T. Sutton, received October 28; Consul Wooldridge, No. 20, October 28; Mr. Mitcalfe, October 23; Consul Wooldridge, No. 21, November 1; to Consul Wooldridge, November 2; Consul Wooldridge (Telegraphic), November 4; ditto, No. 22, November 4; ditto (Telegraphic), November 6; Indemnity Association (Telegraphic), November 7; to Mr. Mitcalfe, November 7; ditto, November 7; Mr. Mitcalfe, November 7; ditto, November 8; to Consul Wooldridge, November 8; to Mr. Mitcalfe, November 8; Mr. Mitcalfe, November 8; ditto (Telegraphic), November 9; ditto (Telegraphic), November 9; Consul Wooldridge (Telegraphic), November 9; Mr. Mitcalfe, November 9; Consul Wooldridge, No. 23, November 10; Memorandum, November 11; Mr. Mitcalfe, November 13; Consul Wooldridge, No. 3, Commercial, November 18; to Consul Wooldridge, November 21; Consul Wooldridge, No. 24, November 22; ditto, No. 25, November 25; Mr. Mitcalfe, December 7; ditto, December 12, 1882.

That the Russian Court at Taganrog declined to make an order that the money should be paid into Court.

That the Association declined to refer the case to arbitration, and apparently refused to appear on the new trial, when the case could be decided on the merits.

That, in those circumstances, Mr. Currie was to request that we would favour your Lordship with our opinion as to the course which should be followed.

In obedience to your Lordship's commands we have the honour to report—

The money should be paid to Mr. B. Smith, in accordance with the agreement.

That we think the money should now be handed to Mr. Berthold Smith.

The deposit was made as security for the Judgment of the Commercial Court in place of the ship, which was then under arrest, and to procure her release.

The Judgment of the Commercial Court has not been reversed on the merits, but only in respect of certain informalities of procedure. The case is still pending in that Court, a new trial having been ordered. The difficulty of bringing that trial to a determination appears to arise from the fact that the defendant is not present or represented. If, then, the deposit was returned to the parties who made it, Mr. Berthold Smith, however just his claim, would probably be left without the means of enforcing it.

It seems now to be clear that the receipt given by the Consul correctly represents the terms upon which the money was deposited. According to those terms, in the events which have happened, Mr. Berthold Smith is entitled to the money. And in existing circumstances we see no reason why the Agreement upon which the release of the ship took place should not be carried out and the money paid to Mr. Smith.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 79.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 19.)

*Temple, January* 18, 1883.

My Lord,

Nationality of Mrs. Newinski, a British subject married to a Pole.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 8th instant, stating that he was to transmit to us papers* relating to the issue of a passport by Her Majesty's Consul-General at Philippopolis to Mrs. Newinski, a British subject by birth, but married to a Russian Pole, and also to the registration as British subjects of the children born of the marriage.

That it was alleged that the husband, at the time of the marriage, had forfeited his nationality of origin, and that he had acquired no other nationality since. That the children having been born out of Her Majesty's dominions, were clearly not entitled to be registered in Her Majesty's Consulate at Philippopolis; but that the question had arisen whether the mother, a natural-born British subject, had become divested of her British nationality by her marriage with Mr. Newinski, the latter having possessed no nationality at the time of the marriage, and section 10 (1) of the Naturalization Act being, therefore, inapplicable to such a case.

That your Lordship desired our opinion on that question, and also that we would inform your Lordship whether, assuming Mrs. Newinksi to have lost her British nationality, the protection of a British passport might, nevertheless, be granted to her under the peculiar circumstances of her case.

In obedience to your Lordship's commands we have the honour to report—

That it does not appear clear that Mrs. Newinski is not a Russian subject.

Unless Mr. Newinski has forfeited his Russian nationality a British passport should not be granted to his wife.

Mr. Jones, Her Majesty's Consul-General at Philippopolis, states in his letter of the 25th November, 1882, that "Mr. Newinsky was forced to quit his country in consequence of the part he took in the rebellion of 1863." He further states that Mr. Newinski had forfeited his nationality before his marriage. But how this was accomplished he does not state, and we cannot very well understand. It seems probable that he lost his civil rights by reason of his complicity in the rebellion, and his flight from the country, and that from this it has been inferred that he has

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* Memorandum by Mr. Bernhardt, November 3; to Consul-General Jones, No. 9, November 7; Consul-General Jones, No. 15, November 25, 1882.

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"forfeited his nationality." But the two things are very different, and though he may have forfeited his civil rights in Russia, we think it probable that he is still to be regarded as a Russian subject. Under the circumstances we do not think it can be accepted, as a fact, that he is not one, and until it be established that he is not a Russian subject, we do not think a passport could properly be granted to his wife as a British subject.

If this should be established, and Mr. Newinski is to be regarded as having no nationality, a British passport might probably without impropriety be granted to Mrs. Newinski.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 80.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 31.)

*Temple, January* 31, 1883.

My Lord,

Case of the "Trevilley." Suit for breach of Charter Party.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th instant, stating that in our Report of the 5th instant on the case of the "Trevilley," we advised that in the events which have happened, Mr. B. Smith was entitled to the deposit placed in the hands of Consul Wooldridge. That as the date of the reversal of the Judgment of the Commercial Court at Taganrog by the Senate at St. Petersburgh was most material, your Lordship, before taking any further action as to the disposal of the deposit, caused a telegraphic communication to be addressed to Her Majesty's Ambassador at St. Petersburgh,* instructing him to ascertain the precise date of the reversal of the Judgment, and, if possible, to send by mail an official copy of the Judgment on appeal. That Sir E. Thornton replied by telegraph on the 10th instant, that the date of the reversal, by the Senate, of the Judgment of the Commercial Court of Taganrog was the 13th (25th) September last, and the date of the Ukase of the Senate setting forth the reversal was the 6th (18th) October last.

That his Excellency subsequently telegraphed† that there was a difficulty in procuring a copy of the Judgment alluded to, but that that was rendered immaterial, as the document in question had then been supplied, together with a certified translation, by the agent of the Steam-ship Owners' Mutual Protection Association, who had made the deposit on behalf of the owners of the "Trevilley," and now claimed its restitution.

That by the terms of the Agreement the deposit was to remain in the Consulate until the case should be settled "by final decision according to Russian law," and that it was only in case the Judgment should not have been reversed before the 8th October, that the deposit became payable to Mr. B. Smith.

That the case not having been "settled by final decision according to Russian law," your Lordship apprehended that the Indemnity Association who made the deposit were not entitled to its return, and that, therefore, the only question which arose was whether Mr. B. Smith was entitled to the deposit on the ground that the Judgment was not reversed before the 8th October.

That on that point we should observe that, according to Sir E. Thornton's telegram, the actual reversal of the Judgment took place on the 25th September, but that the Ukase by which it was carried out was dated the 18th October (N.S.).

That in those circumstances, Sir J. Pauncefote was to request our opinion as to whether the deposit should be handed to Mr. B. Smith, or should remain in the Consulate "until the case in question is settled by final decision according to Russian law."

That inclosed were the papers previously submitted to us, and in addition thereto the copy of the Judgment on appeal, Sir E. Thornton's telegram of the 10th instant, and our Report of the 5th instant.

In obedience to your Lordship's commands we have the honour to report—

Deposit should remain with Consul if Judgment was reversed on the 25th September

That if the actual reversal of the Judgment took place on the 25th September, we think the deposit ought not to be handed to Mr. Berthold Smith, but should remain in the Consulate until the case in question is settled by final decision according to Russian law.

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* To Sir E. Thornton, January 9, 1883.

† Telegram, January 17, 1883.

Should inquire as to exact nature and effect of proceedings.

It does not, however, appear perfectly clear whether what took place on the 25th September amounted to an effective reversal of the Judgment, the Ukase being a formal proceeding, which necessarily followed the other, and which might be issued at any time, or whether, on the other hand, the reversal could not be said to be complete until the issue of the Ukase. We think inquiry should be made on this point, and as to the exact nature of the proceedings, but in the meantime the deposit should remain in the Consulate.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 81.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December* 17.)

*Royal Courts of Justice, December* 15, 1883.

My Lord,

Collisions between the "Minine" and the "Redesdale" and "Fitzroy."

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he was to transmit to us papers relative to the collisions that occurred in the Bay of Gibraltar on the 8th October last between the Russian frigate "Minine" and the British vessels "Redesdale" and "Fitzroy."*

Claim on Russian Government.

That it would be seen from the letters of Messrs. Cooper and Co., the Solicitors of the owners of the "Redesdale" and "Fitzroy," that the latter preferred claims against the Russian Government on account of damages caused to those vessels through the collisions in question.

Proposed reference to Admiralty Court.

They asked that their claim might be laid by your Lordship before the Russian Government, and that, in case the Russian Government should raise any difficulty as to their liability, it might be arranged that the matter be referred to the Judge of the Admiralty Division of the High Court of Justice.

That your Lordship desired to be advised whether there is a case, as set forth in those papers, in which a representation could properly be addressed to the Russian Government in the sense indicated by Messrs. Cooper and Co.

That copies of Reports of the Law Officers and the Queen's Advocate relating to similar applications in the case of collisions between British vessels and foreign ships of war were inclosed for reference, and that copies of the Protests of the masters of the two British steamers would be found in Messrs. Cooper and Co.'s letter of the 26th November.

That our opinion was requested on the question submitted in that letter.

In obedience to your Lordship's commands we have the honour to report—

Desired representation can properly be addressed to Russian Government.

That, in our opinion, this is a case in which a representation can properly be addressed to the Russian Government in the sense indicated by Messrs. Cooper and Co.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Messrs. T. Cooper and Co., November 5; to ditto, November 14; Messrs. T. Cooper and Co., November 26, 1883; Law Officers (Portugal) December 21, 1868, Confidential No. 1892, p. 81; ditto (Spain), June 8, 1869, Confidential No. 2545, p. 197; ditto (United States), September 27, 1870, Confidential No. 3660, p. 174.

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### No. 82.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 22.)

*Royal Courts of Justice, December* 21, 1883.

My Lord,

Vice-Consul Colledge v. "Globe." Charge as to wrecking conspiracy.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 11th instant, stating that he was to transmit to us papers* relating to a charge brought against Mr. Colledge, the British Vice-Consul at Kertch, of complicity in a conspiracy in wrecking or running ashore vessels coming from Constantinople.

Application by defendants for papers.

That Mr. Colledge, having taken proceedings at the Bow Street Police Court against the proprietor of the "Globe" newspaper for libel, in consequence of a paragraph inserted in that paper in connection with that matter, Messrs. Lewis and Lewis, who appeared for the defence, had applied to your Lordship for such documents as might be required to be produced at the adjourned examination.

That your Lordship desired our opinion as to whether, and to what extent, your Lordship would be justified in producing in Court any official documents, or in supplying other evidence in relation to the case.

That the proceedings at Bow Street had been adjourned to Thursday, the 13th instant.

We are also honoured with a further letter from Sir Julian Pauncefote, dated the 12th instant, inclosing correspondence† relative to the application of the Russian Government for the arrest of Mr. Colledge.

In obedience to your Lordship's commands we have the honour to report—

Should consider request for any specific document, but not one for papers generally.

That, if Mr. Lewis should request the production of any specific document for the purpose of producing it in evidence, we think his application should be considered, but at the same time it would be unadvisable, upon an application general in its terms, to produce all documents bearing upon Mr. Colledge's conduct, now in possession of the Foreign Office.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Siam.

### No. 83.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 13.)

*Temple, January* 12, 1883.

My Lord,

Nai Rahtchinda *v.* Chin Sin Peng, a British subject. Suit for recovery of value of rice mill destroyed by fire.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th December last, stating that he had the honour to transmit to us, by your Lordship's direction, a note from Prince Prisdang,‡ the Siamese Minister, inclosing a despatch from his Government in which they expressed their dissatisfaction at the Judgment delivered by the British Consular Court at Bangkok in a case where the plaintiff was a Siamese and the defendant a British subject (Anglo-Chinese), and their desire to be informed of the Tribunal to which the plaintiff might be allowed to appeal.

That Sir Julian had the honour to call our attention to the statement contained in Inclosure 2, from which it would be seen that the plaintiff sued the defendant for the value of a rice mill rented of him by the latter, during whose occupancy it was burnt down. That the plaintiff produced an Agreement under which any loss by fire was to be made good by the defendant, but as that document contained alterations not satisfactorily accounted for, the Court rejected the evidence of such contract and gave Judgment only for the arrears of rent due.

Proceedings in Consular Court.

Failure to appeal to Singapore.

That the proceedings took place in accordance with Article 2 of the Supplementary Agreement between the two Governments of Her Britannic Majesty and their Majesties the First and Second Kings of Siam, of the 13th May, 1856, and Her Majesty's Order in Council of the 28th July, 1856, copies of which were inclosed.* That the plaintiff was informed that formal notice of an appeal to Singapore must be given within fifteen days of the Judgment (Order in Council, section 5), but instead of taking the proper steps, he referred the matter to his Government, and a correspondence ensued, of which a copy formed Inclosure 1 in Prince Prisdang's note.

That Sir Julian was directed by your Lordship to submit, for our approval, a draft reply, which your Lordship proposed to address to the Siamese Minister. That Sir Julian was at the same time to observe that, as the contract related to land in Siam, it was presumed that, apart from the disputed Agreement, it should have been governed by Siamese law as regarded the liability of the tenant for loss by fire, and that if by Siamese law the defendant was liable, as appeared to be the contention of the Siamese Government, it would follow that there had been a failure of justice.

Question as to appeal to Privy Council.

That Sir Julian Pauncefote was therefore to request that we would favour your Lordship with our opinion as to whether, if the Singapore Court of Appeal cannot, by reason of the plaintiff's failure to give the required notice, entertain the appeal, the plaintiff could obtain any relief by direct application to the Judicial Committee of the Privy Council or by petition to the Queen in Council.

In obedience to your Lordship's commands, we have the honour to report—

Approve reply to Siamese Minister.

That we approve the inclosed draft reply which your Lordship proposes to address to the Siamese Minister.

Circumstances of case do not justify appeal.

We are disposed to think that the Queen in Council could, on the recommendation of the Judicial Committee, entertain an appeal from the decision of the Consular Court. But where the party aggrieved had failed to prosecute an appeal before the proper Court, the Judicial Committee would certainly only give leave to appeal under very exceptional circumstances. And we do not think that circumstances exist in the present case which would, or, in our judgment, ought, to induce the Judicial Committee to take so unusual a course.

Case should again be brought before Consular Court upon fresh grounds.

At the same time we quite agree that if the law of Siam be as suggested, there appears to have been a failure of justice. The decision given is only to the effect that the Agreement cannot be admitted as evidence, and "therefore" the claim is rejected. The question, what were the rights of the parties in the absence of the Agreement, does not appear to have been entered upon. And if this question has not been disposed of, we think it might be well to take steps to bring the case again before the Consular Court on this, and also upon the ground that the destruction of the mill was due to the negligence of the tenant, which appears to be raised by the plaintiff and not to have been investigated.

Omission in proceedings in Consular Court.

We observe that by the IInd Article of the Supplementary Treaty, which provides that the British Consul alone shall hear and determine such cases as the present, it is also provided that the Siamese authorities shall be at liberty to attend and listen to the investigation of the case, and copies of the proceedings will be furnished from time to time, or whenever desired, to the Siamese authorities till the case is concluded.

We cannot find any trace of this course having been pursued in the present instance. If it had been, it is quite possible that the difficulty which has arisen would have been avoided.

We have &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr. Palmer, July 9; to Consul-General Stanley, July 10; to Vice-Consul Colledge, July 10; Mr. Scorfield, August 29; Acting Consul-General Hunt (Telegraphic), August 27; ditto, No. 28; to ditto, No. 13; to Mr. Scorfield, September 3; Mr. Hunt, No. 29; ditto, No. 30; Mr. Scorfield, September 15; to Mr. Hunt, September 18; Mr. Scorfield, September 21; Mr. Hunt (Telegraphic), October 2; to ditto (Telegraphic), October 2; Mr. Scorfield, October 4; Mr. Hunt, No. 31; ditto (Telegraphic), October 5; Lloyds, October 9; Mr. Scorfield, October 9; Mr. Hunt (Telegraphic), October 9; to Lloyds, October 12; Mr. Webster (Telegraphic), October 13; Mr. Kennedy, No. 7; Lloyds, No. 17; Mr. Hunt, No. 36, October 22; Vice-Consul Colledge, October 29; Mr. Scorfield, November 3; to Mr. Hunt, November 1; to Mr. Scorfield, November 5; to Mr. Colledge, November 5; Minute, November 2; to Vice-Consul Colledge, November 16; ditto, November 16; to Lloyds, November 16; to Vice-Consul Colledge, November 26; ditto, November 29; Mr. Scorfield, November 29; to ditto, December 4; newspaper account of proceedings at Bow Street, December 7; to ship-owners, &c., engaged in Sea of Azov trade, December 8; to Lewis and Lewis, December 10; Memorandum, December 11, 1883.

† Consul-General Fawcett (Telegraphic), October 1; ditto, ditto, October 2; Consul-General Fawcett, No. 67, October 2; to ditto, No. 39 (Telegraphic), October 2; Consul-General Fawcett, No. 68, October 2; ditto (Telegraphic), October 12; ditto, No. 72, October 12, 1883.

‡ Prince Prisdang, August 26, 1882.

* Supplementary Agreement of May 13, 1856, No. Treaty 411, p. 10; Order in Council of July 28, 1856, Confidential, No. 575.

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## Annex.

*Draft of Letter from Earl Granville to Prince Prisdang.*

M. le Ministre, *Foreign Office*, , 1883.

YOUR Highness did me the honour to call my attention, in a note of the 26th August last, to the case of Nai Rahtchinda, a Siamese subject, who has, in the opinion of your Government, suffered injustice at the hands of Her Majesty's Agent at Bangkok, by a Judgment delivered by him in the Consular Court, and by his refusal to admit of an appeal to Singapore.

I understand, from the papers submitted to me by your Highness, that Nai Rahtchinda sued a British subject, named Chin Sin Peng, for the value of a rice mill hired from him by the latter, during whose occupancy it was burnt down; and that the Court, having rejected the plaintiff's claim for compensation, and only allowed for the unpaid rent, he applied to have the case re-tried. He was informed at Her Majesty's Agency that the case could not be re-tried at Bangkok, but that if he sought to reverse or alter the decision he must give formal notice of appeal within fifteen days from the date of the decision, and give security for costs. He did not take this course, but obtained the intervention of the Siamese Government, who complain not only that Mr. Palgrave declined to discuss the matter further with them, but that he had acted contrary to precedent in not endeavouring to come to an understanding with the Siamese authorities in a case affecting one of their countrymen before giving his final decision.

I am aware that, by the IInd Article of the Treaty of 1855, it is provided that any disputes arising between British and Siamese subjects shall be heard and determined by the British Consul in conjunction with the proper Siamese officers, but I have the honour to remind your Highness of the modification introduced into this arrangement by the IInd Article of the Supplementary Agreement, where it is laid down that all civil cases, in which the defendant is a British subject, shall be heard and determined by the British Consul alone.

With regard to the plaintiff's right to appeal, I beg to point out to your Highness that he was warned that it would expire fifteen days after the delivery of the Judgment, but that, instead of giving the formal notice required, he placed his case in the hands of the Siamese Government, who laid it before Her Majesty's Agent after the time for appeal was past.

With regard to the allegation that there has been no formal trial, and that the decision to which exception is taken was merely the result of a request on the part of the plaintiff for the good offices of the Court (in which event it would still be open to him to institute a formal trial), I beg to observe that this view is not borne out by the papers before me, which show that the case was formally instituted, tried, and decided by the Court. That being so, Her Majesty's Agent has no power to waive the rule regarding the fifteen days' notice; neither would the Supreme Court at Singapore have power to hear the appeal.

But the decision given is only to the effect that, as the Agreement showed on the face of it alterations which were not satisfactorily accounted for, it could not be received in evidence, and therefore the claim was rejected. The question, what were the rights of the parties apart from the Agreement, does not appear to have been entered upon. Her Majesty's Government are advised that if this question has not been disposed of, it is still competent to the plaintiff to commence a fresh suit in the Consular Court for damage for the loss of the mill, by reason of the defendant's legal liability as tenant to compensate the landlord, apart from any Agreement, and also by reason of the defendant's negligence, if such can be proved.

I have, &c.

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## No. 84.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 3.)*

My Lord, *Temple, February* 2, 1883.

Nai Rahtchinda *v.* Chin Sin Peng. Suit for recovery of value of mill destroyed by fire.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 22nd ultimo,* stating that, with reference to our Report of the 12th ultimo on the case of Nai Rahtchinda, a Siamese subject, who recently instituted a suit against Chin Sin Peng, a British subject, in Her Majesty's Consular Court at

Bangkok, to recover the value of a rice mill destroyed by fire, he was directed to request our opinion as to the form in which the case should be brought again before the Consular Court, whether by the plaintiff instituting a fresh suit for damages for the loss of the mill by reason of the defendant's negligence, and by reason also of his liability, by Siamese law of landlord and tenant, to make good the loss apart from the question of the agreement entered into between the parties, or whether the plaintiff should apply to the Consular Court to grant a new trial or to review its Judgment, or whether the Court should take the initiative in reopening the case for that purpose, after notice to the parties.

That your Lordship was aware that it was unusual to request us to advise as to the conduct of legal proceedings pending in a Consular Court, but that, in the present case, owing to the fact that no legal advice was obtainable on the spot, and that the Consul was not a professional Judge, it was very desirable, in order to avoid further difficulties and complications, to supply him with distinct directions as to his powers and duties in the matter.

That, under those circumstances, your Lordship would be obliged to us if we would be good enough to supplement our previous Report by advising your Lordship on the points above indicated.

In obedience to your Lordship's commands we have the honour to report—

Course to be pursued with regard to a fresh suit.

That the proper course to be taken must depend upon what was the exact question raised in the suit brought by the plaintiff, and upon which the decision was pronounced. The information before us is somewhat meagre, but we gather that the only matter put forward and dealt with by the Consul was a claim founded on the terms of the agreement.

If this be so, we think the proper course would be for the plaintiff to institute a fresh suit for damages for the loss of the mill by reason of the defendant's negligence, and also of his liability, by Siamese law, to make good the loss apart from the terms of the agreement entered into between the parties.

There is, no doubt, a difficulty in this course, inasmuch as the claim would be the same as that previously adjudicated upon, though based upon different grounds; but seeing that legal advice was not obtainable on the spot, and that the Consul was not a professional Judge, we do not think this ought to stand in the way of the plaintiff if he really has substantial grounds for a claim against the defendant which has not yet been the subject of a judicial decision.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 85.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 9.)*

My Lord, *Royal Courts of Justice, February* 7, 1883.

Trial of Ai Baa, illegitimate son of an Englishman, for murder of a Siamese policeman.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th January last, stating that by your Lordship's direction he submitted to us the accompanying papers* which had been communicated to your Lordship by the Siamese Minister at this Court relative to the case of Ai Baa, who was sentenced by the Consular Court at Bangkok to three years' imprisonment.

That Ai Baa had been handed over for trial to Mr. Palgrave, the British Consul-General, it having been ascertained that the prisoner was the son of a British subject. That the crime charged against him (and which the Siamese Government allege that he has confessed) was that of murdering a Siamese policeman.

Complaint of Siamese Government as to inadequacy of sentence.

That the Siamese Government took exception to the sentence as a wholly inadequate one, considering the nature of the offence.

That it was believed that the prisoner, who was born in Siam, was an illegitimate son of an Englishman by a Siamese woman. That such persons, according to the usage prevailing in Siam, were treated as British subjects by the Siamese authorities, and enjoy British protection. But there is no provision in the Treaty between Great Britain and Siam as to "British protection," and the Orders in Council regulating the exercise of civil and criminal jurisdiction in Siam by Her Majesty's Consular officers

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* For list of papers, see Report of January 12, 1883.

* Inclosures 3 and 4 in Prince Prisdang's letter of the 15th November, 1882.

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contained no provision empowering them to exercise that jurisdiction in the case of persons not being British subjects, but only enjoying "British protection." Copies of the Treaty of 1855 and Supplementary Agreement of 1856, and of the Orders in Council of 1856 and of 1876, were transmitted therewith.*

That Article II of the Supplementary Agreement (p. 11) provided that criminal cases in which the defendant was a British subject should be tried and decided by the British Consul alone, but that the Siamese authorities might attend the trial, and copies of the proceedings should be furnished to them from time to time, or whenever desired, until the case was concluded.

That by the Order in Council of 1876 the maximum punishment which a Consular Court could inflict was three years' imprisonment, but by Article 22 of the Order of 1856 the defendant might be sent for trial to Singapore and be dealt with there as if the crime had been committed within the colonial jurisdiction. That in the present case, Ai Baa was tried before the British Consular Court, found guilty, and the maximum sentence of three years' imprisonment was inflicted. That it did not appear from the correspondence whether he was tried with assessors, as required by Article 14 of the Order of 1856 and Article 4 of the Order of 1876. But, in reply to the complaint of the inadequacy of the sentence, Consul-General Palgrave informed the Siamese Government that the case was confused; that the truth could not be obtained from the evidence; that although there was not sufficient evidence to convict the prisoner according to British law, there was sufficient "presumption of guilt" to warrant his undergoing the full sentence of the law applicable to his case, namely, three years' imprisonment; that if he had been sent to Singapore for trial he would have been acquitted. (See Correspondence, pp. 5, 8, and 12.) That Mr. Palgrave declined to comply with the application of the Siamese Government for a copy of the proceedings, on the ground that the case was concluded. (*Ibid.*, pp. 16 and 19.)

Irregularity of proceedings of Mr. Palgrave.

That it appeared to your Lordship that Mr. Palgrave's proceedings in the case were very irregular, and that the tone of his letter of the 14th June (p. 19) to the Kromatah was not justified under the circumstances.

That your Lordship apprehended that if Ai Baa be illegitimate (as to which there can hardly be any doubt), the sentence pronounced on him was illegal by reason of the absence of any provision in the Order in Council empowering the Consular Court to exercise jurisdiction over any but British subjects. That in any case, if, as stated by Mr. Palgrave, the evidence was insufficient and "the truth could not be obtained," the prisoner should have been discharged; and that, under the circumstances, copies of the proceedings should have been furnished to the Siamese authorities, although the case was concluded. That as regarded the question of jurisdiction, your Lordship was informed that there were many persons in Siam enjoying British protection to whom it would be a great hardship to be handed over to Siamese jurisdiction.

Question as to jurisdiction over protected persons in Siam.

That it appeared, therefore, to your Lordship, that it might be impolitic to discharge Ai Baa on the ground that the Consular Court did not possess jurisdiction in his case, and that it would be preferable that a short Order in Council should be passed to extend British jurisdiction to persons enjoying British protection in Siam, and to legalize the past exercise of such jurisdiction. That the registration of "protected persons" might be provided for as in the Order in Council for the Ottoman dominions,† of which a copy was transmitted therewith.

Proposed Order in Council.

That, in the meanwhile, your Lordship proposed to instruct Mr. Palgrave to report on the status of Ai Baa, to send home a copy of the proceedings, and also to furnish copies of the proceedings to the Siamese authorities, pending the further consideration of the case by Her Majesty's Government.

Proposed instructions to Mr. Palgrave.

That your Lordship would be glad to be informed whether we concurred in the above view of the case, and in the course proposed to be followed.

In obedience to your Lordship's commands we have the honour to report—

That we concur in the course proposed to be followed, and in the above view of the case so far as regards Mr. Palgrave's proceedings, which appear to have been very irregular.

Concur in instructions and view as to Mr. Palgrave's action.

But with reference to the suggestion, that a short Order in Council should be passed to extend British jurisdiction to persons enjoying British protection in Siam, and to legalize past exercise of such jurisdiction, we have to make the following observations:—

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* Treaty of the 18th April, 1855, and Supplementary Agreement of the 13th May, 1856. No. 411. Orders in Council of the 28th July, 1856, and the 23rd October, 1876. Confidential Nos. 575 and 2963.

† Confidential No. 2873.

By the Treaty between Her Majesty and the Kings of Siam of the 18th April, 1855, and the Supplementary Agreement thereto of the 13th May, 1856, jurisdiction is conferred on the British Consul in those cases only in which the defendant is a "British subject." No such jurisdiction appears to be conferred in respect of persons who are not British subjects, but only enjoy British protection in Siam. As at present advised, we think the Order in Council could not confer on the Consul any valid jurisdiction in Siam beyond the limits defined by the Treaty.

Opposed to Order in Council, as Treaty does not confer jurisdiction over foreigners under British protection.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 86.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 16.)

My Lord,
*Royal Courts of Justice, March* 15, 1883.

Fezoolabhoy Abdoolaly. As to jurisdiction of Consul at Bangkok in cases of bankruptcy.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 7th instant, stating that he had to transmit to us, by direction of your Lordship, the papers noted in the accompanying list,* which related to a complaint preferred by an Indo-British subject, named Fezoolabhoy Abdoolaly, against Mr. Palgrave, Her Majesty's Consul-General in Siam, in connection with proceedings in bankruptcy pending in Her Majesty's Consular Court at Bangkok, and in the Supreme Court of the Straits Settlements.

That the case of the complainant was stated by him in his letter of the 13th January, and Sir Julian Pauncefote was to refer us to the explanations given by Mr. Palgrave in the Memorandum inclosed in his despatch No. 5.

That it would appear from the above document that the Consular Court had hitherto exercised jurisdiction in bankruptcy, although such jurisdiction was not vested in Her Majesty's Consuls by any of the Orders in Council for regulating the exercise of Her Majesty's jurisdiction in Siam. Copies of those Orders were sent herewith.

That the complainant filed a Petition in the Consular Court praying for relief as a bankrupt, and stating that he not only traded under his own name in Bangkok, Singapore, and Surat, but also as a partner to the extent of a third share in the firm of Hyderbhoy Moothabhoy and Co., of Bangkok.

That a meeting of creditors was held and his assets were realized and paid into Court.

Recourse of bankrupt to Supreme Court at Singapore.

That in the meanwhile the complainant who had proceeded to Singapore where some of his creditors resided, filed a Petition in bankruptcy in the Supreme Court of the Straits Settlements, having been advised that Her Majesty's Consular Court at Bangkok had no jurisdiction in bankruptcy.

Refusal of Consul to remit assets to Singapore.

That Her Majesty's Consul-General at Bangkok was thereupon requested by him and also by the Sheriff of Singapore to remit to the Supreme Court of the Colony the assets in the custody of the Consular Court.

That Mr. Palgrave declined to do so, and it would seem from his despatch No. 5, that he was about to proceed with the distribution of the separate estate of the insolvent among the creditors at Bangkok.

That the Supreme Court of Singapore had power under Article 24 of the Orders in Council of 1856 to stay proceedings in the Consular Court, in suits of a civil nature between British subjects, but had declined to make any Order in the present case presumably on the ground that it did not come within the terms of the enactment.

That the assets or part of them were in the custody of the Court at Bangkok, and no assignment appeared to have been made by the bankrupt of his property.

That he had selected the Supreme Court of the Straits Settlements as the forum of his bankruptcy, and wished the assets then in Court at Bangkok to be administered in Singapore.

That if, as your Lordship apprehended, the Consular Court at Bangkok had no jurisdiction in bankruptcy, your Lordship would be glad to be advised whether with

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* Mr. Palgrave, No. 89, November 24, 1882; ditto, No. 5, January 13; ditto, No. 9, January 17; Fezoolabhoy Abdoolaly, January 12, 1883; Orders in Council, July 28, 1856, No. 575, and October 23, 1876, No. 2963.

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the previous assent of the Supreme Court at Singapore, the assets might properly be transmitted to that Court as desired by the bankrupt.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into consideration, and favour your Lordship with our opinion as to the instructions which should be sent in the matter for the guidance of Her Majesty's Consulate at Bangkok.

In obedience to your Lordship's commands we have the honour to report—

Consular Court has no jurisdiction in bankruptcy.

That it appears clear that under the Order in Council of 1856, the Consular Court at Bangkok has no jurisdiction in bankruptcy.

Consul should, with its assent, transmit assets to Court at Singapore.

We think, therefore, that under the circumstances Her Majesty's Consul at Bangkok may properly be instructed to transmit the assets in his hands to the Supreme Court at Singapore, as desired by the bankrupt, if that Court assent to their being so transmitted.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 87.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 14.)*

My Lord, *Royal Courts of Justice, May 12, 1883.*

Ai Baa. Sentenced by Consular Court at Bangkok.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 27th ultimo, stating that he was to transmit to us the papers* which related to Ai Baa, who was sentenced by the Consular Court at Bangkok to three years' imprisonment, and which formed the subject of our Report of the 7th February last.

That it now appeared that it was upon evidence taken by Siamese officials that Mr. Palgrave sentenced the prisoner; and that our opinion was requested as to whether, in view of the irregularity of Mr. Palgrave's proceedings in the case, instructions should be sent to the Acting British Agent and Consul-General at Bangkok, by telegraph, directing him to set Ai Baa at liberty, and not to interfere with any action which the Siamese authorities might take against that person.

In obedience to your Lordship's commands we have the honour to report—

Irregularity of proceedings do not invalidate his trial.

That, although taken before Siamese officials, it appears, from the statement at the end of the depositions, that they were read over to the witnesses by the Consul in the presence of the accused. Presuming, as we do, that an opportunity was given to him to interrogate the witnesses, we do not think that any irregularity sufficient to invalidate the trial has occurred, though the course taken was very objectionable.

Not advisable to release him on account of the Siamese authorities.

We would also suggest that, if Ai Baa were now released, he would probably receive very hard treatment at the hands of the Siamese authorities. Under these circumstances, we doubt whether it would be advisable to order the release of the accused.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 88.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received August 2.)*

My Lord, *Royal Courts of Justice, July 31, 1883.*

British Consular jurisdiction over protected persons, and its recognition by Siamese Government.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, stating that, with reference to the concluding paragraph of our Report of the 7th February last, in the case of Ai Baa, of which Report a printed copy was inclosed, he had the honour to transmit to us the papers relating to the exercise of jurisdiction by the British Consular Court in Siam over protected persons, and its recognition by the Siamese Government.* That our opinion was now requested as to whether, under the circumstances stated by the Acting Consul-General at Bangkok, he should be instructed to obtain a Declaration (by an exchange of notes or otherwise) from the Siamese Government, recognizing British jurisdiction over protected British subjects, and whether such Declaration would be sufficient to support such an Order in Council as was suggested in the reference to us from the Foreign Office of the 27th January last, and which was embodied in our Report of the 7th February.

Proposed to obtain Declaration from Siamese Government.

In obedience to your Lordship's commands we have the honour to report—

That the letter of Mr. Newman presents the question in a new aspect. It would appear that very many of the children of British subjects who receive British protection, though illegitimate according to our law, if they were the children of Englishmen, are the offspring of the marriage of the subjects of British India and other parts of Her Majesty's dominions.

And such offspring would, as we understand, be regarded as legitimate in those dominions, and also legitimate according to the law of Siam. If this be so, we think they may properly be regarded as British subjects.

Offspring of male British subjects should be treated as British subjects till proved illegitimate.

There may, of course, be children of British subjects who do not come within this category, and are not, strictly speaking, entitled to the privilege of British subjects. But we quite recognize the difficulty pointed out by Mr. Newman, of ascertaining decisively in all cases the status of the children of British male subjects. Under the circumstances, therefore, the practically convenient course would probably be to treat them as British subjects, unless the fact of illegitimacy should be brought to the knowledge of the Consulate.

Not expedient to raise question with Siamese Government.

As it is not likely that there will be many such cases, it might be more expedient to avoid raising the question with the Siamese Government until some practical necessity for so doing arises.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# Spain.

## No. 89.

*The Law Officers of the Crown to Earl Granville.—(Received January 1.)*

My Lord, *Temple, January 1, 1883.*

Arrest of Cuban refugees expelled from Gibraltar.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 19th December, stating that, with reference to the case of the expulsion of the Cuban refugees from Gibraltar, and to our Report thereon of the 5th December (a printed copy of which was inclosed), he now had the honour to transmit to us, by direction of your Lordship, the Report of the Committee appointed by the Governor of Gibraltar to inquire into all the circumstances of the case.

That the Report would be found on p. 73 of the print† which was inclosed.

That Mr. Currie was also to inclose a despatch from Her Majesty's Minister at Madrid (No. 170 of the 6th December),‡ in which Sir R. Morier stated the grounds on which he conceived that no exception could justly be taken to the action of the Spanish Consul in the matter.

That Mr. Currie was to request that we would inform your Lordship, at our earliest convenience, after a perusal of the Report of the Committee and of Sir

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* Inclosures 3 and 4 in Prince Prisdang's letter of 15th November, 1882; Treaty of April 10, 1855 (Treaty No. 411); Supplementary Agreement of May 13, 1856 (Treaty No. 411); Order in Council, July 28, 1856 (Confidential No. 575); Order in Council, October 23, 1876 (Confidential No. 2963).

* Law Officers, February 7; to Mr. Palgrave, No. 19 A, February 28; Mr. Newman, No. 42, May 14, 1883.

† Colonial Office Confidential Print, September 7 to November 29, 1882.

‡ Confidential No. 4761, p. 44.

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R. Morier's despatch, and generally of the correspondence comprised in the print, whether we were still of opinion that the Spanish Consul could be charged with any suppression of fact to which could be attributed the unfortunate error committed by the British officials, and if not, whether, having regard to the provisions of the Extradition Treaty, we were of opinion that the part taken by the Spanish Consul in bringing about the surrender of the fugitives by way of expulsion from Gibraltar, and preconcerted arrest by the Spanish police, was such as to justify Her Majesty's Government in addressing any complaint or remonstrance to the Government of Spain.

**Cases of P. Lawler and Spanish emigrants sent from Gibraltar in 1844.**

We were honoured also with a further letter from Mr. Currie, of the 20th December, stating that he was directed by your Lordship to transmit to us the papers, marked in the margin,* relating respectively to the case of Patrick Lawler, a convict, who, having escaped from Gibraltar in 1860, was recaptured at Algeciras, and was subsequently set at liberty on the Neutral Ground, and to the circumstances under which certain Spanish emigrants were sent away from Gibraltar in August 1844.

That those papers might be of assistance to us in forming an opinion on the question connected with the Cuban refugees which was submitted to us in Mr. Currie's letter of yesterday's date.

In obedience to your Lordship's commands we have the honour to report—

**Cannot charge Spanish Consul with suppressing facts;**

That, having perused the Report of the Committee and the correspondence comprised in the accompanying print, we do not think that the unfortunate error committed by British officials can justly be said to be due to "a suppression of fact" by the Spanish Consul in the sense in which those words would be ordinarily understood.

The Consul appears to have communicated two documents as he received them to General Baynes. In the first (the copy of the telegram from the Governor of Algeciras) Maceo is described as "the exiled Cuban." In the second (the telegram from the Governor of Cadiz) the description is the same, but the following words are added: "This implies that he was undergoing imprisonment."

There is nothing before us to show in what sense General Baynes read these descriptions, except the employment by him of the phrase "fugitive criminal" in the Memorandum of the 16th August, addressed by him to the Police Magistrate, which leaves his interpretation still in doubt. But if General Baynes did draw the inference from the expressions referred to that Maceo and his companions were criminals of a class whose extradition could be demanded, he ought not to have done so, and we do not think that the Spanish Consul can be held responsible for such an error, if it existed.

But the fact remains that the application by the Spanish Consul, based upon no ground of international right, was the foundation and the cause of the error that has been committed, whether that error proceeded from a wrong inference drawn from the phrases employed, or from a wrong exercise of discretion applied to the true state of facts.

The second question submitted to us presents different considerations. If it were clear that the Consul had requested that a political offender should be delivered over by arrangement under cover of a mere order of expulsion, we should feel disposed to answer the question in the affirmative, but it seems doubtful whether this is the case.

On the one hand, the formal application requests that Maceo may be expelled from the garrison "if possible," yet it must be observed that the same documents show that the Spanish authorities desired "the apprehension" of Maceo, and the informal note of the 16th August expresses the hope "that we may do something in the matter should they" (the fugitives) "come to this place."

There was also perfect readiness on the part of the Spanish police to accept the surrender, as distinguished from expulsion, and to take advantage of the opportunities presented to rearrest Maceo and his companions.

**Nor Spanish authorities with having acted in bad faith.**

**Grounds for strong representations.**

Leaving the exact nature of the request in doubt, we think that no charge should be made against the Spanish authorities of having acted in bad faith, or even of having with intention made a demand they had no right to make; but there appears to us to be ground for representing most strongly to the Spanish Government that the application made by their Representative was the source from which the error of the British officials has proceeded, and that the excessive desire of those officials to act in a friendly spirit towards the Spanish Government having led them into that error, advantage ought not to be taken of an act occasioned by such a cause, and which certainly cannot be justified as between Her Majesty's Government and their officials, or between the British Government and the persons arrested.

**The seizure of convict Lawler not a parallel case.**

We do not think the case of the convict Lawler can be quoted to the Spanish Government as one parallel to the present. The prisoner was then brought from Spain without the knowledge, and not by the action, of the Spanish authorities.

In the opinion of the Law Officers, the man having been made insensible, and brought away in that condition by a British official, the case was the same as if his removal from Spanish territory had been forcible, and it was therefore clear that a breach of international law had occurred. Nothing of the kind, however, can be alleged here.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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* General Sir W. Codrington to Sir Charles Dilke, December 14, 1882, Confidential No. 4761, p. 45; Memorandum (Sir E. Hertslet), December 16, 1882, Confidential No. 4761, p. 50; Memorandum, March 11, 1845.

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## No. 90.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 19.)

*Temple, January* 18, 1883.

My Lord,

**"Léon XIII." Sir R. Morier's note to Spanish Government.**

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 8th instant, stating that with reference to our Report of the 11th November last, in the draft instructions which your Lordship proposed to address to Her Majesty's Minister at Madrid in the case of the "Léon XIII," he was directed to transmit to us the draft of the instructions which were finally addressed on the 14th November to Sir R. Morier, and his despatch No. 178 of the 17th ultimo, in which he transmitted copy of a note which, in pursuance of those instructions, he had addressed to the Spanish Government. That it would be observed that Sir. R. Morier in that note had supplemented the reply, which he was instructed to make to the Spanish note of the 30th August, with various explanations respecting the law of *habeas corpus*, the accuracy of which, in point of law, appears open to doubt. Thus he stated that the writ of *habeas corpus* was a remedy given to the subject against irregularities by "agents of the law," whereas your Lordship apprehended that it was a remedy against all illegal or unjust restraint of personal freedom. That he (Sir R. Morier) further stated that in the present case the writ could only be procured when the matter got into the hands of a responsible and respectable body like that of the Association of Engineers, at Singapore, and that that remedial act could not be initiated at Aden.

That our opinion was requested as to the extent to which the terms of Sir R. Morier's note should be approved.

In obedience to your Lordship's commands we have the honour to report—

**Should be approved except statements as to writs of *habeas corpus*.**

That we think the terms of Sir R. Morier's note should be approved with the exception of those portions of it to which reference is made above, and which contain inaccurate statements with respect to the law applicable to writs of *habeas corpus*.

That the former of these statements is imperfect, as it states only one of the cases to which the remedy by writ of *habeas corpus* is applicable.

**No impediment to application for writ of *habeas corpus* at Aden.**

That the latter contains more positive error. There was no legal impediment to the application for the writ at Aden.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

Law Officers, November 11; To Sir R. Morier, No. 169, November 14; Sir R. Morier, No. 178, December 17, 1882. See Confidential No. 4795.

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## No. 91.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 10.)

My Lord, *Royal Courts of Justice, February* 10, 1883.

Case of the "Tangier." Fired on by Spanish authorities at Carthagena.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th January last, stating that with reference to his letter of the 3rd January relating to the case of the "Tangier," he informed us, by direction of your Lordship, that in accordance with the advice communicated by us verbally on the 4th January, your Lordship caused a telegraphic instruction to be dispatched on the following day to Sir Robert Morier, of which a copy was inclosed.[*]

That Sir Julian Pauncefote was to inclose, for our consideration, a draft of a despatch[†] which your Lordship proposed to address to Sir Robert Morier on the same subject. That Sir Julian was also to inclose a despatch which had just been received from Sir Robert Morier,[‡] transmitting a copy of a note which he addressed to the Spanish Minister for Foreign Affairs in pursuance of the telegraphic instructions above referred to. That Sir Julian Pauncefote was to request that we would be good enough to inform your Lordship whether we approved of the terms of the draft despatch then submitted for our consideration.

We were also honoured with Mr. Currie's letter of the 24th January last transmitting to us herewith, for our consideration in connection with the papers then before us, two despatches[§] from Her Majesty's Minister at Madrid, forwarding copies and translations of two notes from the Spanish Government defending the action of their authorities in the case of the "Tangier."

That Mr. Currie was to add that as it would now be necessary to substitute for the proposed instructions to Sir Robert Morier a rejoinder to the Spanish notes, your Lordship would be glad if we would favour you with our opinion as to the general terms of such reply.

We were also honoured with Sir Julian Pauncefote's letter of the 31st January, transmitting to us the accompanying despatch[‖] from Sir Robert Morier containing further observations on the case of the "Tangier," together with a chart of the harbour of Carthagena, and he was to request us to take that despatch into our consideration, together with the papers at present before us relative to the subject.

In obedience to your Lordship's commands, we have the honour to report—

Approving instructions to Sir R. Morier with alterations, and suggesting answer to Spanish notes.

That we approve generally of the terms of the draft despatch submitted to us on the 12th ultimo.

We, however, suggest that the subsequent correspondence renders it unnecessary to emphasize any complaints in relation to the constitution of the Court, or the sentence imposed upon the master of the "Tangier." The position taken up by Sir Robert Morier in reference to these subjects may be maintained, and it may be well to show that the account contained in the despatch of the Spanish Minister cannot be accepted as accurate. Sir Robert Morier's Memorandum affords grounds for establishing that the story is not a consistent one, and that some of the circumstances relied on by the Spanish Minister himself prove that the "Tangier" cannot have been departing with the haste and at the speed suggested. We think, too, the fact that no formal representation was made to the master of that vessel, and no steps taken to ascertain that he understood what was meant by the official who desired him to stop, increases the gravity of the action subsequently taken. Stress, too, may well be laid on the very trivial grounds upon which, even accepting the Spanish story, so violent a course was adopted, and it should be borne in mind that the vessel had cleared for Valencia, and therefore steps could be taken (as indeed they were) against the vessel and captain at that port, so that there was the less excuse for imperilling the lives of the crew.

But the nature of the arguments contained in the despatch of the Marquis de la Vega of the 4th January, causes the act of firing rifle ball cartridge to become one of serious and prominent importance, and renders it necessary to make the strongest protest against the suggestion that whenever a vessel is hailed by the Spanish authorities and refuses to stop, the lives of the crew may be taken in order to enforce obedience to the order. It may be pointed out that the established and recognized habit of firing blank charges, and then shot from a cannon, is founded upon the intention of first warning and then impeding the vessel's course—a result which would be obtained by the course pursued. But the firing of rifle bullets cannot injure the vessel, whilst it probably will destroy human life, and as such firing is not generally recognized as a warning to stop the vessel's course, no captain would choose to do so when such an act would necessarily bring his crew into greater danger. If death had resulted in this instance, we presume Her Majesty's Government would have felt compelled to insist that compensation should be paid to the relatives of any person killed on board the English vessel. If this view be correct we think that the Spanish Government should be informed that Her Majesty's Government cannot recognize the right of the Spanish authorities to take or endanger the lives of English subjects for so insufficient a reason as that existing in this case, and that it most strongly protests against the course that has been pursued.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] To Sir R. Morier, Telegraphic, January 5, 1883. Confidential No. 4794, p. 37.

[†] For draft of despatch, as approved by the Law Officers, see Annex to Report of February 27, 1883.

[‡] Sir R. Morier, No. 4, January 8, 1883. Confidential No. 4794, p. 37.

[§] Sir R. Morier, No. 8, January 13; ditto, No. 9, January 15, 1883. Confidential No. 4794, pp. 39 and 44.

[‖] Sir R. Morier, No. 15, January 26, 1883. Confidential No. 4794, p. 45.

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## No. 92.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 28.)

My Lord, *Temple, February* 27, 1883.

Case of the "Tangier." Fired on by Spanish authorities at Carthagena.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th instant, stating that he was to inclose, for our consideration, a draft of a despatch to Her Majesty's Minister at Madrid relative to the case of the "Tangier."

That the instructions which it contained had been altered in accordance with the suggestions made in our Report of the 10th instant upon the subject, and that Sir Julian Pauncefote was to request that we would inform your Lordship whether we concurred in the amended despatch as then transmitted.

That our Report of the 10th instant was returned for convenience of reference.

In obedience to your Lordship's commands, we have the honour to report—

Concur in despatch to Sir R. Morier, but suggest further alterations.

That we concur in the amended despatch as now transmitted. But we would suggest that the concluding language should be somewhat stronger, and so couched as to leave the matter somewhat more open for further action.

After the words "the one existing in this case" in the last paragraph but one, some such words as the following might, perhaps, with advantage, be added:—

"Her Majesty's Government entertain a confident expectation that on further consideration the Spanish Government will come to the conclusion that the course which was taken by the authorities at Carthagena cannot be justified, and that it would be most prejudicial to the interests of maritime commerce, including that of Spain itself, if it were to be maintained that such acts of violence were justifiable as regards the crew of foreign vessels under such circumstances as existed in the present case, even assuming the version of the Spanish authorities at Carthagena to be accurate.

"In the meantime, Her Majesty's Government protest most strongly against the course which has been pursued, and which is warranted by no international usage."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch from Earl Granville to Sir R. Morier.*

Sir, *Foreign Office, March* , 1883.

I HAVE received your despatches, noted in the margin,[*] relating to the outrage committed on the British steamer "Tangier" by the port authorities of Carthagena on

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[*] Sir R. Morier, No. 156, November 28; No. 160, November 29; No. 11, Consular, December 3; No. 12, Consular, December 14; No. 14, Consular, December 19; No. 15, Consular, December 19; No. 17, Consular, December 22; No. 18, Consular, December 24; No. 20, Consular, December 29; No. 21, Consular, December 29, 1882; No. 4, January 8; No. 3, Telegraphic, January 13; No. 8, January 13; No. 9, January 15; Telegraphic, January 29; No. 15, January 26, 1883.

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the 24th November last. I have to convey to you my approval of all your proceedings as therein reported.

The correspondence which has passed renders it unnecessary that I should recapitulate the facts of this deplorable incident, or that I should emphasize the complaints already put forward with regard to the constitution of the Court and the sentence imposed upon the master of the "Tangier."

The account contained in the Spanish Minister's note of the 4th ultimo cannot be accepted as accurate.

A careful examination of the two versions laid before Her Majesty's Government and of the analysis of the conflicting statements furnished in the Memorandum accompanying your despatch No. 15, leads to the certain conclusion that the Spanish account is not a consistent one, and that some of the circumstances relied upon by the Spanish Minister himself prove that the "Tangier" cannot have been departing with the haste and at the speed suggested. The trivial nature of the offences charged against the master of that vessel and the fact that no formal representàtion was made to him, and that no steps were taken to ascertain that he understood what was meant by the official who desired him to stop, increase the gravity of the action subsequently taken.

Moreover, the "Tangier" had cleared for Valencia, and, therefore, steps could be taken (as indeed they were) against the vessel and captain at that port. Consequently, there was all the less excuse for imperilling the lives of the crew.

But the nature of the arguments contained in the Marquis de la Vega de Armijo's note of the 14th January, causes the act of firing rifle ball cartridge to become one of serious and prominent importance, and renders it necessary for Her Majesty's Government to make the strongest protest against the suggestion that whenever a vessel is hailed by the Spanish authorities, and refuses to stop, the lives of the crew may be taken in order to enforce obedience to the order.

The established and recognized usage of firing blank charges and then shot from a cannon is founded upon the intention of first warning, and then impeding the vessel's course. But the firing of rifle bullets cannot impede or injure the vessel whilst it probably will destroy human life; and as such firing of rifle bullets is not generally recognized as a warning to stop, no captain would be likely to do so when such an act would necessarily bring his crew into greater danger.

An assault of this character on a trading-vessel of a friendly Power by harbour officials is, so far as I am aware, quite unparalleled in the history of the commerial relations of this country with any nation; and, indeed, it is only necessary to refer to the Declaration between Great Britain and Spain, signed on the 2nd March, 1865 (of which I inclose a copy), to show that the practice of firing on merchant-vessels was condemned by the Spanish Government even in the case of the neglect to obey the precautionary rules imposed on vessels approaching the British and Spanish ports in the Straits of Gibraltar.

And in the case of the "Mermaid," to which you refer in your despatch No. 15, the Spanish Government actually paid an indemnity for the sinking of that schooner by a shot fired from the Spanish battery at Ceuta in 1864, before the date of the Declaration above mentioned.

Her Majesty's Government cannot recognize the right of Spanish authorities to take or to endanger the lives of British subjects for so insufficient a reason as the one existing in this case; and they entertain a confident expectation that on further consideration the Spanish Government will come to the conclusion that the course which was taken by the authorities at Carthagena cannot be justified, and that it would be most prejudicial to the interests of maritime commerce, including that of Spain itself, if it were to be maintained that such acts of violence were justifiable as regards the crew of foreign vessels under such circumstances as existed in the present case, even assuming the version of the Spanish authorities at Carthagena to be accurate.

In the meantime Her Majesty's Government protest most strongly against the course which has been pursued, and which is warranted by no international usage.

I have to instruct you to address a communication to the Spanish Government in the sense of this despatch.

I am, &c.

## No. 93.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 25.)*

My Lord, *Royal Courts of Justice, April* 25, 1883.

Case of the "Tangier," fired on by Spanish authorities at Carthagena.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 20th instant, stating that, with reference to the case of the "Tangier," which had been the subject of our Reports printed at pp. 52 and 55 of accompanying print,* he was to submit the following question for our consideration and advice.

That from a despatch just received from Her Majesty's Minister at Madrid, your Lordship had reason to believe that the Spanish Government were disposed to come to an amicable adjustment of the case by means of an exchange of notes, in which they would be prepared to state that the firing of rifle ball-cartridge at the "Tangier" under the circumstances was unjustifiable, and that the Captain of the Port, who was answerable for that proceeding, had been dismissed from his office.

That, before assenting to the termination of the controversy in the manner proposed, your Lordship desired to invite our attention to the claim of the owners of the "Tangier," and of the master of that vessel, for compensation, and to the correspondence which had taken place on that subject, which we should find at p. 17 (No. 14), p. 33 (No. 27), p. 51 (No. 41), p. 53 (No. 43), p. 54 (No. 44), p. 54 (No. 46), p. 55 (No. 47) of the accompanying print.

That some of the items of claim given at pp. 17 and 18 (No. 14) were no doubt inadmissible, and others greatly exaggerated.

That, moreover, the question whether the "Tangier" had or had not contravened the Spanish regulations, and was or was not liable to be detained, had not been judicially established.

That all that was admitted by the Spanish Government was that the action resorted to by the port authorities in their efforts to stop her was unjustifiable. That the damage resulting from the firing of rifle ball-cartridge was fortunately insignificant.

That our opinion was requested as to whether the claim of indemnity put forward by the owners and captain of the "Tangier," or any part thereof, should be pressed against the Spanish Government in view of their admission that the action of their port authorities was unjustifiable.

In obedience to your Lordship's commands we have the honour to report—

Claims of owners and master should not be pressed.

That we do not think that, under the circumstances, the claims of the owners or master should be pressed.

The damage which actually resulted from the outrage of firing at the "Tangier" was too insignificant for consideration, and we do not think that compensation should be claimed as a *solatium* to the captain for the risk he ran. It might with as good reason be claimed for every one of the crew.

The question, then, is whether either the owners or master are entitled to have a claim for compensation pressed in respect of the occurrences after the return of the "Tangier" to Carthagena.

It is to be observed that what then took place was entirely independent of the attempt to stop the "Tangier," and was the result of legal proceedings instituted before a Spanish Tribunal for an alleged offence against the local law, which the master of the vessel was, beyond doubt, bound to obey.

It is certainly open to question whether the decision of the Spanish Court was a right one.

But the damage resulting from it appears to be limited to a temporary inconvenience to the captain and a short delay of the vessel.

The results of legal proceedings do not warrant demand for reparation.

And we do not think the proceedings constituted any such violation of natural law and justice as to warrant Her Majesty's Government in insisting on reparation at the hands of the Government of Spain.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Confidential Print No. 4794.

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# Switzerland.

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## No. 94.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 8.)

My Lord, *Royal Courts of Justice, March* 8, 1883.

Expulsion of Salvationists.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd February last, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Minister at Berne,* relative to the proceedings of certain members of the so-called Salvation Army at Geneva, and to the treatment which they had received from the Cantonal and Federal authorities, as well as the appeal which they had made to Her Majesty's Minister to the Swiss Confederation for protection and support.

That Sir Julian Pauncefote further annexed a copy of the latest Treaty of Friendship, Commerce, and Establishment between Her Majesty and the Swiss Confederation and two Memoranda which had been left at the Foreign Office by the representatives of the Salvation Army in this country.

That Sir Julian Pauncefote was to invite our particular attention to the letter addressed by the complainants to Mr. Adams which was contained in his despatch No. 15 of the 19th February, and to the accompanying Memorandum drawn up by him in consultation with Professor König, the Legal Adviser to Her Majesty's Legation, who had expressed his concurrence therein.

That Sir Julian Pauncefote was to request that we would take the whole of those papers into our consideration, and favour your Lordship with our opinion as to whether the circumstances of the case warranted the intervention of Her Majesty's Government.

We were also honoured with Sir Julian Pauncefote's communications of the 27th (2)† and 28th February‡ and the 3rd March,§ transmitting to us further papers to be considered with those transmitted with his letter of the 22nd February.

In obedience to your Lordship's commands we have the honour to report—

That there can be no doubt that if the law of Switzerland permits the expulsion from that country, or the law of one of its cantons permits the expulsion from that canton, of persons whose presence is dangerous to public order, an expulsion on such grounds lawfully carried out according to the municipal law could not be taken exception to on any grounds of international law by a Power whose subjects had been so expelled. At the same time such an expulsion might be carried out in a manner so unnecessarily harsh and oppressive as justly to warrant diplomatic action.

Unable to give opinion as to legality of expulsion.

We have not the materials before us to enable us to determine whether the expulsion of the two ladies was in accordance with Swiss law, supposing the authorities to have come to the conclusion that their presence was a source of danger.

But whatever may have been the public excitement and possible tumult produced by the meetings of the Salvation Army, there hardly appears to have been reasonable ground for contending that the mere presence of the ladies in Geneva was a source of danger to the State, and on that ground justified their expulsion. They had yielded to the action of the authorities and had abandoned any public proceedings prior to their expulsion. And the grounds upon which the expulsion purports to be founded appear very trivial, and scarcely such as one can conceive would be a legal justification for the expulsion. The ladies appear also to have been compelled to leave with a haste which seems, in any view, harsh and unnecessary.

Expulsion carried out harshly, and the grounds for it trivial.

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* Mr. Adams, No. 6, February 5; ditto, No. 8, February 12; ditto, No. 9, February 12; ditto, No. 10, February 12; ditto, No. 11, February 13; ditto, No. 12, February 13; ditto, No. 13, February 14; ditto, No. 14, February 15; ditto, No. 15, February 19, 1883; Treaty, Great Britain and Switzerland, September 6, 1855, Treaty No. 401; Memoranda by representatives of the Salvation Army, received February 16 and 19, 1884. See Confidential No. 4924.

† Mr. Adams, No. 19, February 21; Mr. Auldjo, No. 1, February 23, 1883. See Confidential No. 4924.

‡ Mr. Adams, No. 24, February 26; Countess Gasparin, February 23, 1883. See Confidential No. 4924.

§ Mr. Auldjo's No. 3 of 1883. Confidential No. 4924.

Should wait for explanation before making representations.

As the President of the Swiss Confederation is in communication with the authorities of Geneva on the subject, we would suggest that Her Majesty's Government should await the explanation or statement which those authorities will no doubt make through the President before taking further action.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 95.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November* 2.)

My Lord, *Royal Courts of Justice, November* 1, 1883.

Salvation Army.

Expulsion of Miss Booth from Geneva.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 21st September last, stating that, with reference to our Report of the 8th March last, he had the honour to transmit to us, by direction of the Secretary of State, the papers* noted in the margin of his letter, which related to the rejection by Swiss Federal Council of an appeal made by Miss Booth against the Decree of the Cantonal Government expelling her from the Canton of Geneva, and to the question of appeal from that decision.

That Mr. Currie was to invite our special attention (*a*) to the opinion of Professor König upon the treatment of the Salvation Army in Geneva, which was inclosed in Mr. Adams' despatch No. 33 of the 7th March last; (*b*) to the despatch from Mr. Thornton No. 51 of the 25th April, which contained copy of a letter from Miss Booth forwarding her appeal to the Federal Council; (*c*) to the answer of the Federal Council, of which a copy was inclosed in Mr. Adams' despatch No. 93 of the 30th July; (*d*) to Mr. Booth's letter of the 31st July asking whether any further steps would be taken by Her Majesty's Government in the matter; and (*e*) to the opinion of Professor König respecting the power of further appeal to the Federal Tribunal, which accompanied Mr. Adams' private letter of the 2nd August last.

That Mr. Currie was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion whether the Judgment of the Federal Council called for any action on the part of Her Majesty's Government, and with any general observations which we might have to offer on the case.

We were also honoured with Mr. Currie's communications of the 27th September, the 1st October, and the 6th October, transmitting further papers† on the case.

In obedience to your Lordship's commands we have the honour to report—

That the Federal Council rejected Miss Booth's appeal exclusively on the ground that her expulsion was warranted by the reasons upon which the Department of Justice and Police of the Canton of Geneva based its Decree, and considered it unnecessary to enter into the further reasons contained in the Decree of the Council of State of Geneva.

Mr. Booth appears therefore to be in error when he states in his letter of the 26th September last that the Federal Council charged Miss Booth upon the authority of the Council of Geneva with having infringed the Law of "Collectes à Domicile." The passage which he quotes from the Decree of the Federal Council is a mere recital of the proceedings of the Council of State of Geneva.

The Department of Justice and Police founded their justification of the expulsion of Miss Booth upon the fact that the Salvation Army had organized collections of the employment of which she had not furnished justification, although called upon to do so, and though it was in her power to do so, as the result of the collection was contained in a book of which she acknowledged the existence, but which she refused to produce, and that such proceedings constituted a grave breach of public order which could not be tolerated.

The foundation of the decision of the Federal Council is to be found in paragraph 7

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* Mr. Adams, Nos. 29 and 30, March 3; ditto, No. 31, March 4; ditto, No. 33, March 7; ditto, No. 35, March 10; ditto, No. 37, March 19; to ditto, No. 12, March 26; Mr. Thornton, No. 42, March 31; ditto, No. 51, April 25; Mr. Adams, No. 60, May 5; to ditto, No. 18, May 11; Mr. Adams, No. 68, May 26; ditto, No. 74, June 18; ditto, No. 85, July 9; ditto, No. 91, July 25; ditto, No. 93, July 30; ditto (Private), August 2; Mr. Booth, July 31; Mr. Booth to Mr. Caine, M P., August 8 (communicated); to Mr. Caine, M P., August 17; to Mr. Booth, August 17; Confidential Print, No. 4924.

† Mr. Booth, September 26; Mr. Adams, Nos. 107 and 109, September 26, 1883. Confidential No. 4924.

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of their considerations. It asserts that Miss Booth, by her admitted position in relation to the Salvation Army, was responsible for the acts of the members of the Army under her orders, and consequently was undoubtedly under the obligation to render a complete account to the police authorities of collections made at Geneva in public assemblies organized by the "Army." It further asserts that she neglected to do this, notwithstanding repeated notices, and was unable to explain her conduct satisfactorily. It then states that it was not necessary to inquire whether the notices in question were given under a Law applicable to the particular case or in virtue of the right of surveillance and police control over public collections or begging, "a right which belongs incontestably to every political authority."

It becomes essential, therefore, to examine these reasons, by which alone the expulsion of Miss Booth is justified by the Federal Council, and the other reasons which have been put forward may be disregarded.

Status of British subjects in Switzerland.

We think the Federal Council are correct in the view that the right of British subjects to reside in Switzerland under the Treaty of 1855 is not absolute, that they are only entitled to do so on the condition of their obeying the laws of the country, and that they may be expelled either by judicial sentence or by a measure of police lawfully adopted and executed.

We think, too, that the Federal Council are probably right in the view that the laws of the particular canton where the British subjects are residing must be obeyed by them, and that such right of expulsion and police control as exists is vested in the authorities of that canton.

We do not think it would constitute a violation of the rights secured by the Treaty if laws should be passed from time to time under which British subjects, in common with other foreigners, might become liable to expulsion, and be expelled from a canton in Switzerland. Of course, if such laws were colourably passed for the purpose of evading the stipulations of the Treaty, the case would be different; but no such question arises here.

Under the Alien clause in the Crimes Act (Ireland) recently passed, a Swiss subject might, under the circumstances provided for, be compelled to quit this country; but we should not admit that such an expulsion would amount to a breach of the Treaty between Great Britain and Switzerland.

At the same time, where, as in the present case, the expulsion does not result from a judicial sentence, but from the act of the Executive, Her Majesty's Government is entitled to scrutinize the facts; and if the action of the Executive has been arbitrary and unfounded, or the mode of its enforcement unnecessarily harsh or oppressive, may properly make the matter the subject of protest or representation to the Swiss Government.

Grounds for expulsion frivolous, and expulsion harshly carried out.

Examining the case in the light of these considerations, it appears to us that the grounds upon which the expulsion took place were frivolous, and the expulsion itself carried out with unnecessary harshness.

Unless the facts deposed to by Miss Booth (p. 15) should prove to be inaccurately stated, the charge that "she neglected, in spite of repeated notices, either to render an account of the collections made by the 'Salvation Army,' or to give a satisfactory explanation of her conduct," appears entirely unfounded. The reason why she could not at once produce such accounts was abundantly explained.

We observe that Professor König states that, according to the law of Geneva, she was under no obligation to produce to the police an account of collections made under such circumstances as existed in the present case (p. 41).

The Federal Council insist that she might be called upon by the police to produce such accounts under the general right of surveillance and police control over public collections or beggings which is vested in the Executive of every State.

It may be that where a person was found begging for money from the public, it would be within the authority of the police of the State to require an explanation of the circumstances and the production of the accounts, just as a person begging in the streets is, in this country, liable to be penally dealt with. But in view of the circumstances of the case, and of the explanations given by Miss Booth, it seems almost absurd to contend that such considerations were applicable to it.

Moreover, Miss Booth appears to have been compelled to leave the canton with a haste which was harsh and quite unnecessary.

No action called for with regard to arrest of Miss Booth and Mr. Becquet at Neuchâtel.

With regard to the arrest of Mr. Becquet and Miss Booth at Neuchâtel, which is the subject of the further papers transmitted by Mr. Currie in his letter of the 6th October, we do not think that any action is, at present, called for on the part of Her Majesty's Government. They were proceeded against for an alleged violation of the law of the country where they were residing, and were, after trial, acquitted. The question raised appears to have been as to the legality of a Decree of the Council of State, and whether the accused were justified in disregarding it. The proceedings were conducted, as we gather, with strict regularity, and without undue harshness. At all events, there is no evidence before us to found any complaint in these respects.

Proceedings were regular and not too harsh.

The accused were allowed to remain at large on moderate bail, which they had no difficulty in procuring, and their subsequent arrest was due to their own voluntary acts in removing the bail.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 96.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 15.)

*Royal Courts of Justice, December* 15, 1883.

My Lord,

Expulsion of Miss Booth, of the Salvation Army, from Canton of Geneva.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 4th instant, stating that, with reference to our Report of the 1st ultimo, he was to transmit the additional papers* relative to the proceedings of the Salvation Army in Switzerland, and to the expulsion of Miss Booth from the Canton of Geneva.

That our special attention was called to the Report by Professor König† inclosed in Mr. Adams' No. 116 of the 8th October, and relating to the trial of Miss Booth, Mr. Becquet, and four Swiss citizens, at Boudry, in Neuchâtel, and to the Decree of Expulsion of the 8th October last;‡ and that Sir J. Pauncefote was to request our opinion whether those papers in any way modify or alter the opinion expressed in our former Report.

In obedience to your Lordship's commands we have the honour to report—

Adhere to former opinion on case. Desirable to obtain opinion as to legality of Decree, and as to mode of testing it legality.

That the papers now transmitted do not modify or alter the opinion expressed in our above-mentioned Report. But we think it would be desirable to obtain the opinion of Professor König as to the legality of the expulsion of Miss Booth by the authorities of the canton, under the Decree of the 8th October last, and whether there is any mode in which its legality can be tested.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Tunis.

### No. 97.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 3.)

*Temple, February* 2, 1883.

My Lord,

Sentence of death on G. Pace.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that he was to transmit to us a despatch from Mr. Fawcett,§ Her Majesty's Consul-General at Constantinople, forwarding a despatch from Mr. Reade, Her Majesty's Consul-General at Tunis. That Mr. Reade's

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* Printed Correspondence Nos. 116 to 133 inclusive. Confidential No. 4924.

† Print, Confidential No. 4924, p. 125.

‡ Print, Confidential No. 4924, p. 133.

§ Consul-General Fawcett, No. 70, December 30, 1882.

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despatch inclosed a Report from Her Majesty's Judge at Tunis, which contained copies of Minutes and of notes of evidence in the case of "Regina *v.* Giuseppe Pace," in which sentence of death had been recorded against the prisoner in Her Majesty's Court for Tunis, established by "The Ottoman (Tunis) Order in Council, 1881,"* of which a copy was inclosed, together with a copy of the General Order in Council for the Levant, of the 12th December, 1873.†

That we were referred to section 209 of the Order of 1873, which was made applicable to the Court for Tunis by section 8 of the Order of 1881, and that Sir J. Pauncefote was to request our opinion as to the direction which should be given by the Secretary of State respecting the punishment to be actually imposed on the prisoner.

In obedience to your Lordship's commands we have the honour to report—

**Under circumstances of case, five years' imprisonment sufficient.**

That it appears clear that both the prisoner and the deceased were drunk at the time the offence was committed, and there does not seem to have been any personal quarrel or ill-will between them until just at the time of the occurrence. What then took place, prior to the blow being struck, cannot exactly be ascertained. But it seems probable that something more passed than was deposed to by the deceased man in his dying declaration. Considering his state of intoxication, his recollection in this respect cannot be altogether relied on.

We think the justice of the case will be met by a sentence of five years' imprisonment.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 98.

*The Law Officers of the Crown to Earl Granville.*—(*Received August* 17.)

My Lord, *Royal Courts of Justice, August* 16, 1883.

**Arrest of G. Mangano by French military authorities for attack on a French officer.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th July last, stating that he had to transmit to us by direction of your Lordship, the papers noted in the accompanying list, which related to the case of a Maltese British subject, Giovanni Mangano, who was arrested by the French military authorities at Tunis under the circumstances detailed in Consul-General Reade's despatch No. 33 (Print, p. 20).

That it appeared that Mangano was one of a crowd of persons who had collected at the booking-office of the Italian Railway Station, and were striving for precedence in obtaining their tickets, when he came into bodily contact with a French officer, a Captain Nicolas. An altercation ensued, followed by a succession of blows from the French officer upon the head or face of the Maltese, who was seized and rendered powerless by the French military present at the time.

That in that condition, according to the testimony of eye-witnesses, he was struck by the French Captain across the head with his drawn sword, and subsequently conveyed to the military guard-house.

**Mr. Reade's claim to jurisdiction.**

That Mr. Reade's demand that the prisoner should be handed over to the charge of Her Majesty's Consulate was refused, and he was informed by the French Representative that it was impossible to prevent the case going through the regular course of procedure by court-martial, whilst Baron d'Estournelles at the same time maintained that the case of Mangano did not affect the question of Consular jurisdiction or Treaty rights.

**French claim to military jurisdiction.**

That in reply to a representation which Lord Lyons was instructed to make on that subject to the French Government, the Minister for Foreign Affairs had replied, as we would see from the inclosure in Lord Lyons' despatch No. 441 of the 14th July, that the attack by the Maltese on a Captain attached to the French army constituted an offence committed in a foreign country against a person attached to an army occupying that country, and that consequently, according to international law, the offender is subject to the jurisdiction of the military Tribunals of that army.

That the legal justification put forward by the French Government for that assumption of military jurisdiction over Mangano was supported in an article contained in the accompanying number of the "Journal du Droit International." (Nos. 9 and 10 of 1882, p. 511.)

That it appeared, however, to your Lordship that it might be urged that the French occupation of Tunis was effected on the express understanding that all the rights and privileges of foreigners would be respected, and that even if martial law should be held to over-ride the ex-territorial jurisdiction secured to foreigners in the Regency during actual hostilities, or resistance to the military occupation, the season of martial law had then ceased, and its continuance was inconsistent with the establishment of the French Protectorate, and of French Tribunals, and of Civil Government by the French authorities.

That if the plea advanced in the present cases be admitted, there seemed to be no reason why military jurisdiction should not prevail in numerous cases so long as the French had troops in Tunis; and judging from the treatment received by Mangano, the question assumed considerable importance.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the validity in point of law of the grounds on which the French Government justified the action of their military authorities against Mangano, and with any general observations we might have to offer on the case.

We were also honoured with Sir Julian Pauncefote's communication of the 1st instant, transmitting a further despatch from Her Majesty's Agent and Consul-General in Tunis.*

In obedience to your Lordship's commands we have the honour to report—

**Usual rule as to military jurisdiction in case of occupation of territory affected by Capitulations.**

That we think it cannot be disputed as a general rule of international law, that an attack on an army of occupation, even although directed against its individual members, falls properly within the cognizance of the military tribunals of that army.

And we think this jurisdiction continues so long as an army is in occupation of a foreign country, even though actual hostilities have ceased. It seems to have been exercised, and the propriety of its exercise to have been recognized by jurists, whilst the German army was in occupation of certain parts of France pending the payment of the indemnity.

We think, too, as a general rule, that the right to deal with offences cognizable by the military Tribunals would apply to the case of offences committed by foreigners equally with those committed by subjects of the country occupied.

In the present case, however, the existence of the Capitulations, and the undertaking by the French Government to respect them, are undoubtedly important elements in the consideration of the questions submitted to us.

**Her Majesty's Government should reserve their freedom of action.**

It is open to contention that the effect of them is to withdraw British subjects from the operation of the ordinary rules relating to the cognizance by military Tribunals of offences committed against members of the army of occupation. But the arguments against this view which are urged with great force in the "Journal du Droit International," appear to us very cogent. And it will probably not be necessary or expedient in the present circumstances to express any definite opinion upon the point either by way of admission or denial, but to reserve for Her Majesty's Government freedom of action in relation to it hereafter.

**If occupation is to be permanent, British Consular Court has jurisdiction over British subjects**

We are not aware what is the exact opinion of the French authorities in Tunis at the present time, or for what purpose their army is maintained there, and whether the occupation is intended to be permanent. If, as we gather, the French have established a Protectorate over Tunis intended to be of a permanent character, and the army is stationed there in support of their authority, and civil Courts have been established and are maintained by them, we think it may well be contended that the army has ceased to be an army of occupation in a foreign country within the ordinary sense of those terms, and that charges against British subjects should, under the Capitulations, be dealt with in the British Consular Court.

**After restoration of peace, military Tribunals have jurisdiction only over acts of hostility against army.**

But apart from this we think that where an army remains in occupation after peace and order are restored, at all events where such rights exist as are enjoyed under the Capitulations in Tunis, the military Tribunals can only properly claim cognizance of offences against a member of the army of occupation when the offence is an act of hostility to the member as such. The jurisdiction is claimed and exercised for the safety of the army, and individual assaults upon its individual members may endanger its safety as much as an organized attack. But we do not think that on any sound principle the jurisdiction can be extended to the case of an offence against an individual

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* Order in Council, May 13, 1881 (Confidential No. 4446).

† Confidential No. 2354.

* Mr. Reade, No. 35, July 20, 1883. Confidential Print No. 4923, p. 29.

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member of the army, which is not directed against him as such, and which cannot properly be regarded as an act of hostility to the army, but arises out of some private quarrel or dispute.

Consul's claim to jurisdiction well founded.

Mangano's assault not an act of hostility to army.

Outrage by French officer very gross.

Strong grounds for remonstrance and investigation.

It seems to us that on these grounds the claim of the British Consul was well founded. Even if the French officer's statement be correct, the assault by Mangano was in no sense committed against that officer in consequence of his being a soldier, but resulted from circumstances which would equally have affected a private person. But in fact the outrage appears to have been a gross one on the part of the French officer, and seeing that Mangano was detained for some days in custody, and that the charges against him were found insufficient for instituting a prosecution, we think there is, independently of the considerations to which we have alluded above, strong ground for remonstrance and for a claim that the conduct of the French officer should be investigated.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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*List of Papers.*

Papers contained in Confidential Print No. 4923, viz. :—

Mr. Reade (Telegraphic), No. 13, July 9; to Mr. Reade (Telegraphic), No. 4, July 11; ditto (Telegraphic), No. 13, July 11; to Viscount Lyons (Telegraphic), No. 18, July 11; ditto, No. 682, July 11; Mr. Reade (Telegraphic), No. 14, July 12; ditto (Telegprahic), No. 15, July 13; Mme. Mangano (Telegraphic) July 14; Viscount Lyons, No. 432, July 12; ditto, No. 441, July 14; Mr. Reade, No. 33, July 11; ditto, No. 34, July 11; Mme. Mangano (Telegraphic), July 18; to Viscount Lyons, No. 702, July 19; to Mr. Reade (Telegraphic), No. 5, July 19; to Viscount Lyons, No. 704, July 19; Mr. Reade (Telegraphic), July 19; Viscount Lyons (Telgraphic), No. 45, July 19; ditto, No. 452, July 19; ditto, No. 453, July 20; ditto, No. 456, July 20; to Mr. Plunkett, No. 716, July 23, 1883.

"Journal du Droit International Privé;" Memorandum respecting Outrages on Foreigners and British Subjects; Correspondence respecting the Affairs of Tunis, 1881; Treaties between France and Tunis, May 21, 1824 (State Papers, vol. xiv, p. 712), and August 8, 1830 (State Papers, vol. xix, p. 1050); Treaty between Great Britain and Tunis, July 19, 1875, No. 586.

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## No. 99.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October* 11).

*Royal Courts of Justice, October* 10, 1883.

My Lord,

Abrogation of foreign Consular jurisdiction in Tunis.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th September last, stating that by direction of the Secretary of State, he transmitted to us the accompanying papers,* which related to the establishment of French Tribunals in Tunis, under the Law of the 27th March last, and to the question of the abrogation of foreign Consular jurisdiction in that Regency, which the French Government were desirous should be assented to by foreign Governments, in order that foreigners should henceforward be amenable to the new jurisdiction.

French request for.

That at p. 38 of the printed correspondence, we would find the note from the French Chargé d'Affaires at this Court, dated the 10th May last, inclosing the various Laws, Decrees, &c., establishing the new Tribunals, and requesting Her Majesty's Government to waive the British Consular jurisdiction in their favour.

That Her Majesty's Government having decided to withdraw the jurisdiction of their Consular Representative, under certain conditions to be determined upon, it was thought desirable to consult the late Sir Francis Reilly upon the subject, and a Memorandum from him,† stating his views upon various points upon which he was requested to report, would be found at p. 48 of the print.

Her Majesty's Government willing to consent on certain conditions.

That on the 20th June last your Lordship intimated to the French Ambassador that, subject to certain reservations, and to explanations on sundry points on which further information was required by Her Majesty's Government, they would take the proper measures to relieve Her Majesty's Consular Officers in the Regency of their judicial functions as soon as the other foreign Governments represented in Tunis had signified their willingness to adopt a similar course (p. 51). That in the meantime the papers on the subject were submitted to M. Treitt, the Legal Adviser to Her Majesty's Embassy at Paris, whose Report was given at p. 56 of the print, being inclosure in Lord Lyons' despatch No. 414 of the 3rd July.

That the reply of the French Government to the inquiries put to them, as above stated, would be found at p. 60, and appeared to your Lordship to be, on the whole, satisfactory.

Objections to French proposals.

That there were, however, two points which appeared to your Lordship to give rise to objection:—

1. The absence of a right of challenging Assessors.
2. The limitation of the right of foreign advocates to practise before the French Tribunals, to those now practising there.

That as regarded the first point, Sir Julian Pauncefote was to refer us to the remarks of M. Treitt thereon; and as regarded the second point, Sir Julian was to observe that, in view of the large foreign community in Tunis, it would appear very desirable to press for the extension of that right to all duly qualified foreign advocates, under proper conditions and regulations.

That it further appeared to your Lordship that care must be taken to reserve every other right or privilege retained by any other nation, and notably by Italy, whose reservations, which were more extensive than those of Her Majesty's Government, would be found at p. 64.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether the above reservations were desirable and sufficient, and with any general observations which we might have to offer on the general question.

In obedience to your Lordship's commands we have the honour to report—

Reservations desirable.

That we think the above reservations are desirable, and that care should be taken to reserve every right or privilege retained by any other nation.

Also appointment of Assessors of nationality of accused if possible.

It will certainly be desirable to secure, if it be possible, that in the case of a trial of a British subject one-half of the Assessors should be British subjects, in conformity with the proposal made by Italy for the benefit of her subjects. But there would probably be considerable difficulty in France making this concession general to all nations, as it may be difficult to find a sufficient number of suitable Assessors in the case of certain nationalities.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# Turkey.

## No. 100.

[After recapitulating the following Reference, they report as on p. 121:—]

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

*Foreign Office, January* 31, 1883.

Gentlemen,

Conference as to prolongation of the European Commission of the Danube.

A CONFERENCE of the Representatives of the Great Powers is about to assemble in London for the purpose of dealing with several questions relating to the Danube, of which the first and most important is that of the prolongation of the European Commission, the duration of whose powers, unless prolonged by the Conference, expires on the 24th April next.

The inclosed Memorandum (A) by Sir E. Hertslet respecting the navigation of

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* (1) Correspondence respecting the establishment of French Tribunals, and the proposed abrogation of Foreign Consular Jurisdiction in Tunis, 1882-83, Confidential No. 4853; (2) Minute on M. Treitt's Report (A); (3) General Minute on the Papers (B).

† June 15, 1883. Confidential Print No. 4853.

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the Danube contains a complete history of the question. A summary of the Acts by which the powers of the European Commission have been prolonged from time to time will be found in a Memorandum (B) by Consul-General Sanderson, who is the British Delegate on the Commission.

Probable objection by Russia to its jurisdiction over the Kilia Mouths.

It is apprehended that Russia will oppose the prolongation of the Commission, except on the condition that the mouths of the Kilia branch of the Danube, which are comprised in the Bessarabian territory retroceded to Russia by Article XLV of the Treaty of Berlin (G), should no longer be subject to the powers and jurisdiction of the Commission.

Such a concession to Russia would be attended with inconvenience, and possibly with great disadvantage to the interests of the other Powers concerned.

A question has been raised by Consul-General Sanderson as to whether the title of Russia to the mouths of the Kilia cannot be disputed on the grounds stated by him in the inclosed Memorandum (marked C), notwithstanding that Article XLV of the Treaty of Berlin declares that the mid-channel of the Stary-Stamboul mouth, which is the most southern of the Kilia mouths, shall be the boundary.

The Kilia mouths form part of the Delta of the Danube, as shown by the map annexed to the Protocol of the 6th January, 1857 (D).

Ambiguity of Articles XLV and XLVI of Treaty of Berlin as to sovereignty over islands at Kilia Mouths.

But the line of frontier of Russia and Turkey in Bessarabia was declared by the Treaty of Paris of the 19th June, 1857 (E) to be determined in conformity with a topographical map which was prepared by the Boundary Commission at Kichenew, on the 30th March, 1857. A copy of that map on a reduced scale is annexed (F), from which it will be seen that the Kilia mouths were declared to consist of sixteen islands, which were specified as forming part of the Delta of the Danube.

By the last-mentioned Treaty, the whole of the Delta of the Danube, instead of being annexed to Moldavia as declared by the Treaty of Paris of the 30th March, 1856 (H), was replaced under the sovereignty of the Porte. It follows, therefore, that at the date of the Treaty of Berlin (G) the Kilia mouths were not in the possession of Roumania, although they are comprised in the territory which, by Article XLV, Roumania is declared to restore to Russia. It may be that this defect is cured by the fact that the Porte being at that time the Suzerain of Roumania, and the possessor of the sixteen islands in question, was a party to the Treaty.

But another element of uncertainty arises from the fact that by the following Article of the Treaty (Article XLVI) the islands forming the Delta of the Danube and the Sandjak of Toultcha, which comprises the district of Kilia, were added to Roumania.

It has been shown that the sixteen islands forming the mouths of the Kilia, are part of "the Delta of the Danube," and they were certainly comprised in the district of Kilia. It follows, therefore, that while the mouths of the Kilia were restored to Russia by Article XLV of the Treaty, they were added to Roumania by Article XLVI. You will observe that by Article XLVI the frontier-line is to be determined on the spot by a Delimitation Commission, but it seems doubtful whether this provision is not restricted to the territory named in the second paragraph of the Article.

By Article XLVII the question of "the division of the waters" is to be submitted to the arbitration of the European Commission; no such arbitration has yet taken place.

The mid-channel of the Stary-Stamboul mouth was also mentioned as the southern boundary of the territory restored to Russia in Article XIX of the Treaty of San Stefano (I); and yet the same Article declares that Russia is not desirous of annexing "the Delta Islands," and passages are cited in Consul-General Sanderson's Memorandum from the Protocols of the Congress of Berlin (K), showing that the Russian Representatives disclaimed any desire on the part of their Government to acquire the Delta of the Danube, or portions of territory the possession of which might constitute a menace to, or an interference with, the free navigation of the river.

Looking at the small extent of the sixteen islands at the Kilia mouth, as compared to the rest of "the Delta of the Danube," referred to in Article XLVI of the Treaty of Berlin, it may perhaps be contended that the Article must be read subject to the dispositions of the preceding Article, which had restored a small portion of the Delta to Russia. I am directed, however, by Earl Granville to request that you will consider the point, and favour him with your opinion as to whether the territorial rights of Russia are affected by the ambiguity arising from the terms of Articles XLV and XLVI of the Treaty of Berlin to such an extent as to justify his Lordship in raising the point at the Conference, should the attitude of the Russian Representative render this course otherwise desirable.

I am to add that the first meeting of the Conference will take place on the 5th February, and Lord Granville would be glad to receive your Report at your earliest convenience.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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*List of Papers.*

- (A.) Memorandum respecting the Navigation of the Danube, 1815–1881. Sir E. Hertslet, 17th July, 1881. Confidential No. 4462.
- (B.) Memorandum respecting the Prolongation of the Powers of the European Commission of the Danube. Consul-General Sanderson of 17th February, 1882. Confidential No. 4724, p. 20.
- (C.) Statement of Case.
- (D.) Protocol of Paris, January 6, 1857. Parliamentary Paper, No. 434.
- (E.) Treaty of Paris, June 19, 1857. No 423.
- (F.) Topographical Map annexed to above.
- (G.) Treaty of Berlin, July 13, 1878. "Turkey No. 44 (1878)." No. 623.
- (H.) Treaty of Paris, March 30, 1856. No. 402.
- (I.) Treaty of San Stefano. "Turkey No. 22 (1878)." No. 2012.
- (J.) Austrian Staff Map. General 18A. Sheet Q 9.
- (K.) Protocols. Congress of Berlin. "Turkey No. 39 (1878)." No. 2062.

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### *Report by the Law Officers of the Crown and Dr. Deane.*

*February* 3, 1883.

IN obedience to your Lordship's commands signified in Sir J. Pauncefote's letter of the 31st ultimo, we have the honour to report—

That it appears clear that if the terms of Article XLV of the Treaty of Berlin be looked at by themselves, all the territory north of the mid-channel of the Stary-Stamboul mouth of the Danube is retroceded to Russia, and that this would include the islands at the Kilia mouth. On the other hand, it is equally clear that, if Article XLVI stood alone, these islands, forming, as they do, part of the Delta of the Danube, would be included in the territory added to Roumania.

There is thus no doubt an apparent conflict between the provisions contained in these two Articles.

It is, however, a well-settled canon of construction that in such a case the Articles should be so construed as, if possible, to give effect to each of them.

If a literal interpretation be placed upon Article XLVI, it is no doubt difficult to put any rational construction at all upon Article XLV.

The only one possible, apparently, would be that the Russian territory was to extend to the mid-stream of the Stary-Stamboul mouth, but that the islands north of that line, which formed part of the Delta of the Danube, were, nevertheless, to be part of the Roumanian territory.

Articles XLV and XLVI probably refer to parts of the Delta not retroceded to Russia.

But this would be a strange, and perhaps hardly conceivable, arrangement, and as it would certainly give to Russia two of the Kilia mouths, we do not know that it would answer the purpose in view to put forward this construction. If it be not the true one, the other alternative, and we confess it appears to us the sounder and more natural interpretation, would be to hold that Article XLVI refers to all that part of the Delta (and this is by far the larger part) which is not, by virtue of the preceding Article, included in the territory retroceded to Russia.

Difficulty in putting forward ambiguity in Conference.

We can conceive it possible that circumstances may arise in the course of the Conference which would render it expedient to put forward the ambiguity arising from the language of Articles XLV and XLVI. But, for the reasons we have pointed out, we do not think too much reliance should be placed upon it.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

## No. 101.

[After recapitulating the following Reference, they report as on p. 124 :—]

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### *Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

*Foreign Office, February* 2, 1883.

Gentlemen,

European Commission of the Danube.

IN my letter of the 31st ultimo, in relation to the approaching Danube Conference, I had the honour to submit to you, by direction of Earl Granville, a question respecting the territorial rights of Russia under Article XLV of the Treaty of Berlin.

Questions with regard to its prolongation.

I am now to request that you will favour his Lordship with your opinion on the following points :—

1. If, notwithstanding Article LIV of the Treaty of Berlin, no agreement be arrived at by the Conference for the prolongation of the term of twelve years, assigned by Article IV of the Treaty of London of 1871, as the duration of the European Commission, will the powers of the Commission expire on the 24th April next by effluxion of time, or will they continue until the dissolution of the Commission shall have been pronounced by the Powers parties to the Treaty of Paris of 1856, as provided by Article XVIII of that Treaty?

Is unanimity a necessary condition of the prolongation of the Commission, or of its dissolution?

2. If the dissolution of the European Commission shall be so pronounced, or if it shall take place by effluxion of time, will the Riverain Commission *ipso facto* be called into existence again, and "enjoy the same powers as those with which the European Commission shall have until then been invested," as provided by Article XVIII of the Treaty of Paris, or will the revival of the Riverain Commission depend on the "previous understanding between the Riverain Powers," and the conclusion of the Convention between the co-Signatory Powers contemplated by Article V of the Treaty of London of 1871?

3. In case, by reason of no such understanding being arrived at, or for any other reason, the reassembling of the Riverain Commission cannot legally take place, and no agreement is arrived at by the Conference, in relation to the control and regulation of the navigation of the Danube, what will be the position of the Powers interested as regards international rights?

I am to inclose :—

(A.) Treaties and other documents relating to the Navigation of the Danube ("Turkey No. 29, 1878," Parliamentary No. 2024).

(B.) Memorandum respecting the Navigation of the Danube, by Sir E. Hertslet (17th July, 1881, Confidential No. 4462).

(C.) Memorandum respecting the Prolongation of the European Commission, by Consul-General Sanderson (17th February, 1882). Confidential No. 4742, p. 20.

(D.) Memorandum on same subject, by Mr. Bertie (13th October, 1882, Confidential No. 4690).

(E.) Treaty of Berlin ("Turkey No. 44, 1878," Parliamentary No. 623).

(F.) Memorandum on same subject, by M. Möhler, Secretary-General of the European Commission, inclosed in Colonel Siborne's No. 60 of 9th December, 1881. Confidential No. 4596, p. 118.

Sir E. Hertslet's Memorandum (B.) contains a complete history of the Danube question, and I am to refer you particularly to the résumé, which will be found at pp. 43 to 50.

The European Commission for the Navigation of the Danube was constituted under Article XVI of the Treaty of Paris of the 30th March, 1856. It was charged with the designation and execution of the works necessary below Isaktcha to clear the mouths of the Danube, as well as the neighbouring parts of the sea, from the sands and other impediments which obstructed them, in order to put that part of the river and the said parts of the sea in the best possible state for navigation. For these purposes power was given to the Commission to levy duties upon shipping.

The duration of the Commission was originally limited to two years, but it has at different times been prolonged, and by Article IV of the Treaty of London of the 13th March, 1871, it stands prolonged till the 24th April, 1883. Article LIII of the Treaty of Berlin confirms the Commission and the Treaties and arrangements relating to it, and provides that in future the Commission, in which Roumania shall be represented, shall exercise its functions up to Galatz, in complete independence of the territorial authority, and Article LV declares that one year before the expiration of the term

assigned for the duration of the Commission the Powers shall come to an understanding as to the prolongation of its powers, or the modifications which they may consider necessary to introduce ("d'y introduire").

The territorial changes effected by the Treaty of Berlin in regard to that portion of the Danube which is placed under the control of the Commission are as follows :—

Under the Treaty of Paris (Articles XX and XXI) the left bank of the Kilia mouth of the Danube were ceded by Russia, to be annexed to the Principality of Moldavia, under the Suzerainty of the Porte. By the subsequent Protocol of Paris of the 6th January, 1857, and the Treaty of the 19th June following, the Delta of the Danube and the Isle of Serpents were placed under the immediate sovereignty of the Porte. The Sultan, therefore, was the supreme authority over the whole territory within which the functions of the Commission were exercised, and the Sulina mouth of the Danube, which is that most used by shipping, and to the improvement of which the labours of the Commission have been principally devoted, was under the direct sovereignty of the Porte.

By Article XLV of the Treaty of Berlin, the left bank of the Kilia branch and the left bank of the whole river upwards from the point of divergence of that branch to the confluence of the Pruth with the Danube is ceded to Russia. By Article XLVI the Delta of the Danube, the Isle of Serpents, and the whole right bank of the river up to a point to be determined, in the neighbourhood and to the east of Silistria, is ceded to Roumania, which, by Article XLIII, is recognized, subject to certain conditions, as an independent State. By Article XLVIII the question of the division of the waters and fisheries is submitted to the arbitration of the European Commission; and by Article LI Roumania is substituted for the whole of the ceded territory to the rights and obligations of the Sublime Porte in regard to undertakings of public works and others of a like nature.

Consequently, Roumania is the territorial authority with which the Commission has to deal, except in so far as regards the sovereign rights of Russia as holding the left bank from Reni to Stary-Stamboul; the Commission being, however, placed in a position of complete independence.

Article LV of the Treaty of Berlin provided that the Commission, assisted by Delegates of the Riverain States, should draw up Regulations for the navigation, river police, and supervision of the Danube from the Iron Gates to Galatz.

These Regulations have accordingly been drawn up, but they have not yet been finally agreed to.

The questions which will be submitted for decision at the Conference are three, viz. :—

1. The prolongation of the Powers of the European Commission.
2. The extension of its powers from Galatz to Ibraïla.
3. The confirmation of the Regulations drawn up under Article LV of the Treaty of Berlin.

It is in connection with the first of those questions that the three points above stated arise, as to which Lord Granville desires to obtain your advice for his assistance during the approaching discussions.

Questions as to—
1. Prolongation of the European Commission.

As regards the first point, whether the Commission, if no act is done by the Powers, will expire, or will continue until its dissolution is formally pronounced, I am to refer you to the review of the history of the European Commission at p. 23 of Sir E. Hertslet's Memorandum and to the résumé of the facts with regard to its duration at p. 43, and also to the Memoranda (C) and (D) by Mr. Bertie and Consul-General Sanderson.

The view taken at p. 44 of Sir E. Hertslet's Memorandum is that the powers of the European Commission, though extended only up to the 24th April, 1883, by the Treaty of London of 1871, continue in force until the dissolution of the Commission shall be pronounced, as provided by Article XVII of the Treaty of Paris of 1856, having regard also to Artitle LIV of the Treaty of Berlin. It is contended by others that the powers of the European Commission, unless prolonged by agreement, expire on the 24th April next by effluxion of time, and that the pronouncement of its dissolution is only a preliminary condition of the substitution of new arrangements.

2. Reassembling of Riverain Commission.

As regards the second point, as to the reassembling of the Riverain Commission, I am to submit the following observations :—

By Article V of the Treaty of London of 1871, it was provided that the conditions of the reassembling of the Riverain Commission established by Article XVII of the Treaty of Paris of 1856 should be fixed by a previous understanding between the Riverain Powers, without prejudice to the clause relative to the three Danubian Principalities; and that in so far as any modification of Article XVII of the said Treaty might be involved, it should form the subject of a special Convention between the co-Signatory Powers.

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By Article LIV of the Treaty of Berlin, it is provided that "one year before the expiration of the term assigned for the duration of the European Commission, the Powers shall come to an understanding as to the prolongation of its powers or the modifications which they may consider necessary to introduce therein."

It is to be observed that the Regulations framed by the Riverain Commission under Article XVII of the Treaty of Paris of 1856 were not agreed to by all the Powers assembled in Conference at Paris in 1858, who moreover declared that in their opinion "the work of the Riverain Commission could not be legally enforced until all the Signatory Powers had come to an understanding about it." (Sir E. Hertslet's Memorandum, pp. 22 and 45.)

It would seem to follow from the foregoing, that if the European Commission should cease to exist on the 24th April next, either by effluxion of time or by its dissolution being pronounced, the substitution of the Riverain Commission, or of any other authority in its place, can only be effected by agreement among the Powers.

3. Rights of Powers with regard to the maintenance of freedom of the navigation of the Danube.

As regards the third point, namely, what will be the position of the Powers, as regards their international rights, if no agreement as to the future regulation of the navigation of the Danube should be arrived at by the Conference, I am to refer you to Article XV of the Treaty of Paris of 1856 (A, p. 1), and to Article LII of the Treaty of Berlin (E).

The principles established by the Congress of Vienna as to the free navigation of rivers which separate or traverse different States were declared by the Treaty of Paris to be applicable to the Danube, and the general conditions of such free navigation were explained.

By the Treaty of Berlin, it was declared that the freedom of the navigation on the Danube is recognized "as of European interest."

It is presumed that the emancipation of Roumania and Servia from the suzerainty of the Porte under the Treaty of Berlin does not relieve them from the obligations flowing from Article XV of the Treaty of Paris of 1856, to which the Porte was a party, and which declared that the arrangement thereby made as to the freedom of the navigation of the Danube should thenceforth form part of the public law of Europe, and place it under the guarantee of the Signatory Powers.

Therefore, in the contingency above suggested of no new agreement being arrived at by the Conference, it would seem to follow that all the Powers interested are equally entitled to the maintenance of the freedom of navigation on the Danube as defined by Article XV of the Treaty of Paris, and, if necessary, to enforce their rights under that Article on any of the Riverain Powers who may attempt to disregard and obstruct them. That, on the other hand, the Riverain States will, subject to the observance of those rights, be the supreme authority within the limits of their respective territories.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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*Report by the Law Officers of the Crown and Dr. Deane.*

*Temple, February* 8, 1883.

IN obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

1. Of opinion that the European Commission will expire unless prolonged by agreement.

That we think the answer to the first question submitted to us depends upon what is the true construction of Article LIV of the Treaty of Berlin.

Whatever may have been the state of things created by Article XVI of the Treaty of Paris of 1856, we do not think that, looking at the terms of the Treaty of London, 1871, and bearing in mind what passed in the interval, it can be successfully contended that the European Commission would not, under that instrument, expire in April next, supposing nothing to have occurred subsequently to 1871 to prolong its existence.

The question therefore arises, whether Article LIV of the Treaty of Berlin has that effect.

At the sitting of the Berlin Congress held on the 2nd July, 1878, Baron Haymerle proposed, *inter alia*, that the duration of the European Commission should extend beyond 1883, until a fresh Agreement was concluded. To this proposal the Russian Representative objected.

Ultimately Article LIV, in the form in which it appears in the Treaty, was agreed upon, no doubt as a compromise, between the Representatives of Russia and Austria.

Various interpretations of Article LIV of Treaty of Berlin.

Two constructions have been put upon this Article. Each of them is a possible one, and may be supported by plausible arguments.

The one is that the Powers were, before the expiration of the term assigned for the duration of the Commission, to come to an arrangement either that the European Commission, as it now exists, should be prolonged, or, if modifications were deemed necessary, what these modifications should be. So that, if no modifications should be agreed upon, the prolongation of the Commission, with its existing functions, should result. If this be the true view, it follows that the Commission would continue, unless its dissolution or some modification of its functions were unanimously agreed upon. In support of this construction, it may be urged that the language used in the Article points to something more than a mere future conference of the Powers at which something may or may not be agreed to. The words "se mettront d'accord" seem, it may be said, to suggest that some agreement was to be arrived at on the subject, and that the choice was only between a mere prolongation and a modification.

It must, however, be observed that if this were the meaning of the parties, the language chosen is not happy, and is not what would have been expected.

The other possible construction of the Article is, that it merely provides that the Powers should come to an understanding on the subject of the prolongation of the Commission as it existed, or of any modification of it, the whole question being left open for arrangement. It will be seen that Count de St. Vallier, who was associated with the Russian and Austrian Plenipotentiaries in the drafting of the Article, used the following language with reference to the draft they had prepared:—

"The principle alone has been voted; the form is reserved for the Drafting Committee, and it is only intended to affirm the utility of an agreement before the lapse of the term assigned to the duration of the European Commission." So far as appears from the extracts from the Protocols before us (we have only what are contained in Sir E. Hertslet's Memorandum), no exception was taken by any of the Plenipotentiaries to the view thus enunciated.

Upon the whole, then, we think the balance is in favour of the latter construction.

2. The Riverain Commission can no longer meet.

2. With regard to the second question submitted to us, we think that the revival of the Riverain Commission must be governed by the provisions of Article V of the Treaty of 1871. It is clear that the Riverain Commission created by Article XVII of the Treaty of Paris can no longer meet. It is not applicable to the altered circumstances which now exist.

3. Concur in views respecting rights of Powers as to free navigation of the Danube.

3. As regards the third question submitted to us, we have only to express our concurrence with the views suggested thereon in the letter of Sir Julian Pauncefote.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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No. 102.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 23.)*

*Temple, February* 21, 1883.

Circulation of foreign coins in Ottoman dominions prohibited by Porte.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was to transmit to us a copy of a despatch from Her Majesty's Chargé d'Affaires at Constantinople, inclosing copy of a note from the Porte stating that from a certain date the circulation of foreign coins in the Ottoman dominions would be prohibited, and requesting that steps might be taken for bringing that prohibition to the knowledge of British subjects.

Presume Porte has acted within its rights.

That in 1881 the export of the small copper currency was prohibited at Bagdad, and that in our Report of the 31st December of that year we advised that such prohibition could not be objected to, as such copper coinage could not be considered "a manufacture" within the meaning of the Treaty of Commerce between Great Britain and Turkey; that, in this country the right of regulating the currency was one of the prerogatives of the Crown, and that it was conceivable that the measure in question might be deemed expedient to the Sultan for reasons of State. That it was presumed that, on the same principle, the right of Turkey to withdraw foreign coin from circulation must be admitted, there being no Treaty limiting that right; but that before instructing Mr. Wyndham to take steps for bringing the decision of the

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Porte in that matter to the knowledge of British subjects in Turkey, your Lordship desired our opinion as to whether such instructions might properly be given.

That the correspondence which took place in 1882 relative to the prohibition by the Porte of the importation of foreign coin into Turkey, and also a copy of the Treaty between Great Britain and Turkey of the 29th April, 1861, were inclosed.

In obedience to your Lordship's commands we have the honour to report—

Approve instructions to Mr. Wyndham to inform British subjects.

That we think the proposed instructions may properly be given.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

Earl of Dufferin, No. 45, Commercial, April 24; to ditto, No. 46, Commercial, May 24; Earl of Dufferin, No. 84, Commercial, July 5; to ditto, No. 61, Commercial, July 20; Earl of Dufferin, No. 96, Commercial, August 20; to ditto, No. 70, Commercial, August 31; Mr. Wyndham, No. 102, Commercial, November 5, 1882.

Treaty between Great Britain and Turkey, April 29, 1861. No. 453.

Law Officers' Report, December 31, 1881. Confidential No. 4637, p. 105.

Mr. Wyndham, No. 14, Commercial, January 26, 1883.

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## No. 103.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 16.)

My Lord, *Temple, March* 15, 1883.

Marriage at Bournabat by Smyrna Consular Chaplain.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 8th instant, transmitting to us the papers* relating to a question raised as to the validity of a marriage of British subjects, solemnized at the Church of St. Mary Magdalene, at Bournabat, near Smyrna, on the 10th December last, by the British Consular Chaplain at Smyrna. That the same persons were subsequently married before Her Majesty's Consul, but not the 11th January. That the facts of the case were stated in Mr. Wyndham's No. 76 (Inclosure 4).

Its validity questioned.

That the Rev. Mr. Washington, Chaplain to the Embassy at Constantinople, questioned the validity of the religious marriage, on several grounds (Inclosure 1).

That Mr. Dennis, Her Majesty's Consul at Smyrna, also considered it illegal (Inclosure 4), while Mr. Fawcett, Her Majesty's Consul-General and Judge of the Consular Court at Constantinople, held that it was valid under 4 Geo. IV, cap. 91, which established "the validity of marriages solemnized by a minister of the Church of England in the chapel belonging to any British factory situated abroad, or in the house of any British subject residing at such factory" (Inclosure 6).

That it appeared to your Lordship doubtful whether Smyrna could now be considered "a British factory" within the meaning of the 4 Geo. IV, cap. 91, and if so, whether Bournabat could be considered as part of such factory.

That it has always been held, however, that in heathen countries, marriages celebrated by a priest in Holy Orders were valid, though they were discouraged, since facilities have been given for marriages under the Consular Marriages Act.

Subsequent marriage at Consulate

That the subsequent marriage of the parties in the present case at the Consulate appeared to have been solemnized with all the formalities required by law, and to be perfectly valid. That the question of the validity of the first marriage at the chapel is therefore of no practical importance to the parties themselves, but that it was desirable to set the question at rest, if possible, for the future.

That copies of the Acts 4 Geo. IV, cap. 91, and 12 and 13 Vict., cap. 68, together with several Reports of the Law Officers of the Crown, and an opinion of Dr. Tristram on the question of the marriage of British subjects in heathen countries, were transmitted, and that Sir J. Pauncefote was to request our opinion as to whether the first marriage was valid, and any observations which we might desire to offer on the case.

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* List of inclosures in Foreign Office letter to the Law Officers of March 8, 1883:—
Mr. Wyndham, No. 76, February 3, 1883; Act 4 George IV, cap. 91; Act 12 & 13 Vict., cap. 68; Queen's Advocate, November 13, 1862 (Turkey, p. 279 of 1862, Confidential No. 1301); ditto, March 3, 1870 (Zanzibar, p. 181 of 1870, Confidential No. 3660); Law Officers, July 8, 1876 (Madagascar, p. 50 of 1876, Confidential No. 4028); ditto, October 18, 1876 (Turkey, p. 83 of 1876, Confidential No. 4028); Dr. Tristram, February 9, 1877 (Persia, &c., p. 42 of 1877, Confidential No. 4216); Law Officers, December 27, 1877 (Turkey, p. 92 of 1877, Confidential No. 4216); ditto, March 22, 1878 (China, p. 13 of 1878, Confidential No. 4280); ditto, September 29, 1880 (Cyprus, p. 28 of 1880, Confidential No. 4539); ditto, February 9, 1881 (China p. 10 of 1881, Confidential No. 4637).

In obedience to your Lordship's commands we have the honour to report—

That in our opinion the first marriage was valid.

Marriages by clergymen in non-Christian countries valid.

It has already been pointed out in the previous Reports of Law Officers, that the Statutes which have been passed relating to marriages in foreign countries, were not intended to render invalid, marriages solemnized in a manner which was previously valid, and that the marriage of British subjects in a non-Christian country by an English clergyman was always valid at common law. The disadvantage of such marriages is, that in case a question should afterwards arise with respect to them, there may be a difficulty in procuring proof of the marriage. This difficulty is avoided if the marriage takes place in accordance with the provisions of the 12 and 13 Vict., cap. 68.

Disadvantage of such marriages.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 104.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May* 7.)

My Lord, *Royal Courts of Justice, May* 5, 1883.

Termination of Turkish Treaty and Tariff of 1861.

Notice given by Turkish Government.

WE are honoured with your Lordship's commands signified in the letter of Lord Edmond Fitzmaurice of the 24th ultimo, stating that he was to state to us that Mr. Wyndham, Her Majesty's Chargé d'Affaires at Constantinople, had called attention, in a despatch dated the 2nd instant, No. 70, to the manner in which notice had been given by the Porte for the termination of the Treaty and Tariff of 1861 between Great Britain and Turkey, and had inquired whether the notice which had been given is sufficient to terminate the Tariff. That the engagements contained in the Treaty of the 29th April, 1861, relative to the termination of the Treaty and Tariff respectively, would be found in the accompanying volume of Treaties, &c., regulating the trade between Great Britain and Turkey.

That copies of the communications with the Porte for the termination of the Treaty and Tariff were inclosed.

That it would be seen that in a note dated the 11th March, 1882, the Porte announced the desire to revise the Tariff of 1861, and the intention to terminate the Treaty itself. A distinction was there made between the Tariff and the Treaty.

That, in a note dated the 20th March, 1882, Lord Dufferin stated in reply that notice for the revision of the Tariff could not be given before the 1st September, 1882; and that, with regard to the Treaty, notice for its termination could not be given before the 1st October of that year. That the notice given in the Porte's communication of the 11th March, 1882, was therefore not accepted.

That on the 30th September last the Porte gave notice to terminate the Treaty of 1861, which announcement was formally accepted by Lord Dufferin, on behalf of Her Majesty's Government, on the 7th November last. That the Treaty would therefore expire (as then arranged) on the 1st October next.

That the Tariff, however, was not mentioned in that note of the 30th September, 1882, and no express notice for its termination had been given between the 1st September, 1882, and the 1st March, 1883; and in a conversation reported in Mr. Wyndham's No. 68 of the 2nd ultimo the Minister for Foreign Affairs stated that the Porte considered the British Treaty and Tariff to be in force till the 30th September next.

Question as to existence of Tariff apart from Treaty, and sufficiency of notice of termination.

That the question then arose whether the Tariff could continue to exist apart from the Treaty; and, if so, whether the notes, above referred to, of the 30th September and the 7th November, 1882, were sufficient to make it lapse with the Treaty.

That it was, however, to be observed that in the recent correspondence the duration of the Treaty and Tariff had been taken to go together; and that Mr. Wyndham, in a note to the Porte dated the 13th ultimo, had applied to the Porte to engage definitely to accord to Great Britain most-favoured-nation treatment in the event of the lapse of the Treaty and Tariff of 1861 before negotiations for a new Treaty and Tariff should have been concluded.

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That our opinion was requested on the point thus raised as to the duration of the Tariff of 1861, and the sufficiency of the notice given for its termination.

In obedience to your Lordship's commands we have the honour to report—

Further information on certain points necessary before giving an opinion.

That, by Article XXII of the Treaty of 1861, Commissioners were to be appointed for the settlement of the Tariff.

The new Tariff so concluded was to remain in force during seven years from the 1st October, 1861, and each party was to have a right during the seventh year to demand a revision of the Tariff. If this was not done, the Tariff was to be in force for seven more years from the expiration of the present term, and the same was to be the case with each successive period of seven years.

So far as the Treaty is concerned, it would seem that a revision could only be demanded during the years ending the 1st October, 1868, 1875, and 1882, and that if no such revision were demanded, the Tariff would in such case continue to have the force of law for seven more years.

It is stated, however, in a note by Sir E. Hertslet, that "the new Tariff came into force on the 1st March, 1862. It was not revised at the end of the first seven years, and is therefore not terminable before the 1st March, 1876."

Now, Article XXII of the Treaty does not make the duration of the Tariff in any way dependent on the date when it comes into force. It is to continue for a fixed term of seven years from the 1st October, 1861.

It appears to be provided by the Tariff settled by the Commissioners that it should remain in force from the 1st March, 1862, to the 1st March, 1869. It is also provided that either party may demand its revision and renewal within the last six months of its term; but if the six months should elapse after the time fixed without either party having demanded its renewal, the time should be extended "to the seven following years."

These provisions do not accord with those contained in the Treaty; and we do not see how the Commissioners by whom they are signed had any authority under the Treaty to do more than settle the Tariff, which was governed by its stipulations.

The names of the British Ambassador and the Turkish Minister for Foreign Affairs appear to be appended to those of the Commissioners, but we do not understand whether this is to be regarded as a mere verification of the Tariff or as a substantive agreement by them varying the terms of the Treaty. Seeing that it did not take the form of a new Treaty, ratified like the former, we should hardly judge that this was the case.

We think some explanation on these points is essential before we are in a position to advise on the question submitted to us.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers to accompany reference to Law Officers of the Crown of April* 24, 1883.

The Earl of Dufferin, No. 32, Commercial, March 14; ditto, No. 35, Commercial, March 21; ditto, No. 100, Commercial, October 9; to ditto, No. 75, Commercial, October 30; Mr. Wyndham, No. 105, Commercial, November 7, 1882; Mr. Wyndham, No. 18, Commercial, January 29; to Mr. Wyndham, No. 20, Commercial, February 8; Mr. Wyndham, No. 32, Commercial, February 8; to Mr. Wyndham, No. 26, Commercial, February 22; Mr. Wyndham, No. 43, Commercial, February 20; ditto, No. 65, Commercial, March 27; ditto, No 68, Commercial, April 2; ditto, No. 70, Commercial, April 2; ditto, No. 85, Commercial, April 13, 1883; Volume of Treaties regulating Trade with Turkey.

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## No. 105.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May* 19.)

My Lord, *Royal Courts of Justice, May* 18, 1883.

Expiration of the Anglo-Turkish Treaty of Commerce of February 28, 1861. Question as to position of British subjects and commerce.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th February last,* stating that he was to state to us that the question had arisen as to the position of British subjects and commerce in Turkey in the event of the Treaty of the 29th April, 1861, between Great Britain and Turkey lapsing before a new Treaty was concluded, and before the Treaties expire which other nations had concluded since or about that date, containing similar conditions.

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* Memorandum (E. H.), February 7, 1883, Confidential No. 4736; "Treaties on Trade, &c., with Turkey" (Hertslet), pp. 41–52; draft to Mr. Wyndham.

That a Memorandum was inclosed on that point by Sir Edward Hertslet; also a volume containing (pp. 41-52) the Treaty of 1861, and other Treaties between the Porte and this country and different European Powers; and also a draft of a despatch which it was proposed to address to Her Majesty's Chargé d'Affaires at Constantinople,* preferring, on the part of Her Majesty's Government, a claim to most-favoured-nation treatment in the event of the Treaty of 1861 lapsing in the circumstances above mentioned.

That our opinion was requested as to whether a despatch in those terms might properly be sent to Mr. Wyndham, and what alterations, if any, we would suggest in its terms as there proposed.

We are also honoured with a letter from Lord Edmond Fitzmaurice, dated the 2nd instant,† on the above subject, and our opinion was requested on the following points:—

That Article XVIII of the Capitulations of 1675 provided that—

"All the Capitulations, privileges, and Articles granted to the French, Venetian, and other Princes who are in amity with the Sublime Porte, having been in like manner, through favour, granted to the English, by virtue of our special command, the same shall be always observed, according to the form and tenour thereof, so that no one in future do presume to violate the same, or act in contravention thereof."

That those Capitulations were expressly confirmed by the Treaties of the 5th January, 1809, by the Convention of the 16th August, 1838, and by the Treaty of the 29th April, 1861, which latter Treaty replaced the Convention of the 16th August, 1838.

That by Article I of the Treaty of the 29th April, 1861, it was agreed as follows:—

"All rights, privileges, and immunities which have been conferred on the subjects or ships of Great Britain by the existing Capitulations and Treaties are confirmed now and for ever, with the exception of those clauses of the said Capitulations which it is the object of the present Treaty to modify. And it is moreover expressly stipulated that all rights, privileges, or immunities which the Sublime Porte now grants or may hereafter grant to, or suffer to be enjoyed by, the subjects, ships, commerce, or navigation of any other foreign Power, shall be equally granted to, and exercised and enjoyed by, the subjects, ships, commerce, and navigation of Great Britain."

But that notice had been given by the Porte to terminate that Treaty on the 1st October next, and that the question had arisen whether, in the event of its being permitted to expire on that day, Her Majesty's Government would still be justified, under the Capitulations above mentioned, in demanding, for British subjects and commerce, enjoyment of the most-favoured-nation treatment in the Ottoman dominions.

That it would appear from a Report upon the Capitulations‡ which was drawn up Mr. Van Dyck, the United States' Consular Clerk at Cairo in 1880, and laid before the American Congress in the following year, that, in his opinion, "the Capitulations with the different Powers constitute, as it were, one single whole, which each nation can turn to its own advantage, by reason of the condition stipulated for with the Porte by every Power that it shall grant it the same privileges and rights conceded or that shall be conceded to any other Power. The Porte has thus bound itself to exercise no preference towards any one of the States with which it has Treaties, but to make them all share alike in the benefits of the provisions contained in the Treaties it has entered into with each of them."

That should we be of opinion, however, that a demand for most-favoured treatment could not be supported as a Treaty right, and that, on the abrogation of the Treaty of 1861, an appeal can only be made to the very letter of the Capitulations of 1675, our attention was directed to the fact that by Articles XXXIV, LIV, LVII, and LXVII of those Capitulations, it was declared that English merchants should pay a duty of 3 per cent. only on all goods by them imported and exported, and that our opinion was requested as to whether it might not be advisable, in the event of British commerce being denied most-favoured-nation treatment, to make a demand upon the Porte for the fulfilment of those privileges which were conceded to British merchants by the Capitulations of 1675.

That to do so would, no doubt, be to revert to a state of things which was found

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* Not printed. The letter to the Law Officers of February 28 being cancelled by that of May 2.
† See also Memorandum (E. H.) of April 11, 1883.
‡ 8vo., 6496, p. 23.

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to work far from satisfactorily, as would be seen by a reference to p. 46 of Mr. Van Dyck's Report, but that the matter was so important to British merchants that your Lordship was of opinion that every appeal which can possibly be made to Treaty stipulations should be made, in order to secure for British subjects, who had so long enjoyed most-favoured-nation treatment in Turkey, that they be not subjected to less favourable treatment than other foreigners in the event of the Treaty of 1861 being allowed to expire.

In obedience to your Lordship's commands we have the honour to report—

That it is open to contention that the Ist Article of the Treaty of 1861 is to be regarded as an independent stipulation, not only confirming existing Capitulations, but granting for all time most-favoured-nation treatment, and that this latter right is not extinguished by the Treaty being put an end to.

But we do not think this view can be insisted on as clearly the sound one. We think the sounder view probably is that, when the Treaty of 1861 ceases, British subjects are remitted to their prior rights, and that they are entitled to the benefit of all Capitulations and Treaties prior to the Treaty of 1838, which was replaced by that of 1861.

Should claim either most-favoured-nation treatment, or privileges conceded by the Capitulations.

We think, therefore, that the claim should be put forward that British merchants are either entitled to most-favoured-nation treatment, or, if not, to the fulfilment of the privileges conceded by the earlier Capitulations. And, in the event of the former being denied them, we think the latter claim should be preferred.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## United States.

### No. 106.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 25.)*

My Lord,
*Temple, January* 24, 1883.

Claim of Mr. Young, trustee under bankruptcy of A. Collie, for cotton seized in 1864.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that, with reference to our Report of the 11th November last, he was to transmit to us a further despatch from Her Majesty's Minister at Washington, inclosing copies of a recent correspondence which had passed between himself and the United States' Government in regard to the claim of Mr. Young against that Government, as trustee under the bankruptcy of Alexander Collie.*

That the previous papers on the subject were returned to us; and that Sir Julian Pauncefote was to request that we would take the same into our consideration in connection with Mr. West's last despatch on the subject, and favour your Lordship with our observations and opinion as to whether any further action on the part of Her Majesty's Government was called for at present.

In obedience to your Lordship's commands we have the honour to report—

No further action called for.

That we think no further action on the part of Her Majesty's Government is called for at present.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr. West, No. 447, December 22; Mr. Young, August 3; to Law Officers, September 19; Law Officers, October 19, Confidential No. 4783, p. 98; to Law Officers, November 2; Law Officers, November 11, Confidential No. 4783, p. 100; to Mr. West, No. 313, November 22, 1882.

### No. 107.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 6.)*

My Lord,
*Royal Courts of Justice, June* 5, 1883.

Free entry of British West Indian sugar into the United States.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 17th ultimo, stating that he was to transmit to us the papers which related to a question raised by the West India Committee, that sugar the produce of the British West India Colonies should obtain the benefit of free entry into the United States about to be accorded to Mexican sugar, under the Treaty of Commerce between the United States and Mexico concluded on the 20th January last. That the Secretary of State for the Colonies, with whom your Lordship had been in communication with reference to that claim, had expressed a wish that our opinion should be obtained thereon.

That in Mr. West's No. 97, Commercial, of the 20th March, we should find a Judgment given in the United States Circuit Court for the Southern District of New York, on a claim to introduce sugar from a Danish West India Colony, under the provisions of the Treaty of 1875 between the United States and Hawaii, which Treaty, it was to be observed, was similar to the Treaty recently concluded between the United States and Mexico. That the Treaty stipulation in regard to most-favoured-nation treatment of imports between Great Britain and the United States was contained in Article II of the Convention of Commerce of the 3rd July, 1815 (Hertslet's Treaties, vol. ii, p. 387).

That our opinion was requested as to the questions submitted, and with any general observations we might have to offer upon the case.

In obedience to your Lordship's commands we have the honour to report—

British West Indian sugar not entitled to "most-favoured-nation treatment.

That, in our opinion, sugar which is the produce of British West India Colonies is not entitled to the benefit of the most-favoured-nation clause of the Treaty between this country and the United States.

Sugar "manufactured" in England might be.

That clause accords the benefit only to the European territories of Her Majesty.

It is perhaps open to contention that sugar "manufactured" in England would be entitled to the benefit of the clause.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

Treaty dated January 20, 1883.
West India Committee, January 26, 1883.
To ditto, January 31, 1883.
To Mr. West, No. 7, Commercial, January 31, 1883.
West India Committee, February 22, 1883.
To ditto, February 28, 1883.
To Mr. West, No. 13, Commercial, February 28, 1883.
Mr. West, No. 43, Commercial, February 13, 1883.
Ditto, No. 48, Commercial, February 18, 1883.
Ditto, No. 97, Commercial, March 20, 1883.

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## Venezuela.

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### No. 108.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 20.)*

My Lord, *Temple, January* , 1883.

Abduction f Venezuelan fugitives from Patos or Goose Island.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 12th instant, stating that, with reference to the question of Patos, or Goose Island, which formed the subject of our Reports of the 27th April, 1880, and the 29th January, 1881, he was to transmit to us the draft of an instruction which your Lordship proposed to address to Her Majesty's Minister at Carácas relative to the landing, in April last, of a party from an armed Venezuelan vessel on the island in question, and the abduction from thence of certain Venezuelan fugitives.

That according to the statements of witnesses examined by the British authorities (Colonial Office letter to Foreign Office, 16th June, 1882, and Mr. O'Leary's despatch No. 44 of the 26th May, 1882), it appeared that certain refugees from Venezuela sought shelter on Patos on the night of the 29th April last.

That the day following a vessel flying the Venezuelan colours anchored off the island, and sent a boat ashore to make inquiries. That subsequently two other boats landed armed crews, and the officer in command, on being warned that the island was British territory, replied that it had for four years belonged to Venezuela; and two of his men went in pursuit of the fugitives, some of whom eventually came down to the beach and went on board the Venezuelan vessel.

That the officer, it was said, uttered a threat that if the remainder did not surrender in the course of the following day, he would land troops to take them. That that threat did not, however, seem to have been carried out; and it appeared somewhat doubtful from the evidence whether the fugitives who went on board the Venezuelan vessel did so voluntarily or under coercion.

That Her Majesty's Representative at Carácas was instructed (No. 28 of the 29th June, 1882) to demand an explanation of those proceedings, and he accordingly addressed a communication in that sense to the Venezuelan Minister for Foreign Affairs (Mr. O'Leary's No. 68 of the 27th July, 1882).

That the latter replied in a note dated the 27th July, of which a translation was inclosed in Mr. O'Leary's despatch No. 77 of the 5th August, 1882.

That in that note Señor Seijas disputed the claim of Great Britain to the island.

He asserted that, even were the title of Great Britain admitted, a nation had a right to invade neighbouring territory, under the doctrine of self-preservation, in certain cases. He gave a different version of the facts of the present case from that on which the complaint of Her Majesty's Government was based, and argued that there was in no sense an armed landing; that no coercion was resorted to; and, therefore, that there was no violation of British rights.

That, in view of the attitude taken by the Venezuelan Government, your Lordship considered that a strong remonstrance was required, and that we were requested to favour your Lordship with any observations we might have to offer on the proposed instruction to Colonel Mansfield.

In obedience to your Lordship's commands we have the honour to report—

Approve draft to Colonel Mansfield.

That we approve of the proposed instruction to Colonel Mansfield.

We would observe, however, that considering the proximity of the Island of Patos to the Venezuelan territory, the sensitiveness of that Government with regard to its becoming a place of refuge for those who are endeavouring to create disturbances in its territory is not unnatural.

Recommending cession of Island to Venezuela.

Considering, too, the doubt we have expressed in our Report of the 29th January, 1881, it would seem desirable to come to an arrangement with the Government of Venezuela which should involve the cession of Patos at as early a date as possible.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

Admiralty, June 2; to Colonial Office, June 10; to Mr. O'Leary, No. 23, June 10; Colonial Office, received June 16; Admiralty, June 20; Mr. O'Leary, No. 44, May 26; to Colonial Office, June 29; to Admiralty, June 29; to Mr. O'Leary (Telegraphic), No. 27, June 29; to ditto, No. 28, June 29; Colonial Office, August 9; Admiralty, August 14; Mr. O'Leary, No. 68, July 27; ditto, No. 77, August 5; ditto, No. 78, August 6; ditto, No. 87, August 16; Señor Rojas, August 28; to Colonial Office, September 5; to Señor Rojas, September 7; to Mr. Hales (Colonial Office), September 28; Colonial Office, December 8, 1882.

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*Draft of Despatch to Colonel Mansfield.*

Sir, *Foreign Office,* , 1883.

I HAVE had under my consideration, in communication with Her Majesty's Secretary of State for the Colonies, Mr. O'Leary's despatches Nos. 77, 78, and 87 of the 5th, 6th, and 16th August last respectively, relative to the recent proceedings of a Venezuelan vessel of war at Patos or Goose Island.

I have now to state to you that the explanations of these proceedings, contained in the note of the Venezuelan Minister for Foreign Affairs of the 4th August, and the grounds on which it is attempted to justify them, appear to Her Majesty's Government most unsatisfactory.

Her Majesty's Government must altogether decline, in connection with this affair, to discuss the question of title to the island, raised in the Venezuelan note. This island has been in the possession of Great Britain as long as the Island of Trinidad, and while Her Majesty's Government might not be indisposed to entertain a proposal for the cession of Patos to Venezuela to facilitate the settlement of other questions still pending, they will regard any violation of the territory of that island by Venezuela before such cession shall have taken place in the same light as if it had occurred in any other part of Her Majesty's dominions.

As regards the citations from jurists, contained in the Venezuelan note, and which are adduced to justify the action of the Commander of the "Revindicador," Her Majesty's Government consider that they have no application whatever to the circumstances of the present case. Señor Seijas, however, asserts that the persons removed from Patos were not forcibly taken on board the "Revindicator," but left of their own accord. There appears to be some conflict of evidence on this point, and Her Majesty's Government therefore accept the assurance of the Minister for Foreign Affairs that no violation of territory was intended, but they think it their duty to warn the Venezuelan Government that if any attempt should be made by them to set at defiance the sovereignty claimed by Great Britain over Patos, such attempt will be made at their risk of the consequences.

You will address a communication to the Venezuelan Government in the sense of this despatch.

I am, &c.

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### No. 109.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 14.)*

My Lord, *Royal Courts of Justice, May* 12, 1883.

Case of the "Mercy."

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 24th ultimo, stating that he was to transmit to us papers relating to the British sloop "Mercy," which had been detained by the Venezuelan authorities, and for which compensation was sought by the owner of the vessel.

That our attention was invited to Mr. M. O'Leary's despatch No. 69 of the 28th July, 1882, which contained a full résumé of the case, to the protest of the master and owner of the "Mercy," Mr. Billy, made before the British Vice-Consul at La Guayra, to the letter addressed to the Colonial Secretary at Trinidad by the Venezuelan Consul in that island, stating that no blame attached to Mr. Billy but to the charterer of the vessel only; and, further, to the judgment of the Supreme Court of Venezuela, of which a translation was inclosed in Colonel Mansfield's despatch No. 11 of the 8th February, 1883.

That the Secretary of State for the Colonies had suggested that the case should be referred to us, and that our opinion was requested as to whether the circumstances of the case as reported, afforded any grounds for preferring a claim for indemnity

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against the Venezuelan Government on account of the loss to which Mr. Billy had been subjected through the action of the Venezuelan authorities.

In obedience to your Lordship's commands we have the honour to report—

No grounds for claim against Venezuela for detention.

That, in our opinion, the circumstances of the case, as reported, do not afford any grounds for preferring a claim of indemnity against the Venezuelan Government, on account of the loss to which Mr. Billy has been subjected through the action of the Venezuelan authorities. The vessel appears to have been detained pursuant to the judgment of a duly constituted Court, though that judgment was afterwards in part reversed by a higher Tribunal. There was, in the circumstances of the detention, nothing so opposed to natural justice as to warrant diplomatic intervention.

Mr. Billy should take action against the charterer.

The real remedy of Mr. Billy would seem to be by legal proceedings against the charterer of the vessel, whose wrongful acts were the cause of the disastrous consequences which followed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers sent to Law Officers, April* 24, 1883.

Colonial Office, April 20; to Colonial Office, April 27; to Mr. O'Leary, No. 14, May 1; Mr. O'Leary, No. 69, July 28; to Colonial Office, November 21; Colonial Office, December 4; to Colonel Mansfield, No. 48, December 11; Mr. Billy, October 28; Colonial Office, December 20; to Mr. Billy, December 29; to Colonial Office, December 29, 1882; Colonel Mansfield, No. 11, February 8; to Colonial Office, March 22; Colonial Office, April 7, 1883.

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**CONFIDENTIAL.**

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# REPORTS

BY THE

# LAW OFFICERS OF THE CROWN.

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| 42 | Law Officers .. | Nov. 5, | Dissolution of William Rose's marriage with Barbara Zwicker by the Berlin Civil Court, and refusal of British Embassy to grant certificate for his marriage to Caroline Maroni. Has Mr. Rose acquired any domicile in Germany? .. | 59 |

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| 44 | Law Officers .. | Aug. 12, 1884 | Honduras boundary. Protest of Guatemala against British occupation of territory. Articles II, III, IV, and V of Convention of 1859 not invalidated by non-fulfilment of Article VII, as to road. Should inquire as to reasons for the non-fulfilment of IInd and following Articles. Right of Guatemala to refuse to carry out Treaty partially. Obligations of British Government under Article VII . | 61 |
| 45 ✓ Co. | Law Officers .. | Nov. 25, | Honduras boundary. Guatemalan protest against British occupation of territory. Failure to define boundary under Article II of Convention of 1859 was due to action of Her Majesty's Government, who are morally bound to take steps to give effect to Article VII of the Convention of 1859 .. .. .. .. .. .. | 62 |

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| 47 | Law Officers .. | Dec. 30, | Claim of Mr. Breckenridge against Haïtian Government. Claim appears to be an indirect one. If British Government agreed to the instructions given to the Mixed Commission, it will be difficult to insist upon a reversal of the decision rejecting it .. .. .. .. | 64 |

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| 49 | Law Officers .. | Apr. 1, | Naples Hospital. Application for loan from Burial Ground Fund to hospital on security of mortgage of hospital. Trustees of cemetery have no power to grant loan from the invested funds of the cemetery. Inclined to oppose alternative proposal of grant of 1,300*l*. from the uninvested funds. It is not sufficiently clear that cemetery funds can be applied as suggested .. .. .. .. | 65 |

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| 52 | Law Officers .. | Aug. 16, | Blockade of the ports of Madagascar. Case of the "Orénoque" at Mahonovo. No ground for complaint against French Government on account of vessel not being allowed to complete her loading; but should call attention to shortness of notice given to vessel to quit port .. .. | 69 |
| 53 | Law Officers .. | Sept. 27, | British subject in service of Government of Madagascar. Case of Colonel D. Willoughby. Consul has jurisdiction to try offences against Foreign Enlistment Act. Approve instructions to Consul Graves with amendments . .. | 70 |

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| 58 | **Law Officers** .. | Dec. 6, | Capture of the crew of the "Nisero" by the Rajah of Tenom. Her Majesty's Government cannot claim from Dutch Government the 300*l.* contributed to the Mansion House Fund. Dutch Government may be asked to pay expenses incurred by Her Majesty's Government in rescuing captives .. .. .. .. .. .. | 79 |
| 59 | **Law Officers** .. | 30, | Detention of the crew of the "Nisero" by the Rajah of Tenom. Claim of W. Bradley for compensation. Other similar applications received. He has no valid or legal claim, and should be so informed .. .. .. .. | 81 |

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| 61 | **Law Officers** .. | Sept. 11, | Case of the "Madras." Delay in admission of vessel to quarantine. Approve instructions sent to Consul-General. Should, on account of failure to obtain a legal remedy, make strong representations to Hawaiian Government .. | 82 |

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| 65 | **Law Officers** .. | 2, | Claims of Peruvian bondholders. Proposed intervention in regard to cession of hypothecated territory. No settled rule as to division of debt on cession of territory; but, in present case, intervention is justified .. .. .. | 87 |
| 66 | **Law Officers** .. | Nov. 5, | Claims of foreign creditors on Peru. Appropriation by Chile of guano and minerals. No objections to accepting offer of Chile to come to an equitable understanding with some of the creditors and to examine the claims of others .. | 88 |

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| 68 | **Law Officers** .. | Sept. 11, | Oyster fisheries at Lisbon. Claim of Anglo-Portuguese Oyster Company. Transfer by M. Place to Company of his Concession without consent of Portuguese Government. Legal proceedings on bankruptcy of M. Place's estate and sale of his interest in the Concession. Portuguese Government decline to interfere. No diplomatic action can be taken until the question has been decided by the Tribunals .. | 91 |
| 69 | **Law Officers** .. | Oct. 29, | Collision between the "City of Mecca" and the "Insulano." Not expedient to suggest questions as to (1) Judgment of Court of Appeal, (2) extent of liability of Portuguese Government, as proposed for arbitration. The Judgment throwing blame on British steamer not inconsistent with Sailing Rules. Cannot suggest other questions. Arbitration without prospect of success inexpedient. Should consult Lord Chancellor .. .. .. .. | 93 |
| 70 | **Law Officers** .. | Nov. 27, | Claim of Mr. J. Dixon for line built for the Minho District Railway Company and sold to the Guimarães Company. Representations to the Portuguese Government and repudiation of debts of the old by the new Company. The Portuguese Government not legally liable; Mr. Dixon must apply to the Portuguese Tribunals. No further diplomatic action can be taken at present .. .. .. | 94 |
| 71 | **Lord Chancellor** . | Dec. 1, | Collision between the "City of Mecca" and the "Insulano." Course proposed as to indemnification of owners by Portugal against decisions of French Courts would not satisfy the Portuguese conditions for accepting arbitration. Objections to formulating questions to be submitted to Arbitrators. Arbitration must not be a limited one, but on whole case .. | 96 |

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| 73 | **Law Officers**, .. | Nov. 5, | Case of the British ship "Otome," confiscated by the Russian authorities of Eastern Siberia for infraction of the Fur-hunting and Fishing Regulations. Believe that an offence against the Regulations was committed. Nature of the representations which may be made to the Russian Government. (Messrs. Wylie, Fulton, and Co. representatives of owners of the "Otome") .. .. .. .. | 98 |

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| 74 | Law Officers | May 14, 1884 | Jurisdiction over British subjects in Chiengmai, Lakon, and Lampoonchi. Approve proposed Order in Council as amended | 100 |
| 75 | Law Officers | June 21, | Jurisdiction over British subjects in Chiengmai, Lakon, and Lampoonchi. Approve additional clause authorizing the Chief Justice of Singapore to try certain offences at Bangkok | 101 |
| 76 | Law Officers | Nov. 25, | Slave-dealing in Siam. Bills of sale whereby the services of an individual are sold to a purchaser. Attempts to evade criminal liability through a second contract. Contract No. 1 is illegal under Slave Trade Acts, and renders a British subject liable to criminal proceedings before the Consular Court. Contract No. 2—how affected by the Slave Trade Acts. If merely colourable, British subject might be dealt with by criminal law | 101 |

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| 77 | Law Officers | Sept. 22, 1884 | Pursuit and search of the "Scud" by the Spanish gun-boat "Almendarez." Conduct of Spanish officer not justifiable. Any claim for compensation should be supported. Suggest slight alterations in instructions | 104 |
| 78 | Law Officers | Nov. 12, | Arrest of Spaniards at Gibraltar for smuggling tobacco into Spain. Conduct of the Governor in handing them over to the Spanish authorities and in confiscating the tobacco should not be approved. Legal powers should be given to the British authorities to deal with Spaniards thus abusing British territory | 105 |
| 79 | Law Officers | 28, | Execution in Spain of a Judgment obtained in England by Mr. G. C. Stewart against Mr. Forrest on account of money advanced on a mortgage on certain ships belonging to the defendant. Spanish Government apply rule of reciprocity in such cases, but the Judgment was obtained by default of appearance, and Spanish law does not permit execution of a sentence "en rebeldia." The Judgment of a Spanish Court, even though "en-rebeldia," would be executed in England. Explains Judgment for default of appearance. | 106 |

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| 80 | Law Officers | Jan 24, 1884 | Expulsion of Miss Booth from Cantons of Neuchâtel and Geneva. Professor König's Reports make out a strong case as to illegality of proceedings. Objections to taking action before knowing Miss Booth's intentions, and before appeal has been made | 107 |
| 81 | Law Officers | July 18, | Establishment of the Salvation Army in Switzerland. Approve letter to Mr. Booth, as altered, respecting impossibility of granting diplomatic assistance until decision has been finally come to by the highest Tribunals | 108 |
| 82 | Law Officers | Sept. 10, | Prohibition of Salvationist meetings in certain cantons. Approve answer to Mr. Booth declining to support resistance to the prohibition | 109 |
| 83 | Law Officers | 10, | Mr. Clibborn, of Salvation Army, forbidden to enter the territory of Neuchâtel. He will be liable to arrest if he acts contrary to the Decree, and it might be difficult to interfere on his behalf | 109 |
| 84 | Law Officers | 19, | Suppression of Salvationist meetings in Berne. Decree and Circular. Her Majesty's Government should not take any action in the matter | 110 |
| 85 | Law Officers | Nov. 11, | Illegitimate infant daughter of Marie Gouder, a British subject. Her name may be included in her mother's passport. Strictly speaking, she is not a British subject | 111 |
| 86 | Law Officers | Dec. 17, 1884 | Expulsion of Mr. Rabey, a Salvationist, from Switzerland. Expulsion under Arrêté of the 7th October, 1884, was a violation of Treaty of 1856. Should call attention thereto, and to second ground, viz., disobedience to Regulations laid down by Conference at Berne | 111 |

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| 88 | Law Officers | 22, | Settlement of Tunisian debts. French proposal for régime in place of that established by the Finance Commission. The mode of redemption provided by the Act of 1870 must be carried out, but not necessarily through the Finance Commission. Not understanding exact method pointed out, are not competent to give opinion regarding it | 113 |
| 89 | Law Officers | Apr. 4, | Tramway Concession. Claim of the Esparto Fibre Company on account of refusal of permission to construct the tramway. The Company can only claim rights granted to M. Duplessis, the original concessionnaire. Stating grounds on which to base request for arbitration under Anglo-French Agreement as to claims. Great force in French objection under Article 7 of the Concession. As it is not for "personal property," the claim should be made for damages. Of the further French objections, the first, that the Company is French, is erroneous; but the second, that claim is "immobilière," is formidable | 115 |
| 90 | Law Officers | June 24, | Negress slaves taking refuge in British Consulate. Claimed as wives of servants of house they escaped from. Supposed conspiracy to reduce them to slavery. As to handing them over to French Consul-General. Case should be laid before French Government, making them responsible. Meantime, they should be kept under protection of British Consul | 117 |
| 91 | Law Officers | Nov. 10, | Fugitive negress slaves in the British Consulate-General. Should not be given up without Her Majesty's Government being satisfied that the Decree of the Tunisian Court is absolutely binding. Mr. Reade should be asked to explain the correctness of his statements | 118 |
| 92 | Law Officers | 11, | G. Jackson's Petition for remission of sentence passed on him by Consular Court at Tunis. At present no sufficient ground for interfering with the sentence, but Mr. Reade should be asked for any further information he may have | 118 |
| 93 | Law Officers | Dec. 24, | G. Jackson's Petition for remission of sentence of Consular Court at Tunis. Sentence should be reduced from five to three years' imprisonment | 119 |

## TURKEY.

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| 94 | Law Officers | Jan. 31, 1884 | Registration of native Indian subjects in Turkey. Indians not bound to register themselves, but cannot sue in Consular Courts unless registered. In criminal cases Consular Courts have no jurisdiction unless Indian subject was registered at time of committing the offence | 120 |
| 95 | Law Officers | Feb. 5, | Application of new Bankruptcy Act to Ottoman dominions. New Act is applicable. Board of Trade has not jurisdiction to appoint Receivers, whose duties should be assigned by the Judge | 120 |
| 96 | Law Officers | Mar. 11, | Service of processes on British subjects in England. Adhere to former opinion that Consular Court in Ottoman dominions has not power to order such service. Not proper to give opinion on question as to service other than personal | 12 |
| 97 | Law Officers | 15, | Jurisdiction of British Consular Court at Constantinople over foreign sailors charged with murder on British vessel. Approve proposed instructions that Court has no power to try foreign sailors belonging to British vessels | 122 |

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**CONFIDENTIAL.**

# REPORTS BY THE LAW OFFICERS OF THE CROWN: 1884.

## Africa.

### No. 1.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 11.)

My Lord, *Royal Courts of Justice, February* 9, 1884.

Case of T. Phillips, charged with assaults, and inciting natives to commit acts of war against Her Majesty's ship "Opal" at Aboh.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that he was directed to transmit to us papers relative to the detention and disposal of a British subject named Theophilus Phillips, of Sierra Leone,* who had been brought to the Colony of the Gold Coast from the Niger, on board Her Majesty's ship "Opal," as a prisoner charged not only with having been a party to the commission, in his own house, of an aggravated assault, by a native Chief named Opanbi Aramana, on a British subject named Vietch, at Aboh, on the Niger, but with having incited Opanbi Aramana to commit acts of war against Her Majesty's ship "Opal," whereby three of her crew were killed, and one officer was severely wounded.

That Phillips was in custody at the present time on board Her Majesty's ship "Bullfrog" at Accra, as a prisoner of war.

Aboh not in jurisdiction of any British Colony, but within Consular jurisdiction.

That Aboh, on the Niger, was not within the jurisdiction of any British Colony on the West Coast of Africa, but was within British Consular jurisdiction, which was regulated by Her Majesty's Order in Council of the 21st February, 1872. That the facts of the case were detailed in the Admiralty letter of the 13th and Colonial Office letter of the 18th December last. That the prisoner was brought from the Niger to Accra, and confined in the gaol there by order of the Governor of the Gold Coast. That he was subsequently removed to Fort St. George, Elmina, and finally he was transferred, under a warrant of the Governor, to Her Majesty's ship "Bullfrog," pending instructions from Her Majesty's Government.

Proposal to try prisoner at Akassa by British Consul.

That it was proposed by the naval authorities on the spot to send him to Akassa, within the jurisdiction of Her Majesty's Consul, to be there tried under the Order in Council above referred to. But that we should observe that the extreme penalty which Her Majesty's Consul could impose for any crime or offence under that Order was a fine of 200*l.*, or banishment for twelve calendar months, or imprisonment for a period not exceeding twenty-one days (paragraph 14 of Order), and that he had no power to send an offender for trial or imprisonment to a British Colony, under the Foreign Jurisdiction Act, no provision to that effect having been inserted in the Order.

Inadequacy of Consul's powers to deal with case.

That Mr. Hewett, Her Majesty's Consul, who was then in England on leave, but was about to return to his post, in his letter of the 20th December points out the inadequacy of his powers to deal with such a case.

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* List of papers sent to the Law Officers of the Crown, January 22, 1884:—Admiralty, December 13; Colonial Office, December 18; Consul Hewett, December 20; Admiralty, December 22, 1883; Order in Council, February 21, 1872, Confidential No. 2258; Regulations under Order in Council of February 21, 1872, Confidential No. 2182.

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That the reports received of this outrage were unaccompanied by any depositions, and consisted of general and somewhat vague statements. That it was probable, however, that clear evidence would be forthcoming to establish the assault by Phillips against Mr. Vietch.

That for that offence Phillips would seem amenable only to the Consular jurisdiction, and it was presumed that the proper course under the circumstances would be to let him take his trial accordingly before Her Majesty's Consul at Akassa, unless we should be of opinion that he could be dealt with for the graver offence of having aided and abetted the enemies of the Queen, for which he was seized by Captain Brooke, of Her Majesty's ship "Opal," and was then confined on board Her Majesty's ship "Bullfrog" as a prisoner of war.

That our opinion was requested as to the course which should be followed in that case, in order to bring Phillips to justice, and that we would favour your Lordship with any observations we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Prisoner is amenable to Consular Court at Akassa for the assault.

That we think that Phillips, for the offence of assault committed by him, is amenable only to the Consular jurisdiction, and that the proper course will be to let him take his trial accordingly before Her Majesty's Consular Court at Akassa.

Do not see how he can be prosecuted for inciting to war against "Opal."

Having regard to all the circumstances of the case, we do not see how he can be effectually prosecuted in any Criminal Court for the more serious offence for which he was seized and is now in custody.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Belgium.

### No. 2.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 6.)*

My Lord, *Royal Courts of Justice, May* 6, 1884.

Extradition of N. L. Rolland.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 27th March, stating that he was to transmit papers* relating to a demand made by the Belgian Government for the surrender of Nestor L. Rolland on a charge of forgery, under the Extradition Treaty between Great Britain and Belgium of the 20th May, 1876.

Refusal of the Chief Magistrate to issue warrant.

That the demand was originally made by Baron Solvyns, the Belgian Minister at this Court, on the 14th March, 1883, and was referred to the Home Office in the usual course; and that on the 19th the Secretary of State issued the order requiring the Chief Magistrate to issue his warrant for the apprehension of the fugitive. That nothing more was heard of the case in the Foreign Office until the 21st December, when Baron Solvyns made a further application for Rolland's surrender. That that application was referred to the Home Office, and in the reply of that Department of

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* List of papers accompanying reference to Law Officers, March 27, 1884:—
(A.) Baron Solvyns, March 14, 1883.
(B.) Home Office, May 10, 1883.
(C.) Baron Solvyns, December 21, 1883.
(D.) Home Office, December 31, 1883.
(E.) Baron Solvyns, March 8, 1884.
(F.) Home Office, March 18, 1884.
(G.) Copy of Extradition Treaty between Great Britain and Belgium, May 20, 1876, No. 598.
(H.) Draft reply to Baron Solvyns, March , 1884.
(I.) Extradition Act, 1870, 33 & 34 Vic., cap. 52.
(J.) Depositions.

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### No. 1A.

*The Law Officers of the Crown to Colonial Office.*

My Lord, *Royal Courts of Justice, November* 15, 1884.

Jurisdiction in native African territories under Treaties with their Chiefs.

WE were honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 6th instant, stating that he was directed by your Lordship to invite our attention to our Report of the 3rd August, 1880, to the Treaties made with Mankoroane and Montsioa which would be found at pp. 17 and 44 of C.—4194, and to the letter from Mr. Assistant Commissioner Wright at p. 145 of C.—4213; copies of which documents were inclosed.

That your Lordship desired to be favoured with our opinion—

1. Whether it would now be competent to Her Majesty, by an Order in Council under the Foreign Jurisdiction Acts, to create a Court with jurisdiction over offences committed since the date of the above Treaties, within the territories of the Chiefs who had signed those documents.

2. Whether a Court so created would be competent to try, on a charge of murder, the men who killed Mr. Bethell.

3. Whether, having regard to the immediately preceding conflict, the facts, as detailed in Mr. Wright's letter, constituted the crime of murder according to English law.

4. Whether it would be proper to include in an Order in Council, creating a Court with jurisdiction over the territories of the Chiefs signing the above-mentioned Treaties, a clause empowering the Court to receive evidence upon affirmation or declaration, instead of upon oath, similar to clause 26 of the Western Pacific Order in Council of the 14th August, 1879, of which a copy was inclosed.

That Sir Robert Herbert was also to request that we would be good enough to favour your Lordship with any observations upon the subject generally that might appear to us desirable.

In obedience to your Lordship's commands we have the honour to report—

No objection to proposed Court.

That we think, though the point is not free from doubt, that it would be competent to Her Majesty, by Order in Council, to create a Court with jurisdiction over offences committed since the date of the two Treaties respectively, within the territories of the Chiefs who signed those documents. They purport to give Her Majesty power from their date "to rule in the country over white men and black men," in addition to the power of publishing laws, appointing Judges, and the other power, specified. And these powers appear to have been accepted on behalf of Her Majesty. It would appear, therefore, that Her Majesty had authority to try and adjudicate upon all offences committed in the territory of each Chief, from and after the date of the Treaty. This being so, there does not seem to us to be any objection, in principle, to the creation of a Court which is to try past offences. It is totally different from the creation of offences *ex post facto*, which would of course be open to the gravest objection.

Such Court competen to try alleged murder of Mr. Bethell.

2. We think, therefore, that a Court so created would be competent to try, on a charge of murder, the men who killed Mr. Bethell. We presume that murder was recognized as an offence in Montsioa's territory, and, if so, we think it may be regarded as an offence against Her Majesty, though no laws have yet been published by her.

Limitations under Treaty.

We would, however, observe that the wording of the Treaty is somewhat peculiar. It may be contended that the wording of the third paragraph, which gives authority to arrest and imprison criminals, &c., limits the authority conferred by the preceding general words, and that there is no power to inflict capital punishment.

Question as to murder one for Court.

3. If Mr. Bethell had met his death in the course of the conflict which took place between the armed forces, it would be open to serious doubt whether the crime of murder had been committed. But if the account of the occurrences contained in Mr. Wright's letter is to be relied on, and Mr. Bethell was shot when lying wounded in the way described, we think it may fairly be contended that the offence of murder was committed. At all events, we think the determination of that question might properly be left to the Tribunal before whom the case was tried.

As to objections to Court, &c.

Any objection to the jurisdiction of the Court constituted by an Order in Council, and any question as to the sentence it had power to impose, might also be raised at the trial.

No objection to provision in Order.

4. We see no impropriety in such an Order in Council containing the provision suggested.

As to presence of murderers in Transvaal.

We may add that it is not clear whether the alleged murderers are still in the territory of the Chief or are now in the Transvaal. If the latter, we are not aware whether there is any Convention with the Transvaal under which their presence in the protected territory could be secured for the purpose of trial.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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the 31st December was inclosed a copy of a letter from the Chief Magistrate, in which he stated his reasons for not issuing a warrant.

That the decision of the Magistrate was at once communicated to the Belgian Minister.

Renewed application for his extradition.

That on the 8th March Baron Solvyns renewed the application for the surrender of the accused, inclosing further documents in support thereof, and also copies of communications from the Belgian Minister for Foreign Affairs and the Procureur-Général at Brussels in reply to the arguments of the Chief Magistrate.

That that note was communicated to the Home Office, and in the reply from that Department of the 18th March was a copy of a further letter from the Chief Magistrate, in which he still declined to issue a warrant, and stated the grounds of his refusal in the following terms:—

Reasons for continued refusal to issue warrant.

"It appears that the accused signed certain papers with a fictitious name and address, for the purpose of evading French customs duties on goods sent by him from Belgium into France. The Judgment of Lord Mansfield, C.J., in Planché *v.* Fletcher (1 Douglas, 253), applies to this case: 'One nation does not take notice of the revenue laws of another.' On that ground, upon facts substantially similar to the present, he held that there was no fraud in England.

"Having, then, no regard to the French Tariff, I find that the documents upon which the claim for extradition is founded do not contain any evidence of a fraudulent intent."

That we were referred to Article II of the Extradition Treaty between Great Britain and Belgium, and to the heading of the list of crimes contained in the First Schedule of the Extradition Act, 1870.

That your Lordship had caused a draft to be prepared of a note to the Belgian Minister, embodying the reasons given by the Chief Magistrate for his refusal to issue a warrant in the case, and that Sir J. Pauncefote was to request our opinion as to whether the grounds for such refusal were sufficient in law, and were correctly stated in the draft note.

In obedience to your Lordship's commands we have the honour to report—

Better for the Magistrate to issue a warrant, and allow question to be raised by prisoner.

That we entertain grave doubt whether the uttering, in this country, of a false document, with intent to defraud the revenues of a foreign country, would not be a criminal offence here. Indeed, we incline to the opinion that it would. But even treating the matter as open to doubt, we would suggest for consideration whether the better course would not be for the Magistrate to issue his warrant, leaving the question to be raised by the prisoner, as it can be by application for a writ of *habeas corpus*, or otherwise, so that it may be solemnly decided after argument.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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# Chile.

## No. 3.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 22.)

*Royal Courts of Justice, February* 22, 1884.

My Lord,

Boats being built for Chilean Government.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th instant, stating that he was to transmit to us a letter from the Treasury respecting eighteen boats then being built by Messrs. White, at Cowes, for the Chilean Government.* That Sir J. Pauncefote stated that hostilities between Chile and Peru had ceased, and that a Treaty of Peace was signed on the

* Treasury, February 19, 1884.

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20th October last, the ratifications of which had not, however, been exchanged pending the approval of the Peruvian Congress, which was expected to assemble next month.

That our opinion was requested as to whether, under those circumstances, a state of war existed between Chile and Peru within the meaning of the Foreign Enlistment Act, which made it incumbent on Her Majesty's Government to prevent the shipment of the boats, and generally as to what steps should be taken in the matter.

In obedience to your Lordship's commands we have the honour to report—

May be removed, though the Treaty with Peru is not ratified.

That, inasmuch as it appears that a Treaty of Peace has been concluded, and only awaits ratification, which there seems no reason to doubt it will receive, and that no warlike operations between Chile and Peru are now in progress, we think that these vessels, which, from their nature, are not likely to be employed in warlike operations, may be allowed to be removed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 4.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 23.)

My Lord, *Royal Courts of Justice, February* 23, 1884.

Boats being built for Chilean Government. Further papers.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd instant, stating that, with reference to his letter of the 19th February, he was directed by your Lordship to transmit to us a further letter and inclosure from the Treasury on the subject of the boats being built at Cowes for the Government of Chile;* and that he was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as speedily as possible, in view of the fact that the steamer which was to take the boats appeared about to start from Shields on the 23rd February, in order to take up the boats at Cowes.

In obedience to your Lordship's commands we have the honour to report—

No further opinion to add.

That we have nothing to add to our former Report in relation to the stoppage of the boats in question.

Should inquire into export of torpedo boats during last three years.

It is deserving of consideration whether some inquiries should not be made in consequence of the statement contained in Messrs. Laws, Surtees, and Company's letter of the 20th instant, that they had carried torpedo boats to the Chilean Government during the last three years.

We have, &c.
(Signed) HENRY JAMES
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 5.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received October* 30.)

My Lord, *Royal Courts of Justice, October* 28, 1884.

Chile and Peru war. Claims of neutrals. Italian objections to propositions as to rights of neutrals.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 17th instant, stating that he was to transmit to us a note† from the Italian Ambassador at this Court, in which, in pursuance of instructions from his Government, he drew the attention of your Lordship to certain passages which appear in the preface to the first award pronounced by the Anglo-Chilean Court of Arbitration, established for the purpose of determining the amount of indemnity payable to British claimants who sustained losses at the hands of the Chilean forces during the late war between Chile and Peru.

* Treasury, February 22, 1884, with Inclosure.

† (A) Count Nigra, September 23, 1884; (B) Correspondence respecting conduct of war between Peru and Chile, Confidential No. 4936; (C) Memorandum on Neutrals (Sir J. Pauncefote), Confidential No. 5015; (D) Law Officers, November 1, 1883, Confidential No. 4974, p. 83.

That the Court of Arbitration was sitting by virtue of an Agreement between the British and Chilean Governments, of which a copy was inclosed.

That Her Majesty's Government had not yet received the text of the award referred to by the Italian Ambassador, but that the propositions of law to which his Government took exception are quoted verbatim in his note.

That those propositions did not appear to conflict with the statement of the legal position and rights of neutrals, contained in the Foreign Office Memorandum (C) transmitted therewith, and which was approved in our Report of the 1st November last.

That Mr. Currie was to request our opinion as to the reply which should be returned to the inquiry of the Italian Ambassador.

In obedience to your Lordship's commands we have the honour to report—

The propositions may require qualification.

That the "considerations" appear to be accurate as general statements of international law, though it is possible that, in exceptional cases, they might require some qualification.

To what extent do they object?

We would suggest that it might be well to inquire of the Italian Government to what extent they take exception to them.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 6.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 12.)

My Lord, *Royal Courts of Justice, November* 11, 1884.

Chile Claims Commission.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo, stating that he had the honour to transmit to us the papers* relating to the claim of James Noble, a British subject, which had recently been before the Chile Claims Commission.

Rejection of claim of James Noble on plea that he has not proved his nationality.

That that claim was rejected by the Tribunal, on the plea that the claimant had not proved his nationality.

That it appeared that the Tribunal, not having laid down any rule that preliminary proof of British nationality would be required, it was assumed by the British Agent that the fact of the claim being presented by him would be accepted as *primâ facie* proof.

That no objection was taken on that ground by the Chilean Agent during the preliminary stages of the proceedings, and the claimant was therefore taken by surprise.

That nevertheless no time was allowed him to adduce the proof required, but that his case had been dismissed.

That Sir J. Pauncefote was directed to request our opinion as to whether Her Majesty's Government would be justified in addressing a remonstrance to the Chilean Government on the subject, and in asking them to agree to the case being reopened in order to allow of evidence being given to prove the nationality of the claimant.

That a copy of the Convention† for the settlement, by means of a Mixed International Commission, of the claims of British subjects, arising out of the war between Chile and Peru, and the Rules of the Procedure‡ were inclosed for reference.

In obedience to your Lordship's commands we have the honour to report—

Remonstrance should be addressed to Chilean Government, who should be asked to reopen the case.

That we think Her Majesty's Government would be justified in addressing a remonstrance to the Chilean Government on the subject, and in asking them to agree to the case being reopened in order to allow of evidence being given to prove the nationality of the claimant.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr. Pakenham, No. 53, September 1; Mr. J. de V. Drummond Hay, No. 8. Claims, August 30; ditto, No. 9, Claims, August 31, 1884, Confidential No. 5070.

† Confidential No. 4936, p. 26.

‡ Confidential No. 5070, p. 33.

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## No. 7.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 29.)

My Lord, *Royal Courts of Justice, November* 28, 1884.

War between Chile and Peru.

Claims of neutrals.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th instant, stating that he was directed to transmit to us the papers* relating to the proceedings before the Court of Arbitration at Valparaiso for the settlement of the claims of neutrals arising out of the war between Chile and Peru.

That in pursuance of instructions received from his Government, the Italian Ambassador, in a note dated the 30th October, drew your Lordship's attention to certain general principles which the Italian Government had been informed had been asserted by the Chilean Agent at the Court of Arbitration, in opposing the claims that had been presented on behalf of British, French, and Italian subjects, who suffered losses in consequence of the military operations of the Chilean forces during the recent war with Peru.

General principles asserted by Chile.

That the principles thus asserted by the Chilean Agent were explained under three headings in Count Nigra's letter, their general tenour being (1) that foreigners domiciled in Peru or Bolivia during the war had no better claims than the subjects of those countries; (2) that Chile was not responsible for injuries inflicted on such foreigners by the civil or military authorities through acts not expressly ordered or sanctioned by the superior authorities of Chile; (3) that pillage, fire, personal injuries, destruction of private property, were the inevitable incidents of all war, and that neutrals were bound to avoid them by removing from the locality were hostilities were taking place.

Italy wants opinion of Her Majesty's Government.

That Count Nigra pointed out that such theories presented a certain analogy in those advocated by the Agent of the United States before the Mixed Commission on British and American claims established under the XIIth Article of the Treaty of Washington of the 8th May, 1871, and that if they should prevail they would dispose of nearly all the claims of foreigners. That the Italian Government, therefore, were anxious to know the views of Her Majesty's Government thereon.

That Count Nigra might possibly have intended to refer to the case of the "Hiawatha,"† in which a demurrer was raised on the ground of the domicile of the British claimants in the insurrectionary States then engaged in war against the United States, but that the point did not appear to have been decided in that case.

That the terms of the Conventions signed by Chile with Italy and Great Britain for the settlement of the claims of Italian and British subjects would be found in the papers (C) and (D).

That our opinion was requested as to the reply which should be returned to Count Nigra's letter.

In obedience to your Lordship's commands we have the honour to report—

Operations of war.

1. That the first of the three principles laid down, if limited to claims in respect of losses arising from the ordinary incidents and necessary operations of war, appear to be, speaking generally, correct.

Cases where neutrals stand on different footing from nationals.

But it is, we think, subject to some important exceptions. Amongst these we may specify:—

(1.) The wanton violation of premises of the Ambassador or Consular buildings protected by the national flag.

(2.) Wanton and unnecessary destruction of private neutral property plainly distinguishable by the national colours being hoisted, or otherwise.

(3.) Pillage, or other excesses in breach of military discipline, knowingly committed on neutrals.

(4.) Refusal to give neutrals the option of leaving before hostilities are commenced.

(5.) Cases in which neutral property is seized and used for the purpose of warlike operations by an invading army.

The above does not profess to be an exhaustive list of the exceptions. These instances are given by way of example only.

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* (A) Count Nigra, October 30, 1884, with translation, Confidential No. 5070; (B) Report by Her Majesty's Agent of Proceedings and Awards of the Mixed Commission on British and United States' Claims, Parliamentary No. 1631; (C) Correspondence: Conduct of war between Peru and Chile, Confidential No. 4764; (D) Ditto. Confidential No. 4936; (E) Memorandum on Neutrals (Sir J. Pauncefote), Confidential No. 5015.

† Blue Book "North America No. 2 (1874)," pp. 91-99. Foreign Office No. 1631.

Responsibility for acts not expressly sanctioned by authorities.

2. The second principle appears to us to be far too widely stated. We think responsibility is not confined to acts "expressly" ordered or sanctioned.

Excesses of the soldiery, for example, committed through want of proper discipline and control, might, we think, properly give rise to claims.

The words "superior authorities," too, are ambiguous, and might exclude the acts of officials for whom a Government ought justly to be held responsible.

Fire, pillage, &c., if wanton, are not inevitable incidents of war.

3. No doubt fire, personal injury, destruction of private property, and possibly some pillage may be inevitable incidents of war. But they may also be wanton, excessive, and due to the war being carried on contrary to the usages of civilized warfare and the rules of international law.

It is evident, therefore, that the third principle, though in the main correct, cannot be accepted without qualification.

We would suggest that Count Nigra's letter may properly receive an answer founded upon the above observations.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# China.

## No. 8.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 23.)

My Lord, *Royal Courts of Justice, January* 22, 1884.

Canton Riots.

Trial of J. H. Logan for the murder of Pak Wah-king, Chinese boy.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 7th instant, stating that he had the honour to transmit to us, by your Lordship's direction, the papers noted in the accompanying list, which related to the trial of a British subject named James Henry Logan, at Canton, in China, for the murder of Pak Wah-king, a Chinese boy, aged 12, on the 12th August last.

That the trial, which lasted three days, commenced at Canton on the 20th September, before Sir Richard Rennie, Chief Justice of Her Majesty's Supreme Court for China and Japan, and a jury. That Logan was found guilty of manslaughter, and sentenced to penal servitude for seven years.

That for some time previously to the commission of that crime considerable excitement had been created against foreigners by the action of the French in Tonquin (see Sir H. Parkes, No. 25). That the crime committed by Logan naturally aroused the anger and animosity of the lower orders of the Cantonese, who were at all times inclined to be turbulent (Mr. Grosvenor, No. 120). That it appeared from the evidence which was transmitted therewith (report of trial of "Regina *v.* Logan") that Logan, who had formerly served in the Hong Kong police, was employed at Canton in the service of the Chinese Imperial Maritime Customs. That he spent the night of the 11th August at the house of one Nielsen in company with the latter and one Van Koken, playing cards and drinking beer. That at 6·30 on the morning of the 12th all three left the house and proceeded in the direction of Logan's house. That Logan carried a stick, and wantonly struck some inoffensive coolies who were waiting in the street for employment at a tea factory. That one of them remonstrated, whereupon Logan became excited and ran into his house, where he procured a loaded revolver, with which he chased the Chinese in the street, discharging the weapon. That he unfortunately wounded a woman named Chan Anan (evidence, p. 9), the bullet passing through her left shoulder.

That the woman followed Logan, crying out, "Taipan, you give me some medicine to cure me, as you have hit me, and I am covered all over with blood."

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That Logan then became further excited and returned to his house, from which he brought out another loaded pistol, or carbine, with which he proceeded some distance to a bridge.

That there he deliberately stooped down and discharged the weapon, with the result that a Chinese boy (Pak Wah-king) was killed, and a Chinaman (Ng Shap-ng) was wounded (evidence, p. 17).

That on the trial for murder the jury returned a verdict of manslaughter, and the prisoner was sentenced to seven years' penal servitude. That that sentence had caused the greatest dissatisfaction and resentment among the Chinese population and in Chinese official quarters.

That the popular ferment was increased by the circumstances that a few days before another Chinese had been drowned by being pushed into the river from the British steamer "Hankow," by a Portuguese named Diaz, belonging to the ship, and who was removed on board a Portuguese gun-boat, and taken for trial to the neighbouring Portuguese Settlement of Macao.

That, being further exasperated by this unfortunate incident, a Chinese mob attacked the foreign Settlement at Canton on the 10th September, where sixteen houses were burnt, and during several hours the rioters gave themselves up to looting, until the arrival of troops sent by the Viceroy, whose assistance had been invoked by the foreign Consuls in order to quell the disturbance and protect the Settlement.

That the correspondence that had taken place between Her Majesty's Consul at Canton and the Viceroy on the subject of the riot was inclosed in Sir H. Parkes' No. 24 of the 10th October.

That it seemed that a protest was made by the Viceroy against the leniency of the sentence passed on Logan, and that he also intimated that in view of its inadequacy he might be unable to protect the foreign residents at Canton against the lawless mob.

That this menace was at once brought to the notice of the Chinese Ministers by Sir H. Parkes, Her Majesty's Minister at Peking (see his despatch No. 23); and that a correspondence ensued in which a demand was made by the Chinese that a new trial of Logan should take place, and that the Portuguese, Diaz, who belonged to the British ship "Hankow," should be tried before a British Court (Sir H. Parkes, No. 30, and Mr. Grosvenor, Nos. 130 and 132).

That on the 21st ultimo Sir H. Parkes reported by telegram that the claims for losses sustained by foreigners at Canton on the 10th September had been presented to the Chinese Government on the part of Great Britain, Germany, France, and the United States. That the claims of the Germans amounting to 80,000 dollars, and of the French and Americans to about 10,000 dollars each, would be paid; but that the British claims, amounting to 180,000 dollars, would only be paid on condition that a heavier sentence be passed on Logan, that Diaz should be punished by the British authorities, and that indemnities be paid to the families of the two Chinese killed by Logan and Diaz.

That Sir H. Parkes subsequently reported that the Chinese Government were prepared to abandon the demand for a new trial of Logan, and would consent to pay the amount claimed for the British losses at Canton after joint investigation, provided that an indemnity be paid by Her Majesty's Government to the family of the Chinese boy who had been shot by Logan, and that Her Majesty's Government would move the Portuguese Government to allow Diaz to be tried at Hong Kong, as China had no Extradition Treaty with Portugal, and that the Chinese Government objected to his being tried at Macao.

That Logan did not appear to have been put on his trial for shooting at the woman "Chan Anan," and at the man "Ng Shap-ng," with intent to do them grievous bodily harm, and that the sentence of seven years for the manslaughter of the boy "Pak Wah-king" was defended on the ground that imprisonment for that term, in the Colony of Hong Kong (where the sentence was to be carried out), was a very severe punishment for an European, having regard to the climate.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and favour your Lordship with our opinion whether the sentence imposed upon Logan was inadequate.

In obedience to your Lordship's commands we have the honour to report—

Sentence passed on Logan was inadequate.

That, in our opinion, the sentence passed upon Logan was inadequate.

His crime was a very bad case of manslaughter, approaching as nearly as possible to murder, and we think that a more severe sentence should have been inflicted. The trial of our own subjects being left to our own Tribunals, it appears to us most important that adequate punishment should be meted out for acts of violence against Chinese subjects.

It may be that, owing to the climate, a sentence of seven years' penal servitude in Hong Kong is a severer sentence than if it were passed in this country. But, although the fact that the health of a prisoner was in danger of suffering might be a ground for afterwards mitigating the sentence imposed, it does not seem desirable that, on this account, an apparently inadequate sentence should be passed in the first instance.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

1. Report of Trial of James Henry Logan in Her Britannic Majesty's Supreme Court for China at Canton.
2. Mr Grosvenor, No. 120.
3. Sir H. Parkes, No. 19.
4. Ditto, No. 23.
5. Ditto, No. 24.
6. Ditto, No 25.
7. Ditto, No. 30.
8. Mr. Grosvenor, No. 130.
9. Ditto, No 132.

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## No. 9.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 26.)*

My Lord, *Royal Courts of Justice, June 25, 1884.*

Traffic across land frontier of China Franco-Chinese Treaty.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th instant, stating that he was to transmit to us the papers in connection with the question of traffic across the land frontier of China.

That that question had been considered by us in 1882 in relation to certain stipulations of the Treaty (Kuldja) between China and Russia.

That it now again came under consideration, in consequence of the Convention between China and France signed on the 11th of last month.

That the text was inclosed of that Convention contained in the Declaration read in the French Senate and Chamber of Deputies by M. Jules Ferry on the 20th ultimo; and that our attention was called to the stipulations contained in the IIIrd Article, which provided for freedom of trade along the land frontier which divided China from Tonquin, subject to the conditions of a Treaty of Commerce and of Tariffs about to be framed, with a view to conferring special advantages on French commerce.

Can advantages conferred by the Treaty be claimed under most-favoured-nation clause? Ought notice of such claim to be given?

That the question arose whether, under the most-favoured-nation clause of the British Treaty with China, quoted in our above-mentioned Report, this country could claim to participate in the advantages thus conceded, or about to be conceded, by China to France; and, if so, whether it was advisable that notice should be at once given to the Chinese Government that that right would be claimed.

That Sir Julian Pauncefote was to request our opinion on the question submitted in that letter, and that we would favour your Lordship with any general observations which we might have to offer on the subject.

In obedience to your Lordship's commands we have the honour to report—

Cannot state British rights without knowing terms of Treaty.

That, until the conditions of the Treaty of Commerce are ascertained, it is impossible to say whether they are such as to entitle this country to participate in the advantages conceded by them, though it is probable they will be.

Not necessary to give notice to claim such rights

There is certainly no obligation on the part of this country to give notice, before the Treaty is concluded, that they will make such a claim. Whether this should be done is a matter of policy upon which we are hardly in a position to advise. But in the uncertainty which exists as to the terms of the Treaty, the expediency of doing so would seem doubtful.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

Law Officers, May 16, 1882. Confidential No. 4783, p. 12.
Viscount Lyons, No. 288, May 20, 1884, with copy of Treaty of Tien-tsin.
Memorandum by Sir E. Hertslet: Distinction between Frontier Trade and Trade by Sea, August 10, 1880. Confidential No 4278.
Law Officers, May 18, 1882. Confidential No. 4783, p. 67.
Ditto, November 14, 1864. Confidential No. 1405, p. 129.
Attorney- and Solicitor-General, June 23, 1862. Confidential No. 1301, p. 161.
Law Officers, October 10, 1862. Confidential No. 1301, p. 245.

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## No. 10.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received August 26.)*

Position of English Secretaries attached to Chinese, &c., Legations.

My Lord, *Royal Courts of Justice, August* 26, 1884.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th instant, in which he transmitted to us the papers noted in the accompanying list, which relate to the position occupied by the English Secretaries attached to the Legations of China, Japan, and Siam in London; and he requested that we would take the same into our consideration, and favour your Lordship with our opinion whether the communications which it was proposed to address to the Chinese, Japanese, and Siamese Ministers were right and proper, and also with any general observations which we might have to offer on the subject to which they related.

Approving notes to Ministers refusing diplomatic immunities to.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the communications which your Lordship proposes to address to the Chinese, Japanese, and Siamese Ministers are right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers accompanying Reference to Law Officers of August* 12, 1884.

Inland Revenue, May 2; to Phya Damrong, May 8; Prince Narès, July 21, 1884. Drafts proposed to be addressed to the Marquis Tsêng, Mr. Ohyama, Prince Narès, Treasury, Home Office, and Lord Chamberlain. Extract from the "London Gazette," July 8, 1786. (1) To Treasury, inclosing correspondence respecting the Moncorvo case, May 13; (2) to Treasury, May 13, 1850. Confidential Print No. 5115.

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### Annex 1.

*Draft of Letter from Earl Granville to Prince Narès.*

M. le Ministre, *Foreign Office, August* , 1884.

I HAVE the honour to acknowledge the receipt of your note of the 21st ultimo respecting the status of Mr. Frederick Verney in his capacity of English Secretary to the Siamese Mission at this Court; and as it appears that, owing to the insertion of Mr. Verney's name on the list of persons entitled to diplomatic privilege, which is annually furnished to the Sheriffs of London and Middlesex, some misconception has arisen as to the nature of the immunities actually accorded to him, I take this opportunity to place the matter clearly before you.

It has for many years been a settled principle that no British subject attached to a foreign Embassy or Legation, other than a domestic or domestic servant, is entitled to claim the protection afforded to the Diplomatic Body in this country by the Statute 7 Anne, cap. 12, of which I have the honour to inclose a copy; and so long ago as the year 1786 it was found necessary to insert a Notification in the "London Gazette" (of which I also inclose a copy), to the effect that the name of no British subject should be inserted in the list supplied to the Sheriffs excepting such persons as might be employed in a menial capacity.

In view of the difficulties which might arise by a departure from the rule laid down in the above-mentioned Notification, I have deemed it indispensable to direct that it should be strictly observed in the future; and I beg leave, therefore, to acquaint you that, after the close of the current year, the names of the English Secretaries to the Chinese, Japanese, and Siamese Legations will be omitted from the list which is supplied to the Sheriffs of London and Middlesex under the Statute 7 Anne, cap. 12.

I have the honour at the same time to state to you that Mr. Frederick Verney's name will still be retained on the Diplomatic List furnished to the Lord Chamberlain for Court and ceremonial purposes, and that, in all other respects, he will remain on precisely the same footing as heretofore; the object of the omission of his name from the list supplied to the Sheriffs being simply to make it clear that he is not entitled to claim immunities which cannot be extended to any British subject.

I feel sure that it is unnecessary for me to add that the exterritorial character of the Siamese Legation house will, as heretofore, be strictly respected, and that the privileges and immunities enjoyed by those who dwell therein will in no respect be infringed.

I have, &c.

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### Annex 2.

*Extract from the "London Gazette," No.* 12767, *of July* 8 *to July* 11, 1786.

*Notification.*

WHEREAS divers applications have of late been made, by people of different descriptions, to the foreign Ministers resident in England to be appointed Secretaries to some or other of the said foreign Ministers, in order to avail themselves of the protection due to persons in that situation against the ordinary course of legal proceedings in various cases; and whereas such indulgence is liable to many abuses: it is His Majesty's pleasure that henceforth no subject of His Majesty shall be permitted by the Secretary of State to have his name inserted at the Sheriffs' Office in the list of those who are to be deemed under the protection of any foreign Minister, excepting only such persons as may be employed by the said foreign Ministers in the capacity of menial servants.

(Signed) CARMARTHEN.

*Whitehall, July* 8, 1786.

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### Annex 3.

*Draft of Letter from Earl Granville to the Marquis Tsêng.**

M. le Ministre, *Foreign Office, August* , 1884.

THE question of the position occupied by the English Secretaries attached to the Legations of China, Japan, and Siam in London has recently been brought to my attention by a claim preferred by Mr. Frederick Verney, English Secretary to the Siamese Legation, to exemption from inhabited house duty upon a house in Onslow Square occupied by him apart from the residence of the Siamese Minister.

You will be aware that, at the time when Her Majesty's Government acceded to the request of the Chinese Minister that Dr. Macartney should be attached to the Chinese Legation, it was explained that the rule in this country was not to recognize British subjects in such a capacity, and that although in this instance a departure from this rule was made in order to meet the special exigencies of the Chinese service, it was upon the understanding that Dr. Macartney could not be received as Chargé d'Affaires, and would not be entitled to claim diplomatic immunities.

It appears that, owing to the insertion of the names of the English Secretaries to the Legations of China, Japan, and Siam on the list of persons entitled to "diplomatic privilege," which is annually furnished to the Sheriffs of London and Middlesex, some misconception has arisen as to the nature of the immunities actually accorded to those gentlemen; and I desire, therefore, to take this opportunity of placing the matter clearly before you.

It has for many years been a settled principle that no British subject attached to a foreign Embassy or Legation other than a domestic or domestic servant is entitled to claim the protection afforded to the Diplomatic Body in this country by the Statute

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* Also to Mr. Ohyama, Japanese Chargé d'Affaires.

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7 Anne, cap. 12, of which I have the honour to inclose a copy; and so long ago as the year 1786 it was found necessary to insert a Notification in the "London Gazette" (of which I also inclose a copy*) to the effect that the name of no British subject should be inserted in the list supplied to the Sheriff excepting such persons as might be employed in a menial capacity.

In view of the difficulties which might arise by a departure from the rule laid down in the above-mentioned Notification, I have deemed it indispensable to direct that it should be strictly observed in the future; and I beg leave, therefore, to acquaint you that, after the close of the current year, the names of the English Secretaries to the Chinese, Japanese, and Siamese Legations will be omitted from the list which is supplied to the Sheriffs of London and Middlesex under the Statute 7 Anne, cap. 12.

I have the honour at the same time to state to you that Dr. Macartney's name will still be retained on the Diplomatic List furnished to the Lord Chamberlain for Court and ceremonial purposes; and that in all other respects he will remain on precisely the same footing as heretofore, the object of the omission of his name from the list supplied to the Sheriffs being simply to make it clear that he is not entitled to claim immunities which cannot be extended to any British subject. I feel sure that it is unnecessary for me to add that the exterritorial character of the Chinese Legation house will, as heretofore, be strictly respected, and that the privileges and immunities enjoyed by those who dwell therein will in no respect be infringed.

I have, &c.

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### Annex 4.

*Mr. Currie to Sir R. Lingen.*†

Sir, *Foreign Office, August* , 1884.

I AM directed by Earl Granville to transmit to you, to be laid before the Lords Commissioners of Her Majesty's Treasury, copies of notes which his Lordship has addressed to the Chinese, Japanese, and Siamese Ministers at this Court, relative to the position occupied by the English Secretaries to their respective Missions.

Their Lordships will perceive that after the close of the current year the names of the three gentlemen who occupy the positions in question will be omitted from the List furnished to the Sheriffs of London and Middlesex under the Statute 7 Anne, cap. 12, but that they will still be retained on the Diplomatic List furnished to the Lord Chamberlain for Court and ceremonial purposes.

I am to request that the Commissioners of Inland Revenue may be informed accordingly.

I am, &c.
(Signed) P. CURRIE.

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## No. 11.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 18.)

My Lord, *Royal Courts of Justice, September* 18, 1884.

Extradition of Chinese criminals from Hong Kong.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd ultimo, stating that he had the honour to transmit to us, by your Lordship's direction, the papers noted in the accompanying list,‡ relating to

the case of eleven fugitives from justice at Hong Kong, whose extradition was claimed by the Chinese Government under Article XXI of the Treaty of Tien-tsin.

That the case of those fugitives had already been submitted to us with reference to the question how far Her Majesty's Government would be justified in continuing to surrender Chinese fugitives under the Treaty, without satisfactory guarantees against the application of torture of any kind or for any purpose whatever.

That Sir Julian was, in the first place, to refer us to our Report of the 22nd July, 1882, and to the reference on which it was founded, from which we would perceive that the fugitives in question (who originally numbered thirteen, and were charged with murder) were released on *habeas corpus*, by reason of some informality in their committal and in the return to the writ.

That the fugitives appeared to have left the Colony after their release, but, having subsequently been found again in Hong Kong, they were rearrested in 1883 on demand of the Viceroy of Canton.

That Sir Julian was now to invite our attention to a despatch from the Governor of Hong Kong to the Colonial Office, No. 358 of the 31st December, 1883, containing a full report of the proceedings on the new arrest of the fugitives, which resulted in two of them being discharged, and the remaining eleven being committed to prison to await the orders of the Governor respecting their extradition. That at that juncture the Roman Catholic Bishop of Hong Kong (Mgr. Raimondi) interposed, asserting that the prisoners were innocent, and that a correspondence ensued, which would be found in the inclosures to the Governor's despatch.

That the case having been referred home for instructions as to the action to be taken under the circumstances, the Governor of Hong Kong was directed to cause any further evidence to be taken in the case which Bishop Raimondi might be prepared to adduce in support of his allegation that the charge against the prisoners was a false one, and to report whether the "proof of guilt" was, on the whole, such as to satisfy the minds of the Council. (We were referred, as to the proof of guilt, to Law Officers' Report of the 24th February, 1863, and case of the Attorney-General of Hong Kong *v.* Kwok Asing, 5 Law Rep., Priv. Co. Appeal Cases, p. 199.)

That Sir Julian was next to refer us to the despatch of the Governor of Hong Kong to the Colonial Office, No. 178 of the 17th May, 1884, giving a full report of the further proceedings in the case, and requesting to be informed of the decisions of Her Majesty's Government thereon. That the following questions now arose:—

Questions as to—

1. Obligation to surrender.

1. Was the proof of guilt such as to render it incumbent on Her Majesty's Government to direct the extradition of the prisoners in execution of Article XXI of the Treaty of Tien-tsin?

2. Sufficiency of proof.

2. Would Her Majesty's Government, in view of the adverse opinions of the Governor and Executive Council of Hong Kong, be justified in holding that there was not such proof of guilt as might be required under Article XXI of the Treaty?

3. Prevention of torture, and access to prisoners.

3. If not, would Her Majesty's Government be justified in declining to surrender the prisoners without an undertaking, in writing, that no torture of any kind or for any purpose whatever be inflicted upon them, and that Her Majesty's Consul should have access to the prisoners at any time that he might require it—before, during, or after the trial?

That Sir Julian was also to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in Sir Julian's letter, and with any general observations we might have to offer on the case. That Sir Julian was also to request our immediate attention to the case, as the Governor of Hong Kong was awaiting telegraphic instructions.

We were also honoured with your Lordship's commands signified in a further letter from Sir Julian Pauncefote of the 2nd ultimo, stating, with reference to his preceding letter of that date, relating to the case of eleven prisoners in Hong Kong, whose extradition was claimed by the Chinese Government under Article XXI of the Treaty of Tien-tsin, he had the honour to transmit to us, by your Lordship's direction,

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* See inclosure in draft note to Prince Narès.

† Also to Home Office and Lord Chamberlain's Office: the last paragraph being omitted.

‡ List of papers accompanying letter to Law Officers (A), August 2, 1884:—
  Law Officers, February 24, 1863, Confidential No. 1376, p. 55.
  Law Officers, November 25, 1865, Confidential No. 1489, p. 20.
  To Law Officers, June 14, 1882, Confidential No. 4783, p. 14, with inclosures, viz.:—
    Treaty of Tien-tsin, June 26, 1858, No 448.
    Ordinances of Hong Kong (No. 2 of 1850), Parliamentary No. 290.
    Ordinance No. 2 of May 29, 1871, State Papers, vol. lxiii, p. 1217.
    Mo-Wong Case, Parliamentary No. 995.
    To Consul Hewlett, Confidential, August 25, 1880.
    Consul Hewlett, No. 14, April 29, 1881.
    Colonial Office, March 2, May 5, May 8, May 19, and May 27, 1882.
    To Colonial Office, April 18, 1882.
  To Law Officers, June 30, 1882, Confidential No. 4783, p. 16, with inclosures, viz.:—
    Law Officers, November 25, 1865, Confidential No. 1489, p. 20.
    Foreign Office to Sir R. Alcock, December 11, 1865, and its inclosures; both in Confidential No. 1402, p. 72.

(*Note continued from p.* 12)—
  Law Officers, July 22, 1882, Confidential No. 1483, p. 17.
  Colonial Office, April 12, 1883.
  Colonial Office, February 8, 1884.
  To Marquis Tsêng, July 27, 1883.
  Colonial Office, January 15, 1884.
  To Colonial Office, February 23, 1884.
  Sir G. Bowen to Colonial Office, No. 358, December 31, 1883.
  Sir G. Bowen to Colonial Office, No. 178, May 17, 1884.

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a letter (which was inclosed) from the Colonial Office (July 26, 1884), inclosing a despatch from the Governor of Hong Kong (No. 207 of the 4th June, 1884) respecting a further demand by the Chinese Government for the extradition of two Chinese fugitives charged with murder. That the prisoners had been committed to gaol, to await the orders of the Governor as to their extradition, and that the question was raised by Sir George Bowen and the Executive Council, whether in view of the Report of the police magistrate on the case, the crime charged against the prisoners was of such a political character as to justify Her Majesty's Government in refusing their extradition.

That the same question also arose as in the other case of the eleven prisoners, whether Her Majesty's Government might properly insist on an undertaking in writing that no torture of any kind or for any purpose would be resorted to, and that Her Majesty's Consul should have access to the prisoners.

That Sir Julian was also to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the case.

We were also honoured with a further letter from Sir Julian Pauncefote of the 8th ultimo, stating that, with reference to his two letters of the 2nd August, respecting the cases of the Chinese whose extradition had been claimed by the Chinese Government under Article XXI of the Treaty of Tien-tsin, he had the honour to transmit to us, by your Lordship's direction, a despatch from Her Majesty's Minister at Peking,[*] in which he called attention to the barbarous nature of the punishment inflicted upon five criminals by the authorities at Hankow. That Sir Julian was to request that we would take that despatch into our consideration, in conjunction with the previous correspondence submitted to us with his letters of the 2nd instant.

We were also honoured with a further letter from Sir Julian Pauncefote of the 19th ultimo, stating that, with reference to his letters of the 2nd and 8th August, he had the honour to transmit to us, by your Lordship's direction, a letter from the Chinese Minister[†] in this country, renewing the applications he had previously made for the extradition of certain Chinese subjects who were detained by the authorities at Hong Kong.

That Sir Julian was, at the same time, to call our attention to the extracts marked in the accompanying despatches,[‡] addressed to the Colonial Office by the Governor of Hong Kong, giving an account of the Triad Society, to which some of the prisoners were said to be affiliated; and that Sir Julian was to request that we would take those papers into our consideration, together with those previously referred to us, and that we would favour your Lordship with our opinion upon the case at our early convenience.

We were also honoured with a further letter from Sir Julian Pauncefote of the 26th ultimo, stating that, with reference to the letter from your Lordship's Department of the 19th August, marked "Immediate," and to previous correspondence, he had the honour to transmit to us, by your Lordship's direction, a letter from the Colonial Office,[§] inclosing copy of a further despatch from the Governor of Hong Kong, requesting that instructions in the matter of the Chinese whose extradition was demanded might be sent to him as soon as possible.

That Sir Julian Pauncefote was to call our attention to the passage in the letter addressed to the Acting Colonial Secretary at Hong Kong on the 11th July by Messrs. Brereton, Wotton, and Deacon, in which it was stated that the provincial authorities of Canton were most desirous of yielding to the opinion of the British Government in such matters, so long as they were within the terms of the Treaty, or do not necessitate a wide departure from the laws and customs of the Empire, and also to the statement that the British Consul at Canton should have every opportunity and assurance for removing any doubt as to the strict fulfilment of the promise given, that no torture should be used in connection with the trial or punishment of the prisoners.

That Sir Julian was to request that we would take those papers into our consideration, together with those previously referred to us, and favour your Lordship with our opinion on the questions submitted at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

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[*] Sir H. Parkes, No. 101, June 5, 1884.

[†] Marquis Tsêng, August 16; Colonial Office, August 14, 1884.

[‡] Sir G. Bowen, No. 71, in Colonial Office letter of April 29, and Nos. 82 and 90, in Colonial Office letter of May 2, 1884.

[§] Colonial Office, August 25, 1884.

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That the questions submitted to us present features of great difficulty, and the opinion we express is by no means free from doubt.

Possibility of torture no ground for refusing extradition; but steps should be taken to prevent it, and to obtain access to prisoners.

Dealing first with the more general question relating to the infliction of torture upon rendered criminals, we are disposed reluctantly to agree with the views expressed by the Attorney and Solicitor-General in their opinion of the 25th November, 1865, and we think that under the XXIst Article of the Treaty of Tien-tsin Her Majesty's Government cannot of strict right refuse to deliver a criminal on the ground that there is reason for suspecting that torture will be applied to such criminal. But humanity requires that every step shall be taken, possibly even to the extent of determining the Treaty to prevent the action of the British Government assisting in any way the infliction of torture.

It appears from the letter of Messrs. Brereton, Wotton, and Deacon, dated the 11th July, that the Chinese Government are willing to extend the assurances already given, that no torture shall be inflicted on rendered criminals, and to afford to the British authorities practical opportunities for assuring themselves that the promises of the Chinese officials are fulfilled, and that no torture is inflicted. We suggest that, both in relation to the particular cases before us and to the general question, advantage should be taken of the opportunity afforded by this letter, and that the Representatives of Her Majesty's Government at Hong Kong should be instructed to consider the best practical means of maintaining communication with prisoners who have been rendered so as to ascertain if torture has or has not been inflicted. The result of such consideration should be communicated to the Chinese Government, and acquiescence in the proposed methods of protection from the infliction of torture should, if possible, be obtained.

The two prisoners should be surrendered unless charged with political offences.

In regard to the prisoners, the extradition of whom is now sought, we assume that if sufficient action can be taken in accordance with the terms of Messrs. Brereton and Co.'s letter to secure them from the infliction of torture, their cases ought to be dealt with apart from the consideration of the punishment which will be inflicted on them.

But as to the two men, Wong Ping Tai and Churn a King, the inquiry as to whose guilt has taken place before Mr. Wise, we incline to the opinion that if the offence charged prove to be one of a political character only, Her Majesty's Government would be justified in refusing to render a prisoner.

In the case of those men, Mr. Wise reports that "the evidence given before me does not disclose that the offence with which the prisoners are charged was in any way of a political nature" (and a perusal of the depositions confirms this view); but he proceeds: "But I have very strong reasons to believe that such was the case, and that the prisoners were concerned in the Triad revolt at Moni-share in February last."

Upon the whole, we have come to the conclusion that the legal evidence ought to control this case, and that if no further inquiry be instituted and the case be considered to be governed only by the evidence already taken, these two prisoners (the safeguards already mentioned being obtained) should be rendered to the Chinese Government.

The eleven others should not be rendered, as proof of their guilt is not sufficient.

In respect of the other eleven prisoners different considerations arise. Special directions were given by the Secretary of State for the Colonies on the 20th February, 1884, "that the proof of guilt should be such as on the whole to satisfy the minds of the Council."

These instructions were carried out, and the Executive Council appear to have made a very full inquiry, and to have considered the evidence given on behalf of the prosecution and the accused. They received, also, the assistance to be derived from the advice of the Attorney-General, and in the result the members of the Council, with one dissentient voice, have come to the conclusion "that the proof of guilt is not, on the whole, such as to satisfy the minds of the members." We feel great difficulty in advising that this decision should be repudiated, and we certainly do not feel competent to review the opinion thus given by the members of the Executive Council.

Again expressing an opinion which is not free from doubt, we think that the decision arrived at by the Executive Council should control this case, and that those eleven prisoners should not be rendered on the ground that their guilt has not been proved within the terms of the XXIst Article of the Treaty of Tien-tsin.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 12.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 18.)

My Lord, *Royal Courts of Justice, September* 18, 1884.

Island of Chusan.

Is Convention of 4th April, 1846, still in force?

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 25th ultimo, stating that he was directed to transmit to us a copy of the Convention between this country and China of the 4th April, 1846,* in regard to the Island of Chusan, and that he was to request that we would favour your Lordship with our opinion as to whether that Treaty could be held to be still in force, or to have lapsed in consequence of the war which subsequently occurred between the two Powers, and which was terminated by the Treaty of Tien-tsin of the 26th June, 1858.†

That a copy of the last-named Treaty was inclosed for reference, and that we would observe that, whilst it confirmed the Treaty of Nanking of 1842, it made no reference to any other.

In obedience to your Lordship's commands we have the honour to report—

Articles II and III are maintained by Treaty of Tien-tsin, but cannot claim Article III without being bound by Article IV.

That we are of opinion that Article LIV of the Treaty of Tien-tsin has the effect of maintaining in existence Articles II and III of the Convention of the 4th April, 1846.

We have some doubt whether Article IV of the Convention is affected by Article LIV of the Treaty; but on the whole we think that the British Government could not in justice claim the advantages arising under Article III of the Convention without bearing the burdens cast upon them under Article IV.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 13.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 24.)

My Lord, *Royal Courts of Justice, December* 24, 1884.

Hostilities between France and China.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th instant, stating that he was to transmit to us the accompanying despatch‡ from Her Majesty's Minister at Peking, inclosing a copy of a Circular in which he had furnished to Her Majesty's Consuls in China, for their guidance, a Memorandum by Mr. Wilkinson, the Crown Advocate at Shanghae, showing how the rights and position of British subjects in China were affected by the present relations of France and China.

Rights and position of British subjects in China.
Circular to Her Majesty's Consuls with Memorandum.

That Sir J. Pauncefote was to request that we would take Sir Harry Parkes' despatch and its inclosures into our consideration, and favour your Lordship with our opinion as to whether the Circular might be approved.

That a printed copy of our Report of the 5th November in connection with the question was inclosed for reference.

In obedience to your Lordship's commands we have the honour to report—

Circular in the main correct, but object to some of views propounded as to.

That we do not think the Circular can be unreservedly approved in its present form. Though its substantial conclusions are in the main correct, we are unable to concur in some of the views propounded, and we fear that it might possibly lead to confusion, if accepted as a guide by the persons intended to act upon it who are not lawyers.

Privileges conferred by exterritoriality.

We cannot agree in the view that British subjects resident in China are to be treated as neutrals to a much greater extent than British subjects resident elsewhere. Nor do we think that the principle of exterritoriality is that they are to be considered as residing in their own territory, and that when effect can be given to this assumption it is to be given.

For the purposes of the matters which have now to be dealt with, we think that British subjects resident in China are, when that country is at war, in the same position as British subjects resident in the country of any other belligerent, except so far as their position is varied by the fact that they are not subject to the jurisdiction of the Chinese Tribunals.

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* State Papers, vol. xxxiv, p. 26.

† Treaty No. 448.

‡ Sir H. Parkes, No. 212, October 13, 1884.

No doubt, speaking generally, ships and cargoes owned by British subjects residing in China are to be treated in the same way as if they were the property of British subjects resident in Great Britain. But this does not arise from the principle of exterritoriality; it would generally be true of cargoes and ships owned by British subjects residing in a belligerent country where there was no exterritoriality. In both cases they would be liable to seizure in respect of the breach of neutral obligations, as by breaking a blockade or otherwise; and in both cases the owners might render themselves liable to further penalties in respect of acts done in relation to them in the belligerent country where they were residing.

Assistance to belligerents.

We have already expressed our view, in our Report of the 5th November,* that very general prohibitions by the Chinese Government of particular acts calculated to assist the other belligerent should be enforced against British subjects in the manner we have pointed out.

Neutral obligations without declaration of war.

We think the fifth paragraph on p. 3, beginning "It is unnecessary," &c., states the proposition there laid down too broadly. Although it may be that neutral obligations to their full extent do not exist, Her Majesty's Government have, we believe, recognized the blockade of a certain part of the coast notified by France, which gives rise to certain neutral obligations.

Enlistment in service of belligerents.

As regards the concluding paragraph on p. 6 of the section on "Enlistment in the service of France or China," we do not think it desirable to lay down as a general proposition that a British subject who, in violation of British law, has entered the service of a belligerent "ought" to be considered to be under the protection of that State on his return to China. And we think that the prosecution should be, at all events, commenced, without waiting for the sanction of Her Majesty's Minister, if the offender would otherwise escape.

Contraband of war.

We think the section on contraband of war, as it stands, may lead to misunderstanding. It is, as we understand, intended to apply to all contraband, other than arms or munitions of war. So far as regards contraband dealt with by British subjects not resident in China, and not exported thence, it is accurate enough, but it ought to be distinctly recognized that the export of contraband which might be legitimate if from a neutral port, might not be permissible if sent from China by a British subject resident there, for the use of the French, and in defiance of a prohibition of such export by the Chinese.

Export of arms, &c.

The section on the export of arms and munitions of war, though not perhaps open to question, would be less likely to be misunderstood as would other parts of the Memorandum, if they were confined to the position of British subjects resident in China, and acts done by them in that country.

It hardly appears necessary to deal with the position of neutrals generally.

Chinese restrictions on trade.

We would only observe upon this section that, whilst agreeing that the measures taken by China in restraint of trade ought not to be more than the necessities of the case require, we think that the Chinese Government must be left to judge what is necessary. Any diplomatic representations on the subject should be left to Her Majesty's Minister.

Passage of rivers.

The same observation applies to the last paragraph of the Memorandum dealing with the passage of rivers, &c.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Sir H. Parkes to Earl Granville.*—(*Received December* 8.)

(No. 212.) *Peking, October* 13, 1884.

My Lord,

I HAVE the honour to inclose a copy of a Circular, in which I have furnished to Her Majesty's Consuls in China, for their guidance, a Memorandum by Mr. Wilkinson, the Crown Advocate, showing how the rights and position of British subjects in this country are affected by the present hostile attitude of France and China.

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* See No. 33, p. 50.

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I add five copies of this Memorandum, which I have thought desirable to have printed at Shanghae.

I shall be glad to be instructed whether the step I have thus taken, and the opinions furnished me by Mr. Wilkinson, receive your Lordship's approval.

I have, &c.
(Signed) HARRY S. PARKES.

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### Inclosure 1.

*Circular addressed to Her Majesty's Consuls in China.*

Sir, *Peking, October* 11, 1884.

I FORWARD to you a Memorandum, drawn up by Mr. Wilkinson, the Crown Advocate, at my request, which I trust will serve as a useful guide to Her Majesty's Consuls in dealing with the complicated questions to which the anomalous state of the relations between China and France give rise.

It shows how the position of British subjects in China is affected by the existing hostilities, which, so long as they are not recognized by one or other of the contending parties as amounting to open war, do not give to them the rights of belligerents; but it also shows that the Chinese Government are justified in taking such measures as are necessary for national protection, and the obligation devolving upon British subjects of conforming to the restrictions which the exercise of the right of self-defence imposes.

I have, &c.
(Signed) HARRY S. PARKES.

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### Inclosure 2.

*Memorandum.*

## HOSTILITIES BETWEEN FRANCE AND CHINA AS AFFECTING BRITISH SUBJECTS IN CHINA.

### *Position of British Subjects in China towards the contending Parties.*

THE position of British subjects in China with reference to hostilities carried on between China and France, or any other country at peace with Great Britain, is the resultant of their position—

1. As subjects of a neutral Power.
2. As residing in China.
3. As subjects of a Power having exterritorial jurisdiction in the country in which they reside.

As to the extent to which they are to be treated as filling these several capacities, it may be stated generally that they are to be treated as neutrals to a much greater extent than are British subjects living in countries in which Great Britain has no exterritorial jurisdiction.

As residents in China, were it not for the immunities which exterritoriality gives them, they would be liable to be treated, not for all purposes, but for nearly all purposes, by both France and China, as Chinese subjects. But the principle of exterritoriality, so far as it can be carried out, is that they are to be considered as residing in their own country, and when effect can be given to this assumption it is to be given.

Thus, ships or cargoes owned by British subjects resident in China are to be considered and treated, by both France and China, as the ships and cargoes of British subjects resident in Great Britain, that is, as being the property of neutrals. So far as regards the ownership of such ships and their cargoes, there is nothing in the fact of residence in China which need interfere with the full operation of the assumption of residence in England, or which need affix to the owner the obligations attaching to a residence in China rather than those attaching to a residence in England; and it has consequently always been the rule hitherto that ships or cargoes owned by persons in the position which British subjects occupy in China should be treated as being owned by persons domiciled in their own country.

The obligations, however, arising from residence are in conflict with the immunities which the principle of exterritoriality carried to its furthest extent would give. The fact that they are resident in China cannot be got rid of by an assumption to the contrary. The result is that, while their obligations accruing from their residence in China are very much modified by exterritoriality, they are still subject to the inconveniences which such residence of necessity entails.

And as residence in China circumscribes the immunities which exterritoriality, carried to its fullest extent, would give, so it is found that such residence interferes in many cases in the enforcement of the obligations which exterritoriality imposes.

The obligations of British subjects by reason of exterritoriality consist in this, that they are subject generally to the laws of their own country and to the Tribunals appointed by their own country to enforce those laws, and whatever laws Great Britain may have made to regulate their conduct towards either of the contending Parties, they are bound to obey. But it is found that the fact of their residence in China imposes some obstacles to the full enforcement of these laws.

### *As to the Commencement of War.*

In examining what obligations these several relations involve, it is necessary to consider the stage at which hostilities have arrived.

The present state of affairs may be summed up shortly as follows:—

1. France has made an attack upon China (it is not necessary to consider why), and China has reason to apprehend a renewal of the attack, and is taking measures of defence.

2. The Chinese Government have requested that British subjects may be prohibited as neutrals from giving supplies to the French. They have also issued a Decree to Chinese subjects which, in Europe, would amount to a declaration of war, and this Decree has, in some instances, been communicated by the local authorities to Her Majesty's Consuls; but it has not been communicated by the Chinese Government to Her Majesty's Government; and the Chinese Government, on being referred to, have stated that it is not intended to communicate it to foreign Powers, as it is a domestic matter, and they have also intimated that, so far as neutral Powers are concerned, they do not wish to be considered as at war with France.

3. The French Government, on being referred to, have returned to Her Majesty's Government an answer amounting to an intimation that, so far as neutrals are concerned, France does not wish to be considered as at war with China.

4. Her Majesty's Government have so far recognized the existence of a state of war as to direct that the provisions of the Foreign Enlistment Act are to be enforced in Hong Kong; but, in the absence of a declaration of war, no Proclamation of Neutrality has been issued.

5. It is to be feared that eventually, and, perhaps, within a short time, war will be formally declared.

Under these circumstances, it must be considered that, as regards British subjects, as subjects of a neutral State, war has not yet commenced.

It is unnecessary to consider whether a notification to neutral Powers that war has commenced is necessary to entitle beligerents to exercise belligent rights over neutral property. It is clear that, when they declare to neutral Powers that they are not at war, they cannot claim over neutrals rights which are only exercisable when they are at war. So long, then, as France and China abide by the intimation which they have made to Great Britain, neither France or China can claim to exercise belligerent rights over the property of British subjects, as being the property of neutrals.

As regards British subjects as residents in China, and so far as they are identified with China by their residence, the matter is different. France and China are virtually at war with each other. No further declaration is necessary from the one to the other to entitle either of them to exercise rights of belligerents as against the other. So far, then, as British subjects are identified with China, their obligations arising out of a state of hostility between France and China have already commenced, and they must submit to the inconveniences which their residence on the soil of a belligerent of necessity entails.

China, moreover, is threatened with attack. She is entitled to defend herself. That right is one of the highest nature, and British subjects must submit to the inconveniences which necessary measures of defence may entail.

As regards the obligations of British subjects under exterritoriality also, war has

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commenced. These obligations depend upon the particular British laws imposing them, and it will be found that the laws in question contemplate an actual state of war, and an actual state of war exists.

It is not proposed to attempt to deal with all the matters in respect of which British subjects are required to submit to the obligations and inconveniences arising from a state of war. The following are some of them:—

1. Enlistment in the service of France or China;
2. Contraband of war;
3. Export of munitions of war and stores from China;
4. Foreign Settlements;
5. Passage of rivers and access to ports.

### 1. *Enlistment in the Service of France or China.*

Great Britain, for the enforcement of the duties and obligations of neutrality devolving on her by the law of nations, has enacted "The Foreign Enlistment Act, 1870."

The greater part of the offences created by that Act can only be committed within Her Majesty's dominions. There is one, however, which is made an offence whether committed within or without Her Majesty's dominions; that is, the offence of illegal enlistment, under section 4, which provides as follows:—

"If any person, without the licence of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts, or agrees to accept, any commission or engagement in the military or naval service of any foreign State at war with any foreign State at peace with Her Majesty. . . .

"He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour."

By section 13 it is provided that—

"The term of imprisonment to be awarded in respect of any offence against this Act shall not exceed two years."

By the Interpretation Clause (section 30) it is provided that—

"'Military service' shall include military telegraphy and any other employment whatever in or in connection with any military operation.

"'Naval service' shall, as respects a person, include service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship when such ship of war or other ship is being used in any military or naval operation, and any employment whatever on board a ship of war, transport, store-ship, privateer, or ship under letters of marque."

And section 12 provides that any person who aids, abets, counsels, or procures the commission of any offence against this Act shall be liable to be tried and punished as a principal offender.

France and China are at war with each other within the meaning of the Act, and any British subject entering the naval or military service of France or China renders himself subject to the penalties of the Act.

But, although by the terms of the Statute it is made an offence for British subjects to commit the acts therein referred to in China, and it is desirable that British subjects should know their liabilities in this respect, doubts have been raised as to whether it is intended that the penalties should be enforced in Her Majesty's Courts in China, and in no case whatever should any prosecution be instituted under this Statute by Her Majesty's Consuls without reference to Her Majesty's Minister.

For the good government of British subjects in China special provisions have been made under Order in Council.

Section 82 of the China and Japan Order in Council, 1865, makes it a misdemeanour for a British subject, without licence of Her Majesty, to take part in any operation of war in the service of the Emperor of China against any person engaged in carrying on war against the Emperor of China.

On the other hand, section 81 of the same Order makes it a misdemeanour in any British subject if he, in China, while Her Majesty is at peace with the Emperor of China, levies war or takes part in any operation of war against the Emperor of China, or aids or abets any person in carrying on war against the Emperor of China.

For any offence under these sections of the Order in Council a British subject may be tried and punished by a British Court in China.

But as a British subject in the military or naval service of any State ought to be considered to be under the protection of that State, great difficulties and inconveniences might arise from an attempt to exercise this jurisdiction, and, therefore, when it can be avoided, no prosecution ought to be instituted by Her Majesty's Consuls without first making reference to Her Majesty's Minister.

### 2. *Contraband of War.*

Until war has commenced there is no contraband of war, properly speaking; and until France or China choose to be considered at war, neither of them has a right, as a belligerent, to prevent British subjects, as neutrals, from supplying the other of them with stores or munitions of war.

When war has commenced, the right of prevention will arise; but, as a belligerent right over neutrals, it must be exercised by the belligerents themselves, and neither France nor China is entitled to require that British subjects, as neutrals, should be prevented by the British authorities from supplying stores or munitions of war to the other belligerent.

The practice of Great Britain, as a neutral State with respect to articles which may be deemed contraband of war, is governed by the general law of nations. Her Majesty's Government have always maintained that, by the law of nations, the neutral shipper of goods which may be deemed to be contraband of war commits no offence against his own Sovereign, and that a neutral State is not bound to restrain or punish its subjects who seek to carry such goods across the seas to a belligerent, the only penalty for so doing being the seizure and condemnation of the goods if intercepted by the enemy during their transport

When war has commenced, it will be open to France, on the high seas or in Chinese waters, to intercept stores and munitions intended for the Chinese; and it will, in like manner, be open to the Chinese to intercept stores and munitions intended for the French; and for this purpose either of them may visit and search British ships for contraband of war, and if any is found on board, may take in the ship with her cargo for adjudication, if captured by the French, to some port in the French territory, and if by the Chinese, to some port in Chinese territory.

Contraband is probably the only cargo for carrying which British ships will be seized. For, as to the freedom from condemnation of enemy's goods under the neutral flag, France will, of course, be guided by the Declaration of Paris of 1856; and although China has not signified her adhesion to that Declaration, it is not likely that she will wish to go beyond the limits which France has imposed on herself by her adhesion to it.

As to ships captured by the French, the adjudication will necessarily be in the French Prize Courts.

As to those taken by the Chinese, the Chinese will have the right of adjudication. The arrangement for joint investigation does not extend to such cases, and there is no British Tribunal which would have any jurisdiction to hear them. But adjudication should take place in accordance with the recognized rules of international law; and if a British vessel, captured by the Chinese, should be brought in for adjudication into any port, Her Majesty's Consul should see that she is not condemned by any but a duly constituted Tribunal; he should attend to watch proceedings, and should secure the owners of the ship and cargo a fair hearing; and, if the decision of the Tribunal should, in his opinion, be wrong, he should address a firm but temperate protest to the proper authorities, and ask that the condemnation should not be carried out until a reference has been made to Her Majesty's Minister.

### 3. *Export of Munitions of War and Stores from China.*

What has been said above applies to all articles contraband of war, whatever may be the place from which the articles may have been shipped. But with regard to munitions or stores exported or attempted to be exported from China, China has, as regards munitions of war, a right and power of prevention independently of any belligerent right.

By Article III of the Rules of Trade made under the Treaty of Tien-tsin, import and export trade are alike prohibited in gunpowder, shot, cannon, fowling-pieces, rifles, muskets, pistols, and all other munitions or implements of war.

So far as these articles are concerned, China can prevent the export at all times, and any munitions of war attempted to be shipped can be seized by the Chinese authorities. The consequences of seizure under this clause, however, are different from what would follow seizure under belligerent rights.

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The ship will not, as regards liability to confiscation, be subject to the law of nations as for breach of neutrality, but only to such liabilities as may be imposed by Treaty. The Regulations, moreover, for joint investigation will apply, and the procedure there laid down should be followed.

The right of China under Treaty to prohibit the export of articles included in the category of contraband of war does not extend to any article not properly answering the description of munitions of war. The prohibition does not extend to coal, and British subjects have under Treaty the right of free export of coal.

But this right is subject to China's paramount right of self-defence, and must yield to it so far as the necesssities of self-defence require China is entitled to prevent coal being exported from China for the purpose of being used against herself. She may, therefore, prohibit the export of coal for the use of the French fleet, and may take any measures that are absolutely required for securing the observance of that prohibition.

But such measures ought not to be more extensive than the necessities of the case demand. If a total prohibition of the export of coal were necessary to secure that coal exported should not reach the French fleet, it would have to be submitted to; but it seems practicable that within certain limits and with certain precautions coal might be shipped without incurring the danger of its falling into the hands of the French. Thus, bonds might be taken for its delivery at the port of destination. It is not every port to which the Chinese could fairly be asked to allow coal to be exported. They might reasonably require that its delivery should be verified by their own authorities. This could only be done at one of their own ports, or at a port where they have a Consul. Again, it would defeat the purposes of the prohibition if it were delivered at a defenceless port where it would easily fall into the hands of the French.

As to the enforcement of the prohibition, that should be left to the action of the Chinese authorities. They would not, with respect to a breach of the prohibition, acquire any belligerent rights, but they have ample means of securing its observance by refusing permission to ship Any coal shipped without a permit would be liable to confiscation under Article XXXIX of the Treaty of Tien-tsin, and the adjudication would be under the rules for joint investigation.

Although, as subjects of a neutral Power, British subjects are free to supply stores or munitions of war to either the French or the Chinese, subject only in time of war to the risk of hostile capture and confiscation, yet it is evident that, as resident in China, they ought not to make use of that residence for the purpose of aiding her enemies. If it were not for extra-territoriality they would be subject to any laws which China might make to prevent such a violation of the duties which residence imposes. Great Britain, in obtaining for her subjects exemption from the operation of Chinese laws, has recognized an obligation to legislate for the prevention of such acts as those laws might reasonably have prohibited.

A British subject in China supplying coals to French men-of-war, knowing that it was intended to use those coals in carrying on war against China, may fairly be considered as coming under the prohibition of the China and Japan Order in Council, 1865. section 81, as aiding and abetting in the carrying on of war against China. But the difficulty of proving such a case and of obtaining a conviction has to be taken into account, and it is desirable that the Chinese should, as far as possible, be left to enforce a prohibition of this sort by the means at their own disposal; and in no case where it can be avoided ought a prosecution under this section to be instituted by Her Majesty's Consuls without reference to Her Majesty's Minister.

### 4. *Foreign Settlements.*

Foreign Settlements are not neutral territory. They may be brought within the sphere of hostile operations; and foreign residents are liable to suffer all the inconveniences which hostile operations entail.

There are, indeed, two instances known to residents in China and Japan where the right to maintain the neutrality of a foreign Settlement has been asserted and successfully maintained: Shanghae in 1854, and Yokohama in 1868. But the circumstances in each of those cases were different from those which now exist.

Although, however, the neutrality of foreign Settlements cannot be maintained as a right, it is to be hoped that both belligerents will, as far as possible, avoid making them the scene of hostilities.

The danger to which such Settlements are more likely to be exposed is from armed stragglers and undisciplined mobs, and against such a danger foreigners are entitled to protect themselves.

It is primarily the duty of the Chinese Government to protect the foreign Settlements; but experience has shown that the efficacy of the arrangements made by them for that purpose cannot always be relied on. It is in view of this fact that the foreign Powers have taken measures for the protection of the Settlements. Those measures are likely to be more efficacious than any which foreign residents could of themselves take. But, so far as it may be necessary to do so, foreigners are entitled to combine in their own defence.

It is expedient, however, that any measures which they may take may be taken with the assent of the Chinese authorities, and so avoid, as far as possible, any questions as to the legality of such measures being raised. Her Majesty's Consuls may fairly give their good offices in obtaining the assent of the Chinese; but the latter should be given to understand that Associations such as these are organized only for defence; that their existence is due to the necessities of the case, and that Her Majesty's Government are in no way responsible for them.

### 5. *Passage of Rivers and Access to Ports.*

The rights which British subjects have acquired of free access to the Treaty ports must be subordinated to the rights of belligerency and self-defence. Neither the ports nor the rivers or passages leading to them have, by the operation of the Treaties, been neutralized. Either of the belligerents may extend to them the sphere of hostilities, and China is entitled to take any measures of self-defence which circumstances show to be absolutely necessary, even to the closing of the rivers altogether.

But such measures should be limited to the absolute necessity of the case, and when the necessity has ceased the obligation to keep open the ports will revive. It is, therefore, desirable, in the interests of the Chinese Government as in the interests of foreigners generally, that, in taking measures for the blocking of rivers or ports, such measures should, as far as possible, be taken as will allow of the removal of any obstructions that may be placed to free navigation when they are no longer required.

(Signed) H. S. WILKINSON, *Crown Advocate.*

*Peking, October* 6, 1884.

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## Colombia.

### No. 14.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 13.)

*Royal Courts of Justice, February* 13, 1884.

My Lord,

Case of the "Eliza, detained in port of David.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st ultimo, stating that he was to transmit to us papers relative to the case of Thomas Murray, a British subject, master and owner of the schooner "Eliza," which put into the Colombian port of David (in the State of Chiriqui) in distress. That we were referred to the depositions taken before the Panamá authorities (3. Mr. Gastrell's No. 4 of the 8th January, 1883), from which it would be seen that the nationality of the "Eliza" was found to be very obscure, and that many circumstances connected with the vessel were not free from suspicion.

Suspicious nature of the vessel.

That Murray deposed that the vessel was formerly Ecuadorian, and known as the "Teofilo," and that he had been sailing her for about two years under the British flag, by virtue of a Provisional Register issued to him by the British Consul in Païta. But he did not produce such Register, and had it ever been issued, it would have been valid only for six months, to enable her to proceed to a British port of Registry.

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That the proceedings in the case extended over a period of two years, and a clear and concise statement of them would be found in Mr. Acting Consul Mallet's No. 42 of the 24th November last.

That Sir J. Pauncefote also referred us to the short statement "A," of the facts of the case, by Mr. C. T. Chamberlaine (formerly Acting British Consul at Panamá) to the Foreign Office Memorandum "B," and to the inclosures in Mr. Mallet's No. 42. Also to the opinion of the Attorney-General of Colombia, contained in Mr. Gastrell's No. 29 of the 25th March, 1883.

Proceedings of authorities illegal.

That all the proceedings in the case had been declared by the Supreme Court of the Federal Government to be illegal, and Acting Consul Mallet in his No. 42, after complaining of the indifference with which the repeated remonstrances of the British Consulate had been treated, reported that Thomas Murray, owing to long imprisonment and suffering, was shattered in health, and that having lost all his property by the arbitrary and unjust action of the Colombian officials implicated, he was now a ruined man, and actually dependent on the British Consulate for support.

That Sir J. Pauncefote was to submit to us the draft of an instruction which it was proposed to address to Mr. Chapman, Her Majesty's Acting Consul-General at Bogotá, directing him to call on the Colombian Government for reparation.

That Sir J. Pauncefote was to request that we would inform your Lordship whether, in our opinion, the proposed instruction to Mr. Chapman was right and proper under the circumstances, and also to favour your Lordship with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed instructions to Mr. Chapman.

That, in our opinion, the proposed instruction to Mr. Chapman is right and proper under the circumstances.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

1. Inclosure 3 in Mr. Gastrell's No. 4, January 8, 1883.
2. " 32 " " "
3. " 34 " " "
4. Mr. Gastrell, No. 16, February 25, 1883 (with Inclosures 8, 9, 10, 11, 12, and 13).
5. Mr. Gastrell, No 29, March 25, 1883 (with two Inclosures).
6. Mr. Chamberlaine's Memorandum, October 24, 1883.
7. Mr. Mallet. No. 42, November 24, 1883 (with 34 Inclosures).
8. Foreign Office Memorandum. January 10, 1884.

### Annex.

*Earl Granville to Acting Consul-General Chapman.*

*Foreign Office, February* , 1884.

Sir,

THE proceedings of the Colombian authorities in the case of the schooner "Eliza," and the treatment of her owner and master, Thomas Murray, a British subject, have, for a considerable time, occupied the attention of Her Majesty's Government. It was only on receipt of Mr. Acting Consul Mallet's despatch No. 42 of the 24th November last that they had before them a complete statement of the facts of the case.

That despatch, together with its thirty-four inclosures, is transmitted to you herewith in original, for your assistance in dealing with the case. It contains a clear and concise narrative of the events from the commencement, and I would also draw your attention to its concluding remarks.

Mr. Mallet complains, with reason, of the indifference manifested by the Colombian authorities to the repeated remonstrances of Her Majesty's Consulate in a case in which their treatment of a British subject has been characterized by illegality and oppression, and British property has been unjustifiably sacrificed.

The result of their unwarrantable and arbitrary proceedings is that Murray is now shattered in health and reduced to extreme poverty, being, indeed, dependent on the British Consulate for support.

You will at once express to the Colombian Government the surprise and regret with which Her Majesty's Government have learnt all the details of this extraordinary case, and have noticed their unfriendly indifference in the matter; and you will add that Her Majesty's Government trust they will make all the reparation in their power by an immediate award of indemnity to Thomas Murray for the wrongs and the losses he has suffered at the hands of the Colombian officials implicated.

You will accordingly claim, on behalf of Her Majesty's Government, the payment of a reasonable indemnity to Thomas Murray, to be assessed in such manner as may be arranged, and, in the meanwhile, of a moderate sum on account for the relief of his pressing necessities; but you will not be guided by the particulars of claim furnished by Murray himself, which form Inclosure No. 28 in Mr. Mallet's despatch.

I am, &c.

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## Corea.

### No. 15.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 5.)*

*Royal Courts of Justice, June* 4, 1884.

Consular jurisdiction in Corea. Order in Council to carry into effect Treaty of November 26, 1883. Draft for approval.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th ultimo, transmitting the draft of an Order in Council for China, Japan, and Corea,* which had been prepared by Mr. R. S. Wright, under the instructions of the Lords Commissioners of Her Majesty's Treasury, to carry into effect those Articles of the Treaty concluded between Great Britain and Corea on the 26th November last,† which related to Her Majesty's jurisdiction.

That our opinion was requested as to whether the draft Order might properly be laid before the Queen for Her Majesty's approval.

In obedience to your Lordship's commands we have the honour to report—

Approve draft Order in Council.

That, in our opinion, the draft Order in Council may properly be laid before the Queen for Her Majesty's approval.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 16.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received August 8.)*

*Royal Courts of Justice, August* 8, 1884.

Jurisdiction over British subjects.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 17th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, with reference to the instructions given by Her Majesty's Minister in China to Her Majesty's Consul-General in Corea as to the exercise of jurisdiction, civil and criminal, over British subjects under the Treaty of the 26th November, 1883, pending the commencement of the Order in Council of the 26th June, which was passed to regulate such jurisdiction.

Question as to instructions issued by Sir H. Parkes, and issue of further Order in Council pending commencement of Order of June 26, 1884.

That those instructions form an inclosure in Sir H. Parkes' despatch No. 5 of the 30th April.

That, by a notice published in the "London Gazette" of the 8th ultimo, it was

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* Confidential No. 4985*.

† Treaty No. 728.

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directed that the Order in Council should come into operation in China, Japan, and Corea respectively on and after the 1st day of October, 1884.

That the ratifications of the Treaty were exchanged on the 28th April, and that Sir H. Parkes had instructed the Consul-General to exercise a limited jurisdiction where necessary, as explained in his despatch, during the interval between that date and the commencement of the Order.

That our opinion was requested whether a further Order in Council should be passed legalizing all judicial proceedings by Her Majesty's Consul-General in Corea before the commencement of the Order in Council, or whether any such action might be deferred until the validity of those proceedings be contested; and also whether the course adopted by Sir H. Parkes, under the circumstances, might be approved.

In obedience to your Lordship's commands we have the honour to report—

Do not advise issue of Order as proposed;

That we think it very doubtful whether an Order in Council legalizing all judicial proceedings by Her Majesty's Consul-General in Corea before the commencement of the Order in Council would be of any avail. We do not, therefore, advise the making of such an Order.

We are not aware of the reasons which led to the determination to postpone the operation of the Order in Council, as regards Corea, until the 1st October next.*

but of Order fixing commencement of that of June 26, 1884.

But we submit for consideration that it would be expedient at once, by an Order in Council, to fix the date of such new Order as the date on which, so far as regards Corea, the Order in Council should come into operation.

Approve conduct of Sir H. Parkes.

We think the course adopted by Sir H. Parkes, under the circumstances, may be approved.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers sent to the Law Officers, July* 17, 1884.

1. Treaty with Corea of November 26, 1883. Treaty, No. 728.
2. Order in Council for China, Japan, and Corea, June 26, 1884. Confidential No. 4985*
3. Notice in "Gazette" of July 8, 1884.
4. Sir H. Parkes, "Corea No 5," April 30, 1884.

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## Denmark.

### No. 17.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December* 6.)

*Royal Courts of Justice, December* 6, 1884.

My Lord,

Administration of property of Danes dying in Great Britain.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 18th ultimo, stating that he was to transmit to us the papers† relating to a question raised by the Danish Government as to the effect of Article XV of the Treaty of 1670‡ between Great Britain and Denmark on the administration of the property of Danish subjects dying in this country. That a copy of that Article would be found among the papers, and that we should observe that, in a letter dated the 3rd November, 1884, Mr. Robinson, of the Board of Inland Revenue, stated what were the views of that Department on the subject.

Property not exempt from charges imposed by the *lex loci*.

That they considered that the Article in question applied only to the safe custody of the assets, and did not exempt them from the charges imposed by the *lex loci* on the property of persons dying within the jurisdiction.

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* See section 10 of Order in Council, and Notice prepared by Mr. Wright, with his letter of June 25.

† Mr. Vivian, November 7: Mr. Vedel, October 3, 1884; Article XV of Treaty of 1670; Mr. Robinson November 3, 1884.

‡ State Papers, vol. i., p. 381.

That our opinion was requested as to whether that construction of the Article was right and proper, and whether Her Majesty's Minister at Copenhagen might be instructed to inform the Danish Government to that effect.

In obedience to your Lordship's commands we have the honour to report—

Approve above construction put on Article XV of Treaty of 1670.

That, in our opinion, the construction put upon the Article is right and proper, and Her Majesty's Minister at Copenhagen may be instructed to inform the Danish Government to that effect.

It is to be observed that the provisions contained in the clause which are relied on by the Danish Government only apply where the subject of either country dies in the other without making a disposition of his property, and the words at the commencement of the clause empower him to make such disposition.

If, therefore, a Dane were to die in this country, having disposed of his property by a deed or other instrument, or by a will, Article XV would not apply. And there would be nothing to exempt the property in this country passing under the will from probate duty, or those claiming under such a will or deed from legacy or succession duty. This being so, we think it clear that the clause must be construed (as it is well capable of being, though somewhat loosely worded) as providing only for the safe custody of property which has been left by the deceased without any person having been designated to take charge of it either by deed or will.

No satisfactory reason can be suggested why property thus left should be exempt from burthens which would have to be borne by property of which the deceased has designated the destination and provided for the administration.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Egypt.

### No. 18.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 23, 1884.)

[After recapitulating the following Reference, they report as on p. 29.]

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

*Foreign Office, December* 19, 1883.

Gentlemen,

Suez Canal Company. Rights of the Sultan, the Company, and the Khedive, with regard to alterations.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the papers noted in the accompanying list,* and to submit the following points for your consideration and advice in relation to the recent negotiations which, as you are no doubt aware, have been carried on in this country between M. de Lesseps, on behalf of the Suez Canal Company, and "The Association of Steam-ship Owners engaged in Eastern trade."

I am, in the first place, to invite your attention to the correspondence (document A) which has taken place between the Association and the Foreign Office.

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* (A) Correspondence between the Foreign Office and the Association of Steam-ship Owners engaged in the Eastern Trade; (B) British Suez Canal Directors, No. 60, December 5; (C) Ditto, No. 61, December 6; (D) Ditto, No. 62, December 6; (E) Law Officers' Report, May 26, Confidential No. 4974, p. 31; (F) To Law Officers, July 6; (G) Sir E. Malet, No 150, May 13; (H) Sir E. Baring, No. 504, November 12; (I) Ditto, No. 558, November 26; (J) Ditto, No. 564, November 28; (K) Ditto, No. 578, December 3, 1883; (L) Parliamentary Paper, "Egypt No. 23 (1883)," No. 2734.

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On the 12th October Mr. Westray, the Secretary of the Association, addressed a letter to Earl Granville, announcing their readiness to take measures for the examination of the Isthmus of Suez by competent surveyors, in order to define the best position for a new Canal, or to second the views of Her Majesty's Government in any direction tending to procure such an arrangement as would secure the facilities required by the commerce of this country on fair terms.

In reply to this letter, Earl Granville pointed out to the Association that they were proceeding on the assumption of the absence of any exclusive right appertaining to the present Suez Canal Company, whereas the right to construct a rival Canal was controverted, and was a matter for judicial decision; and his Lordship recommended them either to enter into direct communication with the Suez Canal Company, with a view to obtaining the facilities necessary to British commerce, without prejudice to whatever title they might have to proceed independently, or to furnish a statement of their views to Her Majesty's Government, who would thus be in a position themselves to enter into communication with the Company.

On the 9th November the Association again addressed Lord Granville, stating at length their reasons for rejecting both alternatives proposed by his Lordship.

However, M. de Lesseps and his son, M. Charles de Lesseps, having shortly afterwards visited this country, interviews took place between them and the Association, which resulted in an Agreement as to certain conditions for the future administration of the Suez Canal.

Those conditions were submitted to Lord Granville by the Association in their letter of the 30th November (document A). That letter was communicated to the British Suez Canal Directors for their observations, and I am now to refer you to their despatches No. 60, Confidential, of the 5th December instant (document B), No. 61 of the 6th December instant (document C), and No. 62 of the same date (document D).

You will observe that in those despatches the British Directors state that M. de Lesseps desires to receive from Her Majesty's Government some assurance that if the conditions above mentioned be conceded, they will constitute a final settlement of the question, and that Her Majesty's Government will not allow the Company to be prevented from carrying out the necessary works on the Canal by the Egyptian Government on the ground asserted by the latter, that no alterations in the existing Canal can be made without a fresh Concession from the Khedive. Further, that this settlement of the question is understood by M. de Lesseps as protecting the Company in future from all danger of competition.

Before committing themselves to any pledges or assurances to the Suez Canal Company, Her Majesty's Government desire to consider once more with great care the three principal questions involved, viz.:—

1. The right of the Sultan of Turkey to control any grant of a new Concession, or any extension of the present one.
2. The right to a monopoly in the Isthmus of Suez claimed by the Company.
3. The right claimed by the Khedive to object to any alteration in the existing Canal being made without his sanction.

As regards the first question, Lord Granville has already been favoured with your opinion, as stated in your Report of the 21st ultimo.

As regards the second question, I am to refer you to your Report of the 26th May last (document E), to the reference addressed to you from this Office on the 6th July last, and on which your Report has not yet been received (document F), to Sir Edward Malet's despatch No. 150 of the 13th May last, containing a copy of the opinion of the legal advisers of the Egyptian Government that such monopoly exists (document G), and to Sir E. Baring's despatch No. 504 of the 12th November, transmitting a note from the Egyptian Government, expressing their dissent from the views of their legal advisers on the subject, and stating that the point is undergoing more careful examination (document H).

As regards the third question, I am to refer you to Sir E. Baring's despatch No. 558 of the 26th November (Document I), containing a copy of the opinion of the legal advisers of the Egyptian Government, to the effect that the Company has no right to enlarge the present Canal without the sanction of the Khedive. Also to Sir E. Baring's despatch No. 564 of the 28th November (document J), transmitting a copy of the opinion of Borelli Bey, which is opposed to that view. Also to Sir E. Baring's despatch No. 578 of the 3rd December (document K), transmitting a copy of a note from the Egyptian Government to M. de Lesseps reserving their rights.

Copies of all the Concessions, Conventions, Statutes, and Resolutions of the Suez Canal Company and of the Sultan's Firman will be found in the Parliamentary Paper, "Egypt No. 23 (1883)" (document L).

The first of the three questions, as before stated, has been answered in your Report of the 21st ultimo, and I am now to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Granville with your opinion on the second and third questions submitted in this letter, and with any general observations which you may have to offer on the papers.

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[After recapitulating the foregoing Reference, the Law Officers report as follows:—]

In obedience to your Lordship's commands we have the honour to report—

**The Company possess a monopoly.**

That we retain the opinion we have already expressed, that, having regard to the terms of the Concession to M. de Lesseps, it would be an inequitable violation of the rights granted to him if a rival Company were authorized by the Khedive to construct a Canal piercing the Isthmus of Suez. We have already expressed our view, and now repeat, that some "exclusive power" was granted, a fact which is admitted on all hands. We think the question what this exclusive power was must be determined by considering what it was the Khedive had power to grant or to withhold. This, it can scarcely be doubted, was the right to make a Canal through the isthmus.

The Khedive could neither permit nor prevent any one from forming a Company, but he could prevent any Company formed from making such a Canal.

It is, however, contended that, as soon as the Company was formed, the exclusive power was exhausted, or, at all events, as soon as the Canal was made. But we are unable to see that such a construction can be fairly considered the true construction, and to embody the real intention of the parties. If the true meaning of the Concession be—"We will give to you alone the power to form a Company which shall have the power to pierce the isthmus," we cannot think the meaning of the parties was, that as soon as such a Company was formed, or as soon as it had begun to work the Canal, the Khedive might empower a rival Company to make a competing one. The facts that the Egyptian Government was largely interested in the enterprise, that the Concession was only for a term, and that at the end of the term the Canal was to become the property of the Egyptian Government, appear to us to support the view we take.

At the same time, after the discussion which has occurred, and looking to the conflicting views that have been expressed, it is needless to say that it must be regarded as doubtful which is the true view.

**Provided they can accommodate the traffic.**

We ought to add, too, that the Concession no doubt imposes certain obligations to accommodate the vessels passing through the Canal. And if there were such an amount of traffic that the existing Company, after affording all the accommodation within its power, could not pass the traffic through the Canal, except with an unreasonable delay, we are by no means prepared to say that it would be a violation of the rights of the existing Company if another Canal were constructed, provided it were on such terms as would leave to the existing Company as much traffic as its Canal could reasonably accommodate.

**The Company have power to make any alterations within the conceded territory.**

2. It is clear that the Company cannot make any alterations of the existing Canal which involve works outside their present territory.

The question whether, within their limits, the Company can enlarge the Canal is not free from difficulty, but we have, though not without doubt, arrived at the conclusion that they can. It must be borne in mind that the main object of the Concessions was the formation of the Canal. It was the interest of the Egyptian Government, too, that the Canal should be as large as possible. We think, therefore, that the breadth and depth were fixed by the Commission, not for the purpose of restricting the Canal Company, but for the purpose of insuring that the Canal should not be less than the stipulated width and depth.

And the additional lands which were left to the Company by the Award of the Emperor of the French, were left to them as ancillary to the Canal and necessary for its effective working. If at any parts of the Canal it can be widened, still leaving enough of the Company's land on either side for the protection of the banks and the proper carrying on of the enterprise, we cannot conceive that this could be opposed to the intention of either party to the Convention.

The principal difficulty to our minds arises from the Ist and IInd Articles of the

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Convention of 1866, which provide that the Egyptian Government may occupy, within the limits of the lands reserved, as dependencies of the Maritime Canal, any place it might judge necessary for the defence of the country, provided it does not interfere with the navigation of the Canal, and also may occupy as custom-houses, barracks, &c., any land which can be so disposed of without interfering with the business of the Canal.

It may be contended that if the Canal itself were widened, the lands which could thus be made use of by the Egyptian Government would be so far limited.

But we think that the only object of these provisions was to secure the full territorial powers which were necessary to the Government of Egypt for the defence of the country and the use by them for barracks, &c., of lands not wanted by the Company, and that it was not the intention of the parties to restrict the use by the Company, of the conceded lands, so as to prevent their applying them in the most effective manner for accomplishing the main object of the parties, viz., the creation and working of a Canal, suited for navigation by large vessels. If the breadth and depth originally fixed be taken as restrictive for all time, the Company would not be entitled even to deepen the Canal, to meet the exigencies of an altered construction of vessels, though no conceivable reasons can be suggested why the Egyptian Government should have imposed such a limitation upon the Company's powers. If it could be shown that the widening, at any part of the Canal, would interfere with strategic works necessary for the defence of the country, we must not be understood as saying that the widening could, in such a case, be carried out by the Company.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*Royal Courts of Justice, January* 22, 1884.

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## No. 19.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April* 12.)

My Lord, *Royal Courts of Justice, April* 12, 1884.

**New Egyptian Loan.**

**Questions as to necessity for consent:—**

**1. Of Commissioners of Public Debt.**

**2. Of Powers.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo, submitting the following questions for our consideration and advice:—

1. Was it within the power of the Egyptian Government to raise a new loan, in the shape of an addition to the Unified Debt, with the consent only of the Commissioners of the Public Debt? or—

2. Should the consent of all the Powers who accepted the Law of Liquidation be signified with a view of rendering what, in that event, would be a modification of the Law of Liquidation binding upon the Mixed Tribunals?

In obedience to your Lordship's commands we have the honour to report—

**An addition to the Unified Debt needs sanction of the Powers.**

That we think the answer to the questions submitted to us depends upon whether under the Decree of May 1876, and afterwards under the Law of Liquidation, the revenues appropriated for the service of the Public Debt are to be treated as appropriated, in the manner therein prescribed, to the then existing Public Debt alone, or whether the provisions of those instruments are to be taken as applying also to any addition to the Public Debt sanctioned by the Commissioners. The latter view is open to argument, but we think the former is the more correct one. If so, it follows that an addition to the Unified Debt, with the incidents attaching to that debt, would be a modification of the Law of Liquidation, and, in order to render it binding upon the Mixed Tribunals, the consent of all the Powers who accepted the Law of Liquidation would be necessary.

**Conditions under which Egypt can raise a loan with consent of Commissioners only.**

We may observe that it would appear to be within the power of the Egyptian Government to raise a new loan, with the consent of the Commissioners, without requiring a modification of the Law of Liquidation, provided that the interest upon it was met and it was secured by other revenues than those which, under the Law of Liquidation, are appropriated to the Unified Debt dealt with by that law.

In expressing the above opinion, we have assumed that the first question submitted to us relates to a new loan to be paid out of the same revenues, and put on precisely the same footing as the existing Unified Debt.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers sent to Law Officers, March* 24, 1884.

(A.) Decree of May 2, 1876; Confidential No. 3539, pp. 55 and 56.
(B.) Decree of May 7, 1876; Confidential No. 3539, pp. 53–55.
(C.) Decree of November 18 1876; Confidential No 3539, pp. 116-121.
(D.) Decree of March 31, 1880; Parliamentary No. 2278, p. 6.
(E.) Law of Liquidation of July 17, 1880; Parliamentary No. 2322.

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## No. 20.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April* 30.)

*Royal Courts of Justice, April* 29, 1884.

My Lord,

**Indemnities awarded by the International Commission.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th instant, stating that he was directed to transmit to us papers relative to a question which had arisen as to the obligation of the Egyptian Government to pay in full, and at once, the awards of the International Commission appointed to deal with the claims of those who suffered by the insurrection in Egypt in 1882.*

That that Commission was appointed by a Decree of the Khedive of the 15th January, 1883, of which the terms were approved by the Powers who were to take part in it, and who had consented to the issue of another Decree on the 4th November, 1882, declaring the Mixed Tribunals incompetent to adjudicate upon those claims in view of the constitution of a special Commission for that purpose.

That Article 1 of the Decree of the 25th January, 1883, gave exclusive jurisdiction to the Commission to receive and examine the claims, and to decide without appeal "souverainement" on each one, either by rejecting it or confirming it by an indemnity, and that Article 6 laid down that the time and ways and means of paying the indemnities awarded should be decided thereafter.

That the Egyptian Government was represented on the Commission by two members, the President and the Vice-President, and had taken every precaution to ascertain the particulars of each claim, and assess it at its reasonable valuation, Borelli Bey, Legal Adviser to the Government, being attached to the Commission for that purpose, and commercial questions involving large amounts being referred to the Under-Secretary of State for Finance.

That the despatches inclosed from the Earl of Dufferin and Mr. Cookson, the British members of the Commission, showed the endeavours made by that body to arrive at a just estimate of the claims, and by the Egyptian Government to protect itself against the award of excessive indemnities.

That the Egyptian Government made arrangement for paying in full all awards up to 200*l*., and that that decision had been advanced by a Committee styling itself the "Egyptian Indemnities Committee," in a Memorandum addressed to Her Majesty's Government, as an argument for treating all claims in the same manner.

That an Egyptian Law Officer who had recently been consulted on the subject had advised that the indemnities must be paid in full, that the French and Italian

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* List of Papers:—
A. Earl of Dufferin, No. 15, January 14, 1884.
B. Sir E. Malet, No. 806, November 7, 1882.
C. Earl of Dufferin, No. 132, April 28, 1883.
  Mr. Cookson, No. 34, April 30, 1883; No. 60, August 26, 1883.
D. Earl of Dufferin, No 131, April 28, 1883.
E. M. Mansuardi, November 12, 1883.
  To Sir E. Baring, No. 327, December 18, 1883.
F. Sir E. Baring (Telegraphic), No. 229, March 18, 1884.
G. Sir E. Baring, No. 327, March 18, 1884.
H. Sir E. Baring, No. 356, March 25, 1884.
I. Sir E. Baring, No. 360, March 25, 1884.
K. To Sir E. Baring, No. 279, October 31, 1883.

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Governments had requested the Egyptian Government to take measures for their payment without delay, and that the Mixed Court of First Instance at Cairo, to which one of the claimants had appealed, had declared the competency of the Mixed Tribunals to entertain a suit brought against the Government for the recovery of an award made by the Commission, notwithstanding the Decree of the 4th November, 1882, and the fact that the time and means of payment had not yet been fixed as provided by Article 6 of the 13th January, 1883.

That, on the other hand, the Legal Adviser to the Egyptian Government had given his opinion that the Government was under no obligation to pay the indemnities in full, and that the matter depended on its resources, and on the amount awarded.

That there was no doubt that the present financial position of Egypt must render the payment of the indemnities extremely difficult, and that many of the awards were excessive, as was pointed out by your Lordship in a despatch of the 31st October, 1883, to Her Majesty's Agent and Consul-General at Cairo.

That our opinion was requested upon the question submitted in that letter, viz., whether the Egyptian Government was legally bound to pay the indemnities awarded by the Commission in full.

And whether, in view of the two Decrees above cited, it was competent to the Mixed Tribunals to entertain a suit for the recovery of the awards, or at all events before the time and mode of payment should have been fixed by a further Decree of the Khedive.

In obedience to your Lordship's commands we have the honour to report—

That the 1st Article of the Decree of the 13th January, 1883 (which was issued with the consent of the Powers whose subjects were concerned), establishes an International Commission to examine the claims, and to determine upon each one of them "souverainement," either by rejecting it, or "en y faisant droit par la fixation d'une indemnité."

Indemnities must be paid in full.

It appears to us that where a claim has been allowed, and an indemnity fixed, the amount cannot again be called in question, and that all that remains to be done is, under Article 6 of the same Decree, to fix the time and ways and means of payment "des indemnités accordées par la Commission."

They are not due till date of payment has been fixed. Mixed Tribunals have no jurisdiction.

It appears to us, however, clear that, until this has been done, there can be no legal right to payment, and that the Mixed Courts are not competent to entertain a suit for the recovery of the amounts awarded.

The only right to these sums arises from the very Decree which in terms provides that the ways and means as well as the times of payment are to be thereafter provided for.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J PARKER DEANE.

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## No. 21.

*Sir J. Pauncefote to the Lord Chancellor.*

Nationality of the Judges of the International Court of Appeal.

SIR JULIAN PAUNCEFOTE presents his compliments to the Lord Chancellor, and has the honour to transmit to him, by direction of Earl Granville, the accompanying despatch from Mr. Egerton, relating to the nationality of the Judges of the International Court of Appeal at Alexandria.*

The Règlement Organique, or Charter of the Mixed Tribunals, provides that the Court of Appeal shall consist of eleven Judges, of whom seven are to be foreigners and four natives.

It is now proposed to increase that number to twelve, by the addition of one more foreign Judge.

The foreign Judges are appointed by the Egyptian Government after consultation with the foreign Powers, and the Charter contains no provision as to their respective nationalities. Hitherto the Great Powers only have been represented on the Bench of the Appeal Court, in pursuance of a private understanding in that behalf.

The secondary Powers have urgently claimed that, in the event of any increase of the number of foreign Judges, they should also be represented on that Bench.

If the claims of the secondary Powers be considered with reference to their respective interests in Egypt, there is no doubt that the claim of Greece is superior to that of all the others, by reason of the importance of the Greek community established in that country; and, accordingly, the Greek Government have been unremitting in their efforts to secure the nomination of a Greek Judge of Appeal.

On the other hand, the Egyptian Government are strongly opposed to the system of packing the Appeal Court with representatives of particular nationalities, and desire to be left free to choose the most eligible candidates for the Bench, irrespectively of their nationality.

In the telegram of the 11th April last, referred to in Mr. Egerton's despatch, it was stated that Her Majesty's Government approved the addition of one Judge (if the penal jurisdiction should be extended), without reference to nationality, but that, if possible, a Greek should be selected. The question which now arises is, whether Her Majesty's Government may properly offer to waive all considerations of nationality in the selection of the Judges of Appeal, provided the other Great Powers are willing to do the same, or whether it would be preferable to continue the existing practice of selection with a view to equal representation of nationalities so far as may be possible.

A Memorandum by the late Sir Francis Reilly is inclosed (Memorandum II, October 27, 1881 [Confidential No. 4519], Organization and Jurisdiction of Mixed Courts) in which the subject of "Representations and Nationalities" is briefly treated at p. 3.

Should the principle of representation of nationalities be retained, or should the free choice of new Judges be left to the Egyptian Government?

Lord Granville would be much obliged to the Lord Chancellor if he would favour him with his opinion as to whether the principle of representation of nationalities in the Appeal Court is one which it would be desirable to retain, or whether it would be preferable to defer to the wishes of the Egyptian Government by leaving to them the free choice of new Judges among the candidates possessing the highest judicial qualifications.

*Foreign Office, May* 21, 1884.

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[*] Mr. Egerton, No. 501, May 6, 1884.

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### *Memorandum by the Lord Chancellor.*

If this question were to be dealt with on abstract principles, without reference to the particular circumstances of Egypt, or to the rule laid down by Her Majesty's Government in paragraph 18 of the Memorandum II of the 27th October, 1881 [4519], there would be much to be said for the view suggested in Mr. Egerton's letter of the 6th May, 1884, and for leaving the Egyptian Government free to choose the most eligible candidates for the Bench, irrespective of their nationality.

But the practical considerations appear to me to preponderate in favour of the opposite view, under the actual circumstances of Egypt. The very principle of the existing constitution of the Tribunal (from which it is not proposed to depart) with a certain numerical proportion of *foreign* Judges, appears to me to involve a departure, in two most important respects, from that abstract idea, which the Egyptian Government favour: (1) that the Bench *cannot* be constituted on the simple principle of personal fitness, without *any* reference to nationality; and (2) that, in its actual constitution, a certain balance is to be preserved between Egyptian and foreign interests. It would hardly be reconcilable with the preservation of this balance that the Egyptian Government should be absolutely free and unfettered by any rule in its choice of those persons who are to represent the foreign element; inasmuch as the consequence of this might be that persons might be chosen who, though not themselves Egyptian, might be too much under Egyptian influence, or too much identified with Egyptian interests, to enjoy the confidence of foreigners, and especially (if no regard were paid to any fair representation of different nationalities) of foreigners of different nationalities from themselves.

The principle of national representation should be observed.

These objections to the Egyptian view derive additional force from the principle, which Her Majesty's Government is stated (in the paragraph already referred to of the Memorandum No. 4519) to be determined to maintain, "that the following five countries shall always be represented on the Court of Appeal, viz., Austria, England, France, Germany, Italy." Admitted to that extent, it seems to me quite obvious that national representation (so far as relates to the foreign element in the Court) becomes the ruling principle; and I see nothing but danger and risk of jealousies and discontents if this principle is not fairly and consistently observed in all cases in which new Judges are chosen. The impossibility of representing every one of the lesser Powers interested in Egyptian affairs cannot be a sufficient reason why, in the event of any increase in the number of foreign Judges, they (or some of them) should not be

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represented on the Bench in preference to an increase of the numerical weight of one or more of the greater Powers already represented there.

And I think that the present preponderating power and influence of Great Britain in Egypt would necessarily lead to an impression (in those foreign countries which might appear to be excluded from any share of representation) that the freedom of choice, nominally reserved to the Egyptian, was really under the control (actual or potential) of the British Government.

(Signed) SELBORNE.

*May* 22, 1884.

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### No. 22.

*The Law Officers of the Crown to Earl Granville.—(Received October* 30.)

*Royal Courts of Justice,* , 1884.

My Lord,

Mission of Lord Northbrook to Egypt as Her Majesty's High Commissioner.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th August, stating that he was to transmit to us drafts of a Commission and of a Credential Letter to enable the Earl of Northbrook to act as Her Majesty's High Commissioner to inquire into and report upon the present situation of affairs in Egypt, and that he was to request that we would favour your Lordship, at our earliest convenience, with our opinion as to whether the terms of the said Commission and Credential Letter were right and proper.

That copies of Commissions issued to the Earl of Durham in 1838, and to Mr. Gladstone in 1858, were inclosed for convenience of reference

In obedience to your Lordship's commands we have the honour to report—

Approve drafts of Commission and Credentials.

That, in our opinion, the terms of the said Commission and Credential Letter, as settled, are right and proper.

(Signed) HENRY JAMES.
FARRER HERSCHELL.

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### Annex.

*Commission to the Earl of Northbrook as Her Majesty's High Commissioner to inquire and report upon the Affairs of Egypt, dated August* 12, 1884.

(Large Signet.)

VICTORIA R. et I.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India, &c., to Our right trusty and right well-beloved Cousin and Councillor, Thomas George, Earl of Northbrook, Knight Grand Commander of Our Most Exalted Order of the Star of India, &c.

Whereas there are at present certain weighty affairs to be adjusted in Egypt, especially in connection with the present exigencies of Egyptian finance:

Now know you that We, reposing especial confidence in the tried fidelity and prudence of you, the said Thomas George, Earl of Northbrook, have named, constituted, and appointed, and do by these presents name, constitute, and appoint you to be Our High Commissioner to repair to Egypt and to collect such information touching the premises as you may deem fitting, and to report and advise Her Majesty's Government touching the counsel which it may be fitting to offer to the Egyptian Government in the present situation of affairs in Egypt, and as to the measures which should be taken in connection with them; and We do hereby give and grant unto you, the said Thomas George, Earl of Northbrook, full authority to act in the premises as herein set forth; and We further desire you to submit to Us in writing, through one of Our Principal Secretaries of State, such information as you may be able to collect respecting the premises, together with such suggestions and recommendations as you may deem fitting.

In witness whereof We have signed these presents with Our Royal Hand.

Given at Our Court at Osborne, the 12th day of August, in the year of our Lord 1884, and in the 48th year of Our reign.

By Her Majesty's command.

(Countersigned) GRANVILLE.

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*Earl Granville to His Highness the Khedive of Egypt.*

*Foreign Office, London, August* 12, 1884.

Sir,

The sentiments of friendship which the Queen entertains for your Highness, and the especial interest which Her Majesty feels in the well-being of the country under your rule, and in the prosperity of the inhabitants thereof, have made her desirous to afford a fresh proof of her solicitude in that behalf. I have therefore the honour to acquaint your Highness that Her Majesty has selected the Earl of Northbrook to proceed to Egypt as her High Commissioner to communicate with your Highness, to inquire into certain weighty affairs, especially in connection with the present exigencies of Egyptian finance, which are at present depending for adjustment therein, and to report to us thereupon.

The Earl of Northbrook, whilst upon his mission to Egypt, will have the advantage of the advice and assistance of Sir Evelyn Baring, whose experience and local knowledge, together with the confidence placed in him by your Highness and by the Egyptian authorities, will enable him to afford valuable assistance to the Earl of Northbrook.

I am commanded by the Queen my Sovereign to express the hope that your Highness will afford your countenance to her High Commissioner, and that his Lordship may receive every facility and assistance to enable him to execute the high duties with which he has been intrusted.

I avail myself with pleasure of the opportunity to renew to your Highness the expression of the respect and esteem with which I have the honour to subscribe myself,

Sir,
Your Highness' most obedient,
humble Servant,
(Signed) GRANVILLE.

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### No. 23.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November* 18.)

*Royal Courts of Justice, November* 17, 1884.

My Lord,

Petition of A. de Gabriele for remission of sentence.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 11th instant, stating that he was to transmit to us the papers* relating to a Petition from Andrea de Gabriele, a prisoner in the Malta civil prison, who prayed for the remission of the sentence passed upon him by Her Majesty's Consular Court at Alexandria.

That the Petition, together with the "particulars of the prison history of the prisoner," were transmitted to the Foreign Office through the Colonial Office (Colonial Office letter, 16th July last).

That the opinion of Mr. Cookson, Her Majesty's Consul, and the Judge of the English Consular Court at Alexandria, on that Petition would be found in his despatch No. 49 of the 27th ultimo; but that unfortunately the Judge's note-book, which contained the Minutes of evidence, was not forthcoming.

That it would be seen from the particulars of the prison history that no previous convictions were recorded against the prisoner, and that his conduct in prison had been good.

That Mr. Lister was to request that we would favour your Lordship with our opinion as to whether the sentence of Andrea de Gabriele should be wholly or partly remitted.

In obedience to your Lordship's commands we have the honour to report—

That the notes of the evidence having unfortunately been lost, we are not fully in possession of the facts of the case.

Remainder of sentence may be remitted.

But we think enough appears to show that the allegations in the Petition of Gabriele are not without foundation. He has already suffered about three and a-half years' imprisonment, and we think that, under all the circumstances, the remainder of the sentence might properly be remitted.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Colonial Office, July 16; Mr. Cookson, No. 49. October 27, 1884.

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## No. 24.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November 18.)*

My Lord, *Royal Courts of Justice, November , 1884.*

**Importation of tobacco and maintenance of the "raftieh" system.**

WE were honoured with your Lordship's commands signified in Lord Edmond Fitzmaurice's letter of the 11th ultimo, stating that he was to transmit to us the accompanying Confidential Print of papers relating to the question of the importation of tobacco, and to the maintenance of the "raftieh" system in Egypt.*

**Questions as to power of Khedive—**

**1. To regulate importation of tobacco, and decline to carry out "raftieh" system.**

**2. To free Egypt from Turkish Customs Regulations.**

That Lord Edmond Fitzmaurice was to refer us, in the first place, to the Memorandum in the Print (No. 18, p. 34), which explained the two points under consideration, and indicated the particular documents which bore upon them. That the questions which had arisen were:—

1. Whether the Khedive has power under the Firmans to regulate the importation of tobacco into Egypt, without reference to the Turkish Customs Regulations on the subject, and to decline to carry out the "raftieh" system as regards tobacco.

2. Whether the Khedive has power by his own Decrees, and by Conventions with the foreign States possessing Treaty rights on the subject, to free Egypt from the Turkish Customs Regulations as regards all imports and exports, and, in fact, to establish the complete autonomy of Egypt in the matter of customs.

That, as regarded the first question, Lord E. Fitzmaurice was to refer us to our Report of the 29th May, 1883 (Print, No. 5, p. 8), and to the two Memoranda at the close of the Print (No. 17, p. 33, and No. 18, p. 34); also to the opinion of M. Padoa, the legal adviser of the Egyptian Customs (Print, No. 3, p. 4). That we would observe that no special undertaking had been given by Egypt to the Porte to maintain the "raftieh" system as applied to tobacco, but that "raftiehs" were demanded at Egyptian ports in pursuance of the Turkish Regulations applicable to the whole of the Ottoman dominions.

That, as regarded the second question, Lord E. Fitzmaurice was to refer us to the two Memoranda above mentioned (Print, No. 17, p. 33, and No. 18, p. 34), and to the documents referred to in No. 18.

That a copy of the Firmans was transmitted therewith,† and the Articles of the Capitulations of 1675, which bore on the subject under consideration, would be found in a Memorandum by Sir E. Hertslet (Print, No. 15, p. 31). That the Treaty of 1861 between Great Britain and Turkey referred to in that Memorandum had expired, and the commercial relations between the two Governments were based (pending the conclusion of a new Treaty) on the right claimed by Great Britain to most-favoured-nation treatment in the Ottoman dominions.

That Lord Edmond Fitzmaurice was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in his letter, and with any general observations which we might have to offer thereon.

In obedience to your Lordship's commands we have the honour to report—

**Khedive can regulate importation of tobacco and decline to carry out the "raftieh" system.**

1. That we think the Khedive has power, under the Firmans, to regulate the importation of tobacco into Egypt, without reference to the Turkish Customs Regulations on the subject, and to decline to carry out the "raftieh" system as regards tobacco.

**Circumstances under which Porte may object to Agreement for importation of tobacco.**

We agree generally with the opinion expressed by M. Padoa on this point. But we still entertain the doubt which we expressed in our Report of the 15th December, 1883, whether the Porte might not object to any Agreement for the importation of tobacco in Egypt, by a Power prohibited, under a current Treaty with the Porte, from importing tobacco into the Turkish dominions.

**Khedive can free Egypt from Turkish Customs Regulations, except in case of a State having a current Treaty with Porte.**

2. We think that, speaking generally, the Khedive has power, by his own Decrees, and by Conventions with the foreign States possessing Treaty rights on the subject, to free Egypt from the Turkish Customs Regulations as regards all imports and exports. But we should not feel warranted in expressing a positive opinion that, in the case of any State having a current Treaty, the Porte might not take exception to such a Convention, without carefully considering the terms of the particular Treaty.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Correspondence relating to "raftiehs." Confidential No. 5042.

† Firmans. Confidential No. 4747.

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# Equator.

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## No. 25.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 2.)*

My Lord, *Royal Courts of Justice, July 1, 1884.*

**Claim of Mr. Mackintosh on Ecuadorian Government.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 24th ultimo, stating that he was to transmit to us papers* relative to the claim of Mr. Mackintosh upon the Ecuadorian Government.

**Original claim settled.**

That the original claim, which was for a large amount, was settled by the Convention concluded with the Ecuadorian Government on the 24th July, 1857, and the Supplementary Agreement of the 4th March, 1858. That copies of those instruments were inclosed.

**Present claim for difference caused by depreciation of dollar.**

That the present question had only reference to the claim of Mr. Mackintosh to the payment by the Ecuadorian Government of the difference between the value of the dollar, which was fixed by the Agreement of 1858 at 5 dol. 25 c. to the pound sterling, and the present relative value of the dollar, in which a great depreciation had taken place since that date.

That the annexed Memorandum, which had been drawn up by the Librarian to the Foreign Office, would put us in full possession of the history of that claim, which, as we should observe, was referred to the Law Officers of the Crown on the 22nd July, 1875.

That they advised that the claim should be pressed by Her Majesty's Government, and it had accordingly been supported by them ever since. But that there was nothing to show that the attention of the Law Officers was at the time directed to the particular claim now set up by Mr. Mackintosh, and which appeared inconsistent with the Supplemental Agreement of 1858, whereby the rate of exchange was fixed at 5 dol. 25 c. to the pound sterling, without any provision to meet the case of depreciation of the currency.

If that rate of exchange be not binding on the parties notwithstanding any fluctuation in the rate of exchange, it seemed difficult to understand the purpose of the Supplementary Agreement.

That Sir J. Pauncefote was to request our opinion as to whether, in view of the explanations given by the Ecuadorian Minister (Inclosure 3 in Mr. Lawrence's despatch No. 13 of the 18th April, 1884), any further support could properly be given to the present claim.

In obedience to your Lordship's commands we have the honour to report—

**"Vales" to amount agreed upon having been given, claim cannot be further supported.**

That we gather that "vales" to the amount agreed upon by the Convention of the 24th July, 1857, calculating each pound sterling of that amount at 5 dol. 25 c., have been given to Mr. Mackintosh as provided by the Agreement, and that the debt has been, in this manner, discharged. If this be so, we are of opinion that no further support can properly be given to the present claim.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* List of Papers concerning Mackintosh claim:—
1. Mr. Lawrence's No. 13, April 18, 1884.
2. Mr. Mackintosh, June 9, 1884.
3. Law Officers, August 17, 1875. (Confidential No. 4370, p. 17.)
4. Convention concluded with Ecuadorian Government, July 24, 1857. (For copy see letter from Mr. Mackintosh of February 17, 1875.)
5. Supplementary Agreement of March 4, 1858. (For copy see letter from Mr. Mackintosh of February 17, 1875.)
6. Sir E. Hertslet's Memorandum of June 13, 1884.
7. To Mr. Mackintosh, May 31, 1884.

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# France.

## No. 26.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 16.)

*Royal Courts of Justice, January* 15, 1884.

My Lord,

Convention for protection of submarine cables.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th instant, stating that he had the honour to transmit to us, by your Lordship's direction, the accompanying volume,* and to request our attention to the discussion in regard to the War Article in the proposed Convention for the protection of submarine telegraphs recorded at the pages noted in the margin of his letter.

That we advised on the terms of the English Article in our Report of the 28th February last† (of which a copy was inclosed).

Objections to English Article.

That its text as finally drafted in French was given at p. 103 of the inclosed volume. That the German Government, however, continued to object to that Article. That the grounds of their final decision had not yet been communicated to Her Majesty's Government, but that it was understood that they adopted the views expressed by Dr. Dambach, and recorded at pp. 68, 77 of the accompanying volume.

That it accordingly appeared that unanimity among the Powers could not be obtained for the adoption of the English Article.

Propose accepting Austrian Article with proviso as to action in time of war.

That, under those circumstances, your Lordship was disposed to think that, sooner than delay or abandon the Convention, it would be better that Her Majesty's Government should agree to accept the Austrian Article, which would be found at p. 103, provided that it be put on record that they understood the Article to mean that, in time of war, a belligerent who was a Contracting Party would be at liberty to act with reference to submarine cables as if the Convention did not exist.

That as the decision of Her Majesty's Government on that point had to be made known to Lord Lyons next week, Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion as to whether the course proposed would sufficiently secure the end intended, and with any general observations which we might have to offer on the subject.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed course.

That, in our opinion, the course proposed will sufficiently secure the end intended.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 27.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 4.)

*Royal Courts of Justice, June* 3, 1884.

My Lord,

Exchange of territory [Pettahs] in India between Great Britain and France.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd February last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list,‡ which related to a proposed exchange of territory in India between Great Britain and France. That the nature of the transaction was explained in the draft of a Convention, which had been prepared to carry it out, and of which a copy was inclosed in Sir Julian Pauncefote's letter to the India Office of the 16th November, 1883. That we would observe that in that letter the question was raised as to the right of the Crown, in time of peace, to cede British territory to a foreign Power without the previous assent of Parliament, and that reference was made to the cases cited in Forsyth's Constitutional Law, p. 182.

Question as to cession of territory without sanction of Parliament.

That the Indian precedents bearing on the question would be found in the Memorandum inclosed in the India Office letter of the 13th February, and that the letter from the Colonial Office to the India Office of the 31st December, 1883, contained Reports by the Law Officers on certain cases in point which had occurred in the Colonies.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion whether the proposed Convention might lawfully be concluded by Her Majesty's Government without the previous assent of Parliament.

We were also honoured with Sir Julian Pauncefote's letter of the 2nd ultimo, in which he drew our attention to the case of Damoddar Gordham *v.* Deoram Kanji, reported in 1 Law Reports, E. J. & S. P. C. Appeal Cases, p. 332.

In obedience to your Lordship's commands we have the honour to report—

Such cession unconstitutional in case of a colony; but not of India.

That whatever may be the strict legal rights of the Sovereign with regard to the cession of territory, we think that the cession, in time of peace, of territory subject to Parliamentary government, whether of a part of the United Kingdom or a part of the Sovereign's colonial possessions having a representative Legislature, would be an unconstitutional act.

But we are not prepared to say that the Sovereign cannot exercise such a power as regards her Indian possessions. There are precedents in support of such a course, and one in particular which was recognized by, and received the implied sanction of, the Imperial Parliament.

It seems also clear, from the judgment of the Judicial Committee of the Privy Council (which included the present and the late Lord Chancellors) in the Bhownugger Cession case, that that Tribunal leant to the view that the Sovereign did possess this power of cession in India.

Looking at the somewhat conflicting opinions which have been expressed, we cannot say that the question is free from doubt, but we think the sounder opinion is that the proposed Convention might lawfully be concluded without the previous assent of Parliament.

But expediency of such a course a matter for consideration.

We may add, however, that the tendency in later years has been in the direction of a limitation of the prerogative powers, and an increase of Parliamentary control. It is, therefore, a matter for serious consideration whether it would be expedient to conclude the proposed Convention without the assent of Parliament.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.

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Disagreement with above opinion.

I regret that I am unable to concur with the Attorney and Solicitor-General, and I have the honour to submit to your Lordship the following Report:—

Convention for cession of territory not legal without sanction of Parliament.

The Judicial Committee in the Bhownugger case expressed their opinion, or, at least, their "grave doubts, to say no more, of the soundness of the general and abstract doctrine," that it was beyond the power of the British Crown, without the consent of the Imperial Parliament, to make any cession of territory within jurisdiction of any of the British Courts in India, in time of peace, to a foreign Power.

That opinion is stated in the widest and most general terms, but it was given in a case where the cession was made to a native Power, and may not be extended to a cession, such as that proposed in the present Convention, to an absolutely foreign Power like France.

I conceive that it is not within the power of the Crown to take a part of the British territory in India, and cede such part to France, without the assent of Parliament, and consequently that the Convention cannot lawfully be concluded by Her Majesty's Government without the previous assent of Parliament.

I would add that the tendency, in later years, has been in the direction of a limitation of the prerogative powers, and an increase of Parliamentary control.

Questions expediency of cession.

The object of the Convention is to remove an administrative difficulty, and I respectfully submit to your Lordship whether, in a matter on which conflicting

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* Volume of Minutes of Second Meeting of Submarine Cables Conference. See more particularly pp. 67-69, 78-80, 92-95, 99-106.

† Law Officers, February 28, 1883, Confidential No. 4974, p. 59.

‡ 1. To India Office, November 16, 1883, with copy of Draft Convention.
2. India Office, February 13, 1884, containing Memorandum of September 8, 1873, and letter from Colonial Office, December 31, 1883, with Law Officers' Reports inclosed.

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opinions exist, it is worth while to risk a discussion in Parliament for apparently so small an object, and one which may probably be obtained as easily by some means other than the cession of territory.

I have, &c.
(Signed) J. PARKER DEANE.

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## No. 28.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 5.)

My Lord, *Royal Courts of Justice, June* 4, 1884.

Injunction served on Consul Ward as to non-delivery of papers of the "Fire Queen."

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 26th April last, transmitting to us a despatch from Her Majesty's Ambassador at Paris, forwarding a communication from Mr. Ward,* Her Majesty's Consul at Bordeaux, requesting instructions as to his course of procedure, under the following circumstances:—

That it appeared that a British steamer, the "Fire Queen," had been arrested at Bordeaux by order of the Civil Tribunal at that place, and that the Tribunal had served upon Mr. Ward, in his official capacity, an injunction, or writ, warning him not to deliver the ship's papers of the "Fire Queen," which had been deposited in the Consulate in the ordinary way, under penalty of being held personally responsible for the amount claimed against the ship.

That it was conceived that the Consul, in such a case, on being informed by the proper authorities of the Order of the Court in regard to the ship, was bound to abstain from any Act which would interfere with the course of justice, but that the question arose, whether the service upon him of an injunction or other process of the Court, in his Consular capacity, in relation to matters connected with his public duties and functions, was such an irregularity as to call for diplomatic representation.

That Sir J. Pauncefote was to refer us to "Calvo," vol. i, sections 467 and 468, and to request that we would favour your Lordship with our opinion as to the reply which should be returned to Mr. Ward's inquiry.

In obedience to your Lordship's commands we have the honour to report—

That, though a Consul may not possess immunity from legal process, we think that an injunction requiring him to act in a manner inconsistent with the due discharge of his official functions would call for diplomatic representation.

Case does not call for diplomatic representation.

But the present case hardly falls within this category. The only duty imposed upon the Consul was to deliver the ship's papers to the master a reasonable time before his departure. And, as far as appears from the facts before us, obedience to the injunction of the Court did not involve any inability to discharge this duty.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 29.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 2.)

My Lord, *Royal Courts of Justice, September* 2, 1884.

Pending war between France and China.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that Her Majesty's Government, having received intelligence that a state of war was unhappily pending, if not existing, between France and China, and Her Majesty being resolved to maintain the strictest neutrality, Sir Julian Pauncefote was directed to request that we would immediately take into our consideration the annexed draft of a Royal Proclamation to that effect, to be issued in case of need, and also a draft of letters to the Boards of Admiralty and Treasury, and to the Colonial Office, War Office and India Office, announcing the same.

Drafts of Proclamation of Neutrality, and of letters to Public Departments.

That to facilitate the consideration of these documents Sir Julian Pauncefote was to transmit to us copies* of those issued for the same purpose at the breaking out of war between Russia and Turkey in 1877, together with a copy of the Report of the Neutrality Laws Commissioners,† in the appendix to which would be found documents of the same kind issued on former occasions.

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* In Lord Lyons' No. 25, Consular, 1884.

That Sir Julian Pauncefote was to add that your Lordship would be glad to be informed at our earliest convenience whether the proposed drafts were in our opinion right and proper under the circumstances.

In obedience to your Lordship's commands, we have the honour to report—

Approve proposed drafts.

That we are of opinion that the proposed drafts are right and proper under the circumstances.

Should recite section 2 of Foreign Enlistment Act in Proclamation.

It may be well to recite section 2 of the Foreign Enlistment Act amongst the other portions of that Act recited in the Proclamation.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex 1.

### (A.)

By the Queen.

### A PROCLAMATION.

VICTORIA *R.*

WHEREAS We are happily at peace with all Sovereigns, Powers, and States:

And whereas a state of war unhappily exists between the French Republic and His Majesty the Emperor of China, and between their respective citizens and subjects and others inhabiting within their countries, territories, or dominions:

And whereas We are on terms of friendship and amicable intercourse with each of these States, and with their several citizens and subjects and others inhabiting within their countries, territories, or dominions:

And whereas great numbers of Our loyal subjects reside and carry on commerce, and possess property and establishments, and enjoy various rights and privileges, within the territory of each of the aforesaid States, protected by the faith of Treaties between Us and each of the aforesaid States:

And whereas We, being desirous of preserving to Our subjects the blessings of peace which they now happily enjoy, are firmly purposed and determined to maintain a strict and impartial neutrality in the said state of war unhappily existing between the aforesaid States:

We, therefore, have thought fit, by and with the advice of Our Privy Council, to issue this Our Royal Proclamation:

And We do hereby strictly charge and command all Our loving subjects to govern themselves accordingly, and to observe a strict neutrality in and during the aforesaid war, and to abstain from violating or contravening either the Laws and Statutes of the Realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril:

And whereas in and by a certain Statute made and passed in a Session of Parliament holden in the 33rd and 34th year of Our reign, intituled "An Act to regulate the Conduct of Her Majesty's Subjects during the Existence of Hostilities between Foreign States with which Her Majesty is at Peace," it is, amongst other things, declared and enacted as follows:—

"This Act shall extend to all the dominions of Her Majesty, including the adjacent territorial waters.

"*Illegal Enlistment.*

"If any person, without the licence of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign State at war with any foreign State at peace with Her Majesty, and in this Act referred to as a

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* Confidential Nos. 3166, 3167.

† Parliamentary No. 1147.

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friendly State, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign State as aforesaid,—

"He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"If any person, without the licence of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent,—

"He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"If any person induces any other person to quit Her Majesty's dominions, or to embark on any ship within Her Majesty's dominions, under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State,—

"He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"If the master or owner of any ship, without the licence of Her Majesty, knowingly either takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions any of the following persons, in this Act referred to as illegally enlisted persons, that is to say:

"(1.) Any person who, being a British subject within or without the dominions of Her Majesty, has, without the licence of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign State at war with any friendly State:

"(2.) Any person, being a British subject, who, without the licence of Her Majesty, is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State:

"(3.) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State:

"Such master or owner shall be guilty of an offence against this act, and the following consequences shall ensue; that is to say:

"(1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour; and

"(2.) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two Justices of the Peace, or other magistrate or magistrates having the authority of two Justices of the Peace; and

"(3.) All illegally enlisted persons shall, immediately on the discovery of the offence, be taken on shore, and shall not be allowed to return to the ship.

### "*Illegal Shipbuilding and Illegal Expeditions.*

"If any person within Her Majesty's dominions, without the licence of Her Majesty, does any of the following acts; that is to say,—

"(1.) Builds or agrees to build, or causes to be built, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State; or

"(2.) Issues or delivers any commission for any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State; or

"(3.) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State; or

"(4.) Dispatches, or causes or allows to be dispatched, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State:

"Such person shall be deemed to have committed an offence against this act, and the following consequences shall ensue:

"(1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"(2.) The ship in respect of which any such offence is committed, and her equipment, shall be forfeited to Her Majesty:

Provided, that a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed by this section in respect of such building or equipping, if he satisfies the conditions following; (that is to say):—

"(1.) If forthwith upon a Proclamation of Neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Secretary of State:

"(2.) If he gives such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for insuring that such ship shall not be dispatched, delivered, or removed without the licence of Her Majesty until the termination of such war as aforesaid.

"Where any ship is built by order of or on behalf of any foreign State when at war with a friendly State, or is delivered to or to the order of such foreign State, or any person who to the knowledge of the person building is an agent of such foreign State, or is paid for by such foreign State or such agent, and is employed in the military or naval service of such foreign State, such ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign State.

"If any person within the dominions of Her Majesty, and without the licence of Her Majesty,—

"By adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting, the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign State at war with any friendly State,—

"Such persons shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"If any person within the limits of Her Majesty's dominions, and without the licence of Her Majesty,—

"Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly State, the following consequences shall ensue:—

"(1.) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

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"(2.) All ships, and their equipments, and all arms and munitions of war, used in or forming part of such expedition, shall be forfeited to Her Majesty.

"Any person who aids, abets, counsels, or procures the commission of any offence against this Act shall be liable to be tried and punished as a principal offender."

And whereas by the said Act it is further provided that ships built, commissioned, equipped, or dispatched in contravention of the said Act, may be condemned and forfeited by Judgment of the Court of Admiralty; and that if the Secretary of State or chief executive authority is satisfied that there is a reasonable and probable cause for believing that a ship within Our dominions has been or is being built, commissioned, or equipped, contrary to the said Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be dispatched contrary to the Act, such Secretary of State, or chief executive authority, shall have power to issue a warrant authorizing the seizure and search of such ship and her detention until she has been either condemned or released by process of law: And whereas certain powers of seizure and detention are conferred by the said Act on certain local authorities:

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said Statute, We do hereby strictly command, that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said Statute, upon pain of the several penalties by the said Statute imposed, and of Our high displeasure.

And We do hereby further warn and admonish all our loving subjects, and all persons whatsoever entitled to Our protection, to observe towards each of the aforesaid States, their citizens, subjects, and territories, and towards all belligerents whatsoever, with whom We are at peace, the duties of neutrality; and to respect, in all and each of them, the exercice of those belligerent rights which We and Our Royal predecessors have always claimed to exercise.

And we hereby further warn all Our loving subjects, and all persons whatsoever entitled to Our protection, that if any of them shall presume, in contempt of this Our Royal Proclamation, and of Our high displeasure, to do any acts in derogation of their duty as subjects of a neutral Sovereign in a war between other States, or in violation or contravention of the law of nations in that behalf, as more especially by breaking, or endeavouring to break, any blockade lawfully and actually established by or on behalf of either of the said States, or by carrying officers, soldiers, despatches, arms, ammunition, military stores or materials, or any article or articles considered and deemed to be contraband of war according to the law or modern usages of nations, for the use or service of either of the said States, that all persons so offending, together with their ships and goods, will rightfully incur and be justly liable to hostile capture, and to the penalties denounced by the law of nations in that behalf.

And We do hereby give notice that all Our subjects and persons entitled to Our protection who may misconduct themselves in the premises will do so at their peril, and of their own wrong; and that they will in nowise obtain any protection from Us against such capture, or such penalties as aforesaid, but will, on the contrary, incur Our high displeasure by such misconduct.

Given at Our Court at , this day of , in the year of Our Lord one thousand eight hundred and , in the 48th year of our reign.

God save the Queen.

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## Annex 2.

## (B.)

*Earl Granville to the Lords Commissioners of the Admiralty.*[*]

My Lords, *Foreign Office,*

HER Majesty being fully determined to observe the duties of neutrality during the existing state of war between the French Republic and the Emperor of China, and being moreover resolved to prevent, as far as possible, the use of Her Majesty's harbours, ports, and coasts, and the waters within Her Majesty's territorial jurisdiction, in aid of the warlike purposes of either belligerent, has commanded me to communicate to your Lordships, for your guidance, the following rules, which are to be treated and enforced as Her Majesty's orders and directions:—

Her Majesty's is pleased further to command that these rules shall be put in force in the United Kingdom, the Isle of Man, and the Channel Islands, on and after the , and in Her Majesty's territories and possessions beyond the seas, six days after the day when the Governor, or other chief authority of each of such territories or possessions respectively, shall have notified and published the same; stating in such notification that the said rules are to be obeyed by all persons within the same territories and possessions.

During the continuance of the present state of war, all ships of war of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom, the Isle of Man, or the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station, or place of resort, for any warlike purpose, or for the purpose of obtaining any facilities for warlike equipment; and no ship of war of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or waters subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war or a merchant ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

2. If any ship of war of either belligerent shall, after the time when this Order shall be first notified and put in force in the United Kingdom, the Isle of Man, and the Channel Islands, and in the several Colonies and foreign possessions and dependencies of Her Majesty respectively, enter any port, roadstead, or waters belonging to Her Majesty, either in the United Kingdom, the Isle of Man, or the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs; in either of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been allowed to remain within British waters for the purpose of repair shall continue in any such port, roadstead, or waters, for a longer period than twenty-four hours after her necessary repairs shall have been completed. Provided, nevertheless, that in all cases in which there shall be any vessel (whether ships of war or merchant ships) of the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war or merchant ship) of the one belligerent, and the subsequent departure therefrom of any ship of war of the other belligerent; and the time hereby limited for the departure of such ships of war respectively shall always, in case of necessity, be extended so far as may be requisite for giving effect to this proviso, but no further or otherwise.

3. No ship of war of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination, and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.

4. Armed ships of either party are interdicted from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, the Isle of Man, the Channel Islands, or any of Her Majesty's Colonies or possessions abroad.

I have the honour to be,
My Lords,
Your Lordships' most obedient,
humble Servant,
GRANVILLE.

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[*] Similar letters have been addressed to the Treasury, Home Office, Colonial Office, War Office, and India Office.

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## No. 30.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September 5.)*

My Lord, *Royal Courts of Justice, September* 5, 1884.

Relations between France and China.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 27th ultimo, stating that he had to transmit to us the papers noted in the accompanying list,* concerning the present state of the relations between France and China.

1. That the French Government having recently inquired, through Her Majesty's Ambassador in Paris (from Lord Lyons, No. 468), whether, in the event of telegraphic communication being interrupted between the French Government and their officers in China, Her Majesty's Government would consent that cyphered telegrams between the French Government and Admiral Courbet should pass through the British Consulate.

2. That Her Majesty's Chargé d'Affaires was instructed to inform the French Government, in reply, that Her Majesty's Government would readily accede to their request in that matter, when such an emergency as that referred to should happen, provided it did not occur at a time when Her Majesty's Government is precluded from doing so by the duties of neutrality. (To Sir J. Walsham, No. 728.)

3. In a conversation which occurred between Sir J. Walsham and M. Jules Ferry, the latter asked whether the case supposed in the above reply of Her Majesty's Government would be applicable to the present state of relations between France and China. His Excellency stated that there could not be said to be war between the two countries, and, consequently, the ordinary regulations for the guidance of neutrals in respect of belligerents might be held to have not yet come into action. (From Sir J. Walsham, No. 506, Confidential.)

4. That the views of the French Government in regard to the actual state of the relations between France and China, is described in Sir J. Walsham's despatch No. 507 of the 24th August, and the measures indicated by M. Ferry which were to be taken with reference to the Port of Kelung in the Island of Formosa, and the Chinese Arsenal at Foochow, have been carried into effect, both those positions having been bombarded by the French Admiral.

5. That in view of the present position of affairs between France and China, the Governor of Hong Kong had requested to be furnished, by telegraph, with instructions for his guidance, and Her Majesty's Secretary of State for the Colonies had also expressed a wish that, hostilities having then apparently commenced, more detailed instructions should be issued both for the guidance of the Governor of Hong Kong, and of other Colonial Governors in the East. (From Colonial Office, August 25, 1884.)

6. That Mr. Currie was to state that no official notification had, up to the present time, been received from either France or China that a state of war actually existed between them.

7. That Mr. Currie was to request that we would take the papers forwarded therewith into our consideration, and favour your Lordship with our opinion on the following points:—

Questions as to—
(*a.*) Transmission of French cyphered telegrams through British Consulate.

(*a.*) Whether, considering the present state of the relations between France and China, Her Majesty's Government are precluded by the duties of neutrality from acceding to the request of the French Government that cyphered telegrams between the French Government and their Naval Commander in the China seas should pass through the British Consulate.

(*b.*) Instructions to Governors of Colonies.

(*b.*) What instructions should, under present circumstances, be sent to the Governor of Hong Kong and the other Governors of the British colonial possessions in the East.

(*c.*) Existence of a state of war.

(*c.*) Whether, in our opinion, such a state of war actually exists between France and China as to impose upon Her Majesty's Government the duties of neutrality, and, if so, what measures it would be advisable for Her Majesty's Government to take, with a view to preserve that neutrality.

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* Papers in Foreign Office letter of August 27, 1884:—
Viscount Lyons, No. 468, Confidential; to Sir J. Walsham, No. 728, Confidential; Sir J. Walsham, No. 506, Confidential; ditto, No. 507, Confidential; Colonial Office, August 25, 1884.
Paper in Foreign Office letter of August 29, 1884:—
Sir H. Parkes, No 31 (Telegraphic), August 27, 1884.

In obedience to your Lordship's commands we have the honour to report—

State of war exists.

That we are of opinion that a state of war now actually exists between France and China, and that Her Majesty's Government are precluded by the duties of neutrality from acceding to the request of the French Government that cyphered telegrams between the French Government and their Naval Commander in the China seas should pass through the British Consulate.

Transmission of cyphered telegrams inconsistent with neutrality.

Governors should be instructed to observe neutrality.

Instructions should be sent to the Governor of Hong Kong and to the other Governors of the British colonial possessions that war having broken out between France and China, the strictest neutrality should be observed on the part of the Representatives of Her Majesty's Government, and that no assistance to either belligerent in carrying on warlike operations should be afforded.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 31.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September 29.)*

My Lord, *Royal Courts of Justice, September* 27, 1884.

Franco-Chinese hostilities. Question as to neutrality.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 9th instant, stating that our Report of the 5th September relative to the question of the observance of neutrality by this country in respect to the hostilities between France and China had been considered by your Lordship in communication with Her Majesty's Secretary of State for the Colonies; and that Mr. Currie was directed to inform us that your Lordship and the Secretary of State for the Colonies were of opinion that as France and China had both shown a desire that a state of war should not be held to exist, it would, on grounds of policy, be unadvisable to make at present any declaration of neutrality.

War not declared.

That a telegram had accordingly been sent to the Governor of Hong Kong informing him that, in the absence of any declaration of war by either the French or Chinese Government, it was not proposed to issue any formal proclamation of neutrality, but that the provisions of the Foreign Enlistment Act should be strictly observed.

That Mr. Currie was to inclose a copy of that telegram, together with our Report of the 5th instant, and that he was to request us to be good enough to inform your Lordship whether we concurred in the instructions sent to the Governor of Hong Kong, and whether we would, under the circumstances, consider it advisable so to modify our Report as to suspend the adoption of the course recommended by us until one or other of the parties had declared war.

That the papers previously submitted to us were sent therewith for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

State of war not necessarily existing.

That isolated acts of hostility may no doubt be undertaken by one nation against another without their being at war, so as to bring into operation all those duties of neutral nations which result from a state of war.

So far as the French Government are concerned it appears that they intend, at present, their military operations to have this limited character; and the Chinese Government appear also indisposed to declare war.

Approve instruction sent to Hong Kong, none need be sent to other Colonies.

Under these circumstances, whilst we concur in the instructions sent to the Governor of Hong Kong, it may be that no instructions need be at present sent to the Governor of any other British possession; but it should be understood that any assistance afforded to the actual hostile operations of either belligerent would certainly be very objectionable.

Our Report of the 5th September did not contemplate any "declaration of neutrality," as appears to be suggested by Mr. Currie's letter of the 9th instant.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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State of war exists.

Similar instructions should be sent to all Colonies.

I am still of the opinion given by the Attorney and Solicitor-General and myself in our Report of the 5th instant, that a state of war now actually exists between France and China, and, therefore, I am unable to see why, on legal grounds, different instructions should be sent to the Governor of Hong Kong and to the Governor of any other British possession, or instructions sent to the Governor of Hong Kong and not to the Governor of any other British possession, respecting their duties in relation to the state of things existing between France and China.

(Signed) J. PARKER DEANE.

*List of Papers sent in Foreign Officer letter of September* 9, 1884.

Lord Lyons, No. 468, Confidential; to Sir J. Walsham, No. 728, Confidential; Sir J. Walsham, No. 506, Confidential; ditto, No. 507; Colonial Office, August 25; Sir H. Parkes (Telegraphic), No. 31, August 27; telegram to Hong Kong and Straits, September 2; Law Officers' Report, September 5, 1884.

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## No. 32.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October* 25.)

My Lord, *Royal Courts of Justice, October* 25, 1884.

Searching of British vessels by French naval authorities in China.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd instant, stating that, with reference to our Reports of the 5th and 27th September last, he was directed by your Lordship to transmit to us a correspondence which had taken place respecting the searching of British vessels by the French naval authorities in China, to prevent the landing of contraband of war.

That the searching of these vessels was stated to have taken place off Tamsuy and Kelung, in the Island of Formosa, and, therefore, within the radius of the military operations carried on there by the French forces. That the British Admiral on the station protested against that proceeding, on the ground that the French Government denied the existence of war, and that representations were also addressed to the French Government through Her Majesty's Embassy at Paris. That the French Government admitted the irregularity of the proceeding, on the ground that no effective blockade had been established and notified.

M. Ferry's reply to Lord Lyons.

That on the 17th instant Her Majesty's Ambassador at Paris was instructed to ask the French Government whether any instructions had been issued to their naval authorities in China to abstain from searching British vessels. That the answer of the Minister for Foreign Affairs (Lord Lyons' No. 612 of the 18th October) appeared to your Lordship to be most unsatisfactory. That M. Ferry again admitted that the searching of two British ships referred to was irregular, on the ground that no regular blockade was in force at the time, and that he stated that the French Admiral had been instructed to establish an effective blockade of Tamsuy and another port in Formosa; and added that it was held by his Government, and, as he understood, by the British Government also, that "an effective blockade, regularly notified, is valid," whether or no war had been formally declared. That he did not admit, however, that a state of war would be the legal consequence.

That the blockade of the ports of Formosa had since been formally declared and duly notified. (See Admiralty, 21st October, and M. Waddington, 22nd October; telegram from Sir H. Parkes, No. 39, 22nd October, and telegram from Lord Lyons, No. 27, 23rd October.)

That your Lordship apprehended that M. Ferry was right in stating that the blockade was valid, "though war has not been formally declared," for the reason that war might lawfully exist without such declaration, and that the notification to neutral Governments of a blockade *jure gentium* was of itself a declaration of the existence of a state of war (Law Officers' Report, Haïti, 6th May, 1876). That if so, the French Government could not any longer maintain that France was not at war with China (see Consul Hughes' telegram, 29th September). That your Lordship apprehended further that the right of searching neutral vessels for contraband of war was a belligerent right which was quite independent of the existence or non-existence of a belligerent blockade, and which could only be exercised during a state of war.

That, as regarded the searching of the British vessels in question, it would be observed that they were not visited on the high seas, but apparently in Chinese waters, at the entrance of the Chinese ports against which the French Admiral had established what appeared to have been intended for a "pacific blockade," as distinguished from a "belligerent blockade" (see "Hall on International Law," p. 312). But that a belligerent blockade of the ports of Formosa had now been established and formally notified to neutral Governments, and that it appeared somewhat doubtful from M. Ferry's language whether the French Government did not propose to exercise the right of visit both on the high seas and in Chinese waters, and yet to maintain the position that France was not at war because "war has not been formally declared."

That Her Majesty's Government still entertained some hope that an amicable settlement might be arrived at, and that they were reluctant to take any steps which might aggravate the situation; but that your Lordship felt some doubt as to whether, after the notification of blockade which had been addressed to them by the French Government, Her Majesty's Government would be justified in withholding any longer the issue of the usual Proclamation of Neutrality.

Should Proclamation of Neutrality be issued?

That Sir Julian Pauncefote was to inclose the latest despatches from Her Majesty's Minister at Peking, from which we would see that the Chinese Government were still indisposed to declare war against France, though they wished it to be understood that France was making war against China (see Sir H. Parkes' Nos. 161, 167, and 169), and that he was to request that we would take the papers transmitted therewith into our consideration, and favour your Lordship with our opinion as to whether, under the peculiar circumstances of the case, Her Majesty's Government, while recognizing the blockade which had been notified to them, and the existence of a state of war and the belligerent rights flowing therefrom, could properly abstain from issuing a Proclamation of Neutrality, and enforcing the strict provisions usually inserted therein (see Form).

As to limiting the Proclamation to Hong Kong and the Straits, and as to reply to M. Ferry.

That if not, whether the issue of the Proclamation and the enforcement of its provisions could be limited to the two British Colonies of Hong Kong and the Straits, which are situated near the seat of war; and, in either case, whether any further, and, if so, what, communication should be addressed to the French Government with reference to M. Ferry's reply to Lord Lyons' inquiry and to the present position of the question.

That it was presumed that the notification of blockade should be published at once in the "Gazette," and that it would accordingly appear in the issue of the 24th.

That a Memorandum by Sir E. Hertslet, showing precedents of wars during which no Proclamation of Neutrality was issued, was inclosed.

In obedience to your Lordship's commands we have the honour to report—

Notification of a blockade might be treated as a notification of a state of war, and a Declaration of Neutrality might be issued.

That we think the notification of a blockade which has been received might properly be treated by Her Majesty's Government as a notification of a state of war, and a Declaration of Neutrality might be issued upon it.

It appears, however, that both the French and Chinese Governments are still unwilling to declare war, and whilst engaged in hostile operations are desirous of continuing dealings with neutrals in a manner which would be impossible if once war were declared.

Although our information on the subject is imperfect, we suppose that the imposition on Her Majesty's subjects of the full duties of neutrality would be more disadvantageous than to permit the present state of things to continue, perplexing as it is. If so, we think it would be competent for Her Majesty's Government to abstain from enforcing strictly all the neutral obligations of British subjects.

Not necessary to issue a Declaration of Neutrality.

It would be an answer to a complaint by either of the belligerent Powers that they had insisted that a state of war did not exist, and themselves acted upon that understanding. In any case, it does not seem necessary to issue a Declaration of Neutrality, though if it were determined to enforce a strict neutrality it would no doubt be expedient to do so.

Proclamation of Neutrality cannot be limited to the Colonies.

We do not think the issue of the Proclamation and the enforcement of its provisions can be limited to the Colonies near the seat of war, as suggested.

Action of Her Majesty's Government with regard to M. Ferry's reply to Lord Lyons must be governed by considerations of policy.

The question whether any, and, if so, what, communication should be addressed to the French Government with reference to M. Ferry's reply to Lord Lyons must be determined by the considerations of policy to which we have called attention. The terms of the communication would depend upon whether Her Majesty's Government desired to force the French Government to a declaration of war, and so to terminate the present ambiguous situation, or whether it were considered more expedient to avoid undertaking all the obligations of strict neutrality.

The action to be taken generally must, in our opinion, be governed by considera-

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tions of policy to which we have called attention, but upon which we do not feel competent to express an opinion.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

I have signed this Report, agreeing that the action of Her Majesty's Government may depend on considerations of policy.

Difficulty which may arise should the French seize a British ship.

A difficulty may, however, arise if the French should not only search, but seize, a British ship, either for breach of blockade or for carrying contraband of war This possible occurrence might, in my opinion, properly be suggested to the French Government, and lead to some protection of neutral rights.

(Signed) J. PARKER DEANE.

*List of Papers sent.*

1. Law Officers' Report, September 5, 1884.
2. Ditto, September 27, 1884.
3. Admiralty, September 29, 1884.
4. Ditto, October 1, 1884.
5. Sir J. Walsham, No. 576, October 2, 1884.
6. Admiralty, October 8, 1884.
7. Sir J. Walsham, No. 599, October 11, 1884.
8. Lord Lyons. No. 612, October 18, 1884.
9. Mr. Plunkett (Telegraphic), October 18, 1884.
10. Ditto, ditto, October 21, 1884.
11. Admiralty, October 21, 1884.
12. M. Waddington, October 22, 1884.
13. Sir H. Parkes, No. 161, August 27, 1884.
14. Ditto, No. 167, August 29, 1884.
15. Ditto, No. 169, August 29, 1884.
16. Law Officers' Report, May 6, 1876, Confidential No. 4028, p. 41.
17. Form of Proclamation of Neutrality.
18. Sir H. Parkes (Telegraphic), No. 39, October 22, 1884.
19. Lord Lyons (Telegraphic), No. 27, October 23, 1884.
20. Memorandum by Sir E. Hertslet, October 23, 1884.

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## No. 33.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November 6.)*

My Lord, *Royal Courts of Justice, November 5, 1884.*

Franco-Chinese hostilities. Sale of contraband of war by British subjects to the French, and transmission of telegrams for them by a British Company.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 30th ultimo, stating that, with reference to his letter of the 23rd ultimo, he was to transmit to us correspondence,* in which the question was raised as to whether, during the existing hostilities between France and China, the Chinese Government were entitled to require that British subjects in China should refrain from selling contraband of war to the French, and that a British Telegraph Company, having stations in China, should not transmit messages in cypher through such stations to the French.

That it would seem that different conditions applied to British subjects residing in China, as regarded the observance of neutrality, from those which might be applicable in neutral territory. That although the sale to a belligerent of coal and munitions of war in neutral territory might not constitute a breach of neutrality, it was conceived that a prohibition by the Chinese Government against the sale of munitions of war to the French, during the existing hostilities between France and China, was binding on all foreigners residing in China, notwithstanding the immunity they enjoyed by Treaty from the action of Chinese Courts, and, if so, that such prohibition should be enforced on them by their respective Governments.

That Sir H. Parkes made no such distinction, but that M. von Brandt, the German Minister, differed with him on that point.

That Sir E. Hertslet's collection of Treaties between Great Britain and China was inclosed,* and that our opinion was requested as to whether the prohibition of the Chinese Government against the sale of munitions of war and the communication of cyphered messages to the French by British subjects in China, during the existing hostilities, should be enforced by Her Majesty's Government, and, if so, whether it could be done by a Regulation of Her Majesty's Minister at Peking, under sections 7 and 8 of the China Order in Council of the 25th October, 1881,† of which a copy was inclosed.

In obedience to your Lordship's commands we have the honour to report—

That, we think that if, during the existence of hostilities, the Chinese Government prohibit the selling munitions of war or transmitting messages in cypher to the French, by any person within Chinese territory, they are entitled to require that British subjects in China should refrain from violating such prohibition.

We concur in thinking that different conditions apply to British subjects residing in China from those which may be applicable in neutral territory.

But for the exterritorial jurisdiction possessed by Great Britain in China, the Chinese Government would be entitled to enforce against British subjects any violation of such a prohibition as that suggested.

And we think that this immunity from liability to Chinese Tribunals on the part of British subjects does not deprive the Chinese Government of the sovereign right to prohibit aid being given by persons resident in their territory, to the operations of those who are engaged in hostilities with them.

Prohibition of the Chinese Government should be enforced by Her Majesty's Government by a Regulation under Order in Council of the 25th October, 1881.

We think, therefore, that the prohibition of the Chinese Government should be enforced by Her Majesty's Government, and that this may properly be done by a Regulation of Her Majesty's Minister at Peking, under sections 7 and 8 of the China Order in Council of the 25th October, 1881.

We may add that we have expressed this opinion on the assumption that the prohibition of the Chinese Government applies equally to all persons within Chinese territory whether Chinese or British subjects, or the subjects of any other foreign Power.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 34.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November 26.)*

My Lord, *Royal Courts of Justice, November 25, 1884.*

Proposed Agreement between Great Britain and France relative to disposal of property left by subjects dying on board vessels of the other country.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he was to transmit to us the papers‡ relating to a proposal on the part of the French Government for the conclusion of an Agreement between Great Britain and France relative to the disposal of property of small value left by subjects or citizens of Great Britain and France dying on board vessels of the other country.

That our opinion was requested as to whether there would be any legal objection to such an Agreement as was proposed, provided it be made subject to the rights of any person claiming the property, and opposing, in which case the ordinary course of law would be followed, and also whether if, in our opinion, there was no objection to the conclusion of such an Agreement, it would be desirable to fix any limit as to the value of the property, which could be dealt with under its provisions.

In obedience to your Lordships commands we have the honour to report—

No objection to Agreement.

That we understand the proposal to be that the property left with the Consuls of Great Britain and France respectively should be deposited with them for safe custody in cases where no person is claiming the property or opposing its being so deposited. If this be so, we see no legal objection to an Agreement for the purpose of effecting such an object.

There appears to be no reason in point of law for making a distinction between property of large or small value.

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* Sir H. Parkes, No. 169, August 29; ditto, No. 171, September 2; ditto, No. 172, September 3, 1884.

* Hertslet's Treaties on Trade. China.

† Order in Council, October 25, 1881, Confidential No. 4520*.

‡ Viscount Lyons, No. 38, Consular, June 17; to Board of Trade, June 20; Board of Trade, July 19; to Board of Trade, August 2; Board of Trade, August 16; to Treasury, August 25; Treasury, September 9, 1884.

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Limit of value should be fixed.

But we can conceive that it might be inconvenient to British Consuls to be made the depositaries of property of large value, and therefore, as the proposal of the French Government has reference to property of small value, it might probably be expedient to agree to fix a limit of value.

Limit of 50*l.* too small.

Having regard to the object in view, and to the fact that the proposed Agreement would apply principally to passengers' luggage, the suggested limit of 50*l.* appears too small to answer the purpose.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 35.

*The Law Officers of the Crown to Earl Granville.*—(*Received December* 12.)

My Lord, *Royal Courts of Justice, December* 11, 1884.

Steam-cutters being built at Cowes by Messrs. White for France.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that he was to transmit to us the papers noted in the accompanying list, which related to the building by Messrs. White, of Cowes, of ten steam-cutters for the French Government.

War not yet declared by France or China.

That we would perceive from the printed correspondence between your Lordship and the French Ambassador, and from Sir J. Pauncefote's letter of the 27th November to the Treasury, that, in view of the existing state of relations between France and China, Her Majesty's Government had decided not for the present to issue the usual Proclamation of Neutrality, but to confine themselves to a strict enforcement of the Foreign Enlistment Act.

Proposed note to French Ambassador.

That Sir J. Pauncefote was to add that, in view of the opinion expressed by the Law Officers in their Report of the 30th March, 1881, your Lordship proposed to address a note to the French Ambassador in the terms of the draft inclosed, inquiring the purpose for which the steam-cutters in question had been ordered by the French Government.

That our opinion was requested as to whether the proposed note to the French Ambassador was right and proper; and whether, under the circumstances, it was desirable that Messrs. White should be required to give a bond in a sufficient sum that the boats should not be removed without the sanction of Her Majesty's Government; and that we would favour your Lordship with any suggestions we might have to make as to the course which it would be desirable to pursue in the matter.

In obedience to your Lordship's commands we have the honour to report—

That, as we understand, the state of things existing at the time of our former Reports still continues, and neither France nor China has declared war publicly, or given notice to the neutral Powers that a state of war exists.

Assurance that they will not be used against China sufficient,

It appears that the steam-cutters building by Messrs. White are not themselves armed, even if intended for the equipment of vessels of war. Under the peculiar circumstances of the case, we would submit for consideration whether it would not be sufficient to obtain an assurance from the French Government that they shall not be used, directly or indirectly, in connection with the hostilities between France and China. Subject to this consideration we approve of the proposed draft.

and promise that they shall not leave the yard without permission of Her Majesty's Government.

It will not, we think, be necessary to require a bond at present from Messrs. White if they will give an undertaking, as communications are proceeding between Her Majesty's Government and the French Government on the subject, that the steam-cutters should not be allowed to leave their yard without the permission of Her Majesty's Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

*List of Papers.*

Treasury, December 5, 1884.
Printed correspondence with M. Waddington (see Confidential No. 5045):—
  M. Waddington, October 22 and 24, November 5 and 21, 1884.
  To M. Waddington, October 25 and 31, November 11 and 26, 1884.
To Treasury, November 27, 1884.
Proposed draft to M. Waddington.
Law Officers' Report, March 30, 1881 (Confidential No. 4637, p. 42).

### Annex.

*Draft of Letter to M. Waddington.*

M. l'Ambassadeur, *Foreign Office, December* , 1884.

I HAVE the honour to state to your Excellency that information has reached Her Majesty's Government that ten steam-cutters are now being built by Messrs. White, of Cowes, to the order of the French Government.

Your Excellency is aware from the terms of my note of the 26th ultimo that, in view of the existing hostilities between France and China, Her Majesty's Government feel it to be incumbent upon them to enforce the provisions of the Foreign Enlistment Act.

I have therefore the honour to state to your Excellency that Her Majesty's Government would be glad to be informed of the purpose for which the steam-cutters in question have been ordered by the French Government, and, if they are destined for the equipment of vessels of war, to receive an assurance that they shall not be used, directly or indirectly, in connection with the hostilities between France and China.

I have, &c.

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## No. 36.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.* – (*Received December* 23.)

My Lord, *Royal Courts of Justice, December* 22, 1884.

Franco-Chinese hostilities. Observance of neutrality by Great Britain in absence of proclamation of war.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th instant, stating that he was directed to transmit the papers noted in the accompanying list,* which related to the observance of neutrality by Great Britain during the hostilities at present existing between France and China.

That we would learn from the printed correspondence with the French Ambassador, and from the letters of the Foreign Office to the Colonial Office, and to Her Majesty's Representatives in China and Japan, that Her Majesty's Government had decided, for the present, not to issue the usual Proclamation of Neutrality, but to confine themselves to a strict enforcement, throughout Her Majesty's dominions, of the provisions of the Foreign Enlistment Act.

Question as to issue of definite instructions to Governors of Colonies.

That in the letter from the Colonial Office of the 22nd November it was suggested, with especial reference to Hong Kong, Ceylon, and the Straits Settlements, that definite instructions should be given to the Governors of those Colonies as to their duties under section 11 of the Foreign Enlistment Act.

That your Lordship apprehended that no difficulty should arise on that section, and that no special instructions were required, as it did not apply to the furnishing of supplies to belligerent vessels, but only to the fitting out of naval or military expeditions, as to which the terms of the section presented no ambiguity. But that your Lordship concurred in the expediency of furnishing the Colonial Governors with general instructions for their guidance in carrying out the provisions of section 10, which related to aiding the warlike equipment of a belligerent vessel.

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* Foreign Enlistment Act, 33 & 34 Vict., cap. 90; Printed Correspondence with M. Waddington, Confidential Print No. 5045; to Colonial Office, November 18; to Sir H. Parkes and Mr. Plunkett, November 17; Colonial Office, November 22; Marquis Tsêng, November 21; to Marquis Tsêng, November 26; Memorandum by Sir E. Hertslet, November 27; Memorandum by Captain W. Murray, 1883; Report by Law Officers, September 2, 1884, with draft Proclamation of Neutrality and letter to Departments (amended as suggested by Law Officers).

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That the Chinese Minister, in his letter of the 21st November last, drew attention especially to the question of coaling.

That Sir J. Pauncefote was to refer us to the Memoranda by Sir E. Hertslet and Captain Wolfe Murray, which contained certain precedents and citations from various authorities upon those questions.

Suggesting limitation as to repairs, supply of coals, &c.

That your Lordship apprehended that Her Majesty's Government were not bound to enforce against French or Chinese vessels those precautions enjoined in the letters to the Admiralty and other Departments which usually accompanied the issue of a formal Proclamation of Neutrality, but did not come within the terms of the Foreign Enlistment Act, such, for instance, as the prohibition to remain in a British port for more than twenty-four hours. But that your Lordship would be glad to be favoured with our opinion as to the instructions which might be given with regard to the extent of the repairs which should be allowed to a belligerent vessel, and the quantity of provisions, and especially of coal, which might be supplied to her consistently with the prescriptions of the Foreign Enlistment Act; whether, for instance, the supply of coal should be limited in the manner laid down in the Regulations issued by Her Majesty's Government during the Civil War in America, and cited in the passage from Sir E. Creasy's work, referred to in Sir E. Hertslet's Memorandum, whether the repairs should be restricted to such as might be strictly necessary to enable a ship to hold the sea on a voyage to the nearest national port, and whether a similar limitation be imposed on the supply of provisions for the crew. Also whether the Governors of Colonies should be instructed to allow no repairs to be effected, and no supplies furnished to a belligerent vessel except under the supervision of the local authorties, whose duty it would be to report at once to the Governor any case in which the limits imposed were being transgressed.

That Sir J. Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Suggestions as to repairs of vessels and supply of coals and provisions.

That we think instructions should be sent to the Colonial Governors with reference to the supply of coal to the belligerents similar in spirit to those issued during the American war. But we would suggest for consideration whether, having regard to the local situation of the French and Chinese ports, the restriction should be precisely the same. The object should be to prevent such supplies as would assist the naval operations.

Approve limitations suggested. Supervision of local authorities.

We think that instructions should be given that the repairs to be done and provisions to be supplied should be limited in the manner suggested by your Lordship. We think, too, that the Governors should be instructed to allow no repairs to be effected and no supplies to be furnished to a belligerent except under the supervision of the local authorities, whose duty it would be to report at once to the Governor any case in which the limits imposed were being transgressed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 37.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December* 30.)

My Lord, *Royal Courts of Justice, December* 29, 1884.

British pilots on French ships during operations against Foochow. Chinese demand for their prosecution.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th instant, stating that he was to transmit to us the papers noted in the margin,* from which it appeared that the Chinese authorities at Foochow had applied to Her Majesty's Consul at that place to proceed against two British subjects who had served as pilots on board French ships of war during the operations of the French fleet against that place on the 23rd August last (Sir H. Parkes, No. 205).

Sir H. Parkes' instructions.

That Sir H. Parkes also forwarded a Report, drawn up by the Crown Advocate at Shanghae, as to the manner in which the case of those men should be dealt with, which Report had been communicated to the British Consul at Foochow for his guidance in the matter.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether Sir H. Parkes' instructions to Consul Sinclair might be approved.

In obedience to your Lordship's commands we have the honour to report—

Mr. Sinclair's answer not satisfactory.

That we think the answer of Mr. Sinclair to the Chinese authorities is not in all respects satisfactory.

Prosecutor should be appointed.

Breach of Foreign Enlistment Act and Order in Council possible without declaration of war.

Mr. Sinclair states that as he cannot be both Judge and prosecutor the Chinese authorities must appoint some person to conduct the prosecution. Now, the two pilots appear clearly to have committed an offence of a serious character against the British law. Under these circumstances, the British authorities may, we think, if it should become practicable to do so, be properly called upon by the Chinese Government to prosecute them. We do not see why the difficulty pointed out by Mr. Sinclair may not be met either by the British Minister appointing a person to conduct the prosecution, or in some other way. Mr. Sinclair further urges that it is not likely that a conviction could be obtained, because war had not been formally declared. But we are of opinion that there may be a breach both of the China Order in Council VI, 1881, and of the Foreign Enlistment Act, without a formal declaration of war. Upon this point, however, it would appear that Mr. Sinclair has been set right by the transmission to him, by Sir H. Parkes, of the Crown Advocate's opinion.

Qualified approval of instructions.

Subject to these observations, we think Sir H. Parkes' instructions to Consul Sinclair may be approved.

Difficulties as to arrest.

If the pilots should not return to China, and so render it impossible to arrest them until after the conclusion of peace, and if they should then still be in the French naval service, there may be a difficulty in prosecuting them in the Consular Court, but it is not necessary to consider this contingency at present.

They should, we think, in any case be arrested if they come within the reach of British authorities.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# General.

## No. 38.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 29.)*

My Lord, *Royal Courts of Justice, May* 28, 1884.

International Convention for the protection of industrial property, signed at Paris on the 20th March, 1883. Draft Order in Council as to accession of Great Britain.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 10th instant, stating that he was directed to transmit to us the papers with reference to the issue of an Order in Council under sections 103 and 104 of the Patents, Designs, and Trade Marks Act, 1883, to give effect to the accession of this country to the International Convention for the Protection of Industrial Property, signed at Paris on the 20th March, 1883.

That the draft of an Order in Council for the above purpose would be found in the letter from the Board of Trade to the Foreign Office of the 6th instant; and that Sir Julian Pauncefote was to request that we would inform your Lordship whether, in our opinion, the draft was sufficient and might be submitted to the Queen for Her Majesty's approval.

In obedience to your Lordship's commands we have the honour to report—

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* China and Japan Order in Council, 1865 (Confidential No. 1354); Attorney-General, February 25, 1878 (Confidential No. 4280, p. 65); Solicitor-General and Dr. Deane, February 27, 1878 (Confidential No. 4280, p. 66); Law Officers, August 17, 1880 (Confidential No. 4539, p. 15); Sir H. Parkes, No. 205, October 8, 1884.

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Approve draft Order in Council.

That, in our opinion, the draft is sufficient, and may be submitted to the Queen for Her Majesty's approval.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

List of Papers to accompany reference to Law Officers of the Crown, May 10, 1884:—
1. (A) Patents, Designs, and Trade Marks Act, 1883, 46 & 47 Vict., cap. 57.
2. (B) Print giving Convention, Protocol, Accession, and Acceptance, Treaty No. 729.
3. (C) Board of Trade Letter, May 6, 1884, inclosing draft Order in Council.
For proposed Order in Council see Confidential No. .

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## No. 39.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 12.)

My Lord, *Royal Courts of Justice, September* 11, 1884.

Liability of Resident Clerks to assessment under Schedule A of income tax in respect of their rooms at the Foreign Office.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th ultimo, stating that he was to transmit to us the papers* relating to the liability of the Resident Clerks in the Foreign Office to pay assessments under Schedule A of the income-tax in respect of their occupation of rooms in the Foreign Office.

That the Resident Clerks were members of the Foreign Office appointed by the Secretary of State to attend to any immediate and pressing work at the Foreign Office out of office hours.

That that entailed their residence in the Office, and that officially furnished rooms which formed an integral part of the Foreign Office were assigned to them for that purpose.

That the rooms occupied by them were not separated from the rest of the building by any structual division, as *e.g.*, in the case of the apartments at Hampton Court Palace, and had no separate access to the public street. That the rooms were open to any one on official business, and that their occupation was compulsory and indispensable for the discharge of the public duties of the Resident Clerks.

That in 1857 the Law Officers of the Crown advised to the effect that if the Resident Clerks had "the exclusive occupation of their respective apartments as part of their official emoluments, which we collect from the facts to be the case, we think they are properly assessed to the property tax under the 8th Rule, No. 4, Section 60 of the Statute 5 and 6 Vict., cap. 35.

Whether the use of the apartments might be considered as part of their official emoluments is a question of fact as to which there may be a diversity of opinion. But that there could be no doubt that the occupation was compulsory for official purposes, and that on that point Sir J. Pauncefote was to refer us to a decision on Appeal in the Court of Exchequer in 1877.†

That in that case Chief Baron Kelly, in giving judgment in favour of the Appellant, laid down that compulsory occupation by a public officer was not such occupation as rendered him liable to the payment of income-tax in respect of the premises allotted for his residence in the discharge of public duties, a decision in which the Chief Baron was supported by Mr. Baron Cleasby and Mr. Baron Pollock.

That our opinion was requested as to whether the Resident Clerks have such an "occupation" of the rooms allotted to them as rendered them liable to assessment under the 8th Rule of No. 4, Section 60 of the Statute 5 and 6 Vict., cap. 35.

In obedience to your Lordship's commands we have the honour to report—

Want further information before giving any opinion.

That before expressing an opinion upon the question submitted to us, we desire further information in relation to the facts connected with the occupation of the rooms in question by the Foreign Office Clerks.

We especially wish to know whether the occupation of such rooms is allowed as any equivalent for salary, whether any Clerk has any particular room appropriated for his personal use (as, for instance, a bed-room) over which he has the sole control, and into which no one can enter without his permission.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Act 5 & 6 Vict., c. 35; "Bent *v.* Roberts," 1877, Exchequer Cases, pp. 203-4; to Treasury, May 8; Treasury, June 2; to Law Officers, July 16; Law Officers, December 19, 1857; Inland Revenue, March 21, 1884; Resident Clerks, April 5, 1870.

† "Bent *v.* Roberts," Exchequer Cases, pp. 203-4 (transmitted).

## No. 39*.

*The Law Officers of the Crown to the Earl of Derby.*—(**Communicated in Colonial Office** *letter of June* 23, 1886; *received* **June 24.**)

My Lord, *Royal Courts of Justice, December* 11, 1884.

Jurisdiction over other than British subjects in a Protectorate not British soil.

WE were honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 31st October last, stating that he was directed to inform us that Her Majesty having assumed the Protectorate of a portion of the southern coast of New Guinea, it became necessary to consider by what means effect might be given to the statement made by Mr. Gladstone in the House of Commons on the 11th August last, viz., "That within the limits of it (the Protectorate) the jurisdiction of the Government will be sufficient to afford protection to the natives against lawless action, by whomsoever taken, whether by British subjects or foreigners."

That by the Foreign Jurisdiction Act of 1843 (6 & 7 Vict., cap. 94, sec. 1), Her Majesty "may hold, exercise, and enjoy any power or jurisdiction which Her Majesty now hath, or may at any time have, within any country or place out of Her Majesty's dominions, in the same and as ample a manner as if Her Majesty had acquired such power or jurisdiction by the cession or conquest of territory."

That the preamble of the Act recited that such power or jurisdiction might be acquired "by Treaty, Capitulation, grant, usage, sufferance, or other lawful means."

That Orders in Council had been at various times issued under that Act and subsequent amending Acts for establishing Courts in foreign countries, *e.g.*, China and Japan, for exercising over British subjects the jurisdiction possessed by Her Majesty in such countries; and that questions having arisen in South Africa as to the power of acquiring, by Treaty, jurisdiction over the subjects of foreign civilized States, the Law Officers, on the 3rd August, 1880, advised "that Her Majesty can by Treaty with a native Chief obtain jurisdiction over subjects of foreign civilized States resident within such territories, but that the exercise of such jurisdiction might be made the ground of diplomatic objection by the civilized State to whose subject it is extended, and that it should not, as a rule, be exercised without the concurrence of that State given generally or in the particular case."

That "The Foreign Jurisdiction Act, 1878" (41 & 42 Vict., cap. 67, sec. 5), conferred power and jurisdiction over British subjects resorting to countries not subject to any Government from whom Her Majesty might obtain power or jurisdiction by Treaty or any of the other means mentioned in "The Foreign Jurisdiction Act, 1843."

That it might be taken, for the purposes of the present reference, that there was not in New Guinea any Government from whom Her Majesty might obtain power and jurisdiction by any such means.

That one of the reasons, if not the principal reason, which induced Her Majesty to assume a Protectorate in New Guinea had been the desire to preserve the natives in the enjoyment of their lands, and to protect their persons and property from outrage at the hands of unprincipled white men, and that with that object to obtain and enforce, for the present, full control of all settlement upon the protected area.

Question as to protection of British subjects and natives in New Guinea.

That there would appear to be sufficient power under the Foreign Jurisdiction Acts, 1843-78, to control the actions of British subjects by means of Orders in Council passed under those Acts; but that a jurisdiction which conferred no protection on British subjects against the acts of natives, and which conferred no protection on either natives or British subjects against the acts of foreigners, subjects of civilized States, did not meet the necessities of the present case.

That it therefore became important to consider whether the protected area should not be brought more directly under the sovereignty of the Queen, not with any desire for the acquisition of the soil, but as the best means of securing an effective and legal control over all persons resorting thereto.

That Sir R. Herbert was accordingly to request us to favour your Lordship with our opinion—

1. Whether legal jurisdiction over persons other than British subjects can in any way be acquired within the protected area if it does not become British soil?

2. Whether, if a British officer, acting under authority of Her Majesty's Government, were to proclaim the extension of Her Majesty's sovereignty to the territory in question, it would thereupon become part of Her Majesty's dominions?

3. Whether, in that case, it would be territory acquired by cession or conquest, so as to give Her Majesty the right to make laws within it?

4. Whether it would be competent to Her Majesty, by commission under her sign

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manual and signet, to appoint an officer to be administrator of the territory, and by Proclamation to make laws in the name and on behalf of Her Majesty?

In obedience to your Lordship's commands we have the honour to report—

Such jurisdiction cannot be acquired unless soil become British.

1. That we are of opinion that legal jurisdiction over persons other than British subjects cannot, under the circumstances, be acquired within the protected area in question if it does not become British soil.

We understand that there is no native power within that area capable of ceding to the Queen jurisdiction over the natives, or, in fact, over any one.

As to assumption of possession.

2. We are of opinion that if a British officer, acting under authority of Her Majesty's Government for that purpose, were to proclaim the extension of Her Majesty's sovereignty over the territory in question, and were also to assume possession of it, it would thereupon become part of Her Majesty's dominions.

And we think that if Her Majesty were to appoint an officer to administer and govern the territory over which the Protectorate has been declared, and to send him, in pursuance of that appointment, to such territory, that would amount to an assumption of possession on behalf of Her Majesty.

Acquisition of possession equivalent to settlement.

3. We much doubt whether, in such a case, the territory could be said to be acquired either by cession or by conquest. It appears to us that the acquisition must rather be regarded as by settlement; and if this be so, the Statute 23 & 24 Vict., cap. 121, which empowers the Crown to legislate by Order in Council, or to delegate legislative powers in the manner therein pointed out, in all possessions of Her Majesty not acquired by conquest or cession, and not within the legislative authority of any of Her Majesty's possessions abroad, will apply.

Powers of Crown as to administration of such country.

4. We are of opinion that it would be competent to Her Majesty, by commission under her sign manual, to appoint an officer to be Administrator of the territory. Such officer would not have power to make laws by Proclamation. We have already pointed out that the power to make laws in such a territory is conferred by the Statute 23 and 24 Vict., cap. 121.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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# Germany.

## No. 40.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 7.)*

My Lord, *Royal Courts of Justice, May 6, 1884.*

Administration of oaths, &c., by Her Majesty's Consular officers in Germany to persons not British subjects.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 21st March, stating that he had the honour to transmit to us papers relating to the administration of oaths and the taking of affidavits by Her Majesty's Consular officers in Germany to persons not British subjects.

That the British Acts of Parliament giving discretionary power to Her Majesty's Diplomatic and Consular officers abroad to administer oaths* contained no restriction on that point.

Liability of a British Consul to prosecution and withdrawal of his Exequatur.

But that it appeared that the administration of oaths by a British Consul to any but British subjects was by the law of some of the German States an offence rendering the Consul liable to prosecution, and even to the withdrawal of his Exequatur.

Proposed Circular to Consular officers in Germany.

That Her Majesty's Ambassador at Berlin had obtained from the German Government an official Memorandum (Inclosure 1 in Lord Ampthill's No. 5) containing a statement of the German law on the subject; and that his Excellency had suggested that a Circular should be issued to Her Majesty's Consular officers in Germany, instructing them to abstain for the future from administering oaths in any form at their Consulates to persons not being British subjects, until satisfied that they were justified by the local law in so doing.

That a correspondence was inclosed which had lately taken place between the Foreign Office and the Board of Inland Revenue on the subject of the administration of oaths in this country by foreign Consuls, and that our attention was directed to section 13 of 5 & 6 Will. IV, cap. 62.

If foreign Consuls in the United Kingdom can administer oaths to persons of any nationality, propose to ask German Government to extend reciprocal facilities to British Consuls in Germany.

That if we should be of opinion that under the concluding words of that section a foreign Consul in the United Kingdom might lawfully administer oaths to persons of any nationality for the purposes of transactions pending or to be conducted in the country which he represents as Consul, your Lordship would be disposed to ask the German Government to extend reciprocal facilities to British Consuls in Germany.

That Mr. Lister was to request our opinion on the question raised as to the effect of the concluding words of section 13 of the Act above referred to, and also as to whether the proposed Circular, of which the draft was inclosed, might properly be issued.

In obedience to your Lordship's commands we have the honour to report—

Foreign Consuls in the United Kingdom may administer oaths to persons of any nationality.

That we are of opinion that a foreign Consul in the United Kingdom may lawfully administer oaths to persons of any nationality for the purposes of transactions pending or to be conducted in the country which he represents as Consul.

Approve proposed Circular with slight verbal alteration.

We also think that the proposed Circular may properly be issued, but we would suggest that, instead of the words, "that no local objection exists to your doing so," it might be well to substitute "that the local law justifies your doing so."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex 1.

*Draft Circular from Lord Ampthill to Her Majesty's Consuls in Germany.*

Sir, *British Embassy, Berlin,*

DOUBTS having been raised as to how far German law admits the rights of foreign Consuls to administer oaths and take affidavits in Germany, Her Majesty's Embassy has been at pains to obtain a clear statement of the German law in this respect from a competent source.

The information thus obtained will be found embodied in the annexed Memorandum, to which I invite your careful attention.

In view of this official statement of German law, and of the fact that Her

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* 6 Geo. IV, cap. 87, sec. 20; 18 & 19 Vict., cap. 42.

1884

Majesty's Consular officers in Germany are subject to the jurisdiction of the local Courts, I have to instruct you to abstain from administering oaths in any form at your Consulate to persons not being British subjects until clearly satisfied that the local law justifies your doing so. You will also communicate this instruction to the Consular officers in your district for their future guidance.

I have, &c.

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### Annex 2.

*Pro-memorid.*

(Translation.)

There is no special provision of Prussian law expressly forbidding foreign Consuls to administer oaths or take sworn declarations from Prussian subjects.

But it has always been regarded as a fundamental principle of Prussian State law, that the right to administer an oath is derived from the sovereign rights of the State, and can only be exercised by those officials and persons upon whom it has been conferred by law or Treaty of the State. This principle is expressly laid down in the Memorandum which treats of the privileges conceded to foreign Consular officers in Prussian States, forming Appendix I to the official instructions to Prussian Consular officers of the 1st May, 1862.

Moreover, the Imperial Criminal Code, in adjudging the penalties laid down by sections 154 and 156, starts from the presumption that the false oath to be punished has been tendered to an official "competent to administer an oath." According to the provisions of the Civil Code of Procedure and of the Code of Criminal Procedure, an oath in civil suits and in criminal cases can only be administered by a Judge, *i.e.*, oaths of witnesses, experts and parties, and judicial oaths. (Sections 356-58, 375, 410-437, Civil Code; Sections 60-63, 78, Criminal Code.)

How far other authorities are competent to administer oaths, *i.e.*, oaths of office, of evidence in disciplinary inquiries, and of experts, is also laid down in the laws. No legal provision exists authorizing foreign Consuls to administer an oath. Consequently, foreign Consuls in Germany generally can only be considered competent to administer an oath in case the authority to do so has been conceded to them by Treaty or by Conventional usage.

Since the Consular Treaty with the United States of America of the 11th December, 1871 ("Reichsgesetzblatt, 1872," p. 95), in Article 9 decides that the Consuls, so far as they may be empowered by the Laws and Regulations of their own country, shall have power in their official or private dwelling-houses, in the houses of the parties interested, or on board their national ships, to take declarations on oath from ships' captains, crews, passengers, merchants, or other subjects of their own nationality, it must be inferred that American Consuls in Germany have also the right to take sworn declarations from subjects of the United States, while this right has not been conceded to them in regard to German subjects.

Although no similar agreement exists with England, still as recorded in the Appendix to the General Instructions to Prussian Consuls above referred to, English Consuls have also been allowed to take declarations on oath from subjects of their own nationality.

With special reference to the oath peculiar to English law, termed affidavits, it has been hitherto held that the above-mentioned Rules are also to be considered as applicable to this form of oath.

The Criminal Code of the German Empire only punishes those making oaths when they have knowingly or carelessly sworn falsely, in the case of a voluntary oath or counter-oath, or of an obligatory oath ("zugeschobener, zurückgeschobener, oder auferlegter Eid"), or when false evidence has been wilfully or carelessly tendered on oath before an authority competent to administer an oath, or when a false statement has been confirmed by an oath, or when a false evidence or false statement violates an oath taken before examination. (Sections 153, 154, 163, Criminal Code.) On the other hand, by section 132 of the Criminal Code, any person taking upon himself the performance of a public function, or doing any act which can only be legally done in virtue of an official commission ("Kraft einer offentlichen Amts"), is liable to be punished. Consequently, any person administering an oath without authority to do so is to be considered as punishable according to the circumstances of the case.

*Foreign Office, Berlin, February* 26, 1884.

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## No. 41.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September* 20.)

My Lord, *Royal Courts of Justice, September* 19, 1884.

**Hermann Isaacs, naturalized British subject. His expulsion from Hamburgh.**

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 5th instant, stating that he was to transmit to us a despatch from Her Majesty's late Ambassador at Berlin,* accompanying a despatch, and its inclosures, from the British Vice-Consul at Hamburgh, relative to the expulsion of Hermann Isaacs, a naturalized British subject, from that city, the Senate of Hamburgh having rejected his appeal against the Decree of Expulsion which had been issued against him.

That Hermann Isaacs was charged with having obtained his "entlassungsschein" (or release from German nationality) under false pretences, and for the purpose of evading military service in 1872; but that instead of emigrating to the United States (under which pretence he obtained his release) he came to England, where, after residing the necessary period, he obtained a certificate of naturalization on a statutory declaration of his intention to reside in the United Kingdom.

**His British certificate obtained under false pretences.**

But that no sooner had he obtained the certificate than he returned to Hamburgh, and had resided there ever since, and that he thus appeared to have deceived both the English and German Governments. That the Decree of Expulsion having been confirmed on appeal, Her Majesty's Government were now requested to interfere diplomatically on Hermann Isaacs' behalf. That there was nothing to show that the "entlassungsschein" had been cancelled, for Isaacs was still described as a naturalized British subject; but that it appeared to your Lordship that his breach of faith in obtaining his British certificate without, as it appeared evident, any intention of residing in this country disentitled him to the support of Her Majesty's Government.

That Mr. Lister was to request our opinion as to whether the case called for any diplomatic action on the part of Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

**Case does not call for interference.**

That we are of opinion that the case calls for no diplomatic action on the part of Her Majesty's Government.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 42.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November* 6.)

My Lord, *Royal Courts of Justice, November* 5, 1884.

**Marriage of William Rose.**

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 16th September last, stating that he was to transmit to us papers relating to the case of William Rose, a British subject, who was married in 1877 at the British Embassy in Vienna to Barbara Zwicker, an Austrian subject.†

**Dissolution of first marriage by Berlin Civil Court.**

That the marriage had been dissolved by Decree of the Berlin Civil Court in March of the present year, and that Rose, being desirous to marry Caroline Maroni, an Italian subject, had applied to Her Majesty's Embassy at Berlin for the usual certificate, that by English law there was no impediment to such marriage.

**Refusal of British Embassy to grant certificate for second marriage.**

That he had been informed, in reply, that Her Majesty's Embassy could not grant the certificate until the first marriage at the British Embassy at Vienna had been dissolved by the competent Court in England.

That the case had been submitted by Her Majesty's Embassy at Berlin, to M. Dyenfurt, an eminent jurist at Berlin, for a report on the Judgment of the Berlin Court dissolving the marriage of Rose with Barbara Zwicker.

That we were referred to the documents transmitted with Mr. Lister's letter, and that he was to request our opinion as to whether the refusal to grant the certificate in question was under the circumstances right and proper, and if so, whether any further action was called for on the part of Her Majesty's Government.

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* Lord Ampthill, No. 13, Consular, August 5, 1884.

† Lord Ampthill, No. 11, Consular, July 29; to Lord Ampthill, No. 226, August 11; Mr. Scott, No 250, September 1, 1884.

1884

Has Mr. Rose acquired any domicile in Germany?

In obedience to your Lordship's commands we have the honour to report—

That before expressing an opinion upon the question submitted to us, we wish to be informed whether Mr. Rose had acquired any domicile in Germany, so as to affect his domicile of origin, or not.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Guatemala

### No. 43.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 15.)*

My Lord, *Royal Courts of Justice, May* 14, 1884.

Protection of British subjects.

WE are honoured with your Lordship's commands, signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he was to transmit to us the papers relating to a question affecting the protection of British subjects in Guatemala.

Concession to Mr. Gillespie containing clause renouncing right to diplomatic intervention.

That it appeared from the despatches inclosed, from the Acting British Consul-General at Guatemala, that a Concession was granted by the Government of that Republic to a British subject named Gillespie to enable him to establish an ostrich farm.

That that Concession contained a provision binding Mr. Gillespie under no circumstances to have recourse to diplomatic intervention in case of need.

That as Mr. Bennett stated that that clause was now frequently introduced into Concessions granted by the Guatemalan Government to foreigners, and as, as he further pointed out, a case was certain sooner or later to arise where a "concessionnaire" who had thus, for the sake of securing a more lucrative business, bartered away his rights as a British subject, applied to his Legation for assistance, Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether such a clause in a Concession to a British subject precluded Her Majesty's Representative from intervening diplomatically in his behalf, if he should think it expedient to do so, in a case where, but for such clause, diplomatic intervention would be justified.

In obedience to your Lordship's commands we have the honour to report—

Diplomatic intervention not necessarily precluded, especially if other British subjects are affected.

That in our opinion such a clause in a Concession to a British subject does not preclude Her Majesty's Representative from intervening diplomatically in his behalf if he should think it expedient to do so in a case where, but for such clause, diplomatic intervention would be justified.

At the same time, if the British subject who had agreed to such a clause had sustained only some personal pecuniary loss, owing to the failure of the Guatemalan Government to carry out their Concession, and the matter was not one affecting in principle or otherwise any other British subject except himself, these circumstances would be very important elements in determining whether, in such a case, Her Majesty's Representative should intervene on his behalf.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

Mr. Bennett, No. 11, Confidential, February 7, 1884.
Ditto, No. 17, Confidential, February 14, 1884.
Memorandum (Sir E. Hertslet), March 31, 1884.
Law Officers, August 2, 1881, Confidential No. 4637, pp. 25, 26.
To Mr. Graham, No. 25, August 5, 1881.
Queen's Advocate, March 21, 1867, Confidential No. 1745, p 2.

### No. 44.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received August 13.)*

My Lord, *Royal Courts of Justice, August* 12, 1884.

Honduras boundary. Guatemalan protest against British occupation of territory.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th ultimo, transmitting papers relative to the protest of Guatemala against the continued occupation by Great Britain of a certain portion of British Honduras which was claimed by Guatemala.

That the two Memoranda of Sir E. Hertslet inclosed in Sir Julian Pauncefote's letter fully and clearly explained the whole history of the case; and that Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion on the following points:—

1. Whether Articles II, III, IV, and V of the Convention of 1859, which related to the recognition by Guatemala of the boundary of British Honduras, were invalidated by the non-fulfilment of Article VII of that Convention, which related to the construction of a road from Guatemala to Belize, under the circumstances mentioned in Sir E. Hertslet's Memoranda.

2. Whether, in the event of a Parliamentary vote for the purpose of carrying out Article VII of the Convention of 1859 being applied for and refused, Great Britain would be released from all obligation under that Article without prejudice to the other provisions of the Convention.

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In obedience to your Lordship's commands we have the honour to report—

Articles II, III, IV, and V of Convention of 1859 not invalidated by non-fulfilment of Article VII.

That, in our opinion, Articles II, III, IV, and V of the Convention of 1859 are not invalidated by the non-fulfilment of Article VII.

The latter Article is, so far as the terms of the Convention are concerned, an entirely independent stipulation. And the former Articles are explicit and absolute in their terms. and in no way made conditional upon the carrying out of Article VII.

We observe, however, that M. de Medina states in his letter that Article II "began to be fulfilled," and he appears to connect its not being further carried into effect with the controversy which arose under Article VII.

Should inquire as to non-fulfilment of certain Articles.

We are not aware what are the facts in relation to this, or whether it was with the assent of Her Majesty's Government that the proceedings provided for by Article II and the following Articles were abandoned.

It appears advisable that this should be inquired into.

Right of Guatemala to refuse to carry out Treaty partially.

We may add that, assuming the obligation created by Article VII to be still in force, it would, of course, be open to Guatemala to insist that, as there had been a breach of it by the British Government, she would retaliate by refusing to observe the other provisions of the Convention, even though they were unconnected with Article VII.

Obligations of British Government under Article VII.

2. Article VII clearly imposes an absolute obligation on the British Government. The undertaking is only to use their best efforts. If they did this by proposing and using all due efforts to carry a vote of money, we think their obligation under Article VII, would be fulfilled.

Whether they are still bound to do so, having regard to what has passed since the date of the Convention, we do not understand to be submitted to us.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

1. Memorandum (Sir E. Hertslet), July 28, 1880. Confidential No. 4719.
2. Señor Medina, April 5, 1884.
3. Memorandum (Sir E. Hertslet), June 17, 1884. Confidential No. 4982.
4. Convention between Great Britain and Guatemala of April 30, 1859, No. 432.
5. Convention between Great Britain and Guatemala of August 5, 1863 (not ratified).

1884

### No. 45.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 26.)

My Lord, *Royal Courts of Justice, November* 25, 1884.

Honduras boundary. Guatemalan protest against British occupation of territory.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 1st September, stating that with reference to our Report of the 12th August relative to the protest of Guatemala against the continued occupation by Great Britain of a certain portion of British Honduras, which was claimed by Guatemala, and in which we suggested that an inquiry should be instituted into the circumstances under which the Boundary Commissioners appointed, under the Convention of 1859, ceased their labours, he was to transmit a copy of a further Memorandum by Sir E. Hertslet, prepared on the 24th December, 1883.*

That at pp. 4 and 5 would be found stated the causes which led the Boundary Commissioners, who met in 1860 for the purpose of executing the provisions of Articles II–V of the Convention of 1859, to suspend their labours in the following April.

That Mr. Currie was to request that we would inform your Lordship whether, in view of the facts, we were of opinion that Her Majesty's Government were morally bound to take steps to meet the obligations imposed on them by Article VII of the Convention of 1859, notwithstanding the failure of the Guatemalan Government to ratify, within the appointed time, the Supplementary Convention of 1863, for the construction of a road from Guatemala to the Atlantic, at a spot near Belize.

That the former papers and copy of our Report of the 12th August were inclosed.†

In obedience to your Lordship's commands we have the honour to report—

That the 1st Article of the Convention of 1859 states what always "was and is" the boundary of British Honduras. The next Article provides for its exact demarcation.

It now appears that the two Governments commenced, by their Commissioners, to mark out the boundary, and that, after a portion of it had been agreed upon, temporary physical difficulties prevented its being defined at a point north of Garbutt Falls. The Commissioner appointed by Her Majesty's Government was then ordered to cease going on with the work until further orders. The ground for this order seems to have been that Mexico claimed the territory north of Garbutt Falls, and also part of British Honduras itself. It seems, therefore, that the failure to define the boundary under Article II of the Convention was due solely to the action of Her Majesty's Government.

Failure to define boundary under Article II of Convention of 1859 was due to action of Her Majesty's Government.

There seems no doubt that, prior to the Convention of 1859, Guatemala claimed territory which the British then occupied. Sir C. Wyke, who negotiated that Convention, reported that Great Britain had no right, except actual occupation, to a large portion of the territory which the Convention recognizes as belonging to this country, that, but for some inducement, Guatemala never would have consented to Article I of the Convention, and that Article VII was, in fact, the fine paid to secure the consent of Guatemala.

Now, the Convention of 1863 does not purport, in terms, to be, of itself, a satisfaction of the obligation created by Article VII of the Convention of 1859, for, by the Vth Article of the Convention of 1863, it was provided that "the Republic accepts the said sum of 50,000*l.*, to be paid for the purpose of constructing the line of communication as a full and entire discharge of, and release from, all the obligations contracted by Her Britannic Majesty by the stipulations of the VIIth Article of the Convention of the 30th April, 1859."

The Convention of 1863 fell through, owing to the failure of Guatemala to ratify it within the appointed time, and consequently no payment has been made under it.

Her Majesty's Government are morally bound to take steps to give effect to Article VII of the Convention of 1859.

In these circumstances, it appears to us that it may well be urged that there is a moral obligation, if not, something more, to take some steps to give effect to Article VII of the Convention of 1859.

But in measuring the extent of this obligation, the changed circumstances and the increased difficulties, due to the delay which has taken place, and which are the

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* Memorandum (Sir E. Hertslet), December 24, 1883, Confidential No. 4917.

† Memorandum (Sir E. Hertslet), July 28, 1880, Confidential No. 4719; Memorandum (Sir E. Hertslet), June 17, 1884, Confidential No. 4982; Señor Medina, April 5, 1884; Convention between Great Britain and Guatemala, April 30, 1859, Treaty No. 432; Convention between Great Britain and Guatemala, August 5, 1863 (not ratified); Law Officers, August 12, 1884.

fruits of the non-ratification of the Treaty of 1863, may well be taken into consideration.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Haïti.

### No. 46.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 23.)

My Lord, *Royal Courts of Justice, January* 22, 1884.

Blockade of Jacmel.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th instant, stating that, with reference to the Foreign Office letter of the 28th September last, and to previous correspondence upon the subject of the blockade of Haïtian ports, he was to transmit to us papers relative to the blockade of Jacmel.*

Steps taken to render it effective.

That Her Majesty's Consul at Port-au-Prince forwarded copies of two communications which he had received from the Haïtian Government: the first, requesting him to notify to the agents of the Royal Mail Steam Packet Company that the blockade of Jacmel was then effective by the presence before that port of the Haïtian war-vessel "Dessaline," which had orders to sink any ship trying to force the blockade; and the second, stating that the President had received information that two British men-of-war were about to proceed to Jacmel in order to protect the Royal Mail steamer, which it was reported intended to force the blockade of that place on the 26th ultimo, and requesting that Mr. Hunt would take measures to prevent their interference.

That Sir J. Pauncefote was to request our opinion as to the reply which Mr. Hunt should be instructed to make in regard to the threat of the Haïtian Minister for Foreign Affairs, that vessels attempting to force the blockade would be sunk, a measure which it was conceived would not be warranted by international law.

Action of British vessels of war.

That, with reference to the reported action of Her Majesty's ships, Sir J. Pauncefote invited our attention to the passages marked in the accompanying letter which had been communicated by the Admiralty.† That Sir J. Pauncefote was to add that it was proposed to issue, on the receipt of our Report, a notification of the blockade of Jacmel in the "London Gazette."

In obedience to your Lordship's commands we have the honour to report—

If blockade is effective, capture and destruction of vessels justifiable.

That if the blockade of Jacmel be effective, a Haïtian vessel of war would no doubt be entitled to capture any vessel attempting to break the blockade, and to prevent its being broken. And we apprehend that if a vessel persisted, in defiance of the opposition of the war-vessel, in its endeavours to reach the port, and refused to surrender, such conduct would justify hostile action. But we do not think a vessel of war would be justified in sinking a merchant-vessel, except as an extreme measure, in the case where such vessel was acting in defiance of the rights of the blockading force, and by its own action rendered such an extreme act of hostility absolutely necessary.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr. Hunt, No. 51, December 15, 1883.

† Admiralty, January 8, 1884.

1884

## No. 47.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received December* 31.)

My Lord, *Royal Courts of Justice, December* 30, 1884.

Claim of Mr. Breckenridge against Haïtian Government.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was to transmit to us the papers* relating to the claim of Mr. Breckenridge against the Haïtian Government on account of losses suffered by him through the disturbances which occurred at Port-au-Prince on the 22nd and 23rd September, 1883. That Mr. Breckenridge claimed as mortgagee of certain property destroyed on the above occasion, and that the papers which were transmitted to us, marked "A," were laid before the Mixed Commission appointed to investigate the claims of foreigners.

Claim rejected as being indirect.

But that the claim was rejected on the plea of its being an indirect claim, as shown by the various documents transmitted.

That Sir Julian Pauncefote was to request our opinion as to whether it was competent for the Commission to bar Mr. Breckenridge's claim on the ground alleged.

That the records of proceedings in the cases of the "Circassian" and "Empress," dealt with by the Mixed Commission for the settlement of British and American claims under the Treaty of Washington of the 8th May, 1871, were also inclosed in connection with the point on which our opinion was asked.

In obedience to your Lordship's commands we have the honour to report—

That, as we understand, Mr. Breckenridge's claim was rejected by the Commissioners as indirect, on the ground that an alien cannot hold landed property according to the law of Haïti, and that, therefore, the building destroyed was his mortgagor's and not his, the supposed transfer being void.

Claim appears to be an indirect one.

If this view of the law be correct the claim would certainly appear to be an indirect one, as the fire only destroyed part of the property of the mortgagor, and so diminished his resources.

And this distinguishes the present case from the two cases to which our attention has been called, dealt with under the Treaty of Washington.

We are without any direct information as to whether the suggested view of the law of Haïti be correct. The mortgage appears to have been registered in Haïti, and it may well be that the mortgagee has some rights there in respect of it.

It appears, however, that in the instructions given by the Haïtian Government to the Commission, they are not only required to reject indirect claims, but it is stated that the labours of the Commission will not be subject to revision, and that they are to judge absolutely and without appeal.

If British Governnent agreed to nstructions to Mixed ommission it is lifficult to insist upon eversal of decision.

If these instructions were agreed to by Her Majesty's Government, it is difficult to see how any review of one of their decisions can be insisted upon, because it is adverse to a British subject.

It is asserted in the instructions, which bear date the 27th March, 1883, that they have been communicated to the Chiefs of the English and French Legations, and have their complete concurrence.

How this was obtained does not appear from the documents before us, the only one written by Mr. Hunt appearing to be a letter of the 31st March, a few days afterwards, in which he merely acknowledges the receipt of a copy of the instructions.

But as no exception was taken to their terms, we presume the statement made by Mr. St. Victor was correct.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* (A) Mr. Breckenridge, November 22, 1884; (B) Procès-verbaux des Opérations de la Commission Mixte (in Mr. McGuffie's No 20, August 7, 1884); (C) Documents Diplomatiques (in Mr. Love's letter of September 9, 1884).

# Italy.

## No. 48.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 31.)

My Lord, *Royal Courts of Justice, January* 31, 1884.

Marriage of railway conductor Cornwell.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd instant, stating that he was to transmit to us the papers relating to the propriety of Her Majesty's Consul-General at Florence celebrating a marriage between two British subjects under the following circumstances:—

As to residence, he having a room at Florence.

That Henry Cornwell, the intended husband, British subject, is a conductor in the service of the Wagon Lits Company, running its carriages on the French and Italian railways between Calais and Bologna, at the latter of which places the lady he intends to marry is resident, and he has held furnished rooms for more than two years, the actual time of his occupation of them being necessarily limited, as his time is principally passed on the road.

Reference to case of John Julian.

That the question arose whether Cornwell could, under the circumstances mentioned, properly make the declaration required under the Consular Marriages Act (12 & 13 Vict., cap. 68) as to residence within the Consular district during one calendar month, and as to his usual place of abode being within that district.

That the question appeared to your Lordship to be very analogous to that of John Julian, which was submitted to the Law Officers in 1877, and upon which an answer was returned in the affirmative.

That our opinion was requested on the question submitted in that letter.

In obedience to your Lordship's commands we have the honour to report—

He may make declaration under Consular Marriage Act.

That we think Cornwell can, under the circumstances, properly make the declaration required under the Consular Marriages Act.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

Consul-General Colnaghi, No. 6, January 5, 1884.
Law Officers, October 9, 1877. Confidential No. 4216. p. 18.

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## No. 49.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April* 2.)

My Lord, *Royal Courts of Justice, April* 1, 1884.

Naples hospital. Application for loan from Burial Ground Fund on security of mortgage of hospital.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th ultimo, stating that he was to transmit to us papers relating to an application by the trustees of the late Lady Harriet Bentinck's Hospital at Naples to the trustees of the Naples British Burial Ground Fund for the loan of 2,500*l.* on the security of a mortgage of the hospital.

That the hospital was founded in pursuance of the trusts of a Deed dated the 12th August, 1880 (Inclosure 2 in Mr. Consul Grant's despatch).

That the trustees of so much of the Naples British Burial Ground Fund as was invested in this country were the Chief Clerk of the Foreign Office, Mr. Bonham, formerly Her Majesty's Consul at Naples, and a British resident in that city, and that the money was invested in this country in their names under the provisions of section 12 of 6 Geo. IV, cap. 87 (copy inclosed).

That under those circumstances two questions had arisen—

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1. Whether the proposed loan could be legally made under the provisions of the Act.

2. Whether the trustees of the hospital had power to mortgage the hospital grounds.

That the history of the British Burial Ground Fund was given in the Foreign Office Memorandum (B). That it would be observed that the fund was invested in British consols under the authority of section 12 of the Act, which contained no power to vary the investment. It was true that under section 15 it was competent to a general meeting of subscribers to the fund to make such orders for the management of the burial ground, or for the proper control over and expenditure of the money raised by subscription, "or otherwise in relation to the matters aforesaid as may be necessary for carrying into execution the objects of the Act;" and if it should be considered that under section 15 a general meeting had power to vary the investment of the fund, and to advance the same upon mortgage of land in Naples by an order to be approved and confirmed as therein provided, the next question was whether the hospital trustees had power to raise money on mortgage.

That no such power was given to them by the trust deed under which they held the hospital grounds, but that it might be that under the *lex loci* they might be able to give a good security to the proposed mortgagees.

Proposed gift of 1,300*l.* from uninvested Burial Ground Fund to hospital.

That a further proposal was made in Consul Grant's despatch, viz., that if the 2,500*l.* could not be advanced on mortgage as desired, the Secretary of State should sanction the application of 1,300*l.*, part of the Burial Ground Fund at present uninvested and now lying in the hands of bankers in London and Naples, for the benefit of the hospital by way of gift to that institution.

That it was suggested that it was in the power of the Secretary of State to sanction such gift under section 20 of certain Regulations purporting to have been made and issued in 1848 by Her Majesty, through one of her Principal Secretaries of State, "under the authority of the 6 Geo. IV, cap. 87."

That a copy of those Regulations was inclosed.

That section 20 would appear to empower the Secretary of State to sanction a diversion of the Burial Ground Fund "to other purposes," but that the question arose whether those Regulations had any legal force. That they purported, as before stated, to have been issued "under the authority of the Act 6 Geo. IV, cap. 87," but that the only power given by the Act to make rules and regulations for the management of British Church affairs and burial grounds at foreign places was contained in section 15, and was limited to rules and regulations made at particular places by the subscribers to the Church and Burial Ground Funds assembled in general meeting under section 14.

That it appeared that the Regulations in question were originally issued in 1839, in consequence of disputes which had arisen with regard to the management of Church and Burial Ground Funds of Naples, and that they were amended and issued in their present form in 1848, in consequence of a controversy as to the right of the Bishop of London to appoint British Chaplains abroad. That the Regulations of 1839, as well as those of 1848, were submitted to and approved by the Queen's Advocate, but that there was nothing in his Reports to show upon what legal ground it was considered, at the time, that those Regulations rested, or why they were stated to be issued under the authority of the Act.

That it would be seen, however, from a Memorandum, which had now been furnished by the Chief Clerk of the Foreign Office, that those Regulations were only instructions to Consuls from the Secretary of State respecting the management of Church matters, under the Act, and that it would seem, therefore, that they could give no legal force or effect to any act not authorized by the Statute.

That our attention was invited to the Report of the Treasury Solicitor on the questions under consideration, which formed an inclosure in the Treasury letter of the 13th October last, and in which he expressed the opinion that the proposed mortgage could not legally be effected, but that under section 20 of the Regulations the Secretary of State has power to sanction the gift of 1,300*l.* to the hospital out of the uninvested portion of the Burial Ground Fund.

That Sir Julian Pauncefote was to observe, however, that the Treasury Solicitor had not before him at the time the Memorandum of the Chief Clerk explaining the origin and character of the Regulations.

That our opinion was requested on the questions submitted in that letter, and that we would favour your Lordship with any general observations we might have to offer on the case.

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# Italy.

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## No. 49*.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November 29.*)

*Royal Courts of Justice, November 28, 1884.*

My Lord,

"North Durham." Refusal of Sicilian authorities to grant pratique after expiration of quarantine.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 17th instant, and transmitting to us the papers* relating to the claim for compensation made on behalf of the owners of the British steamer "North Durham."

That on the 14th August, when that ship was ready to leave Naples for Girgenti, the prescribed quarantine which vessels circumstanced as the "North Durham" had to perform before being admitted to pratique at Girgenti was ten days, but that before the ten days were accomplished the quarantine was raised to twenty-one days. But that even after the twenty-one days' quarantine she was refused pratique at Girgenti, and that that refusal was due to the attitude of the population.†

That such refusal to admit the "North Durham" to quarantine was an infraction of the orders issued by the Italian Government.

That our opinion was requested as to whether the claim put forward on behalf of the owners of the "North Durham" was one that might properly be pressed on the Italian Government.

In obedience to your Lordship's commands we have the honour to report—

Claim for detention a proper one.

That we think the claim in respect of the detention after the expiration of the extended quarantine (that is, during seven days) is one that may properly be pressed officially on the Italian Government. The refusal of pratique was, we gather, the act of Italian officials, and it was an act done by them in violation of the then existing law. This, we think, affords ground for a claim of redress.

Claim should not be extravagant.

At the same time, we would observe that the Italian authorities were, no doubt, in a position of great difficulty, and it would be undesirable to claim an amount which was at all extravagant.

Should obtain independent opinion as to reasonable compensation.

The claim of 30*l.* a-day strikes us as somewhat high, and we would suggest that, before the claim is put forward, inquiry should be made as to the tonnage of the "North Durham," and some independent opinion should be obtained as to the reasonable demurrage for a ship of that size.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* North of England Steam-ship Owners Association, September 11; to North of England Steam-ship Owners Association, October 18; North of England Steam-ship Owners Association, November 1; to Sir J. Lumley, No. 49. Commercial, September 15; Sir J. Lumley, No. 125, Commercial, September 19; to Sir J. Lumley, No. 61, Commercial, October 18, 1884.

† Sir J. S. Lumley, No. 125, Commercial, September 19, 1883.

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In obedience to your Lordship's commands we have the honour to report—

Trustees of cemetery have no power to grant loan from invested funds.

That the documents before us show no power in the trustees of the hospital to mortgage the grounds. Whether the trustees could give a good title to any person lending money upon mortgage of them is a question to be determined by Italian law.

But even assuming that the trustees could give such a title, we think there is no power to dispose of the money already invested in that way.

Inclined to oppose grant of 1,300*l.* from uninvested funds.

Whether the 1,300*l* could be applied either in that way or as a gift is a matter of more doubt, but the inclination of our opinion is that it could not.

By section 15, the general meeting therein provided for, may make rules and orders in relation to the moneys raised for the several purposes specified.

And by that section Her Majesty may, through a Secretary of State, allow or disallow such rules and orders, either wholly or in part, or make amendments in or additions to the same.

But it would appear that no such Regulations have been made by a general meeting, and the Regulations before us purport to have been "made and issued by Her Majesty through one of her Principal Secretaries of State," and not to be an allowance, either with or without additions, of Regulations made by a general meeting.

We can find no authority sanctioning any such Regulations.

Not sufficiently clear that proposals can be acceded to.

Upon the whole, we think that it is not sufficiently clear that the burial ground money can be applied in the way suggested to justify that course being taken.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### *List of Papers.*

(A.) Consul Grant, No. 65, July 9, 1883.
(B.) Foreign Office Memorandum (A. W.) August 25, 188[illegible].
(C.) Act 6 Geo. IV, cap. 87.
(D.) Church Regulations, 1848. Confidential No. 5[illegible]7.
(E.) Treasury, October 13, 1883, with opinion of Treasury Solicitor.
(F.) Memorandum by Chief Clerk, February 28, 1884.

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# Japan.

## No. 50.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 31.)

My Lord, *Royal Courts of Justice, December* 30, 1884.

Affray at Yokohama. John Collins and others killed by French sailors.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 16th instant, stating that he was to transmit to us papers* relating to an affray which occurred at Yokohama on the 1st October, in which three persons were killed by French sailors, belonging to the French Messageries steamships "Menzaleh" and "Volga," one of the victims being a British subject, named John Collins.

That a résumé of the case, and of the proceedings which followed, were inclosed in Mr. Plunkett's No. 205 of the 5th ultimo.

That your Lordship was disposed to think that the British Consul at Yokohama

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* In Foreign Office letter of December 16, 1884:—Mr. Plunkett, No. 175, October 9; No. 193, October 22; No. 203, November 4; No. 204, November 5; No. 205, November 5; No. 206, Confidential, November 5, 1884. In Foreign Office letter of December 18, 1884:—Mr. Plunkett, No. 199, October 31, 1884.

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should have taken steps for prosecuting the French sailors before the French Consular Court. But that he contented himself with sending a list of witnesses, and declined to attend the inquiry before the French Consul, though invited to do so, for reasons which did not appear to your Lordship altogether satisfactory.

Nor did he depute any person to formulate any charge, or even to watch the proceedings.

That although it would appear that there had been a grave miscarriage of justice, it seemed difficult, in the absence of the evidence taken at the French inquiry, to make any representation to the French Government.

That our opinion was requested as to what action, if any, was called for in the matter, together with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

That it is extremely difficult, if not impossible, to arrive at any clear opinion as to the exact circumstances of the affray on the evening of the 1st October last. It appears certain that weapons were used, and violence offered on both sides. It does not seem possible, even to say with certainty, who were the aggressors.

There is evidence both ways.

It is possible that the French went ashore resolved to provoke and commence a conflict, and that they, in fact, did so. But it is possible that their story may be true, that they went in large numbers as a demonstration to show that they would not submit to the attacks to which they had been subjected.

Under the circumstances, and so far as we can judge of the evidence before him, it would scarcely have been possible for the French Consul to have proceeded against any of the men for murder.

But there would seem to have been a miscarriage of justice in treating them as guilty of no substantial offence.

The Consul was apparently himself of that opinion, inasmuch as he sent three, whom he thought most implicated, to be dealt with at Saigon.

Cannot take action before termination of proceedings at Saigon. British Consul should have attended French inquiry.

Until the result and nature of the proceedings there are known, it is not, we think, possible for Her Majesty's Government to take any action in the matter.

We concur in your Lordship's view, that the British Consul should have either himself attended, or deputed some one to attend, the French Consular Court, to watch the proceedings, and to take care, as far as his position allowed him, that all the evidence available was put before the Court.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Madagascar

### No. 51.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 15.)*

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Mail steamer "Taymouth Castle;" interference of French naval authorities.

My Lord, *Royal Courts of Justice, May 14, 1884.*

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 24th ultimo, stating that, with reference to our Report of the 24th December last, he had the honour to transmit to us papers* relating to the interference by the French naval authorities at Tamatave with the mails on the English steamship "Taymouth Castle," and which contained the fuller information requested by us, as to whether the act was committed by the direct orders of the French Admiral.

That Mr. Lister was to request that we would take the further papers transmitted

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* To Sir D. Currie, January 4; from Sir D. Currie, January 8; ditto, March 12; to Post Office, March 24; from Post Office, March 26; from Captain Johnstone, April 10, 1884.

## MADAGASCAR.

### No. 50 A.

**Colonial Office.**

*The Law Officers of the Crown to the Earl of Derby.*

Proclamation prohibiting exportation of arms and ammunition to Madagascar.

My Lord, *Royal Courts of Justice, January 21, 1884.*

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the inclosed copy of a despatch from the Governor of Mauritius, together with the connected papers, relative to a Proclamation which had been issued by him prohibiting for six months the exportation of arms and ammunition to Madagascar.

That Mr. Bramston was to refer us, in connection with that question, to our opinion given on the 2nd December, 1882,* respecting the issue of a Proclamation by the Governor of Trinidad against the export of arms from that Colony to Venezuela.

That in that case we advised that the Governor had no power, under a clause in the Colonial Customs Ordinance authorizing the exportation of arms to be prohibited, to prohibit exportation to a particular country or place, and that the Governor was thereupon instructed to withdraw the Proclamation.

That since, however, the clause in the Mauritius Ordinance No. 14 of 1858 contained the words "to any port or place whatever," which were not in the clause of the Trinidad Ordinance, your Lordship had thought it desirable to request to be favoured with our opinion whether the Proclamation issued by Sir J. Pope Hennessy, on the advice of the Procureur-Général of Mauritius, was not valid.

In obedience to your Lordship's commands we have the honour to report—

Was legal.

That we think that Sir J. P. Hennessy had power to issue the Proclamation in question.

We do not understand that we are asked to express any opinion upon the policy or expediency of such a Proclamation.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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* No. 281 in Miscellaneous No. 51.

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into our consideration, and that we would inform your Lordship whether they were sufficient to enable us to report on the question submitted to us, as to whether Sir Donald Currie's complaint was such as to call for a representation to the French Government.

In obedience to your Lordship's commands we have the honour to report—

That we think the circumstances are such as to call for a representation to the French Government, or, at all events, to render it proper that some explanation should be required.

Explanations should be required—

The Commander of the "Boursaint," who insisted as a condition of the master of the "Taymouth Castle" carrying the "Dryad's" mails, that they should be sent on board the Admiral's ship, appears to have been in command of the guard-ship, and to have had committed to him the enforcing of the regulations laid down by the French authorities.

both as to mails of the "Dryad,"

And it certainly seems to require explanation why he should have insisted that the despatches and letters from the ship of war of a friendly Power should be submitted to the French Admiral apparently for examination, before being carried by one of its own mail steamers.

We think further that the placing two armed men on board the "Taymouth Castle," even if it were for the purpose of preventing communication with the shore, was an unusual course.

and the placing of armed men on board.

Assuming that the French authorities had a right to prevent communication with the shore, the proper course would seem to have been to have prevented such communication by their own vessels or boats, and not to station a portion of their armed force on board a neutral vessel. On this point, too, therefore, we think an explanation may well be asked for.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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### No. 52.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received August 18.)*

My Lord, *Royal Courts of Justice, August* 16, 1884.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 30th ultimo, stating that he was to transmit the papers* relative to the blockade of certain ports on the coast of Madagascar by the French fleet, and to the summary notice given on the first day of the blockade to the British vessel "Orenoque," ordering her to leave the last-mentioned port (Mahonovo) in five hours, although her loading was only half completed.

Blockade of ports of Madagascar. Case of the "Orenoque" at Mahonovo.

That the facts of the case were fully stated in the various documents therewith transmitted.

That Sir J. Pauncefote was to observe that the French Government had recently given the assurance that express instructions had been conveyed to their military and naval authorities to take all possible precautions to prevent Europeans suffering from the effect of hostile operations, and that Consul Graves had distinctly brought to the attention of the French Admiral the fact that the entire trade of the various ports mentioned was in the hands of British subjects, and that they would be the only sufferers from the blockade.

That the Lords of the Admiralty desired to learn your Lordship's opinion on the questions raised by Captain Boyle.

That on the 8th May the French Admiral intimated, in writing, both to Consul Graves and to Captain Boyle, his intention to establish the blockade very shortly, and on the 16th he notified to them that it would commence from the following day.

That it was presumed that no objection could be taken, so far, to the action of the French Admiral, and if so, the only question which would appear to arise was whether the notice to the "Orenoque" to leave in five hours, given on the first day of the blockade, was justified by international law and the rights of war, having regard to the usual practice as to egress in cases of blockade.

Was notice of five hours sufficient?

That our opinion was requested on the above question, and also as to whether the

Are there grounds for representation to French Government

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* Consul Graves, No. 5, Commercial, May 31; Lord Lyons, No. 56, Africa, June 2, Confidential No. 4993; to Lord Lyons, No. 113, July 8; Admiralty, July 8, 1884.

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papers disclosed proper grounds for making a representation or complaint to the French Government respecting the treatment of the "Orenoque," or any other proceeding of the French naval authorities.

In obedience to your Lordship's commands we have the honour to report—

That the "Orenoque" was certainly ordered to leave the blockaded port within an unusually short space of time. It has been customary, at all events in the more recent cases, to allow at least fifteen days for egress from a blockaded port; but the only practical grievance complained of by the "Orenoque" in relation to her hastened departure is that she was compelled to leave without completing her loading.

Now it is a well-settled rule of international law that a vessel is only entitled to leave a blockaded port with the cargo which was on board her at the time the blockade commenced.

After notice of the blockade she is not entitled to continue her loading and depart with the additional cargo so loaded, although in some recent cases express permission has been given to take out any cargo loaded within the time permitted for egress.

No ground for complaint on account of ship not being allowed to complete her loading.

Under the circumstances, therefore, we do not think a well-founded complaint can be made against the French Government, that the "Orenoque" was not allowed to complete her loading.

Should call attention of French Government to the unusual shortness of notice.

But in view of cases that may possibly arise hereafter, it might be well to call the attention of the French Government to the very brief time allowed for egress, which was certainly not in accordance with well-established modern usage.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 53.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 29.)

My Lord, *Royal Courts of Justice, September* 27, 1884.

British subject in service of Madagascar. Case of Colonel D. Willoughby.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 30th ultimo, stating that he was to transmit a despatch from Her Majesty's Consul for Madagascar,* reporting that he had been informed that Colonel Digby Willoughby, a British subject, had taken military service under the Malagasy Government, and was in command of the Malagasy troops in front of Tamatave, and requesting instructions as to whether, in the event of that information proving to be correct, he should take proceedings against Colonel Willoughby under the Foreign Enlistment Act.

Question as to proceedings under Foreign Enlistment Act.

That our attention was directed to the Reports† of the Attorney-General of the 25th February, 1878, and of the Solicitor-General and Dr. Deane of the 27th February in the same year, and to our Report of the 17th August, 1880, relative to the liability of British subjects to be proceeded against in Her Majesty's Consular Courts under section 4 of the Foreign Enlistment Act in Turkey and in China for taking military service under the Porte and the Government of China in time of war with a foreign Power at peace with Her Majesty.

That Sir J. Pauncefote was to inclose Her Majesty's Order in Council for Madagascar, and the draft of an instruction which your Lordship proposed to address to Mr. Graves in reply to his despatch.

That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion on the proposed draft, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Consul has such jurisdiction; difficulty in enforcing it. Amending instructions.

That it is by no means free from doubt whether the Consul has jurisdiction to try an offence against the Foreign Enlistment Act. But upon the whole we are disposed to think that he has, though the practical difficulty exists of enforcing the jurisdiction, which has been pointed out in former Reports of the Law Officers.

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* Consul Graves, No. 15, July 14, 1884.

† Confidential No. 4280, pp. 65–66, and Confidential No. 4539, p. 15.

We approve of the proposed instructions; but we would suggest the amendments which we have made in pencil on the draft.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch to Consul Graves.*

Sir, *Foreign Office,* , 1884.

Earl Granville has received your despatch No. 46, Africa, of the 28th May, reporting that you had been informed that Colonel Digby Willoughby, a British subject, had taken military service under the Hova Government with rank of Adjutant-General, and was in command of the Malagasy troops in front of Tamatave, and requesting to be furnished with instructions as to whether, supposing that information to be correct, you should take proceedings against him under the Foreign Enlistment Act.

In reply, I am to state that you have jurisdiction, under Her Majesty's Order in Council of the 4th February, 1869, to try a British subject for an offence against section 4 of the Foreign Enlistment Act, and that you should warn Colonel Willoughby against committing a violation of that Act, and call on him to retire from the Malagasy military service while the war with France continues.

Should he disregard that communication, you are authorized to put the law in force against him by sending him to Mauritius for trial under section 4 of "The Foreign Jurisdiction Act, 1843," and paragraph 22 and 23 of the Order in Council, provided you find it practicable to effect his apprehension, as directed by section 13, without conflict with the Malagasy authorities.

I am, &c.

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## No. 54.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 26.)

My Lord, *Royal Courts of Justice, November* 25, 1884.

Complaint of the Hova Government of an alleged breach of neutrality by the British authorities at Mauritius in assisting French ships.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd instant, stating that he was to transmit to us the papers noted in the accompanying list,* which related to a complaint by the Hova Government of an alleged breach of neutrality on the part of Her Majesty's Government, by giving assistance to French ships in Mauritius during the existing hostilities between France and Madagascar.

That the complaints were—

1. That the French vessel "Tonarez," carrying cattle from the French Island of Nossi Bé to the French fleet at Tamatave, touched at Mauritius and was there supplied with water and food for the cattle. That the particulars in regard to that proceeding, together with the Acting Procureur-Général's opinion on it, were given in the accompanying Colonial Office letter of the 19th May, forwarding copies of correspondence between Governor Hennessy and the Consul for Madagascar in the Mauritius. That your Lordship's reply to the Colonial Office was also inclosed.

2. That the French man-of-war "Boursaint" had been allowed to be docked and repaired in Mauritius. That the particulars of that complaint would be found in the inclosed Colonial Office letter of the 28th October.

That the complaints of the Hova Government were formulated in a letter addressed to your Lordship by the Foreign Secretary. That the letter was inclosed in Mr. Graves' despatch No. 79 of the 2nd September.

That a copy of the Treaty with Madagascar was also inclosed,† as well as the

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* Colonial Office, January 10; to ditto, January 26; Colonial Office, February 2; to ditto, February 9; Colonial Office, March 17; to ditto, April 7; Colonial Office, April 14; ditto, May 19; to ditto, June 28; Mr. Ashley, August 7; to Colonial Office, August 20; Colonial Office, September 4; ditto, October 28; Consul Graves, No. 79, September 2; Foreign Secretary, Madagascar, August 18, 1884.

† Treaty No. 494.

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Colonial Office letter of the 17th March, containing our Report of the 10th March, respecting the export of arms, and their letter of the 14th April, containing the instructions sent to the Governor of Mauritius on the subject.

Draft despatch to the Foreign Secretary of Madagascar.

That Sir Julian Pauncefote was at the same time to forward a draft of a despatch which it was proposed to address to the Foreign Secretary of Madagascar in reply to his letter of the 18th August, and to request that we would take the papers transmitted therewith into our consideration, and favour your Lordship with our opinion as to whether the draft met with our concurrence and approval.

In obedience to your Lordship's commands we have the honour to report—

There was no breach of neutrality.

That, in our opinion, there was no breach of neutrality either (1) in supplying the French vessel "Tonarez" with water and food for the cattle on board, or (2) in allowing the French man-of-war "Boursaint" to be docked and repaired in Mauritius.

Approve draft despatch with certain alterations.

We concur with the draft of the despatch transmitted to us; but we would suggest that on p. 4 the word "even" should be inserted at the commencement of the second line before the words "of contraband of war," inasmuch as it would rather appear, in the present case, that there was not an export of contraband of war. We would also suggest an alteration in the last paragraph. We are under the impression that, owing to the peculiar circumstances of the case, strict neutrality has not been maintained in the usual way in the hostilities between France and China, though no doubt both Powers have enjoyed the advantage of these departures from the rigid enforcement of neutral duties. The sentence might conclude with the words, "to observe impartially an attitude of neutrality."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Letter to the Foreign Secretary, Madagascar.*

Sir, *Foreign Office*, , 1884.

I BEG to acknowledge the receipt of your Excellency's letter of the 18th August, containing copies of the correspondence which has recently taken place between the Governor of the Mauritius and Her Malagasy Majesty's Consul in that island on the subject of an alleged breach of neutrality which is said to have occurred in the assistance rendered in Port Louis to the French ship of war "Boursaint" and to the French vessel "Tonarez."

In reply, I have the honour to state to your Excellency that Her Majesty's Government are most anxious to maintain neutrality during the existing hostilities, although no declaration of war has been issued on the side of either the French or Malagasy Governments.

The Proclamation by the Governor of Mauritius against export of arms was originally issued in supposed compliance with Article VI of the Treaty of 1865 between Great Britain and Madagascar. Her Majesty's Government afterwards considered that the Treaty did not render this imperative except at the request of the Hova Government, and as the prohibition might have proved injurious to Madagascar, it was withdrawn.

As regards the case of the "Tonarez," it is a well-established rule that the export even of contraband of war from a neutral country is no violation of neutrality, the penalty being capture on the high seas; while, with reference to the "Boursaint," it is equally clear that a neutral country may allow a belligerent vessel of war provisions necessary for the crew, and repairs, provided that no increase be made to her crew or warlike armament, and that her efficiency as a ship of war is not otherwise added to. To that extent only were repairs allowed to the "Boursaint."

Her Majesty's Government will, however, take precautions to pervent any breach of the Foreign Enlistment Act in Mauritius, and to observe impartially an attitude of neutrality.

I have, &c.

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# Mexico.

## No. 55.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 23.)

My Lord, *Royal Courts of Justice, January* 22, 1884.

Renewal of diplomatic relations.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th (? 3rd) instant, stating that he was to transmit to us the papers relating to the question of the renewal of diplomatic relations between Great Britain and the Republic of Mexico.

That those papers mainly consisted of the Treaties, Conventions, and Agreements which had been concluded between this country and Mexico since the promulgation of the Mexican Constitution of 1824, and of Memoranda thereon.

That it would be seen that the subjects of those Treaties might be classified under three heads—1. Commerce; 2. Slave Trade; 3. British claims.

1. That in regard to the Treaty of Commerce, it was outside the scope of the present letter, and need not now be alluded to.

2. With respect to the Slave Trade, that Traffic being now entirely suppressed in Mexico, the Treaty of 1841 might be said to have lapsed.

3. That the Memorandum drawn up by Sir E. Hertslet on the 1st November, 1881, analyzes the nature of the various Conventions concluded between Great Britain and Mexico for the settlement of the British claims.

That with regard to those claims it should be borne in mind that it was in consequence of the arbitrary and vexatious conduct of the authorities of the Republic of Mexico towards British, French, and Spanish subjects that those Governments concluded a Convention on the 31st October, 1861, of which a copy was inclosed, in which they agreed to have recourse to combined operations against Mexico, with a view to demand from those authorities more efficacious protection for the persons and properties of their subjects, as well as a fulfilment of the obligations contracted towards those Governments by the Mexican Republic.

That in 1864 Maximilian was duly elected Emperor of Mexico, and duly recognized by this country.

That statements with regard to the British claims had from time to time been formally presented to the Mexican Government, and that that fact was recorded in the Convention of the 26th June, 1866, concluded with the Government of the Emperor Maximilian, by which it was also agreed that a Mixed Commission should be appointed for their investigation and settlement.

That that Commission sat in Mexico from August 1866 until March 1867, when its sittings were temporarily suspended.

But that in August of that year diplomatic relations between Great Britain and Mexico were suspended owing to the determination taken by the Republican Government of Mexico, which succeeded that of the Empire, no longer to recognize the Agents of any Power which had acknowledged the Emperor Maximilian. In recognizing, however, the Empire, Her Majesty's Government simply adhered to its traditional policy of recognizing what was represented to it at the time as being the *de facto* Government of Mexico.

That the object of the Convention of 1866 was to refer to a Mixed Commission all claims which had not been dealt with in previous Conventions, whilst it declared to be valid all such as had already been recognized by the two Governments.

That the nature of those claims was described in the Memoranda by Sir E. Hertslet of the 5th November, 1881, and the 9th March last, to the former of which was attached the text of the different Conventions which had been concluded for the settlement of the British claims.

That the Government of Her Britannic Majesty and that of the Republic of Mexico had long desired to see the present estrangement between the two countries removed by a renewal of the friendly relations formerly existing between them.

Mexican conditions—(1) abrogation of Treaties; (2) diplo-

That negotiations had been on foot for some time past with that object, but that the Mexican Government had hitherto insisted upon attaching two conditions to the matic abandonment of claims.

renewal of relations:—(1) that all existing Treaties between the two Governments should be considered as abrogated; and (2) that no claims which arose before the resumption of friendly relations should be made the subject of diplomatic representation or demand.

That, at the same time, the Government of the Republic did not repudiate their obligation in regard to those claims.

That negotiations had recently taken place between the two Governments, and Special Envoys had been appointed with a view to ascertain on what basis diplomatic relations should be re-established, and how far the difficulties raised on either side could best be removed.

Draft of "preliminary Agreement."

That accordingly a draft of a "preliminary arrangement" between Great Britain and Mexico had been prepared, of which a copy was transmitted therewith.

That our attention was called to the 1st Article, which provided that Mexico would proceed forthwith to the examination of international claims and debts without reference to the disputed Conventions, which, for the purpose of the Agreement, should be considered as abandoned.

That our opinion was requested as to whether, having regard to the importance to Imperial interests of a renewal of relations between the two countries, the abandonment of the Conventions in question by Her Majesty's Government would be justified, and could be effected without incurring any liability from British subjects claiming any interest thereunder.

That on that point we were referred to our Report of the 20th May, 1882, in which we expressed our concurrence in an instruction to Her Majesty's Consul at Smyrna, wherein it was laid down, in regard to the question of the Smyrna quays, that "the settlement of such questions is an act of State in which Her Majesty's Government, however anxious to secure full justice for the British subjects aggrieved, incur no obligation towards them individually, and must be guided not only by the particular facts of the case, but also by considerations of public policy and convenience."

In obedience to your Lordship's commands we have the honour to report—

British Government would not incur any liability by its abandonment of Claims' Conventions,

That we do not think that Her Majesty's Government would incur any legal liability to the persons whose claims are the subject of Conventions between the Mexican and British Governments, in case the latter Government should agree to the abrogation of such Conventions. It is to be observed that the claims of the individuals interested against the Mexican Government are not created by the Conventions.

All that the Conventions do is to create an obligation as between the two Governments for the payment in the prescribed manner.

And it is, we think, competent for the Governments concerned to put an end to this international agreement.

At the same time, it would be a strong exercise of authority, which would probably be much criticized, and which the Government would be bound to justify; and in certain circumstances such a measure might give rise to an overwhelming equitable claim that the debts which were the subject of the abrogated Conventions should be discharged by the State.

In the present case the circumstances are no doubt peculiar. The claims are of long standing, and one Convention has been substituted for another, as the Mexican Government have proved unable or unwilling to fulfil their obligations.

And so long as diplomatic relations remain unrenewed the British creditors of Mexico have no prospect of seeing the terms of the Convention carried out. Moreover, the Mexican Government does not appear to be so anxious to renew diplomatic relations that any conditions can well be imposed.

But would be bound to justify such action.

Under these circumstances, it may well be that the best thing that could be done in the interest even of the creditors would be to enter into such an arrangement as that proposed. We have pointed out the considerations which appear to us to govern the determination of the question, but it is hardly within our province to say whether the abandonment of the Conventions by Her Majesty's Government "would be justified."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

1. Memorandum (Sir E. Hertslet), November 1, 1881 (Confidential Print No. 4945, p. 12 B).
2. Convention between Her Majesty the Queen of Spain and the Emperor of the French relative to combined operations against Mexico of October 31, 1861 (State Papers, vol. li, p. 63).
3. Convention between Great Britain and Mexico, signed June 26, 1866 (Confidential Print No. 4945, p. 26; Treaty No. 496).
4. Memorandum (Sir E. Hertslet), November 5, 1881 (Confidential Print No. 4945, p. 14, and Confidential No. 4554).
5. Memorandum (Sir E. Hertslet), March 9, 1883 (Confidential Print No. 4945, p. 63, and Confidential No. 4765).
6. Draft of "Preliminary Arrangement" (Confidential Print No. 4945, p. 169).
7. Law Officers, May 20, 1882 (Confidential Print No. 4783, p. 91).

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## Netherlands.

### No. 56.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*

My Lord, *Royal Courts of Justice, April* 25, 1884.

Capture of the crew of the "Nisero" by the Rajah of Tenom.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 7th instant, transmitting papers relative to the case of the crew of the British steamer "Nisero," who were detained by the Rajah of Tenom in Sumatra. That by Article IX of the Treaty between Great Britain and Holland of the 17th March, 1824, all the English possessions on the Island of Sumatra were ceded to Holland, and that it was agreed that no British Settlement should be formed on that island, nor any Treaty be concluded by British authority with any native Prince, Chief, or State therein. That, by a Treaty of the 2nd November, 1871, Great Britain engaged to desist from all objections against the extension of the Netherlands dominion in any part of Sumatra. (See documents C, D, and E).

That since the date of the last Treaty the Dutch had extended their dominion over the whole of the Island of Sumatra, but that they had of late years been engaged in warfare with the Rajah of Tenom (F).

That the Rajah had long resisted the dominion of Holland, and his port had been blockaded by the Dutch for four years before he submitted to them. That he then lived on good terms with them until about a year ago, when the Dutch, believing him to have instigated an attack by Acheenese against them, closed his port and burned his residence.

That it was affirmed that he was quite innocent of any complicity in the attack, and that he had been treated with great injustice.

That since then he had been hostile to the Dutch (Colonial Office letter, March 6th, 1884).

That on the 7th November last, during the blockade of the Rajah's port (which still continued), the British steamer "Nisero" was wrecked on the coast, and became a total loss.

That the crew, twenty-eight in number, were seized by the Rajah, and, with the exception of the master and two others, were still detained by him as captives, his avowed object being to extort from the Dutch, through the intervention of Her Majesty's Government, compensation for the losses inflicted on him by the Dutch, the reopening of his port, and a guarantee against further molestation.

That all efforts to obtain the liberation of the captives had failed, owing to the nature of the conditions imposed by the Rajah.

That the Dutch having attacked him and burned his residence, he retired inland, taking the prisoners with him.

That a British Mission was dispatched to him from Singapore, with the assent of the Dutch authorities, and that they had succeeded in reaching the spot to which the

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Rajah had retired, and in carrying on negotiations with him; but that Mission, which had now returned, was unsuccessful.

That the terms still insisted on by the Rajah were a payment of 40,000*l.*, the reopening of his port to trade, and the protection of Great Britain against the Dutch.

That, after referring us to the documents transmitted with his letter, Sir Julian Pauncefote stated that the Netherlands Minister had informed your Lordship that a new Governor-General of the Dutch East Indies was on his way out to Acheen, with instructions to make fresh efforts to effect the liberation of the captives by compelling the neighbouring States in the interior to take up arms against the Rajah, thus forcing him into submission, but that the success of such an operation seemed very problematical.

That your Lordship was therefore disposed to act upon Governor Weld's suggestion, and to offer mediation on the ground of the alleged misapprehension as to the Rajah's complicity in the attack against them, which had led to the renewal of hostilities, as well as on account of the deep anxiety which the fate of the captives had aroused in this country.

That your Lordship would also point to the great injury to commerce in general, and especially to the commerce of the neighbouring British possessions, which that prolonged interruption of trade was causing, contrary to the expectations which had been formed on the conclusion of the Treaty of 1871.

That, before proceeding further in the matter, your Lordship would be glad to be favoured with our views on the case, particularly with reference to the precise responsibility and obligations of the Netherlands Government, if any, under international law, in relation to the detention and liberation of the prisoners, having regard to the fact that they claimed dominion over the territory of the Rajah, and treated him as a rebellious vassal.

That our opinion was requested as to whether, under the circumstances, Her Majesty's Government would have the right, without regard to the relations between the Dutch and the Rajah, to dispatch a military force against him to effect the forcible rescue of the prisoners, should such a course be deemed expedient and practicable.

In obedience to your Lordship's commands we have the honour to report—

Dutch are bound, if the territory is theirs, to restore their authority and release the prisoners.

That, assuming the territory where the sailors were taken prisoners and are now kept in captivity to be Dutch territory, we think that the Dutch are bound to take the necessary steps to restore their authority within that territory, and to liberate the captives.

Whether the Dutch Government are under obligation to make compensation is a question of more difficulty.

Difficult to make out case for compensation, but want more information on point.

According to the view which has been taken in former cases, we do not think they are liable to do so, unless the occurrence arose from neglect on their part to take due precautions to protect the lives and liberty of persons who were within their territory and entitled to their protection.

As the capture appears to have taken place at a time when some of their subjects were in rebellion against them, and to have been, in fact, an act of hostility against the Dutch Government, we think it would be difficult to make out a case for compensation.

But we have hardly sufficient knowledge as to the state of things immediately preceding the capture to express a definite opinion upon the point.

If Dutch are acting in good faith for release of prisoners, a British expedition cannot be sent without their assent.

It would seem, from the information before us, that the Rajah of Tenom and his subjects had, at one time, become subject to the Dutch, and had authority exercised over them, but that they had thrown off this authority at the time of the wreck. If this be so, and provided the Dutch Government are, in good faith, taking all such steps as appear to them to be most calculated to effect the release of the captives, whether by force or otherwise, we do not think Her Majesty's Government would be justified, without their assent, in dispatching a military force against the Rajah to effect the forcible release of the prisoners.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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*List of Papers.*

1. (A.) Treaty between Great Britain and the Netherlands, March 17, 1824 (Treaty No. 206).
2. (B.) Convention between Great Britain and the Netherlands, November 2, 1871 (Treaty No. 534).
3. (C.) Memorandum by Mr. Anderson, January 5, 1874 (Confidential No. 2398).
4. (D.) Memorandum by Mr. Sanderson, February 1, 1869 (Confidential No. 2440).
5. (E.) Memorandum by Mr. E. Hertslet, March 26, 1874 (Confidential No. 2447).
6. (F.) Map No. 2 annexed to Parliamentary Paper, "Netherlands No. 1 (1882)" (No. 2515).
7. Colonial Office, March 6, 1884 (Confidential No. 5047, p. 42).
8. Ditto, March 13, 1884 (Confidential No. 5047, p. 60).
9. (G.) Memorandum, with Inclosure, by Sir F. Denys, February 2, 1884.
10. Colonial Office, March 27, 1884.

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## No. 57.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 4.)*

My Lord, *Royal Courts of Justice, June 4, 1884.*

Capture of the crew of the "Nisero" by the Rajah of Tenom.

WE are honoured with your Lordship's commands signified in Lord Edmond Fitzmaurice's letter of the 22nd ultimo, respecting the case of the crew of the British steamer "Nisero," which formed the subject of our Report of the 25th April.

Refusal of Dutch Government to accept offered mediation.

That upon receipt of that Report your Lordship addressed a semi-official communication to the Netherlands Minister, offering the mediation of Her Majesty's Government in the affairs of Acheen. That Count de Bylandt's reply was inclosed, and was to the effect that his Government were unable to accept that offer.

Proposed draft renewing offer of mediation.

But that Her Majesty's Government were not disposed to accept this refusal as final; and that the draft of an official note which it was proposed to address to the Netherlands Minister, renewing the offer of mediation, was inclosed, together with the papers transmitted to us in the Foreign Office letter of the 7th April.

That Lord Edmond Fitzmaurice was to refer us especially to the final Reports of Mr. Maxwell, at pp. 89 and 100 of the Print, and to the Treaties between Great Britain and the Netherlands of 1824 and 1871, and to the printed Memorandum thereon.

That your Lordship desired to be favoured with our opinion as to whether we concurred in the terms of the draft note, and with any general observations which we might have to offer on the case.

We are also honoured with a further letter from Sir Julian Pauncefote dated the 29th ultimo, inclosing a draft to Count de Bylandt, which it was requested might be substituted for the one previously submitted for our consideration.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed draft to Count de Bylandt.

That, in our opinion, the proposed draft despatch is right and proper.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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*List of Papers submitted to Law Officers in Foreign Office Letter of May 22, 1884.*

List No. 1.—1. Correspondence respecting the case of the "Nisero," printed for the confidential use of the Foreign Office, Confidential No. 5047.  
2. Draft to Count de Bylandt, May , 1884.  
3. Sir F. Weld, May 14, 1884.  
4. Colonial Office, January 8, 1884 (Commercial Department paper).  
List No. 2.—Papers sent to Law Officers on April 7, 1884.  
See list annexed to Report of April 25, 1884.

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### Annex.

*Draft of Letter from Earl Granville to Count de Bylandt.*

M. le Ministre, *Foreign Office, May , 1884.*

I HAVE the honour to acknowledge the receipt of your letter of the 9th instant, in which you inform me that your Government decline to entertain the friendly proposal of mediation in the affairs at Acheen which was conveyed in my communication to you of the 29th ultimo.

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Her Majesty's Government have received this announcement with great regret, and they are unable to appreciate the reasons given for rejecting an offer calculated to terminate in an honourable and friendly manner the long-pending hostilities in that country, and the embarrassments which have arisen thereout and have culminated in the unhappy incident of the "Nisero."

The facts of that case are placed in the clearest light by the Reports of the British officers who took part in the recent Mission to Tenom.

Those Reports and other papers on the subject have just been laid before Parliament, and, according to the promise contained in my previous communication, I now have the honour to transmit to you a copy of them.

A perusal of the Blue Book must satisfy any impartial reader that the surmise expressed in your letter under reply, that the wreck of the "Nisero" was not attributable to accident, but to some criminal design, is totally without foundation; and the papers conclusively show that the motive of the Rajah of Tenom in detaining the crew was not to obtain payment of a debt from Khoo Tian Poh, the Penang trader, with whom he has always been on good terms, but the hope of obtaining relief, through the good offices of Her Majesty's Government, from the closing of his ports to commerce by the Dutch authorities.

I would particularly refer you, M. le Ministre, to the concluding Report of Mr. Maxwell, at p. 86 of the Parliamentary Papers,* which gives a clear, concise, and, as I believe, an accurate history of the whole case.

The detention of the crew of the "Nisero" has not only created the most painful anxiety in this country, but their prolonged captivity is producing a growing agitation which Her Majesty's Government cannot but view in a very serious light, as calculated to impair the friendly relations between the two countries. It is felt—not without reason—that the sovereignty claimed by the Netherlands Government over the territory in which these British subjects are detained carries with it obligations as well as rights, and among them the obligation that they should not permit the continued imprisonment of innocent persons, the subjects of a friendly Power. Unfortunately, all the endeavours of the Netherlands Government to fulfil that obligation since the date of the occurrence in November last have entirely failed.

Moreover, the steps they are taking cannot be said to hold out a reasonable prospect of obtaining the desired result at an early date; whereas Her Majesty's Government have good grounds for believing that their friendly intervention would probably be successful.

In these circumstances Her Majesty's Government feel that they have a right to urge the acceptance of their mediation on the Netherlands Government, and they believe that if it were agreed to abandon the commercial restrictions imposed at the Acheenese ports, the release of the captives could be effected.

Her Majesty's Government have had the advantage of personal communication with Sir Frederick Weld, the Governor of the Straits Settlements, who has recently arrived in England from that Colony, and he entirely confirms the statements of the other British officials as to the character of the war which has now desolated Acheen for thirteen years, and as to the hopelessness of any return to peace unless the Netherlands authorities are prepared to abandon the restrictions which they have imposed on the freedom of commercial communication on the coast by confining the general trade to particular ports, and by requiring the coasting trade to be carried on in vessels of very small tonnage.

That policy, M. le Ministre, is a departure from the spirit of the Treaty of 1824 between Great Britain and the Netherlands, and of the notes appended thereto, if not a violation of one of the most important stipulations of that Treaty, in consideration of which Great Britain consented to waive the rights and advantages which she possessed under her Treaty with Acheen of the 22nd April, 1819. The stipulation to which I refer is contained in Article IV, and under it the Netherlands Government engaged to respect the freedom of trade, and "in no way to impede a free communication of the natives of the Eastern Archipelago with the ports of the two Governments respectively, or of the subjects of the two Governments with the ports belonging to native Powers."

The objection put forward, as I understand, by the Netherlands authorities to carrying out this engagement in Acheen is the fear of arms and ammunition being smuggled into the country. But that objection is hardly an answer to the complaints of the British traders. Moreover, I would point out that sufficient precautions might be taken to guard against the danger apprehended, and that the authorities of the British possessions in those seas have hitherto co-operated in the most friendly manner with the Netherlands authorities to avert it, by prohibiting the export of munitions of war, notwithstanding the great injury inflicted on them by the restrictive measures complained of.

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* "Netherlands No. 1 (1884)," No. 2843.

In the British note appended to the Treaty of 1824 the British Plenipotentiaries, after adverting to the fact that the Treaty was in some respects incompatible with the previous Treaty of 1819 between Great Britain and the King of Acheen (which it was intended to modify), expressed their confidence that "no measures hostile to the King of Acheen would be adopted;" and when Her Majesty's Government, by the Treaty of 1871, withdrew their objection to "the extension of the Netherlands dominion in any part of the Island of Sumatra," they little anticipated that the result would be the breaking out of hostilities between the Netherlands Government and the Acheenese, which have never ceased up to the present day.

Her Majesty's Government do not wish to enter into the causes of those hostilities, nor do they dispute the strict right of the Netherlands Government to make war on the Ruler of Acheen; but looking at the provisions and objects of the Treaties above referred to, at the prolonged captivity of British subjects in Tenom, and at the detriment caused to British interests by the existing state of affairs in Acheen, they consider that they are fully justified in giving expression to the feelings which these events have aroused in this country, and in offering their mediation for the restoration of peace and the re-establishment of trade on a basis of commercial freedom more consistent with the spirit and intention of the general settlement effected by the Treaty of 1824.

In the concluding part of his Report Mr. Maxwell observes that the difficulties between the Chief of Tenom and the Netherlands authorities, and the detention of the crew of the "Nisero," are but incidents in a contest in which the whole of the north of Sumatra has for years been engaged, and that it would be quite possible for the British Government to open negotiations with the titular Sultan of Acheen and his advisers at Kemala, and with the leaders of the war party in other parts of Acheen, with a view to arranging terms of peace.

Her Majesty's Government are prepared to send a Mission to Kemala with that object, if the Netherlands Government will undertake to restore the freedom of trade, which at all events would, in the opinion of the British officials, secure the liberation of the crew of the "Nisero."

I have to request, M. le Ministre, that you will be good enough to submit the foregoing observations to your Government, and to convey to them the earnest hope of Her Majesty's Government that they will see their way to respond to the friendly proposals which are reiterated therein for the pacific and honourable solution of their differences with the Acheenese, and the cessation of the injurious consequences which have resulted therefrom to this country.

I have, &c.

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## No. 58.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—*(Received December 6.)*

My Lord, *Royal Courts of Justice, December* 6, 1884.

**Capture of the crew of the "Nisero" by the Rajah of Tenom.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 1st instant, stating that he was to transmit the papers* relating to the case of the "Nisero," which was the subject of our Report of the 25th April last.

That our attention was specially directed to the letters from the Foreign Office to the Treasury of the 18th and 30th July last (Print, pp. 215 and 237), and to the Treasury replies of the 23rd July and 6th August (Print, pp. 224 and 249), in which we should observe that the Lords Commissioners were of opinion that a sum of 300*l.*, contributed by them to the Mansion House Fund for the relief of the relatives of the captive crew of the "Nisero," should be recovered from the Netherlands Government.

That we were also referred to our Report of the 25th April (Print, p. 108), in which we expressed the opinion that the responsibility of the Netherlands Government was governed by the consideration whether or not the seizure and the detention

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* Correspondence "Nisero" 1883-84, Confidential No. 5047; Mr. Thomson, received November 15; to ditto, November 21, 1884.

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of the crew arose from neglect on their part to take due precaution to protect the lives and liberty of persons who were within their territory and entitled to their protection.

That it appeared to your Lordship that the question raised by the Treasury with regard to the contribution of 300*l.* to the Mansion House Fund was equally applicable to the general expenditure incurred by Her Majesty's Government in supplying the captives with provisions, in carrying on the negotiations for their deliverance, and in providing for their final reparation.

That in applying the test laid down in our Report of the 7th April, your Lordship, as at present advised, failed to perceive on what grounds a charge could be sustained against the Netherlands Government of any neglect on their part to take due precautions for the safety of the crew of the "Nisero," or to use all the means in their power to effect their rescue.

That at the time when the "Nisero" was wrecked on the coast of Tenom the Rajah was in rebellion against the Dutch authorities.

The wreck of the vessel, for which the latter could not be held responsible, had the effect of throwing the crew into the hands of their enemy, and owing to the tactics of the Rajah in withdrawing inland with his captives immediately upon the commencement of hostilities, their forcible rescue was rendered impracticable without resorting to an expedition on a large scale, such as was subsequently contemplated by the British and Dutch Governments.

Indeed, in the opinion of many persons acquainted with the country, any attempt at a forcible rescue would have resulted in the massacre of the captives.

That the early history of the case was stated in the reference on which our Report of the 7th April was based (Print, p. 69).

That the measures taken by the Netherlands Government on hearing of the wreck and captivity of the crew were detailed in Consul Kennedy's No. 8 of the 19th January, and in the "historial statement" read in the Second Chamber by the Dutch Minister for the Colonies.

That we were referred to an important Memorandum by Mr. Maxwell, explanatory of the political situation in Acheen (Print, p. 100).

That it would appear from those documents that the Netherlands Government had been ready from the first to adopt any measures likely to effect the liberation of the captives, whether by naval or military operations, or by ransom.

That ultimately joint action was agreed upon by the two Governments, which happily resulted in the surrender of the captives on payment of a sum of 100,000 rupees by the Netherlands Government, and of a further sum of 10,000 dollars as a present to Tuku Yit, the Rajah's negotiator, as explained by Mr. Maxwell in his final Report of the 14th September (Print, pp. 348, 361).

That your Lordship proposed to ask the Netherlands Government whether they will repay the 10,000 dollars present to Tuku Yit under the circumstances reported by Mr. Maxwell, but that before making any other pecuniary claim on them, your Lordship desired to be favoured with our opinion on the question raised by the Treasury, whether Her Majesty's Government would, under all the circumstances of the case, be justified, consistently with international law, in claiming from the Netherlands Government the reimbursement of all or any of the expenses incurred by them on account of the captives and of their rescue, including the 300*l.* contributed by them to the Mansion House Fund for the relief of the relatives of the crew.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government cannot claim from Dutch Government the 300*l.* contributed to the Mansion House Fund.

That we do not think Her Majesty's Government are entitled, consistently with international law, to claim from the Netherlands Government the 300*l.* contributed by them to the fund for the relief of the crew.

Our reasons for this view are to be found in our Report of the 25th April, 1884. The fuller information now before us does not, in our opinion, establish that the captivity of the crew arose from neglect on the part of the Dutch authorities of the duties incumbent upon them.

Dutch Government may be asked to pay expenses incurred by Her Majesty's Government in rescuing captives.

Whether a claim for the expenses incurred by Her Majesty's Government on account of the rescue of the captives can in strictness be maintained may be doubtful, but it appears to us that representations might be made to the Dutch Government that these expenses ought, as a matter of right, to be borne by them.

The Dutch Government were, we think, bound under an international obligation to take all reasonable measures to reassert their authority, and release the captives.

Now there can be little doubt that, but for the co-operation of Her Majesty's Government and the expenses incurred by them, the task of the Dutch Government would have been more prolonged, difficult, and expensive.

It would seem only fair, therefore, that they should recoup to Her Majesty's Government the expenses to which they have been put to, which have diminished the xependiture which the Dutch Government must otherwise have incurred in the performance of their international duties.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 59.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 31.)

My Lord, *Royal Courts of Justice, December* 30, 1884.

Detention of the crew of the "Nisero" by the Rajah of Tenom. Claim of W. Bradley for compensation

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 20th instant, transmitting to us a Memorial* addressed to your Lordship by William Bradley, late Third Engineer on board the "Nisero," praying for compensation on account of the sufferings and losses entailed upon him in consequence of his detention by the Rajah of Tenom as one of the crew of the "Nisero."

Other similar applications received.

That that Memorial was one of several which had been addressed to the Foreign Office, and that our opinion was requested as to the reply which should be returned to that and similar applications.

In obedience to your Lordship's commands we have the honour to report—

He has no claim on Her Majesty's Government.

That, in our opinion, the petitioner has no legal or valid claim to compensation by Her Majesty's Government.

Owing to an error of navigation, he was shipwrecked on the coast of Acheen, and there imprisoned and kept in confinement by an uncivilized Chief.

His imprisonment did not, either in its inception or continuance, result from any act or default of Her Majesty's Government.

He should be informed he has no valid claim.

We therefore suggest that the petitioner should be informed that Her Majesty's Government, whilst deeply regretting the loss and injury to which he has been subjected, are not in a position to make him any compensation in respect of them.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Pacific Islands.

### No. 60.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 11.)

My Lord, *Royal Courts of Justice, January* 9, 1884.

Responsibility of Government for acts of Ministers.

Grant to Mr Flowerden of Tramway concession.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was to transmit to us a despatch† respecting the claim of Mr. Flowerden on the Government of Hawaii. That Mr. Flowerden, a British subject, had obtained a Concession to lay down tramways in Honolulu from the Hawaiian Minister of the Interior, within whose competence the Minister for Foreign Affairs stated the matter to lie.

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* In Messrs. Bell, Broderick, and Gray's letter of December 18, 1884.

† Major Wodehouse, No. 18, Commercial, November 15, 1883.

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That Mr. Flowerden thereupon went to San Francisco, and incurred considerable expense in purchasing plant and securing the services of an engineer.

That, meanwhile, a change of Ministry occurred, and when Mr. Flowerden came back he was informed by Mr. Guleck, the new Minister, that by a Hawaiian Law the power of a Minister in any proposed work of public improvement depended on the consent of the King in Privy Council, and that his scheme must be so submitted. To that Mr. Flowerden made no objection.

That the matter was not, however, brought before the Privy Council, and that Mr. Flowerden announced his intention of commencing work on the strength of the authority granted by the ex-Minister.

That thereupon Mr. Guleck applied for and obtained an injunction from the Supreme Court restraining Mr. Flowerden from proceeding.

That Mr. Flowerden, on the advice of Her Majesty's Consul-General, filed an answer to the injunction, but that the suit was decided in favour of the Government, and the injunction was made perpetual.

That, under those circumstances, your Lordship proposed to address to Her Majesty's Consul-General in Hawaii an instruction, draft of which was inclosed, but that your Lordship before doing so would be glad to be favoured with an expression of our opinion on it, and that in case it did not meet with our approval with our advice as to the alterations which should be made in it.

That a copy of the Law Officers' Report in 1878* on the case of the "Jane Francis" was inclosed, which had some bearing on the present case.

Approve proposed instructions to Major Wodehouse.

In obedience to your Lordship's commands, we have the honour to report that we approve of the proposed instruction, the draft of which is inclosed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch to Major Wodehouse.*

(No. Commercial.)
*Foreign Office, January* , 1884.

Sir,

Grant of concession by Minister was *ultra vires*.

I AM directed by Earl Granville to acknowledge the receipt of your despatch No. 18, Commercial, of the 15th November, forwarding correspondence respecting Mr. Flowerden's claim on the Hawaiian Government. In reply, I am to state that, as at present advised, his Lordship is of opinion that the grant of the Tramway Concession having been pronounced by the Supreme Court to be *ultra vires* on the part of the Minister of the Interior, that decision must, until reversed, be taken as the law; and that that being so, the Government is not legally responsible, the act of the Minister of the Interior having been in excess of his authority, and not within the scope of his functions as an agent of the Government. Nevertheless, Mr. Flowerden's case is a hard one, and although he may have a personal remedy in an action for damages against the Minister, I am to instruct you to express to the Hawaiian Government the hope of Her Majesty's Government, that they will be disposed to take an equitable view of the case, without prejudice to their legal rights in the matter, and award of their own accord to Mr. Flowerden such reasonable indemnity as the nature of the case may warrant.

Government not legally responsible.

To apply for indemnity.

I am, &c.

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### No. 61.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 11.)

My Lord,
*Royal Courts of Justice, September* 11, 1884.

Case of the "Madras."

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 25th ultimo, stating that he was to transmit to us papers† relative to the case of the "Madras" at Honolulu. That the circumstances under which that vessel arrived at that port with small-pox on board, and applied to be admitted to quarantine, but was not so admitted till after a delay of sixty-two days had elapsed, would be found set forth in the Judgment* delivered in a suit connected with the case by the Supreme Court of Hawaii.

Delay in admission of vessel to quarantine.

That the owners of the "Madras" had preferred a claim against the Hawaiian Government on account of the loss incurred through the ship not having been at once admitted to quarantine. That the statement of the claim was Inclosure No. 10 in Major Wodehouse's No. 2 A, Commercial, of the 15th April, 1884.

That it appeared from an opinion on the case by Mr. Preston,† who was counsel to the ship's agents, and had several times been Attorney-General of Hawaii, that, although the owners of the "Madras" had a good cause of action against the Hawaiian Government, they could not prosecute it with any chance of success owing to the absence of the material witnesses in the case, and that he "considers that in fact they have no remedy in the Courts."

Failure to obtain legal remedy.

That Major Wodehouse reports that, in view of the attitude assumed by the Hawaiian Government in regard to that claim, it would be useless for him to continue his endeavours to obtain compensation for the owners or to attempt a reference of the matter to arbitration.

That Mr. Lister was to draw our attention to the instructions sent to Consul-General Wodehouse in the Foreign Office despatch, and to his despatch in reply thereto, and to request that we would favour your Lordship with our opinion, whether those instructions were right and proper under the circumstances and should still be adhered to, and, if not, what further instructions should be sent to the Consul-General in the matter.

In obedience to your Lordship's commands we have the honour to report—

Approve instructions to Consul General.

That we are of opinion that the instructions sent to Consul-General Wodehouse on the 31st May were right and proper, under the circumstances.

It now appears from Mr. Preston's opinion that, even if a cause of action at law exists against the Hawaiian Government, no remedy can be obtained by the owners of the "Madras" by means of an action, in consequence of the absence of the necessary witnesses.

Should make strong representations to Hawaiian Government.

Under these circumstances, we think that your Lordship may well consider the propriety of making strong diplomatic representations to the Hawaiian Government in support of the claim of the owners of the vessel, especially as that claim is founded upon conduct by the Hawaiian Government which, if persisted in, might prove most injurious to the interests of British ship-owners generally.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Persia.

### No. 62.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

*Foreign Office, November* 24, 1884

Gentlemen,

Herapit and Aratoon bankruptcy case.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the papers noted in the margin,‡ which relate to the bankruptcy of the Persian firm of Herapit and Aratoon, merchants of Tehran.

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* Law Officers, June 25, 1878, Confidential No. 4280, p. 79.

† *List of Papers sent to the Law Officers, August* 25, 1884, *about* "*Madras*:—"
Mr. Chapman, August 23; Major Wodehouse, No. 17, Commercial, November 1, 1883; ditto, No. 1, Commercial, February 1; ditto, No. 2 A, Commercial, April 15; Board of Trade, May 23; to Major Wodehouse, No. 4, Commercial, May 31; Major Wodehouse, No. 4, Commercial, July 15, 1884.

* Inclosure No. 1 in Major Wodehouse's No. 17 of 1883.

† Inclosure No. 2 in Major Wodehouse's No. 4, Commercial, of 1884.

‡ Sir R. Thomson, No. 5, Consular; Memorandum thereon by Sir E. Hertslet, October 15; Messrs. D. Sassoon and Co., November 3, 1884.

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In his despatch No. 5, Her Majesty's Minister at Tehran states that as the bankrupts had large dealings with foreign houses of English, French, Russian, and Dutch nationality, "it was decided, in accordance with treaty rights, that the settlement of its affairs should be intrusted to a Mixed Commission consisting of a Persian President, a member of each of the Legations interested, and the Dutch Consul-General."

The only Treaty stipulation which can be found on the subject in the archives of the Foreign Office is the Arrangement of 1844, referred to in Sir E. Hertslet's Memorandum of the 15th October. But that Arrangement does not appear to touch the present case.

Although the Queen by Treaty enjoys ex-territorial jurisdiction in Persia, no Order in Council has been issued to regulate such jurisdiction, and claims of British subjects are settled by arrangement through the British Legation and Consulates. In the present case, the liquidation of the bankruptcy, as before stated, has by general agreement been intrusted to a Mixed Commission, and liquidators have been appointed.

Dispute as to liquidation.

A complicated case has arisen in connection with the liquidation involving important questions of law, and Sir R. Thomson requests that the opinion of the Law Officers of the Crown may be taken thereon. The dispute is between the liquidators of the bankrupt firm, Messrs. Malcolm and Co., of Bushire (a British protected firm), and Messrs. D. Sassoon and Co., of London. Malcolm and Co. at the date of the bankruptcy (9th October, 1882) held a consignment of tobacco for sale on account of the bankrupts. The tobacco was sold through D. Sassoon and Co., who detain the proceeds under a claim of lien for a general balance. In consequence of this claim Malcolm and Co. demand the return of a sum of about 800*l*. paid by them to the liquidators, under a written guarantee. The facts of the case and the various points at issue are somewhat complicated, and it does not appear that all the parties are agreed as to the facts.

Demand of Malcolm and Co. for return of 800*l*. paid to liquidators.

The case on behalf of the liquidators is stated in Sir R. Thomson's despatch and its inclosures, and that of Messrs. Sassoon and Co. is stated in their letter of the 3rd November instant, and in the declaration of Mr. T. J. Malcolm inclosed therein.

I am to request that you will be good enough to inform Earl Granville whether those documents are sufficient to enable you to advise on the points of law raised by Sir R. Thomson on behalf of the liquidators, or whether you consider it necessary that all parties should agree to a statement of the facts.

Should the latter course appear to you unnecessary I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Granville with your opinion on the questions submitted in Sir R. Thomson's despatch.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

[After recapitulating the foregoing Reference the Law Officers and Dr. Deane report as follows:—]

Information not sufficient for clear opinion.

That it is impossible with the information before us to express any clear opinion upon the case.

The facts stated in the letter of Messrs. Sassoon and Co. convey a somewhat different view from that which is suggested in the Memoranda and letters forwarded by Sir R. Thomson.

Messrs. Sassoon and Co. state that the tobacco was forwarded to Messrs. Malcolm and Co. by Herapit and Aratoon with instructions that part of the parcel was to cover their account with Messrs. Malcolm and Co., and the remainder of the parcel was to be sent on to the consignment of Messrs. Sassoon as cover against their account. And this statement is supported by the declaration of Mr. T. J. Malcolm. We have only one of the letters written by Malcolm and Co. before us, and, though not perhaps inconsistent with the declaration now made, it does not specifically set up the case disclosed by the declaration. Probably some of the letters sent by Herapit and Aratoon to Malcolm and Co., or some of the letters of Malcolm and Co. would show clearly the nature of the transaction.

Observations as to right to goods disposed of before and after the bankruptcy by Malcolm and Co.

No doubt, if the tobacco was sent to Malcolm and Co. to cover their account, and was received by them before the bankruptcy, they were fully entitled to hold it. And if other portion of it was shipped by Malcolm and Co. by the direction of Herapit and Aratoon, consigned to Sassoon and Co., for the purpose of covering their account, and the shipment took place so that the goods or documents of title to them were in the hands of Sassoon and Co., or their agents, prior to the bankruptcy, the claim of Sassoon and Co. to hold the proceeds would be beyond question.

As to the 100 bags, which were in the hands of Malcolm and Co. at the time of the bankruptcy, and which they afterwards shipped to Sassoon and Co., the case seems entirely different; though the intention may have been to ship them as cover for the debt due to Sassoon and Co., they were held, as it appears to us, by Malcolm and Co. as agents for Herapit and Aratoon, at all events down to the time of shipment; and, accordingly, upon their bankruptcy would be held for the liquidators; and we do not think that, by subsequent dealing with the goods, they could give Sassoon and Co. a good title as against the liquidators. We suggest that a copy of the letter of Sassoon and Co., and the inclosed declaration should be transmitted to Sir R. Thomson with the above observations.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*December* 12, 1884.

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## No. 63.

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

Gentlemen, *Foreign Office, December* 19, 1884.

Herapit and Aratoon bankruptcy.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the papers noted in the margin,* which relate to the bankruptcy of the Persian firm of Herapit and Aratoon, merchants of Tehran.

Lord Granville will, in accordance with the last paragraph of your Report of the 12th instant, which is herewith returned to you for convenience of reference, transmit to Her Majesty's Minister at Tehran copy of Messrs. Sassoon and Co.'s letter together with your observations on the case. But before doing so his Lordship would be glad to be favoured with your opinion or observations on the second inquiry put forward by Sir R. Thomson, respecting the claim of Malcolm and Co. to the repayment of the 800*l*. given up by them to the liquidator under the letter of guarantee.

Claim of Malcolm and Co. for repayment of 800*l*. given to the liquidator.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

[After recapitulating the foregoing References the Law Officers and Dr. Deane report as follows:—]

Further information necessary.

That the 800*l*. received from Malcolm and Co. appear to have been paid by them in the belief that they had been credited with that sum in account by Sassoon and Co., as the proceeds of tobacco, whereas it now turns out that this firm claim to hold the tobacco and its proceeds against their own debt. If this claim of Sassoon and Co. be well founded it seems only right that the money should be returned. Upon this point and upon the position of Malcolm and Co. and Sassoon and Co., in relation to the tobacco, we are unable, as stated in our former Report, to advise without further information. And we understand that the question now submitted to us was inferentially answered in that Report.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*December* 30, 1884.

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* Sir R. Thomson, No. 5, Consular; Memorandum thereon by Sir E. Hertslet, October 15; Messrs. D. Sassoon and Co., November 3; to Law Officers, November 24; Law Officers, December 12, 1884.

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## Peru.

### No. 64.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—*(Received February 2.)*

*Royal Courts of Justice, February 2, 1884.*

My Lord,

Peruvian Nitrate Certificate Holders.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that he was directed to transmit to us the following papers, consisting of:—

(A.) Treaty of Peace between Chile and Peru.

(B.) Letter from the Secretary of the Committee of English Holders of Nitrate Certificates issued by the Government of Peru.

(C.) Despatch of Mr. St. John of the 12th November, 1883, with observations on Memorial.

That we should observe the memorialists applied for the intervention of Her Majesty's Government to secure the rights of the certificate-holders, which they alleged had been sacrificed by the Chilean Government in violation of the rules of international law under which a State acquiring new territory by cession or conquest was under the obligation of respecting the rights of private property, and of assuming the responsibility for the public debts charged on such territory.

That the Memorial contained an elaborate statement of facts and arguments presented by the Italian certificate-holders to the Government of Chile, the reply of the Government to that statement, and a rejoinder by the Italian certificate-holders. That at p. 64 we should find a Circular of the Chilean Government, in which it was declared that the rights which might be alleged with respect to the territory in question would be decided in accordance with the rules of international law.

That Sir J. Pauncefote was to request our opinion, whether the facts stated by the memorialists were sufficient to justify the intervention of Her Majesty's Government in their behalf.

Proposed intervention in favour of.

That Sir J. Pauncefote was to add that Her Majesty's Government were much pressed by the Governments of France, Italy, and Spain to join with them in such intervention, and that, as the Peruvian Congress would assemble on the 1st March next for the ratification of the Treaty of Peace, Sir Julian Pauncefote was to request our Report at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

That the case of the Nitrate certificate-holders appears to stand in much the same position as that of the bondholders.

Opinion in Report of same date as to Peruvian bondholders applies to present case.

We beg therefore to refer to our Report on the reference of the 22nd January with regard to the bondholders,* and to request that it may be considered as repeated upon this reference.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

(A.) Treaty of Peace between Chile and Peru of October 22, 1883; Inclosure in Mr. A. St. John's No. 131, Confidential, of November 25, 1883, Confidential No. 5070, p. 2.

(B.) Letter from Mr. Marras, Secretary of the Committee of English Holders of Nitrate Certificates of June 28, 1883, Confidential No. 4936.

(C) Sir S. St. John, November 12, 1883.

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* See No. 65.

### No. 65.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—*(Received February 2.)*

My Lord, *Royal Courts of Justice, February 2, 1884.*

Claims of Peruvian bondholders.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that he was to transmit to us the following papers, consisting of:—

(A.) Treaty of Peace between Chile and Peru, with Protocol annexed.

(B.) Memorial of Mr. Guedalla, 13th December, 1883.

(C.) Letter of Sir H. Tyler, transmitting:—

1. Resolution of General Meeting of Peruvian Bondholders.
2. Decree of Chilean Government, dated 9th February, 1882.
3. Protocols of Peace between Chile and Peru, May 12, 1883.
4. Memorial of Peruvian Bondholders.

(D.) Circular of Chilean Government of 2nd December, 1880.

(E.) Mr. St. John's No. 83 of 3rd September, 1883.

Proposed intervention in regard to cession of hypothecated territory.

That we should observe that the object of the Memorials was to obtain the intervention of Her Majesty's Government to secure the recognition and maintenance of the rights and claims of the Peruvian bondholders before the Treaty of Peace between Chile and Peru was ratified, especially with regard to any territory or other property the subject of hypothecation to the bondholders that might be ceded to Chile.

That the facts of the case and the arguments in support of those Memorials were fully and clearly stated in the above papers, and that Sir Julian Pauncefote was only to add that, though it was contrary to the practice of Her Majesty's Government to intervene officially in favour of creditors of foreign States, the present case appeared to raise a question of international right in regard to the obligation of a State acquiring new territory by conquest or cession to respect the private rights of property therein, and to assume the obligation of discharging the public debts charged on such territory.

That our opinion was requested as to whether the grounds stated in the Memorials were sufficient to justify the intervention of Her Majesty's Government for the purpose indicated.

That the Peruvian Congress would assemble on the 1st March next for the ratification of the Treaty of Peace, and that Sir J. Pauncefote was therefore to request our opinion at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

No settled rule as to division of debt on cession of territory.

That although it would be more equitable that when a part of the territory of one State is acquired by another by conquest, a part of the debt of the conquered country, if any exist, proportionate to the territory so acquired, should be taken over with it; yet there cannot be said to be any absolutely settled rule of international law to that effect. An equitable apportionment of the debt has been frequently, but not invariably, provided for in Treaties of Peace. If, therefore, there were no special circumstances in the present case, it might be doubted whether there was ground for intervention on the part of Her Majesty's Government.

In present case intervention justified.

The circumstances which exist in the present case are, however, certainly peculiar. There can be no doubt that the money was lent by the bondholders, in reliance mainly on the security of the valuable guano deposits belonging to the Peruvian Government. And, as one of the most important of these deposits is included in the territory to be ceded, we think there is an equitable claim on the part of the bondholders of a special character, which may justly be strongly urged upon the consideration of the Governments.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

(A.) Treaty of Peace between Chile and Peru of October 22, 1883; and Protocol, signed at Lima, October 20, 1883; Inclosures in Mr. A. St. John's No. 131, Confidential, of November 25, 1883, Confidential No. 5070, p. 3.

(B.) Memorial from Mr. H. Guedalla of December 13, 1883.

(C.) Sir H. Tyler, January 10, 1884, Confidential No. 5046, p. 76.

(D) Circular of Chilean Government of December 2, 1880.

(E.) Mr. A. St. John's No. 83 of September 3, 1883, Confidential No. 5046, p. 66.

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## No. 66.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November 6.)*

My Lord, *Royal Courts of Justice, November 5, 1884.*

Claims of foreign creditors of Peru.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 28th August last, stating that he was to transmit to us papers* relating to the claims of the foreign creditors of Peru.

That we were referred to two Reports of the 2nd February and accompanying papers for the general facts of the case up to that date.

Appropriation by Chile of Peruvian guano secured to bondholders.

That in response to a proposal made to them by the French Government, through their Ambassador at this Court, Her Majesty's Government informed his Excellency that instructions would be sent to the British Representatives at Lima and Santiago to unite with those of France, and of any other Power interested in the matter, in addressing a representation to the Chilean and Peruvian Governments respectively, with a view to obtain an equitable settlement of the question before the ratification of the Treaty (Print, p. 97, No. 84).

That identic notes with that object were accordingly presented to both Governments by the Representatives of France and Great Britain (pp. 102, 126—173).

That similar action was also taken by the Representatives of some of the other foreign Powers.

That the German Government, which had been invited to join in the action of the British and French Governments, while concurring in principle declined to join, on the grounds stated in Count Hatzfeldt's letter to Lord Ampthill (p. 113).

That in a note, dated the 8th April last, M. Waddington stated that the Peruvian Government refused to recognize the right of foreign Governments to intervene in the matter, and suggested whether, in the case of an unsatisfactory reply from the Government of Chile, it would not be advisable to protect the rights of the holders of the securities in question, by forcibly preventing the exportation of the guano and mineral products of Peru, which Chile proposed to appropriate without regard to the charges to which they were subject (pp. 124, 125, No. 138).

That your Lordship's answer to that communication, dated the 17th April last (p. 128), explained the object and meaning of the joint protest addressed to the Chilean and Peruvian Governments, as understood by Her Majesty's Government, and declined the French proposal.

That the reply of the Chilean Government to the identic note had been received (Mr. Pakenham's No. 40 of the 20th June).

Chile insists that bondholders' remedy is in Chilean Courts, &c.

That the Chilean Government demurred to the terms of the protest and to the rights claimed by the bondholders as incumbrancers, and insisted that their remedy was in the Chilean Courts, and that they expressed their willingness to enter into an equitable understanding with the creditors of Peru.

That a similar reply had been addressed to the Governments of France, Belgium, Italy, and the Netherlands.

That Mr. Currie referred us to the note of the Italian Ambassador at this Court of the 2nd July, 1884, in which he communicated the views of his Government on the Chilean reply.

That the Italian Government held that the competence of the ordinary Tribunals of the country, to which the Chilean Government had intimated their readiness to submit the claims in case of dispute, could not be recognized in questions involving the illegality or legality, from an international point of view, of the legislative or belligerent acts of the Chilean Government.

That the position hitherto taken up by Her Majesty's Government was apparently supported by the German Government in Count Hatzfeldt's letter above alluded to, and that as regarded the terms of hypothecation of the public domain and revenues of Peru, on which the bondholders rely, Mr. Currie referred us to the Memorandum by Mr. Jervoise (p. 25), and to the Memorial addressed to the Foreign Office by Sir Henry Tyler, the President of the Committee of Peruvian Bondholders (p. 76), in which extracts were given from the general bonds, securing the issues of 1870 and 1872, and from the Decree of the Chilean Government of the 9th February, 1882, providing for the sale and realization of 1,000,000 tons of guano to be taken from Peruvian territory.

That by certain Articles of the Treaty of Peace the Province of Tarapacá was ceded absolutely to Chile, and the provinces of Tacna and Arica for a period of ten years certain, with provisions as to the disposal of the guano and nitrate deposits in the ceded territory.

That our opinion was requested on the Chilean reply to the identic note, and on the views of the Italian Government in regard to it, as contained in Count Nigra's note of the 2nd July last.

That your Lordship would be glad also to be favoured with our opinion as to the substance of the rejoinder which should be returned to the Chilean reply.

We have also the honour to acknowledge a further letter from the Foreign Office on this subject, dated the 25th September last, in which Mr. Lister transmits further papers* for our consideration with those previously transmitted.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government, without conceding soundness of Chilean arguments, may accept promise to consider the position of the creditors.

That, in view of the object and meaning of the joint protest pointed out by your Lordship in your Lordship's despatch of the 17th April, 1884, we do not think it is necessary to examine critically all the propositions put forward in the reply of the Chilean Minister for Foreign Affairs, inasmuch as in the concluding paragraph the Chilean Government declare that they will not refuse to enter into an equitable understanding with the creditors of Peru, who may have rights that merit consideration, and which have originated in acts and contracts legally established. And this declaration is in addition to an admission that if there be creditors who have the rights of mortgagees in respect of the property ceded to Chile, they are still entitled to enforce those rights.

We think that, under the circumstances, Her Majesty's Government, in reply to the note of the Chilean Minister, may, whilst not conceding the soundness of all the propositions put forward in it, accept the assurance contained in the concluding declaration, that the position of the creditors of Peru in relation to the ceded territory, and as affected by the cession, will be equitably considered by the Chilean Government.

With regard to the passage to which attention is called by the Italian Minister, we may observe that its meaning is not altogether clear.

No objection to examination of other creditors' claims.

The passage commences by stating that should there be creditors who, by virtue of other rights than those of a pretended mortgage, ought to be attended to, the Government of Chile would examine to what extent those claims could be equitably considered.

This appears to us to be an undertaking on the part of the Government independent of the decision of any Tribunal, or of strict legal right.

And we are not sure that the passage which follows is intended to do more than apply to cases where there may be a dispute as to the right of particular claimants, as, for example, whether they were the holders of securities belonging to a class in respect of which concessions or arrangements may be made by the Chilean Government.

If this is all that it means, it would not, we think, be open to objection.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* *List of Papers.*

1. Peruvian 6 per Cent. Loan of 1870, p. 25.
2. Peruvian Government 5 per Cent. Consolidated Loan of 1872, p. 25.
3. Treaty of Peace between Chile and Peru of October 20, 1883, Confidential No. 5070.
4. Sir H. Tyler, January 11, 1884, p. 76.
5. Law Officers, February 2, 1884, p. 93.
6. Ditto, ditto, p. 93.
7. To M. Waddington, February 9, 1884, p. 97.
8. To Mr. St John, No. 12, and Mr. Pakenham, No. 14, February 15, 1884, p. 101.
9. Mr. St. John, No. 36, March 29, 1884, p. 136.
10. Mr. Pakenham, No. 19, February 29, 1884, p. 126.
11. Ditto, No. 28, April 14, 1884, p. 143.
12. Lord Ampthill, No. 46, February 28, 1884, p. 113.
13. M. Waddington, April 8, 1884, p. 124.
14. To M. Waddington, April 17, 1884, p. 128.
15. Mr. Pakenham, No. 40, June 20, 1884, p. 157.
16. Count Nigra, July 2, 1884, p. 150.

The above Papers are contained in Confidential No. 5046.

* Sir H. Tyler, September 15, 1884, in Confidential No. 5070.

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# Portugal.

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## No. 67.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June 25.*)

*Royal Courts of Justice, June* 24, 1884.

My Lord,

Collision between the "City of Mecca" and "Insulano."

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th ultimo, stating that he was to transmit to us the papers relating to the case of the collision between the British steamer "City of Mecca" and the Portuguese steamer "Insulano."

That the Judgments of the Portuguese Tribunals in that case had formed the subject of numerous references to the Law Officers of the Crown, and that all the facts and arguments on both sides were in the accompanying printed correspondence.

That Her Majesty's Government had protested against the Judgments of the Portuguese Tribunals, whereby the "City of Mecca" was declared wholly to blame for the collision, and liable to pay all the damages and costs on both sides, on the ground that those Judgments were inconsistent with the International Sailing Rules, to which Portugal was an acceding party.

Conditional acceptance of proposal for submission of case to arbitration.

That Her Majesty's Government having failed to obtain redress for the owners of the "City of Mecca," proposed to submit the case to international arbitration. That that proposal was rejected by the Portuguese Government on the ground that the national sovereignty would be thereby infringed. But that in a Memorandum from the Portuguese Legation of the 29th February last, it was stated that the Portuguese Government would accept arbitration, provided the proposal did not "imply a rupture of national sovereignty, or involve the obligation of answering for the acts of another nation."

That the last words referred to the enforcement of one of the Judgments complained of, at Havre, by the French Tribunals there.

That the last paragraph of the Memorandum referred to documents in the correspondence, in which the objections of the Portuguese Government to an arbitration were stated in detail.

That your Lordship was disposed to think that the most simple and convenient course would be to invite the Portuguese Government to accept certain propositions of international law, as governing the question in dispute, and to leave it to the arbitrators to apply them to the facts. That if we should concur in that view, Sir Julian Pauncefote was further to submit for our consideration the three following Rules:—

Proposed rules for guidance of arbitrator.

1. That every nation is bound to bring its legislation into harmony with its Treaties.
2. That the Tribunals of every nation are bound to give effect to its public Treaties.
3. That the Government of a nation bound by a Treaty, whose Tribunals fail to give effect to such Treaty, to the detriment of the subjects of another nation, party to the Treaty, and in violation of their rights, is responsible for the injury occasioned thereby, and liable to indemnify the sufferers.

That Sir Julian Pauncefote was to request our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Proposed rules not entirely in accordance with international law.

That we do not think that the three propositions suggested could, in the exact terms in which they are laid down, be supported as in accordance with international law.

The first proposition is probably not open to question. But until the law of a country has been brought into harmony with a Treaty, we do not think it is universally true that its Tribunals are bound to give effect to it. Indeed, according to our municipal law, the Tribunals cannot have regard to a Treaty or enforce its provisions except so far as it is in accord with law.

It cannot, therefore, be said that a Government is always responsible for the injury occasioned by the failure on the part of its Tribunals to give effect to the Treaty.

If they so fail to give effect to it because the Government has not taken all reasonable steps to bring the law into accord with the Treaty, that would no doubt afford legitimate ground of complaint.

But supposing the law of the country to be in harmony with the Treaty, and that effect is not given to it only by reason of an erroneous interpretation being put upon it, we are not prepared to say that if such an error was made in good faith, there would be any right, according to international law, to claim redress at the hands of the Government whose Tribunal had so erred.

If there were any want of good faith, or the Treaty was wilfully disregarded or set aside, the case would, no doubt, be different.

Cannot suggest any advantageous modifications.

Neither do we see our way to suggest any modification of the propositions which would be likely to obtain the assent of the Portuguese Government, and, at the same time, to be of advantage to the owners of the "City of Mecca."

There seems to be no doubt that the mischief sustained by the owners resulted mainly from the Judgment of the French Courts. Inasmuch as those Tribunals did not enforce the Portuguese Judgment as such, but held themselves entitled to examine and review the grounds on which it was based, and founded their Judgment on an independent consideration of the facts and the law of the case, it is difficult to see how the Portuguese Government could be made liable by any Tribunal of Arbitration for the damages arising from such a cause, and they certainly would not be likely to assent to a reference in such terms as could possibly make them so liable.

No chance of any advantage from such an arbitration as Portugal would agree to.

It is a matter for consideration, in all the circumstances of the case, whether any benefit is likely to be derived from such an arbitration as the Portuguese Government would be willing to assent to.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

A. "Correspondence respecting the 'City of Mecca'" ("Commercial, No. 46. 1882"), Foreign Office No. 2672.

B. "Further Correspondence respecting the 'City of Mecca'" ("Commercial, No. 13, 1883"), Foreign Office No. 2673.

C. Ibid. ("Commercial, No. 7, 1884"), Foreign Office No. 2787.

D. Memorandum received from Portuguese Legation, February 29, 1884.

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## No. 68.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September 11.*)

*Royal Courts of Justice, September* 11, 1884.

My Lord,

Oyster fisheries at Lisbon. Claim of Anglo-Portuguese Oyster Company.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th ultimo, stating that he was to transmit to us papers relating to the claim of the Anglo-Portuguese Oyster Company to certain oyster fisheries at Lisbon.

That the facts of the case were briefly as follows:—

That a Concession to work certain oyster fisheries was granted by the Portuguese Government to Senhor V. Barboso du Bocage; that that Concession contained a stipulation to the effect that it should not be transferred without the previous consent of the Portuguese Government.

That it was transferred with that consent to M. Place, who thus became the legal possessor of it.

Transfer by M. Place of Concession to Company without consent of Government.

That an English Company, called the "Anglo-Portuguese Oyster Company," subsequently contracted with M. Place for the transfer to them of his rights under the Concession, but they omitted to obtain the previous consent of the Portuguese Government to the transfer.

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Bankruptcy of M. Place's estate and sale of his interest in the Concession.

That the business continued to be worked in the name of M. Place, but for the benefit of the Company, of which M. Place became a Director; that he thus held the Concession in trust for the Company.

That M. Place committed suicide, and his estate was made bankrupt in France; the French Syndic, or Liquidator, of his bankrupt estate caused his interest in the Concession, whatever that might be, to be sold by auction; that the English Company lodged a protest against the sale.

That nevertheless M. Place's interest in the Concession was sold in Paris by auction, and was purchased by M. Amorous, who had been recognized by the Portuguese Government as the legal assignee of the rights and interest of M. Place in the Concession, and whose title thereto had been confirmed, on his application, by a Portuguese Decree, which nevertheless bound him to answer before a Portuguese or foreign Court for any contracts made by M. Place, or for any action which might be brought with reference to the Concession.

That the Company had obtained a Judgment from the High Court of Justice declaring them to be entitled to the Concession, and that they had asked your Lordship to cause that Judgment to be served on M. Amorous, through Her Majesty's Consulate at Lisbon, but that that request had been refused as being contrary to the practice of the Foreign Office, and that the Company had been informed that they must effect service through their own agents.

That they also asked that Her Majesty's Representative in Lisbon might be instructed to deliver a copy of the Judgment to the Portuguese Government, but that that request had also been refused pending our report on the case.

Portuguese Government decline to interfere.

That Her Majesty's Minister at Lisbon had already represented the case to the Portuguese Minister for Foreign Affairs, and that the reply of the Portuguese Government was that they could not interfere in the matter, which was one to be settled by the Courts of Law; that the Company had nothing to hope from any administrative aid in Portugal, and that the question for them to decide was whether to bring an action to upset the validity of M. Amorous' purchase, and establish their right to the Concession in a Portuguese, a French, or a British Court of Justice. That the Company had, as before stated, obtained a Judgment in the High Court of Justice against M. Amorous, declaring them to be entitled to all M. Place's rights under the Concession.

But they had taken no proceedings in France to set aside the sale of the property to M. Amorous, nor did they propose to take any proceedings in the Portuguese Tribunals to enforce the English Judgment. That they applied for the assistance of Her Majesty's Government with the view to a vindication of their rights by further diplomatic action.

That we were referred to the documents in the case, and especially to those enumerated (1, 2, 3, 4, 5, 6) in Sir Julian Pauncefote's letter.

That we were requested to take those papers into our consideration, and to favour your Lordship with our opinion as to what further diplomatic action, if any, Her Majesty's Government could properly take in the matter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

No diplomatic action can be taken until the Tribunals have decided the question.

That we are of opinion that no diplomatic action can at present properly be taken.

It appears that a *bonâ fide* claim to the oyster beds is made by M. Amorous. His rights, as well as those of the Anglo-Portuguese Oyster Fisheries, can, and ought to be determined by the legal Tribunals competent to entertain the questions involved, and we see no reason why the legal rights of M. Amourous should be interfered with by means of diplomatic action.

We can only suggest that if, at a time when those legal rights are duly determined it may be of service to the Anglo-Portuguese Company that the Portuguese Government should waive any rights resulting from the permission to transfer not having been obtained, the question whether Her Majesty's Government should interfere to the extent of requesting the Portuguese not to rely on such rights may be considered.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

Anglo-Portuguese Oyster Company, November 16; to ditto, November 22; to Mr. Baring, No. 34, November 23; Anglo-Portuguese Oyster Company, November 24; Sir C. Wyke, No. 109, December 17; to ditto, No. 40, December 29; to Anglo-Portuguese Oyster Company, December 29, 1883; Anglo-Portuguese Oyster Company, January 23; to Sir C. Wyke, No. 3, January 28; to Anglo-Portuguese Oyster Company, January 28; Anglo-Portuguese Oyster Company, February 1; to ditto, February 4; Anglo-Portuguese Oyster Company, March 29; ditto, April 3; to Mr. Petre, No. 35, April 8; to Anglo-Portuguese Oyster Company, April 8; Mr. Petre, No. 45, April 21; to Anglo-Portuguese Oyster Company, May 6; Anglo-Portuguese Oyster Company, May 12; to ditto, May 16; Anglo-Portuguese Oyster Company, May 28; to Mr. Petre, No. 44, May 30; Anglo-Portuguese Oyster Company, May 30; ditto, May 31; Mr. Petre, No. 54, May 31; to ditto, No. 45, June 5; to Anglo-Portuguese Oyster Company, June 7; Mr. Petre, No. 55, June 4; ditto, No. 57, June 7; to Anglo-Portuguese Oyster Company, June 12, Anglo-Portuguese Oyster Company, June 13; to ditto, June 14; to ditto, June 18, 1884.

Further Paper sent in Foreign Office letter of 30th August, 1884:—Anglo-Portuguese Oyster Company, August 27, 1884.

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## No. 69.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October 30.)*

My Lord, *Royal Courts of Justice, October* 29, 1884.

Collision between the "City of Mecca" and the "Insulano."

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 12th August last, stating that he was to transmit to us the papers[*] relative to the case of the "City of Mecca." That our Report of the 24th June last, as to the bases of arbitration which it was proposed to submit to the Portuguese Government for acceptance, was inclosed.

That Sir J. Pauncefote was to observe, as regarded the second proposition therein laid down, that the legal power of the Tribunals to give effect to the Treaty was intended to be implied. But that one qualification of the third proposition rendered it very difficult to deal with the matter in the manner proposed. But that at the same time it was important that the question between the two Governments should be brought to a close, and, if possible, that Her Majesty's Government should make a proposal to the Portuguese Government of a final character by suggesting certain questions which would leave the fullest latitude to the Arbitrators to decide whether there was a valid claim on the Portuguese Government, and if so, to what extent.

Proposed questions for arbitration as to:—

That Sir J. Pauncefote was to suggest two such questions as the following:—

1. Judgment of Court of Appeal.

1. Was the final Judgment of the Court of Appeal, throwing the whole blame and the whole damages on the British steamer, inconsistent with the International Sailing Rules, having regard to the admitted violation of Article XIV by the Portuguese steamer? and

2. Extent of liability of Portugue e.

2. If so, what, if any, is the extent of the liability of the Portuguese Government to indemnify the owners of the British vessel for the consequences of that Judgment?

That should the course proposed meet with our concurrence, Sir Julian Pauucefote was to request that we would inform your Lordship whether we approved of the two questions above suggested, and, if not, that we would favour your Lordship with our opinion as to whether any other questions could be fairly pressed on the acceptance of the Portuguese Government as a basis of arbitration so as to exhaust the discussion on that long-pending dispute.

That our attention was invited to the documents specified by Sir J. Pauncefote and transmitted therewith.

In obedience to your Lordship's commands we have the honour to report—

Not expedient to suggest above questions.

That we do not think it would be expedient to suggest the proposed questions even if the Portuguese Government would be willing to agree to them.

Judgment not inconsistent with Sailing Rules.

We do not think that the Judgment throwing the whole blame on the British steamer can be said to be inconsistent with the International Sailing Rules by reason of the admitted violation of one of them by the Portuguese steamer.

For some years after the Sailing Rules were agreed upon such a Judgment might have been given by the Courts of this country, and we should certainly not have admitted that it was inconsistent with our international obligations.

It was only in the year 1873 that the Legislature of this country enacted the

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[*] (A) Correspondence respecting the "City of Mecca," "Commercial No. 46 (1882)," Parliamentary, No. 2672; (B) Further correspondence respecting the "City of Mecca," "Commercial No. 13 (1883)," Parliamentary, No. 2673; (C) Further correspondence respecting the "City of Mecca," "Commercial No. 7 (1884)," Parliamentary, No. 2787; (D) Memorandum received from the Portuguese Legation, February 29, 1884; Law Officers, June 24, 1884.

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provision that a ship breaking any of the Regulations should be deemed to be in fault.

Cannot suggest other questions.

We are unable to suggest any questions in substitution of those submitted to us which are likely to be accepted by the Portuguese Government, and upon which an Award advantageous to the owners of the "City of Mecca" might be expected.

Arbitration without prospect of success inexpedient.

And we submit that it would be inexpedient to enter upon any arbitration unless there were a prospect of a favourable result.

Should consult Lord Chancellor.

When the proposal for an arbitration was first put forward by Her Majesty's Government the matter was laid before the Lord Chancellor for consideration, and we would suggest that it might be expedient that it should now be again considered by him in its present aspect.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 70.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 28.)

My Lord, *Royal Courts of Justice, November* 27, 1884.

Claim of Mr. J. Dixon for line built for Minho District Railway Company and sold to the Guimarães Company.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th instant, stating that he was to transmit to us the papers noted in the accompanying list,* which related to the claim of Mr. John Dixon, of London, a civil engineer, against the Guimarães Railway Company, as a creditor of the late Minho District Railway Company in Portugal.

That Sir Julian Pauncefote was, in the first place, to invite our attention to the statement of facts contained in Sir R. Morier's note to the Portuguese Minister of the 2nd March, 1881 (Parliamentary Paper, Part I, p. 1).

That the late Minho District Railway was formed by an English Company in 1876, under a Concession granted by the Portuguese Government. That Mr. Dixon contracted with the Company to build a section or sections of the line. That the Company went into liquidation, leaving Mr. Dixon, as he alleged, in possession of the portion of the line he had constructed, and on which he claimed a lien for the sums due to him by the Company. That the line was, however, seized by the liquidator of the bankrupt Company and sold by auction to a new Company called the Guimarães Railway Company, which had been formed by some of the shareholders of the bankrupt Company.

That copies of the Portuguese Decree revoking the Concession to the bankrupt Company, and of the Decree granting a Concession to the new Company, would be found at pages 11 and 12 of the Parliamentary Paper, Part I.

That in the new Decree of Concession it was stipulated that the new railway Company must prove before the Government, within a period of six months, that they had acquired the portion of line already constructed, and that it was declared that "by the fact of such acquisition they became obliged to answer in the terms of Portuguese law and in the competent Tribunals for all claims which referred to acts done by the bankrupt Company."

That the portion of the line completed by Mr. Dixon was sold to the new Company at the auction without reserve for 7,000*l*., although it had been valued by a Commission of Engineers appointed by the Commercial Tribunal in Oporto at over 18,200*l*. That that was accounted for by the fact that the Company, being the holders of the above-mentioned Concession, were in reality the only parties to whom the line could be of any value, and that they consequently had no competitors.

That Mr. Dixon had instituted proceedings in the Portuguese Courts to establish his lien on the line and to prevent its sale, but that the decision was adverse to his claim.

That the period of six months allowed to the Guimarães Company to acquire the line and otherwise carry out the stipulations of their Concession was several times extended by the Portuguese Government, thus enabling the Company to defer the settlement of Mr. Dixon's claim.

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* "Commercial No. 31 (1882)," Part I, Parliamentary, No. 2587; "Commercial No. 24 (1884)," Part II, Parliamentary, No. 2842; Mr. Petre, No. 49, May 1; Mr. Dixon, June 4; to ditto, June 9; Mr. Dixon, June ; to ditto, June 10; Mr. Dixon, June 12; ditto, June 28; to ditto, July 5; Mr. Petre, No. 67, July 10; Mr. Dixon, July 14; to ditto, July 18; Mr. Dixon (2), August 23, 1884

Representations to Portuguese Government.

That in consequence of representations made by Her Majesty's Legation at Lisbon to the Portuguese Government, it was arranged between Mr. Baring, Her Majesty's Chargé d'Affaires, and Senhor Serpa, the Portuguese Minister for Foreign Affairs, that Mr. Dixon should commence legal proceedings against the new Company for the amount due to him by the bankrupt Company, and that thereupon the Portuguese Government would issue a "Portaria," or Declaration, to the effect that the Company would not be considered regularly constituted until it had paid up the liabilities of the old Company as assessed by the competent Court. (See Parliamentary Paper, Part II, pp. 1, 2; Nos. 3 and 4.)

That Mr. Baring was further verbally assured that the Portuguese Government would then decline to grant the new Company running powers, and would refuse them all privileges and facilities till such time as the claims of the creditors had been judicially settled. (Ibid., p. 4, No. 9; and Mr. Petre's No. 67 of 10th July, 1884.)

That Mr. Dixon commenced his action, and the Declaration, or "Portaria," was issued. (Ibid., pp. 5, 6; No. 13.) But that when the line was completed the Portuguese Government held that they had no power to withhold from the Company permission to open their line pending the decision of the Courts in the action instituted by Mr. Dixon. (Ibid., p. 16; No. 28.)

That the Portuguese Government denied having given the verbal assurances reported in Mr. Baring's despatch of the 16th November, 1882 (ibid., p. 4; No. 9), and that the railway was accordingly opened.

That Mr. Dixon was then informed that Her Majesty's Government could take no further action pending the decision of the Courts on his claims. (Ibid., p. 34; No. 48.)

Repudiation of debts of old Company by the new one.

That in the meanwhile the new Company, encouraged by the support they had received from the Government, did not hesitate to repudiate openly their obligation to satisfy the debts of the old Company, and that Mr. Dixon had before him the prospect of a very lengthy and costly litigation with a public Company.

That the position of the case and the grounds upon which Her Majesty's Government considered that they had reason to complain of the attitude of the Portuguese Government in the matter were clearly explained in the following documents, to which our particular attention was invited:—

Sir C. Wyke to your Lordship, 18th February, 1884 (ibid., p. 34, No. 50.); your Lordship to Sir C. Wyke, 23rd February, 1884 (ibid., p. 36, No. 52); Mr. Petre to your Lordship, 6th March, 1884 (ibid., p. 37, No. 54); your Lordship to Mr. Petre, 23rd April, 1884 (ibid., p. 38, No. 55); and Mr. Petre to your Lordship, 1st May, 1884 (ibid., p. 38, No. 56).

That Mr. Dixon, in a letter to your Lordship, dated the 23rd August last, stated in effect that he had no reasonable hope of obtaining justice from the Courts of Law, and asked therefore that the Portuguese Government might be held liable for the value of the line as estimated by the Commission of Engineers (see Sir R. Morier's note to Senhor Braamcamp of the 2nd March, 1881; Parliamentary Paper, Part I, p. 1; No. 1), or that such other steps might be taken on his behalf as might be deemed advisable.

That it was apprehended that the Portuguese Government had incurred no legal liability towards Mr. Dixon, and that the latter had no alternative but to prosecute his claim before the Portuguese Tribunals.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and inform your Lordship whether we concurred in that view; and that we would favour your Lordship with our opinion as to whether any further diplomatic action could properly be taken at present in support of Mr. Dixon's claim.

In obedience to your Lordship's commands we have the honour to report—

Portuguese Government not legally liable. Mr. Dixon must apply to the Tribunals.

That we concur in the view that the Portuguese Government have incurred no legal liability towards Mr. Dixon, and that the latter has no alternative but to prosecute his claim before the Portuguese Tribunals.

No further diplomatic action can be taken at present.

In our opinion no further diplomatic action can properly be taken, at present, in support of Mr. Dixon's claim.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 71.

### *Sir J. Pauncefote to the Lord Chancellor.*

Collision between "City of Mecca" and "Insulano."

SIR JULIAN PAUNCEFOTE presents his compliments to the Right Honourable the Lord Chancellor, and has the honour, by direction of Earl Granville, to submit the papers marked in the margin* respecting the case of the "City of Mecca."

Rejection by Portugal of proposal for arbitration.

The Lord Chancellor will find at p. 97 of Part II of the inclosed Print a Memorandum expressing his opinion that it might be advisable, notwithstanding the difficulty of clearly establishing a definite ground of international complaint, to press the Portuguese Government to refer the case of the "City of Mecca" to international arbitration. Such arbitration was accordingly proposed (Part II, No. 50, p. 99), but was refused by the Portuguese Government (Part II, No. 60, p. 105) A further effort was, however, made to induce them to accept arbitration (Part II, No. 72, p. 147), but without success (Part III, No. 1, p. 1). It then appeared to Lord Granville that it would be useless to prolong the discussion, and Her Majesty's Minister at Lisbon was instructed so to inform the Portuguese Government, and to enter a protest against the attitude adopted in the matter by Portugal (Part III, No. 12, p. 22).

Conditions on which Portugal will accept arbitration.

In answer to a question in the House of Commons, it was announced that arbitration had been definitely refused, but it was thereupon said, in a Memorandum from the Portuguese Legation which was communicated to Earl Granville, that the Portuguese Government would accept arbitration provided the proposal did not imply an infraction of the national sovereignty of Portugal, or involve the obligation on the part of Portugal of answering for the acts of another nation.

Difficulty as to framing questions to Arbitrators.

Earl Granville was then disposed to think that it would be desirable to make a further attempt to bring about an arbitration by submitting to the Portuguese Government, for their concurrence, some general propositions of international law which the Arbitrators should apply to the facts of the case. Certain propositions were accordingly framed and referred to the Law Officers of the Crown, but the Lord Chancellor will perceive from their Reports at pp. 5 and 7 of Part III of the printed correspondence, that they were not approved by them. It was then proposed to frame some questions for reference to the Arbitrators which should leave them the greatest latitude to decide whether there was a valid claim, and if so, to what extent.

Two questions were accordingly submitted to the Law Officers.

Law Officers want Opinion of Lord Chancellor.

It will be seen, however, that the Law Officers were unable to approve of them, or to indicate any others which would be likely to meet with acceptance by the Portuguese Government (Law Officers' Report of the 29th October, 1884). They deprecate an arbitration without a prospect of a favourable result, but they suggest that, as the Lord Chancellor was good enough to consider the matter in its earlier stages, it would be expedient to invite his Lordship's opinion on it in its present aspect.

Lord Granville, therefore, would be much obliged to the Lord Chancellor if he would favour him with his observations on the case.

*Foreign Office, November* 27, 1884.

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### *Note by the Lord Chancellor.*

Lord Chancellor's Opinion.

I understand the present position of the matter to be this: The Portuguese Government have professed to be willing to submit this case to arbitration on two conditions:—

Conditions on which Portugal will accept arbitration.

1. That it should be referred in such terms as to exclude any possible implication of a waiver by Portugal of any of "the prerogatives of national sovereignty;" and
2. That the possibility of Portugal being made answerable for damages awarded against the "City of Mecca" by the *French* Tribunals should also be excluded.

The suggestions made by Sir J. Pauncefote's letters of the 13th May, 1884 (Correspondence, Part IV, No. 3), and the 12th August, 1884 (referred to in the Law Officers' Report, *ibid.*, No. 8) appear to have been intended, as far as possible, to satisfy those conditions.

Indemnification of owners by Portugal against decisions of French Courts.

How far any suggestions of that kind which could possibly be framed would be accepted by Portugal as excluding any possible derogation from her "prerogatives of national sovereignty" it may be difficult to say, but I take it to be quite clear that these particular suggestions would not have satisfied the conditions insisted on as a *sine quâ non* that all possibility of Portugal being held liable to indemnify the owners of the "City of Mecca" against the consequences of *French* decisions should be excluded. And I am bound to add that I agree entirely with the opinion expressed by the Law Officers in their Report of the 24th June, 1884 (last paragraph but one), that the contention of Portugal on that point is in substance right. Furthermore, I cannot but regard this French decision as introducing into the whole case of the British Government a new difficulty, so serious as in itself to make it inexpedient to persevere in the attempt to overcome the objections of Portugal to an arbitration. For if the French Courts, examining and reviewing the grounds on which the Portuguese Judgment was based, and founding their Judgment on an independent consideration of the facts and law of the case, came to the same conclusion, and if the actual damage has been sustained under the French rather than the Portuguese Judgment, it is not apparent what case there can be against Portugal, founded upon the International Sailing Rules, which there would not equally be against France: and, if so, the objection would be obvious, and must be fatal before Arbitrators, that we were seeking an indemnity against the weaker, which might, with equal or greater propriety, have been sought against the stronger, Power; but has not been so sought.

Nature of miscarriage of justice in Portuguese Courts.

Apart from these considerations, the attempt to formulate any propositions with a view to confine the question to be submitted to Arbitrators to that element in the case which is properly international is open to objection on the double ground: (1) that it is hardly possible to formulate any such propositions in a manner which might not admit of applications and consequences more dangerous to the independence of the judicature of *each* nation within its proper province than any result of the proposed arbitration could be beneficial to ourselves (which I understand to be the view taken by the Law Officers); and (2) that the case on which we desire to go to arbitration is not capable of being presented upon such a basis alone, without also taking into account other elements in the question before the Portuguese Courts, as to which, if *they* stood alone, there could be no ground for international complaint, however contrary to justice the decisions of those Courts may have been. The real miscarriage of justice in those Courts has been, not in holding the "City of Mecca" to blame, but in exonerating the "Insulano" from contributory fault. But the law as to the effect of contributory fault or negligence depends in each country upon the *lex fori*, and not upon international obligations or international compacts. So much is this the case, that in England two different rules prevailed until lately on this subject, one in the common Law, and another in the Admiralty, Courts. In Portugal the rule on this subject is contained in the 1568th Article of the Portuguese Commercial Code. If we went to arbitration in a form so limited as to exclude the question whether the "City of Mecca" ought not to have had the benefit of that Article (which is purely Portuguese law), we should not, in my opinion, have any case; and if it be true, as alleged by Senhor de Serpa (Correspondence, Part III, p. 3), that this benefit was not claimed, in the manner required by Portuguese law, by the pleading on the part of the "City of Mecca," this also is purely a question of the *lex fori*.

There must either be an arbitration on the whole case or none at all.

The result is, that I agree with the Law Officers in thinking that a limited arbitration is in this case unadvisable, and practically impossible. It must be either an arbitration at large upon the whole circumstances of the case (which the Portuguese Government have refused), or none.

(Signed) SELBORNE.

30, *Portland Place, December* 1, 1884.

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* Correspondence: "City of Mecca," Part I, Confidential No. 4243; ditto, Part II, Confidential No 4781*; ditto, Part III. Confidential No. 4782.

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# Russia.

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## No. 72.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 6.)

My Lord, *Royal Courts of Justice, March* 4, 1884.

**Power of attorney executed by Mr. Walker in favour of Mr. Haworth.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th January last, stating that he was to transmit to us the papers* relative to an inquiry by the Russian Ambassador, on behalf of his Government, as to whether the terms of a certain power of attorney executed by Mr. Walker before the Russian Consul-General in London in favour of Mr. Haworth, residing in Russia, was sufficient according to English law to authorize and empower the latter gentleman to represent his constituent before the Russian Tribunals in a certain suit. That it would appear from Prince Cantacuzène's letter of the 3rd October last, that a M. Boulygunie instituted a suit against Mr. Walker in relation to an estate in the district of Samara, of which Mr. Haworth had the general management, under the power of attorney in question, and that the latter presented himself before the Court to represent the interests of Mr. Walker.

That his right to do so under his power of attorney had been disputed. That a copy of the power of attorney was inclosed in Count Mohrenheim's note of the 19th January last.

That by section 707 of the Russian Code any document signed abroad acquired in Russia the same force with which it was invested in the country in which it is issued.

**Terms of the document.**

That according to the terms of the document in question, full powers were conferred on Mr. Haworth to manage the estate, to dispose of it by sale, to grant leases, to dismiss the employés, as well as to transfer his powers to a substitute, but that no express power was given to represent the interests of Mr. Walker before the Russian Tribunals.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and further [*sic*] your Lordship with our opinion as to whether, according to British law, the power to represent Mr. Walker in a suit relating to the estate in question would be implied from the general terms of the document.

In obedience to your Lordship's commands we have the honour to report—

**It will, according to English law, enable Mr. Haworth to act in law suit in Russia.**

That we think that, according to British law, the power to represent Mr. Walker in a suit brought against him in relation to the estate in question would be implied from the general terms of the document.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 73.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 6.)

My Lord, *Royal Courts of Justice, November* 5, 1884.

**Case of the British ship "Otome," confiscated by the Russian authorities of Eastern Siberia for infraction of the Fur-hunting and Fishing Regulations.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st ultimo, stating that he was to transmit to us papers relating to the case of the British ship "Otome," which was confiscated by the Russian authorities of Eastern Siberia for an alleged infraction of the Russian Regulations concerning fur-hunting, fishing, &c., in the Russian waters of the Pacific.

That the master's narrative was inclosed in Mr. Trench's No. 150 of the 13th October, 1883, to which was attached a copy of the master's protest addressed to the Governor of Petropaulovski.

That the Russian Hunting Regulations were also in the same despatch (No. 4).

That the master's protest to the Governor of Vladivostock formed the inclosure in Mr. Trench's No. 153 of the 22nd October, 1883.

That a representation as to the case was made by Her Majesty's Ambassador at St. Petersburgh to the Russian Government, whose reply would be found in Sir E. Thornton's No. 71 of the 7th August.

That Messrs. Wylie and Co., the representatives in this country of the parties interested in the "Otome," did not accept the note as a satisfactory explanation of the case, or as a correct statement of the facts mentioned in it. That the case, however, seemed to be one of grave suspicion, and that we were referred particularly to the comments thereon in Mr. Trench's No. 150.

**Should any further representation be made to the Russian Government?**

That a draft of an instruction to Her Majesty's Ambassador at St. Petersburgh had been prepared for consideration, and that our opinion was requested as to whether the circumstances warranted any further representation to the Russian Government, and, if so, whether the draft instruction submitted therewith was proper and sufficient.

In obedience to your Lordship's commands we have the honour to report—

**Believe that an offence against the Regulations was committed.**

That there appear to be strong grounds for believing that an offence against the Russian Regulations was committed, and it appears probable, too, that it was committed with a knowledge of the Regulations.

But even if the Regulations were knowingly violated, there are two matters upon which well-founded representations may, in our opinion, be made to the Russian Government.

**Nature of the representations which may be made to the Russian Government.**

These are the long-continued detention of the persons charged prior to the case being disposed of, and the allegation that no opportunity was given to them of defending themselves, and that there was no judicial inquiry at which they could establish their innocence.

We think, too, that the fact that the Regulations were not communicated to Her Majesty's Representative at Yokohama, or elsewhere, affords a proper ground for representation.

We see no objection to communicating to the Russian Government the version by the owner, captain, and crew of the "Otome" of the transaction in question, and their assertion of their innocence.

But we would suggest the expediency of keeping the representation of these matters distinct from representations on the more general points to which we have called attention, as the latter may have a bearing on future cases, and are of wider application than the question of the seizure of the "Otome."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### *List of Papers.*

Mr. Kennedy, No. 238, October 4, 1883.
Mr. Kennedy, No. 239, October 5, 1883.
To Mr. Kennedy, No. 33, Commercial, October 13, 1883.
Mr. Trench, Telegraphic, October 18, 1883.
Mr. Kennedy, No. 249, October 16, 1883.
Mr. Kennedy, No. 254, October 17, 1883.
Mr. Kennedy, No. 255, October 18, 1883.
Mr. Kennedy, No. 100, Commercial, October 19, 1883.
To Sir E. Thornton, No. 36, Commercial, November 2, 1883.
Mr. Trench, No. 150, October 18, 1883.
Mr. Trench, No. 151, October 18, 1883.
To Mr. Trench, No. 122, November 30, 1883.
To Sir E. Thornton, No. 45, Commercial, November 30, 1883.
Mr. Trench, No. 149, October 18, 1883.
Mr. Trench, No. 157, November 5, 1883.
Mr. Trench, No. 153, October 22, 1883.
To Sir E. Thornton, No. 51, Commercial, December 22, 1883.
Sir E. Thornton, No. 137, Commercial, December 19, 1883.
Mr. Trench, No. 161, November 26, 1883.
To Sir E. Thornton, No. 2, Commercial, January 2, 1884.
Sir E. Thornton, No. 1, Commercial, January 2, 1884.
To Sir E. Thornton, No. 14, Commercial, April 10, 1884.

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* Prince Cantacuzène, October 3; ditto, October 18, 1883; Baron Mohrenheim, January 19, 1884.

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Sir E. Thornton, No. 30, Commercial, April 23, 1884.
To Mr. Plunkett, No. 33, May 1, 1884.
Wylie, Fulton, and Co., July 17, 1884.
To Wylie, Fulton, and Co., July 22, 1884.
To Sir E. Thornton, No 39, Commercial, July 22, 1884.
Sir E. Thornton, No. 73, Commercial, August 16, 1884.
Sir E. Thornton, No. 71, Commercial, August 7, 1884.
To Wylie, Fulton, and Co., August 15, 1884.
Wylie, Fulton, and Co., September 9, 1884.
To Wylie, Fulton, and Co., September 15, 1884.

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## Siam.

### No. 74.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May 15.*)

My Lord, *Royal Courts of Justice, May* 14, 1884.

Jurisdiction over British subjects in Chiengmai, Lakon, and Lampoonchi. Submitting draft of Order in Council.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 22nd ultimo, stating that he was to transmit to us the draft of an Order in Council for Siam, which had been prepared by Mr. R. S. Wright under the instructions of the Lords Commissioners of Her Majesty's Treasury, in connection with the Treaty between Great Britain and Siam to regulate the jurisdiction over British subjects in the territories of Chiengmai, Lakon, and Lampoonchi, which was signed at Bangkok on the 3rd September last; and that Sir Julian Pauncefote was to request our opinion as to whether it might properly be laid before the Queen for Her Majesty's approval.

That Sir Julian Pauncefote was to add that the concurrence of Her Majesty's Secretary of State for the Colonies had been obtained to those sections of the draft Order which affected the Supreme Court of the Straits Settlements.

That a copy of the Treaty was inclosed, together with certain other documents, for convenience of reference.

In obedience to your Lordship's commands we have the honour to report—

Approve draft as altered.

That in our opinion the draft Order in Council, as altered by us, may properly be laid before the Queen for Her Majesty's approval.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

Colonial Office, March 28, 1884.
Order in Council, July 28, 1856. Confidential No. 575.
Ditto, September 12, 1863. Confidential No. 1288.
Ditto, November 10, 1866. Confidential No. 1469.
Ditto, October 23, 1876. Confidential No. 2963.
Treaty with Siam, April 18, 1855. Treaty No. 411.
Supplementary Agreement, May 13, 1856. Treaty No. 411.
Treaty with Siam September 3, 1883. Treaty No. 731.
To Mr. Wright, January 2, 1884.

For draft Order in Council, as altered by the Law Officers, see draft kept with MS. copy of their Report of May 14; and for Order as finally issued June 26, 1884, see Confidential No. 4986*.

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### No. 75.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June 23.*)

My Lord, *Royal Courts of Justice, June* 21, 1884.

Jurisdiction over British subjects in Chiengmai, Lakon, and Lampoonchi. Order in Council.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 18th instant, stating that he was to transmit to us a revised copy of the draft Order in Council for Siam which formed the subject of our Report of the 14th ultimo.

Proposed grant of power to Chief Justice of Singapore to try certain offences at Bangkok.

That since the date of that Report a despatch had been received from Her Majesty's Agent and Consul-General at Bangkok, in which he recommended to favourable consideration a suggestion made by the Siamese Government, that the necessary power should, if practicable, be given to the Chief Justice of Singapore to hold a Court at Bangkok for the purpose of trying prisoners when, owing to the gravity of those offences, Her Majesty's Agent and Consul-General had no power to punish.

That the Consular Court in Siam was not presided over by a professional Judge, and that your Lordship was of opinion that it would greatly facilitate the administration of justice if power were given to any Judge of the Supreme Court of the Straits Settlements to try cases generally in Bangkok, and especially to try on the spot cases which were beyond the competency of the Consular Court, and were at present sent for trial at Singapore.

That a clause had accordingly been added to the draft Order in Council to that effect, which was numbered 14 in the printed copy sent therewith.

That Mr. Currie was to request that we would favour your Lordship with our opinion whether the draft Order, with the addition of clause 14, might properly be laid before the Queen for Her Majesty's approval.

That it was important that the Order should be passed without delay, and that Mr. Currie was to request the favour of an early reply.

That the papers which accompanied the Foreign Office letter of the 22nd April were inclosed, together with Mr. Satow's despatch above referred to, and further correspondence.

In obedience to your Lordship's commands we have the honour to report—

Approve additions. Draft Order in Council.

That in our opinion the draft Order, with the addition of clause 14, may properly be laid before the Queen for Her Majesty's approval.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

Treasury, June 14, 1884.
Mr. Wright, June 14, 1884.
Mr. Satow, No. 17, April 8, 1884.
Law Officers, May 14, 1884.
Colonial Office, June 6, 1884.
Papers submitted to Law Officers, April 22, 1884 (see their Report of May 14, 1884).

For copy of draft Order in Council, as amended by the Law Officers, see the MS. copy of their Report of June 21, 1884; and for Order in Council as finally issued June 26, 1884, see Confidential No. 4986*.

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### No. 76.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November 26.*)

My Lord, *Royal Courts of Justice, November* 25, 1884.

Slave-dealing in Siam. Bills of sale whereby the services of an individual are sold to a purchaser.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 17th ultimo, stating that he was to transmit papers relating to bills of sale in Siam,* whereby the services of an individual are sold to a purchaser in consideration of a certain sum paid down to the parent or relation exercising parental authority over the person whose labour is thus disposed of.

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* Mr. Satow, No. 44, June 25; ditto, No. 60, August 13; ditto, No. 65, August 19, 1884; Law Officers, October 22, 1867, Confidential No. 1745, p. 166; ditto, September 29, 1883, Confidential No. 4974, p. 8.

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That it appeared that the purchase of services in that form by British subjects had always been regarded as an infraction of the English laws relating to slave-dealing, and punishment had, in such cases, been inflicted on the purchaser.

**Attempts to evade criminal liability through a second contract.**

That attempts, however, had been made to evade criminal liability by cancelling the original bill of sale and preparing a fresh contract, whereby the parents agreed that, in consideration of a sum paid down, the individual concerned should serve his new master, and that a certain amount should be deducted from the principal sum for every month's service.

That Mr. Satow, Her Majesty's Agent and Consul-General in Siam, had asked for instructions as to the manner in which such contracts are to be regarded, and whether a British subject could plead in defence that they were recognized by Siamese law.

That the Law Officers' Reports of the 22nd October, 1867, and 29th September, 1883, bearing on the subject of contracts made by British subjects for the services of slaves in countries where slavery was permitted by law were inclosed, and that our opinion was requested as to whether both or either of the forms of contract of which copies were inclosed in Mr. Satow's despatch No. 65 would, if entered into by a British subject in Siam, be illegal under the Slave Trade Acts, and render him liable to criminal proceedings before the Consular Court at Bangkok.

That copies of the Orders in Council regulating the exercise of Her Majesty's jurisdiction in Siam were sent therewith,* and that we were referred more especially to Articles 13, 14, and 21 of the Order of 1856, which dealt with the criminal jurisdiction of Her Majesty's Consular Court at Bangkok.

In obedience to your Lordship's commands we have the honour to report—

***Contract No.* 1. Is illegal under the Slave Trade Acts, and renders a British subject liable to criminal proceedings before the Consular Court.**

That, in our opinion, if the form of Contract No. 1† were entered into by a British subject in Siam, it would be illegal, under the Slave Trade Acts, and render him liable to criminal proceedings, and we see no reason why such proceedings should not be taken before the Consular Court of Bangkok.

***Contract No.* 2.**

The question with regard to the form of Contract No. 2‡ is one of considerable difficulty. In form it is not a transfer of the slave from the former owner, but an agreement to render services to a person who has provided the money for his manumission.

**How affected by the Slave Trade Acts.**

By the 2nd section of the 6 & 7 Vict., cap. 18, persons held in servitude or pledge for debt are to be deemed slaves within the meaning of the Slave Trade Acts. But we think that the case can only come within the Act of Geo. IV, if it can be said to amount to a dealing in sale or transfer or contract for the dealing in sale or transfer of a slave.

And we feel great difficulty in saying that it can properly be so described. So far as the British Courts and authorities are concerned, it would of course be regarded as a mere contract of service, giving no personal right over the slave, and no right to enforce the continuance of the service, the only remedy for its breach being an action for damages. And for any imprisonment or ill-treatment of the person agreeing to serve him, a British subject might be made amenable in the British Consular Court.

**If merely colourable, British subject might be dealt with by criminal law.**

If it can be shown that the form of the contract is merely colourable, as, for instance, if an attempt were made to enforce the servitude by an appeal to the Siamese Tribunals or authorities, we think that the real transaction would be regarded as a dealing in the transfer of a slave, and in such a case we think the British subject might be brought within the reach of the criminal law.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex No. 1.

#### *Contract No.* 1.

(Translation.)

MADE at Bangkok the twelfth day of the waning of the moon of the ninth month, 1246, c.s.

I, Im, make a bill of sale with you, Ma Rern. I receive 1 chang, 8 tamlungs, and 3 ticals from you. I agree to be your slave giving my labour in lieu of interest and doing all kinds of work with you, the owner of the money, in accordance with the laws and customs.

I, Im the slave, have made this Agreement, and give it over to you, Ma Rern, as a proof.

(Signed) KHOON ROU RAN CHAI, *Amphor.*
RERN, *the Money Master.*
NAI TUEY, *Witness.*
NAI TET, *the Clerk.*
IM, *the Slave.*

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#### *Directions to the Presiding Official.*

I, Mhun Rou Ran Chai, the Amphor, being present with Nai Tet, the clerk; Nai Tuey, the witness, having carefully and repeatedly questioned the parties to this Agreement, and explained it to them, believe that this is a proper Agreement, and that both parties fully understand it.

I believe that this Agreement is in full accordance with the laws in all particulars.

I have entered the descriptions of the parties to this Agreement in the schedule, and have affixed my signature and seal as evidence thereof.

| Name of Parties. | Father or Mother, Child or Wife, of Parties. | Age. | Mark. | Colour. | Appearance. |
|---|---|---|---|---|---|
| Im, the slave .. | Ma Puey .. | 27 | Scar on right shoulder | Reddish brown .. | Middle height. |
| Rern, the money master. | | | | | |

### Annex No. 2.

#### *Contract No.* 2.

(Translation.)

The ninth month, eighth day of the waxing moon, 1246.

I, Mun Roug Chai, Amphor, at my house below the Chao Fa Oug Noi's house, in Bangkok, presiding.

Nai Mahomet Alli, on the one part, and Amdeng Im, on the other part, come and make an Agreement before the Amphor, who witnesses it.

I, the Amphor, have carefully explained to both parties all the clauses of this Agreement, and I believe that they both fully understand it; for as neither of the parties can read, Nai Tong has explained the matter fully to both.

I, Mun Roug Chai, the Amphor, believe that this is a proper Agreement in every respect. The date, the clauses of the Agreement, the signatures, and the descriptions of the parties, and other proofs, I have entered in my register.

I have put down the Agreement in the paper attached to this.

I have signed my name and attached my seal as proof.

| Parties to the Agreement. | Child. Wife. | Age. | Mark. | Appearance. | Signature. |
|---|---|---|---|---|---|
| Im, the debtor .. | .. | 29 | Scar on right shoulder | Brown, middle height | Im. |
| Mahomet Alli, the creditor. | .. | .. | .. | .. | Mahomet Alli. |

Wednesday, the eighth day of the waxing moon of the ninth month, 1246.

I, Amdeng Im, come and make an Agreement with you, Mahomet Alli.

I, Amdeng Im, was a slave with you, Ma Formerly, in the ninth month, 1245, I, Amdeng Im, was a slave with you, Ma Rern, being indebted 1 chang, 8 tamlungs, 3 ticals. Now I obtain this money from Mahomet Alli, who has brought it and deposited it, as my price, with you, Ma Rern, the former money master. I have borrowed 1 chang, 6 tamlungs, and 1 tical in addition; altogether it is 2 chang, 15 tamlungs. I agree to be a servant for and

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* Order in Council, July 28, 1856, Confidential No. 575; ditto, September 12, 1863, Confidential No. 1288; ditto, November 10, 1866, Confidential No. 1469; ditto, October 23, 1876, Confidential No. 2963; ditto, June 26, 1884, Confidential No. 4986*.

† Annex No. 1.

‡ Annex No. 2.

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with you, Mahomet Alli. Mahomet Alli will deduct from my debt 4 ticals every month.

I have signed my name, "Im," as proof.

At the time above noted, I, Mun Roug Chai, the Amphor, who presides, together with Nai Term, the clerk; Nai Tong, the witness; have questioned both parties, and they acknowledge it to be right. I have now affixed my seal as proof.

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## Spain.

### No. 77.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September* 25.)

My Lord, *Royal Courts of Justice, September* 22, 1884.

Pursuit and search of the "Scud" by the "Almendarez."

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 2nd instant, stating that he was to transmit to us the papers* which related to the proceedings of the Spanish gun-boat "Almendarez" in pursuing and searching the British cutter "Scud" on the 6th July last when on the high seas on a voyage from Jamaica to Mount Bay, with passengers and a general cargo.

That the facts were briefly stated in the complaint of the master made the day after the occurrence, and that they appeared in greater detail in the depositions of the master, crew, and passengers of the "Scud."

That the explanations of the Spanish Commander were given in the letter of the Spanish Consul to the Colonial Secretary of Jamaica.

That the motive of the Spanish Commander was, no doubt, to intercept a rebel Chief in a supposed attempt to join the insurgent forces in Cuba. But those forces had not been accorded the status of belligerents, and it was apprehended that the belligerent right of search on the high seas did not exist in the present case, and that the utmost right which the Commander of the gun-boat could exercise was to verify the nationality of the "Scud" in the manner provided by the Admiralty instructions to British cruizers, issued in pursuance of an understanding between the Governments of Great Britain, France, and the United States in 1858, which regulated the right of visit in time of peace, and might be taken as laying down the correct rule of international law on the subject.

That on that point Mr. Currie was to refer to "Kent's International Law by Abdy," cap. 9, in which those instructions were cited in a note at p. 365: ed., 1878.†

That Mr. Currie was to annex the draft of an instruction to Her Majesty's Minister at Madrid, founded on the above view of the case, and that he was to request our opinion as to whether it was right and proper under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

That, in the main, we approve of the proposed instructions.

Conduct of Spanish officer not justifiable, and claim for compensation should be supported.

The Spanish officer has acted in a high-handed and oppressive manner without any justification whatever, and if the owners of the English vessel make any claim for specific compensation, we think that their claim should be strongly supported by Her Majesty's Government.

Approve instructions with slight alterations.

We are in doubt whether the words "suitable redress," at p. 7 of the despatch, will be read as including a specific claim for compensation.

We also suggest that the words "and her nationality had been verified," on p. 6, should be struck out.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Colonial Office, June 16; to ditto, June 28; Governor of Jamaica to Sir R. Herbert (Print), July 9; Colonial Office, August 11; Admiralty, August 13; Colonial Office, August 21, 1884; draft to Sir R. Morier.

† 8vo., 4542.

### Annex.

*Draft of Despatch to Sir R. Morier.*

(No. .)

Sir, *Foreign Office,* , 1884.

I TRANSMIT to you herewith a correspondence, as marked in the margin,* respecting the action of the Commander of the Spanish gun-boat "Almendarez" in boarding and searching the British cutter "Scud" on the high seas on the 6th July last. The "Scud" was at the time on a voyage from Jamaica to Mount Bay with passengers and a general cargo, and the Commander of the gun-boat alleges certain suspicious circumstances in connection with the movements of the "Scud" in vindication of the extreme measures adopted by him.

The facts of the case appear briefly in the statement of the master of the "Scud" made the day after the occurrence, which you will find in the Colonial Office letter of the 11th August (Inclosure 4), together with a letter from the Spanish Consul to the Colonial Secretary of Jamaica justifying the action of Don Francesco Catestany, the Commander of the "Almendarez," but they are more fully detailed in the depositions of the master, crew, and passengers of the "Scud," which form Inclosure 2 in the Colonial Office letter of the 21st August.

According to these documents the "Almendarez" fired a shot across the bows of the "Scud," upon which the master of that vessel ran up the British ensign and hove to: she was then overhauled by the "Almendarez," an officer and four armed men boarding her for that purpose, the hatches being removed, and the main and after hold rummaged, and other forcible acts committed which are detailed in the depositions; after which the Captain of the "Almendarez" appearing satisfied, the "Scud" was allowed to proceed on her course.

I have now to request that you will represent the circumstances of this case to the Spanish Government, and protest against the high-handed proceedings of the Commander of the Spanish gun-boat.

The Spanish Government will no doubt readily admit that no belligerent right of search existed in the present case, and that as soon as the "Scud" had hoisted her colours (and her nationality had been verified) the "Almendarez" could no longer pretend to exercise any control over her, and that the further action of Don Francesco Catestany was a violation of international law for which suitable redress is due (including reasonable compensation to the owners of the "Scud," Messrs. Hankey and Co., of London).

You will be good enough to return the papers now sent in original.

The earlier correspondence with the Colonial Office refers to the proceedings of a certain "General Bonachea," who was suspected of preparing an expedition against the Government of Cuba, and it has therefore some bearing on the motives which actuated the Commander of the Spanish gun-boat in his proceedings against the "Scud."

I am, &c.

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### No. 78.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November* 13.)

My Lord, *Royal Courts of Justice, November* 12, 1884.

Arrest of Spaniards at Gibraltar for smuggling tobacco into Spain.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th instant, stating that he had the honour to transmit to us a letter which had been received from Her Majesty's Secretary of State for the Colonies,† inclosing copy of a despatch from the Governor of Gibraltar, reporting the capture of certain Spaniards on the north front of that fortress.

That it appeared that those Spaniards were arrested while endeavouring to smuggle tobacco into Spain, and were subsequently handed over by the Governor to the Spanish authorities, the tobacco amounting to about 3 tons, which was found in the neighbourhood, being confiscated.

That the attempt to smuggle the tobacco into Spain was no offence against British law, and the Governor admitted that the offenders were only liable to a fine for being within the garrison without a permit.

But they had committed an offence against Spanish law.

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* See list of papers in footnote on previous page.

† Colonial Office, October 28, 1884.

1884

Was the Governor justified in handing them over to the Spanish authorities and in confiscating the tobacco?

That your Lordship entertained some doubt as to whether the Governor was justified in handing over the offenders to the Spanish authorities, and in confiscating the tobacco.

That Sir J. Pauncefote was to request our opinion as to whether we concurred in the proposed approval of the Governor of Gibraltar in that matter.

In obedience to your Lordship's commands we have the honour to report—

Action of the Governor should not be approved.

That we do not think the action of the Governor should be approved of. There does not appear to be any warrant in point of law either for handing over the persons implicated to the Spanish authorities or for confiscating the tobacco.

We think that Spanish subjects within British territory at Gibraltar should only be handed over to the Spanish authorities under and in conformity with the requirements of the Extradition Treaty.

At the same time, we feel that the use of Gibraltar for smuggling purposes, by Spanish subjects, is likely to give rise, as it has done in the past, to natural irritation on the part of the Spanish Government.

We are not aware whether any legal power now exists in the British authorities to deal with persons thus abusing British territory.

Legal powers should be given to the British authorities to deal with Spaniards thus abusing British territory.

If not, we would submit for consideration whether it might not be well to make provision that Spaniards so offending should be expelled from British territory and subjected to penalties in case they return without permission, and that tobacco or other articles found, as in the present instance, in the course of being smuggled, should be confiscated.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 79.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November 29.*)

*Royal Courts of Justice, November* 28, 1884.

My Lord,

Execution in Spain of a Judgment obtained in England by Mr. G. C. Stewart against Mr. Forrest.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 25th instant, stating that he was directed to transmit to us the papers* relating to a Judgment obtained by Mr. G. C. Stewart in the Court of Queen's Bench against a Mr. Forrest on account of money advanced on a mortgage on certain ships belonging to the defendant, and to the communication which had taken place between Her Majesty's Minister at Madrid and the Spanish Government with a view to obtaining their assistance in enforcing the Judgment against Mr. Forrest in Spain; both parties were British subjects, and the ships in question were within Spanish jurisdiction.

Spanish Government apply rule of reciprocity in such cases.

That Sir R. Morier had reason to believe that the rule which the Spanish Government applied to such cases was that of reciprocity, so that if a Judgment of the Spanish Courts could, in an analagous case be executed in the United Kingdom, Her Majesty's Government could demand, as a right, that similar treatment should be conceded to them in Spain.

That in reply to Sir R. Morier's inquiries on that point he was instructed to explain to the Spanish Government that the British Law Courts had power, in their exercise of their general jurisdiction, to enforce the Judgments of foreign Tribunals on proper proceedings being instituted, unless the foreign Judgment should be impeached as being contrary to natural justice, or on the ground of its being irregulary obtained.

The Judgment was obtained by default of appearance, and Spanish law does not permit execution of a sentence "en rebeldia."

That Sir R. Morier reported that the Spanish Government, on receiving those explanations, had promised to refer the case to the Supreme Court for such action as could properly be taken in the matter, but in a subsequent despatch (No. 10 of the 14th November) he stated that as the Judgment of the British Court was obtained by default of appearance, a difficulty had arisen inasmuch as Spanish law did not permit the execution of a sentence "en rebeldia."

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* Mr. G. C. Stewart, March 26; to Mr. G. C. Stewart, March 31; Mr. G. C. Stewart, April 3; to Consul Young, No. 2, March 31; Mr. Stewart, April 17; ditto, May 3; to Mr. Stewart, May 16; to Mr. de Bunsen, No. 14, Consular, August 6; Sir R. Morier, No. 6, Consular, August 18; to Sir R. Morier, No. 16, Consular, September 8; Mr. Stewart, September 29; to Sir R. Morier, No. 20, Consular, October 7; Sir R. Morier, No. 9, Consular, October 13; ditto, No. 10, Consular, November 14, 1884; Law Officers, September 14, 1880, Confidential No. 4539, p. 59; "Piggott on Foreign Judgments," 8vo. 6006, Part II, p. 120.

But that Sir R. Morier added that he had obtained a high legal opinion to the effect that, if English law allowed of a Spanish sentence being executed in this country, reciprocity could be claimed.

That on that point Sir J. Pauncefote was to refer us to "Piggott on effect of Foreign Judgments in English Courts," p. 120.

That it would be seen from Mr. Stewart's letter of the 27th September and Sir R. Morier's despatch of the 14th instant, that it was of great importance that there should be no unavoidable delay in dealing with this case, as it was feared that Mr. Forrest might sell his ships, which formed Mr. Stewart's security.

That our opinion was requested as to the reply which should be returned to Sir R. Morier's inquiry.

In obedience to your Lordship's commands we have the honour to report—

Judgment of a Spanish Court, even though "en rebeldia," would be executed in England.

That we are of opinion that the Judgment of a Spanish Court, even though "en rebeldia," if regularly obtained, would be given effect to by the Courts of this country.

Explains Judgment for default of appearance.

We may add that a Judgment for default of appearance is not, we think, founded on the contumacy of the defendant in not appearing to defend, but on the view that by such non-appearance the party sued admits the justice of the claim made against him.

Sir R. Morier will be better able to judge than we are, whether this view can be made use of with any advantage.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# Switzerland.

## No. 80.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January 25.*)

*Royal Courts of Justice, January* 24, 1884.

My Lord,

Expulsion of Miss Booth from Cantons of Neuchâtel and Geneva.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th instant, stating that, with reference to our Report of the 15th ultimo, he was to transmit to us papers* which contained three Reports which had been obtained from Professor König, in accordance with our suggestion, upon the question of the legality of Miss Booth's expulsion from the Canton of Neuchâtel, under the Decree of the 3rd October, 1883, and of her previous expulsion from the Canton of Geneva, and that Sir Julian Pauncefote requested that we would favour your Lordship with any observations which we might have to offer thereon.

In obedience to your Lordship's commands we have the honour to report—

Case as to illegality of proceedings.

That the Reports of Professor König appear to us to make out a strong case in support of the view that the expulsions of Miss Booth from Geneva and Neuchâtel were illegal, and such as to afford just ground of complaint by Her Majesty's Government.

Appeal still open.

It appears, however, from these Reports that it is open to Miss Booth still to appeal to the Federal Assembly as regards the Geneva expulsion, and to the Federal Council, and, if necessary, the Federal Assembly, as regards the Neuchâtel expulsion. And it is possible that upon such appeal the decision complained of might be reversed.

Objections to taking action before knowing Miss Booth's intentions.

We think that before any further steps are taken by Her Majesty's Government it would be well that Mr. Booth should be informed that Her Majesty's Government

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* Mr. Thornton, No. 152, December 28, 1883, two inclosures.
Mr. Adams, No. 4, January 4, 1884, one inclosure.
Printed correspondence, Confidential No. 4924.

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had been advised by their legal adviser in Switzerland that the rights of appeal referred to above exist; and that inquiry should be made whether Miss Booth intends to avail herself of them.

It might perhaps be added that, unless the power of appeal has been exhausted, Her Majesty's Government would be met, in any representations they might make, by the very strong observation, that the highest Swiss authority had not been appealed to for its decision in the case.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No 81.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received July 19.)*

My Lord, *Royal Courts of Justice, July 18, 1884.*

Establishment of the "Salvation Army" in Switzerland.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th ultimo, stating that he was to transmit to us the papers relative to the so-called "Salvation Army"* under the Treaty between Switzerland and this country, and to the declared intention of Mr. Clibborn to proceed to Switzerland this month to establish "the Army" in various cantons.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether Mr. Booth's letter of the 13th June might properly be answered in the terms of the inclosed draft reply.

In obedience to your Lordship's commands we have the honour to report—

Approving letter to Mr. Booth, as altered, respecting impossibility of granting diplomatic assistance.

That we approve of the proposed answer to Mr. Booth's letter, save that we would suggest that the words appended to this Report should be substituted for the passage beginning, "The Government of the country have declared," &c., on p. 2, and continuing to the end of the draft.

We think it desirable to leave open the question whether the decisions have not been so clearly opposed to Swiss law as to justify diplomatic action.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

"But they have no greater rights than Swiss subjects possess. The question raised by the appeal of Miss Booth to the Swiss Federal Assembly is whether her expulsion was in accordance with, or contrary to, the law of that country.

"And it does not appear how any expression of opinion as to her Treaty rights could assist the determination of this question.

"The Tribunals have hitherto decided that certain proceedings of members of the Salvation Army in Switzerland are in violation of the law of the country.

"These decisions have not yet been adjudicated upon by the highest Tribunal, and your attention has already been drawn to the difficulty of interfering by any representations to the Swiss Government until this has been done.

"In these circumstances, if any British subjects should repeat in Switzerland acts which the Tribunals of that country have held to be illegal, it will be impossible for Her Majesty's Government to protect them from the risk they would incur by so acting."

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* Mr. Booth, June 13; to Mr. Booth, 1884; Treaty, Great Britain and Switzerland, September 6, 1855, No. 401; Law Officers' Reports of March 8, November 1, and December 15, 1883, Confidential No. 4974, pp. 113, 115; and January 24, 1884.

## No. 82.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September 11.)*

My Lord, *Royal Courts of Justice, September 10, 1884.*

Prohibition of Salvationist meetings in certain cantons.

We were honoured with your Lordship's commands signified in Mr. Lister's letter of the 19th ultimo, stating that, with reference to previous correspondence respecting the proceedings of the Salvation Army in Switzerland, Mr. Lister transmitted to us the papers noted in the margin* of his letter, which related to the right of the Swiss authorities to suspend temporarily certain existing laws for the better enforcement of good order in connection with certain tumultuous proceedings which had arisen at Bienne, in the Canton of Berne, arising out of the meetings of the Salvation Army.

That Mr. Lister was to refer us to our Report of the 18th July (print, p. 15). and to the reply sent in conformity therewith to Mr. Booth's letter of the 13th June (print, p. 17); also to Mr. Booth's further letter of the 1st ultimo,† and Mr. Lister was to request that we would take the papers transmitted therewith into our consideration, and that we would be good enough to inform your Lordship whether we concurred in the terms of the reply which it was proposed to return thereto, of which the draft was inclosed.

In obedience to your Lordship's commands we have the honour to report—

Approve answer to Mr. Booth.

That we concur in the terms of the reply which it is proposed to return to Mr. Booth's letter of the 1st August.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Draft of Letter to Mr. Booth.*

Sir, *Foreign Office, September , 1884.*

EARL GRANVILLE has had under his consideration your letter of the 1st instant on the subject of his Lordship's reply to your letter of the 13th June last, in which reference is made to the recent *procès-verbal* of the authorities of the Cantons of Berne, Vaud, and Neuchâtel, and the nature of the prohibition on the future meetings of the Salvation Army in those cantons, and certain other restrictions on the proceedings of the Army.

In referring to the occurrences which took place towards the end of last month at Bienne, in the Canton of Berne, you express the wish that Her Majesty's Government should make some representation to the Swiss Government calculated to prevent the issue of Decrees of Expulsion against persons who, as you state, are now admitted to have contravened no Swiss law. &c.

Her Majesty's Government decline to support resistance to the prohibition.

I am now to observe to you, in reply, that if the persons in question contravened no Swiss law in holding the meeting at Bienne, there is no ground for supposing that they have rendered themselves liable to any penal action by expulsion or otherwise; but their meetings having since been prohibited in consequence of the tumult thereby created, Her Majesty's Government cannot support them in resisting that measure, which has been found necessary for the maintenance of the public tranquillity.

I am, &c.

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## No. 83.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received September 11.)*

My Lord, *Royal Courts of Justice, September 10, 1884.*

Salvation Army. Mr. Clibborn forbidden to enter Neuchâtel.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 23rd ultimo, stating that, with reference to previous correspondence respecting the proceedings of the Salvation Army, he had to transmit to us the accom-

* Mr. Booth, June 13; to Mr. Booth, July 25; Mr. Booth, August 1; to Mr. Booth (Draft), 1884.

† Confidential Print No. 4924.

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panying letter from Mr. Booth,[*] inclosing a copy of the official Gazette of the Canton of Geneva, from which it appeared that, for the reasons set forth in the Decree dated Neuchâtel on the 13th instant, which was therein published, Mr. Clibborn had been forbidden to enter the territory of Neuchâtel.

That we would see that Mr. Booth asked to be furnished with "a decided opinion as to whether, in the view of Her Majesty's Government, Colonel Clibborn, under present circumstances, has the right to enter the canton, or to pass through it, as he will frequently have to do, in attending to the various corps already existing in the Cantons of Berne and Geneva and in the east of France."

The *procès-verbal* of the 9th July last, especially referred to by Mr. Booth, and the previous Decrees of the 15th June and 8th October last year, will be found at pp. 16 and 17, Part II, and pp. 108, 109, and 133, Part I, of the accompanying printed papers.[†]

That Mr. Lister was to request that we would take the papers transmitted therewith into our consideration, and favour your Lordship, at our earliest convenience, with our opinion as to the answer which should be returned to Mr. Booth's letter.

In obedience to your Lordship's commands we have the honour to report—

He will be liable to arrest if he acts contrary to Decree, and Her Majesty's Government might be unable to interfere.

That we are of opinion that Mr. Booth should be informed, in answer to the question contained in his letter of the 19th August, that Her Majesty's Government are of opinion that Colonel Clibborn will be liable to arrest and expulsion if he attempt to enter the Canton of Neuchâtel in violation of the terms of the Decree of the 13th August, 1884.

We have already, in our opinion of the 1st November, 1883, expressed the view that Decrees for expulsion of British subjects for good and sufficient legal cause may be justified by the Swiss Government, and if a British subject can legally be expelled from Swiss territory there must be a like power to prevent him re-entering it.

We conceive therefore that Mr. Clibborn cannot treat this Decree as a nullity, and if, in opposition to its terms, he were to enter the canton, Her Majesty's Government (in the absence of any ground for supposing that the Decree has not been made in good faith) might find great difficulty in interfering on his behalf.

The question whether the Decree is so harsh as to justify any diplomatic representation by Her Majesty's Government is not before us.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 84.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received September* 19.)

*Royal Courts of Justice, September* 19, 1884.

My Lord,

Suppression of Salvationist meetings in Berne.

Decree and Circular

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 10th instant, stating that with reference to previous correspondence respecting the proceedings of the Salvation Army in Switzerland, he was to transmit to us the papers[‡] relating to a Decree issued by the Government of Berne, with a view to the suppression of salvationist meetings in that canton, as well as to a Circular stated to have been addressed by the same authority to the Prefectures of the canton, explaining the measures to be adopted for carrying it into effect.

That the Decree was of general application, and not levelled particularly at foreigners; but that its validity had been impugned on the ground that it was opposed to the Swiss Constitution.

That it was presumed that the question of the validity of that law could only be decided by the judicial or other competent authority of the country, and that until it had been repealed, or declared invalid, British subjects must conform thereto.

That your Lordship desired our opinion as to whether any, and, if so, what action should be taken by Her Majesty's Government with reference to that matter.

In obedience to your Lordship's commands we have the honour to report—

That we think no action should be taken by Her Majesty's Government in reference to this matter. The Decree of the Government of Berne is a general one, affecting Swiss subjects as well as foreigners.

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[*] Mr. Booth, August 19, 1882.

[†] Confidential Print Nos. 4924 and .

[‡] Confidential Paper No. 4924; Mr. Adams, No. 62 August 27; No. 64. August 30, 1884; Treaty, No. 401.

No action should be taken in the matter.

It seems to us that the Decree is one which may well be within the competency of a Government to make for the purpose of regulating its internal affairs.

There seems to be a question whether, according to the Federal Constitution, the Decree is within the Cantonal Government, and this question appears to have been raised by an appeal by certain Swiss citizens to the Federal Council

But we do not think a foreign Government would be justified, under existing circumstances, in making any diplomatic representations on the subject.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 85.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 12.)

*Royal Courts of Justice, November* 11, 1884.

My Lord,

Illegitimate infant daughter of Marie Gouder, a British subject.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he had the honour to transmit to us papers relating to the case of the illegitimate infant daughter of Marie Gouder, a British subject resident in Switzerland.[*]

That the infant in question, having been born out of Her Majesty's dominions, and being illegitimate, was not entitled to the status of a British subject; but that Sir Julian Pauncefote was to request whether, under the circumstances, there would be any objection to the name of the infant being included in the British passport given to the mother, so as to get over the difficulties raised by the Swiss authorities by reason of her having no recognized nationality.

In obedience to your Lordship's commands we have the honour to report—

Her name may be included in her mother's passport. Strictly speaking, she is not a British subject.

That we do not think there would be any objection to the name of the infant being included in the British passport given to the mother.

Strictly speaking, the child is no doubt not a British subject; but the Swiss do not claim her, and we do not see that any objectionable consequences can arise from adopting the course suggested.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 86.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 18.)

*Royal Courts of Justice, December* 17, 1884.

My Lord,

Expulsion of Salvationists. Case of Mr. Rabey.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 21st October, stating that he was to transmit to us, with reference to his letter of the 10th September, despatches[†] relating to the expulsion from the Canton of Neuchâtel of Mr. S. Rabey, a British subject, on account of proceedings connected with the Salvation Army.

That your Lordship would be glad to be favoured with our opinion as to whether any, and if so, what, action should be taken by Her Majesty's Government with reference to that matter.

We are also honoured with a letter from Sir Julian Pauncefote, dated the 19th ultimo, stating that in compliance with the request of Her Majesty's Solicitor-General, conveyed by Mr. Davidson in a note dated the 28th October, he was to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Berne,[‡] inclosing copies of the

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[*] Mr. Thornton, No. 24, Treaty, 1884; Circular to Consuls, No. 1270, May 29, 1876.

[†] Mr. Thornton, No. 72, October 10, and No. 73, October 14, 1884.

[‡] Mr. Thornton, No. 76, November 10, 1884; Decree of October 8, 1883; in Parliamentary No. 2847, p. 122; Procès-verbal of July 9, 1884, Parliamentary No. 2889, p. 7; Inclosure in Mr. Rabey's letter to Mr. Thornton of October 13, 1884.

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documents referred to in the letter above mentioned, together with the opinions furnished by Professor König and by M. Monnier, upon the subject of the so-called "Édit de Berne," and the proceedings of the Salvation Army.

We have also the honour to acknowledge the receipt of a further letter from Sir Julian Pauncefote, stating that, with reference to his letter of the 19th ultimo, he had the honour to transmit to us a despatch* from Her Majesty's Chargé d'Affaires at Berne, inclosing a copy of the exact text of the so-called "Edict of Berne," which limited the restrictive measures with regard to the proceedings of the Salvation Army to meetings of a public character; and that Sir Julian Pauncefote was to request that we would take that document into our consideration, together with the other papers relating to the same subject which were then before us.

In obedience to your Lordship's commands we have the honour to report—

**Expulsion under Arrêté of October 7, 1884, a violation of Treaty of 1856.**

That we think the expulsion of Mr. Rabey, a British subject, under the Arrêté of the 7th October, 1884, was a violation of the rights accorded to British subjects by the Treaty between this country and Switzerland of the 8th February, 1856.

By the terms of that Treaty British subjects are entitled to reside and sojourn in any part of Swiss territory under the same title and the same conditions as the Swiss themselves, provided that they conform to the laws of the country.

Now the expulsion of Mr. Rabey is founded upon an Arrêté of the 8th October, 1883, by which the Conseil d'État ordered the expulsion of the chiefs of the Salvation Army, who were foreigners.

It cannot be pretended that the merely being an officer of the Salvation Army is any violation of the Swiss law. If not, it appears impossible, consistently with the Treaty, to refuse to allow British subjects to remain in Switzerland on account of their being chiefs of the Salvation Army, whilst Swiss subjects are subject to no such treatment.

**Should call attention thereto, and to second ground of expulsion, viz., disobedience to Regulations laid down by Conference at Berne.**

We think, therefore, that the attention of the Swiss Government should be drawn to this violation of the Treaty and explanations requested.

It would be well at the same time to call attention to the other ground upon which the expulsion is based, viz., disobedience to the Regulations laid down by the Conference of Berne.

The Reports of Professor König and M. Monnier afford good grounds for believing that these Regulations were beyond the competence of the Cantonal authorities, and were, according to the terms of the Federal Constitution, invalid.

If so, Mr. Rabey cannot be said to have failed "to conform himself to the laws of the country," and had done nothing to disentitle him to the benefit of the provisions of the Treaty, entitling him to reside in Swiss territory.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# Tunis.

## No. 87.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 1.)*

My Lord, *Royal Courts of Justice, January* 1, 1884.

**British Consular jurisdiction in Tunis. Proposed Order in Council abandoning.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, the accompanying draft of an Order in Council, which it was proposed to pass on the 1st January next,† for the abandonment of Her Majesty's Consular jurisdiction in Tunis.

That that jurisdiction was at present regulated by the Ottoman Order in Council of the 12th December, 1873, and the Ottoman (Tunis) Order in Council of 1881 (Confidential No. 2873).

That Sir Julian Pauncefote was to invite our attention to your Lordship's letter to the French Ambassador of the 16th November, 1883, in which certain conditions were laid down on which the consent of Her Majesty's Government to abandon British Consular jurisdiction in the Regency was made to depend.

That those conditions had been acceded to by the French Government, and that they were most anxious that the new régime should be introduced on the 1st January, 1884.

That the French Law establishing the new Tribunals would be found at p. 39 of the printed correspondence (Tunis 4853, 1882-83). That it was dated the 27th March, 1883, and was published in the Tunisian Government Gazette (Ibid. p. 35).

That by a Decree of the Bey of Tunis of the 5th May last (Correspondence, p. 41) it was declared that the subjects of foreign Powers whose Consular jurisdiction should have been abandoned, should have become justiciable by the French Tribunals under the same conditions as French subjects.

That as regarded the form of the Order in Council, Sir Julian Pauncefote was to refer us to a Memorandum by the late Sir F. Reilly of the 15th June (Correspondence, p. 48). That since that date the French Tribunals had been actually established, and that their power to exercise jurisdiction over foreigners was derived from Article 2 of the French Law of the 27th March (Correspondence, p. 39), and the Decree of the Bey of the 5th May (Ibid., p. 41). That we would observe that the draft Order had been prepared substantially in the form suggested by Sir F. Reilly, and in accordance with the precedent referred to in his Memorandum, which we would find at p. 147 (Confidential No. 2873) of the accompanying collection of Orders in Council for Turkey and Egypt. That Her Majesty's Court for Tunis would still continue to exercise its powers for the purpose of disposing of pending cases, and of cases relating to real property, as to which Sir Julian Pauncefote was to refer us to the French Memorandum (Correspondence, p. 61), under the title "Observations Générales."

That Sir Julian was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether the draft Order might properly be submitted to the Queen for Her Majesty's approval.

In obedience to your Lordship's commands we have the honour to report—

**Approve proposed Order in Council.**

That we are of opinion that the draft Order may properly be submitted to the Queen for Her Majesty's approval. The Order may be made to come into force on such day as one of Her Majesty's Secretaries of State shall direct.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 88.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 23.)*

My Lord, *Royal Courts of Justice, January* 22, 1884.

**Settlement of Tunisian debts French proposal.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 30th November last, stating that he was directed to transmit to us the papers relative to the Act agreed upon by the Finance Commission for the settlement of the Tunisian debts, signed at Tunis on the 23rd March, 1870, and to the new financial régime which it would appear that France contemplated establishing in Tunis in lieu of that now existing under that Act in the Regency.

That we should perceive that your Lordship had been in communication with the Italian Ambassador at this Court upon that subject, and that the Italian Government were desirous of knowing the views of Her Majesty's Government with respect to the proposed action of the French Government. That our attention was directed to the following documents: (1) Act of Finance Commission; (2) Mr. Reade's No. 40 and inclosure; (3) Mr. Plunkett's No. 500 and inclosure; (4) Mr. Plunkett's No. 631; (5) Article VII of the Treaty between France and Tunis of the 12th May, 1881; (6) Lord Granville to Lord Lyons, two despatches, 20th May, 1881; and "Tunis No. 6 (1881)," pp. 52 and 55, 56.

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* Mr. Thornton, No. 81, Very Confidential, November 22, 1884.

† See "London Gazette" of January 4, 1884, Confidential No. 4905*.

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That in the absence of more definite information and of any direct proposals from the French Government up to the present moment upon that subject, your Lordship was scarcely prepared to express a formal opinion upon the bearings of the contemplated measure; but as the question raised by the British members of the Finance Commission would now arise, Sir J. Pauncefote was to request that we would favour your Lordship with our opinion as to whether, under the existing arrangement, the Bey of Tunis does not possess the power to abolish the Finance Commission *proprio motu*, on payment in full of the debt, in the manner therein stipulated, although it was provided that the debt "sera liquidée par la Commission." (See Act of Finance Commission, p. 502.)

That that appeared, from Mr. Plunkett's despatch No. 631 of the 18th September last, to be the contention of M. Billot.

In obedience to your Lordship's commands we have the honour to report—

That by the Act of 1870 for the settlement of the Tunisian debts it is provided that the obligations issued thereunder should enjoy, "jusqu'à leur rachat intégral," precedence over future debts contracted by the Tunisian Government.

Mode of redemption provided by Act of 1870 must be carried out;

They were each to have attached thirty half-yearly coupons, and those which were not "amorties" at the expiration of the fifteen years were to be exchanged for new obligations. It was further provided that if the revenues hypothecated exceeded 6,500,000 fr., but were less than 8,000,000 fr, the difference should be employed "à l'amortissement de la dette par la voie du rachat au cours du jour;" and the obligations bear upon the face of them a reference to the Act of 1870, and to the fact that they are to be redeemed "par voie du rachat."

but not necessarily through Finance Commission.

If the mode of redemption thus provided for be carried out, and the bonds completely extinguished, we think it would not be material that this should be effected through the Financial Commission. But it appears to us that the creditors are entitled to require that the mode of redemption provided for by the Act of 1870 should be pursued.

Not competent to give opinion as to exact method.

We are not sure that we completely understand what the exact method pointed out is, and we do not therefore feel competent to express an opinion with regard to it.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

To Sir A. Paget, No. 362 A. December 7, 1882; Confidential No. 4775, p. 121*.
Mr. Plunkett, No. 497, August 3, 1883, in Confidential No. 4923.
„ „ No. 500, August 7, 1883, ibid.
Count Nigra. August 14, 1883, ibid.
Mr. Reade, No. 40, August 6, 1883, with Memorandum thereon by Sir E. Hertslet, August 22, 1883, ibid.
To M. Catalani, September 5, 1883, ibid.
To Mr. Reade, No. 15, September 5, 1883, ibid.
To Mr. Plunkett, No. 849, September 5, 1883, ibid.
Mr. Plunkett, No. 631, September 18, 1883, ibid.
Count Nigra (Translation), September 17, 1883, ibid.
To Count Nigra, September 22, 1883, ibid.
Treaty. France and Tunis, May 21, 1824; State Papers, vol. xiv, p. 712.
„ „ „ August 8, 1830; „ vol. xix, p. 1050.
Beylical Decree, July 5, 1869, Confidential No. 2785.
Act of Finance Commission (Tunis), March 23, 1870; State Papers, vol. lxvii, p. 500.
General Convention between Great Britain and Tunis, July 19, 1875, No. 586.
Memorandum (Sir E. Hertslet) respecting Tunis Finance Commission, May 12, 1881; Confidential No. 4846.
„ „ Increase in Tunisian Import Duties, December 7, 1882; Confidential No. 4775, p 120.
Treaty. France and Tunis, May 12, 1881. "Tunis No. 6 (1881)," Parliamentary No. 2415.

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## No. 89.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 5.)*

*Royal Courts of Justice, April 4, 1884.*

My Lord,

Tramway concession. Claim of Esparto Fibre Company, on account of refusal of permission to carry it out.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th ultimo, stating that he was to transmit to us papers* relative to the claim of the Franco-English Tunisian Esparto Fibre Company to compensation, on account of the refusal of the French authorities in Tunis to allow them to construct a tramway for the conveyance of their produce, which right they claimed as holders of a Concession granted by the Bey of Tunis to a French subject, the late M. René Duplessis.

That the original Concession was sold by M. Duplessis to Mr. E. J. Hough, of London, from whom the Company afterwards acquired it by purchase.

That for particulars of this claim we were referred to the Company's letters of the 18th December, 1883, the 7th January, 1884, and the 3rd March.

That in reply to their representations, the Company were informed by the Foreign Office on the 25th February that their claims should be dealt with in accordance with the understanding recently arrived at with the French Government for the settlement of outstanding British claims upon the occasion of the abandonment of the right of British Consular jurisdiction in Tunis, and that, consequently, if an amicable arrangement was not effected, recourse must be had to arbitration.

That such was the agreement come to with M. Waddington, the French Ambassador at this Court, with regard to that particular class of claim. (Nos. 30, 34, 38, and 39 in Parliamentary Paper C.)

That it appeared, however, from a telegram from Her Majesty's Agent and Consul-General at Tunis, dated the 5th March, that M. d'Estournelles, the French Chargé d'Affaires, contended that the claim of the Company did not come within the operation of the agreement for the settlement of British claims by arbitration, because it was specially provided by Article 7 of the Concession to M. Duplessis that all differences which might arise between the Tunisian Government and the grantees or assignees of the Concession should be decided by the French Tribunal at Tunis.

That Article 7 of the Concession would be found at p. 4 of Paper (A).

That it might be contended, however, that the provision in question was intended only to specify the Tribunal before which legal proceedings, if found necessary, should be instituted; whereas the object of the agreement for the settlement of British claims by arbitration, was to obviate the necessity of any recourse to Courts of Law.

Question as to validity of French objection to arbitration.

That Sir J. Pauncefote was to request our opinion as to the validity of the objection put forward by the French Chargé d'Affaires to the settlement of the claims of the Company by arbitration.

We are also honoured with a further letter from Sir J. Pauncefote, dated the 12th ultimo, stating that with reference to his letter of the 10th ultimo he was to transmit copy of a letter from the Secretary of the Franco-English Tunisian Esparto Fibre Supply Company,† requesting that a decision upon the point raised by M. d'Estournelles, the French Chargé d'Affaires at Tunis, might be deferred until the Company have had an opportunity of submitting evidence which they believe would rebut the view held by the French Chargé d'Affaires.

We have also the honour to acknowledge the receipt of a further letter from Sir J. Pauncefote, dated the 17th ultimo, in which he stated that with reference to his former letters, he was to transmit to us a letter from the Secretary of the above-

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* List of Papers referred to Law Officers, March 10, 1884:—
(A.) Esparto Fibre Company, December 18, 1883.
(B.) Ditto, January 7, 1884.
(C.) Parliamentary Paper, "Tunis No. 1 (1884)." Foreign Office No. 2767.
(D.) Mr. Reade (Telegraphic), No. 6, March 5, 1884.
(E.) Esparto Fibre Company, March 3, 1884.

Also to M. Waddington, January 24, 1884.
Mr. Reade, December 29, 1883.
Esparto Fibre Company, January 31, 1884.
To Mr. Reade, No 7, February 25, 1884.
To Esparto Fibre Company, February 25, 1884.
Esparto Fibre Company, March 1, 1884.
Ditto, March 3, 1884

† March 11, 1884.

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mentioned Company,* stating at length the objections of the Company to the contention of the French Chargé d'Affaires at Tunis, that their claim to compensation, arising out of the refusal of the French authorities to allow them to construct a tramway for the conveyance of their produce, must be submitted to the French Tribunal at Tunis, under Article 7 of the original Concession.

That Sir J. Pauncefote was to request our opinion at our earliest convenience on the question submitted in his letter of the 10th ultimo.

We are also honoured with a further letter from Sir J. Pauncefote, dated the 1st instant, stating that with reference to his letters of the 17th, 12th, and 10th ultimo, he was to transmit to us a note from the French Ambassador at this Court,† supporting the contention that the claim of the Franco-English Tunisian Esparto Company was not one for reference to arbitration, under the arrangement recently made between Her Majesty's Government and the Government of France, and that Sir J. Pauncefote was to request that your Lordship might be favoured with a Report upon that matter at our early convenience.

In obedience to your Lordship's commands we have the honour to report—

That we think there can be no doubt that the Company possess only such rights under the Concession as were possessed by M. Duplessis, and cannot claim any independent rights.

Company can only claim rights granted to M. Duplessis, the original concessionnaire."

They are therefore bound by all the Articles of the Concession, just as M. Duplessis would have been—so far, at all events, as they can be practically given effect to. And it is expressly provided by Article 7 that that Article shall apply even though M. Duplessis should cede his rights.

It may be that if a difference had arisen resulting in a claim by the Bey against the English Company, there would have been a difficulty in enforcing the provisions of Article 7, and compelling them to be bound by the decision of the French Tribunal, though we are by no means sure that this difficulty would have been found insuperable. But, in the present case, the difference is one which results in a claim by the Company against the Bey.

It is clear that this could not have been determined by the British Consular Court; and if the Bey were willing to submit to the jurisdiction of the French Tribunal, and to be bound by its decision, we see no greater difficulty in carrying out the provisions of Article 7 now than if M. Duplessis were himself the claimant. Nor do we think that the change from the French Consular Tribunal to the Court now substituted for it makes Article 7 inapplicable, always assuming that the Bey can and will submit himself to, and be bound by, the existing French Tribunal.

Grounds on which to base request for arbitration.

The only ground, therefore, on which reliance can, in our opinion, be placed in urging the propriety of an arbitration is the arrangement come to between the English and French Governments with reference to the settlement of outstanding claims.

We think it is fairly open to the contention that the intention was to withdraw all outstanding claims by British subjects against the Government of Tunis from the French Tribunals about to be recognized.

And the case seems one within the spirit of the agreement between the two Governments, and in which hardship may not improbably be suffered by the English Company if they are compelled to resort to the French Tribunals.

Great force in French objection under Article 7 of Concession.

At the same time we feel that there is great force in Baron d'Estournelles' view, and that Her Majesty's Government would not stand on very firm ground in insisting upon an arbitration.

It will be, therefore, for the consideration of Her Majesty's Government how the matter should be pressed if it should be determined to urge the claim to an arbitration.

We may observe that in M. Waddington's letter of the 29th December, 1883, he limits the claims which are to be referred to arbitration to "claims as to personal property" between the Tunisian Government and English subjects.

As it is not for "personal property," the claim should be made for damages.

This creates some additional difficulty, for it may be insisted that the dispute which has arisen is not a claim for "personal property."

The difficulty, if raised, may, however, possibly be met by the view that the claim is for damages for not having been allowed to make the tramway provided for by the Concession; but the point is one of difficulty.

Further French objections:—

From the despatch of M. Waddington of the 29th March, now submitted to us, it appears that two points are taken against the reference of this case to arbitration, in addition to that arising from the terms of the 7th Article of the Concession.

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* Esparto Fibre Company, February 13, 1884.

† M. Waddington, March 29, 1884.

1. That Company is French;

The first, viz., that the Company is a French Company, is, as far as we are aware, erroneous in point of fact.

2. That claim is "immobilière."

The second objection is that the claim is "immobilière" in its nature. To this point we alluded in the earlier part of our Report, which was prepared before we received the further communication from your Lordship of the 1st instant.

First is erroneous; but the second is formidable.

It is certainly a formidable one if the Company are claiming that they shall be empowered to make the railway, and specifically to enforce such right in place of claiming damages for not being allowed to construct it.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 90.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 25.)* ✓

My Lord, *Royal Courts of Justice, June 24, 1884.*

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 28th ultimo, stating that he was to transmit to us the papers relating to a correspondence that had lately passed between the French Residency and Her Majesty's Consulate-General at Tunis respecting two negress slaves who recently escaped from the house of their master, and, taking refuge in Her Majesty's Consulate-General, demanded and obtained certificates of manumission, but who had since been claimed as wives by two black servants or slaves of the master from whose house those women had escaped.

Negress slaves taking refuge in British Consulate;

Claimed as wives of servants of house they escaped from.

Supposed conspiracy to reduce them to slavery.

That it would be observed from the inclosures to Mr. Reade's despatch that the Consul-General contended that the Cadi's Judgment was only part of a conspiracy to reduce those women into slavery.

That having regard to the fact that the French were now responsible for the general administration of justice in the Regency, that they called on Consul Reade to give up the women, and that it had been agreed that the inviolability of Her Majesty's Consulate-General should not be resorted to to obstruct the course of justice, the question gave rise to some difficulty.

As to handing them to French Consul General.

That your Lordship was disposed to think that the best course might be to hand over the women, not to the Cadi, but to the French Consul-General and Agent, placing them under his protection under the circumstances communicated by Mr. Reade, and leaving to him the responsibility of further action.

That our opinion was requested as to the best course to be followed under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

That the question raised is one of extreme difficulty. On the one hand, the claim for the delivery up of the negresses is advanced by the French Chargé d'Affaires, whose Government is administering affairs in Tunis, and is responsible for the general administration of justice in that country, the demand being founded on the decision of a local Court. On the other hand, there seems to be considerable weight in the criticisms of Mr. Reade upon that decision, and in the suggestion made by him that the story of the marriages is a mere device to secure the return of the women to slavery.

Lay case before French Government, making them responsible.

Perhaps the best course will be for Her Majesty's Government to lay all the circumstances of the case before the French Government, pointing out how serious a matter it would be if the betrothals were merely colourable pretexts for the purpose of replacing the women in a state of slavery, and the danger there would be in encouraging and assisting slavery, if such allegations were yielded to, supported by no better evidence than exists in the present case. It might also be pointed out that the French authorities, equally with ourselves, are interested in, and must be desirous of putting a stop to such practices. And they might be strongly urged themselves to make a further and more careful investigation into the matter, inasmuch as if the women are given up and it should turn out that they have been really remitted to slavery, the responsibility for such an unfortunate occurrence would rest with the French authorities.

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Meanwhile, keep them under protection of British Consul.

Until the result of such representation is known, we think the women should be allowed to remain under the protection of the British Consul.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

Printed Correspondence relative to abandonment of Consular jurisdiction in Tunis. (?) Confidential 4853.
Consul-General Reade, No. 15, April 16.

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## No. 91.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 12.)

My Lord, *Royal Courts of Justice, November* 10, 1884.

Fugitive negress slaves in the British Consulate-General.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 23rd ultimo, stating that with reference to our Report of the 24th June last, he was to transmit to us the papers noted in the margin* which related to the case of two negress slaves who escaped from the house of their master, and took refuge in Her Majesty's Consulate-General, but had been claimed as wives by two black servants of the master from whose house they had escaped.

That a copy of the note which Lord Lyons had addressed to the French Government, in accordance with instructions which were sent to his Excellency, founded on our above-mentioned Report, was inclosed in his Excellency's despatch No. 71 of the 21st July; and that the reply of the French Government to that communication would be found inclosed in Sir J. Walsham's No. 90, Africa, of the 8th October, together with a copy of the Report on the case which had been furnished to his Government by the French Minister resident in Tunis.

That Mr. Reade's despatch, reporting the case with its inclosures, was also inclosed for reference.

That our opinion was requested on the reply of the French Government, and as to the course which should be pursued in the matter.

In obedience to your Lordship's commands we have the honour to report—

They should not be given up without Her Majesty's Government being satisfied that the Decree of the Tunisian Court is absolutely binding.

That whilst there is so much strength in the views put forward by the French Government, that Her Majesty's Government may have ultimately to yield to them, we feel that every care should be taken not to direct the rendering up of the refugees in question, without Her Majesty's Government being satisfied that the Decree of the Tunisian Court is absolutely binding.

Mr. Reade should be asked to explain the correctness of his statements.

We observe that Mr. Reade, in his letter of 3rd April, 1884, to Baron d'Estournelles, alleges (1) that the claim of the husbands of slaves for their restitution has never been admitted by the English Government; (2) that the Judgment of the Cadi, and the whole proceedings are opposed to the 37th Article of the Anglo-Tunisian Treaty of 1875.

We think that inquiry should be made from Mr. Reade as to the correctness of these statements, and the grounds which exist for making them.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 92.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 12.)

My Lord, *Royal Courts of Justice, November* 11, 1884.

G. Jackson, Petition for remission of sentence.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th ultimo, stating that he was to transmit to us the papers noted in the margin,* which related to a Petition from George Jackson, a prisoner in Malta Gaol, who prayed for the remission of the sentence passed upom him by Her Majesty's Consular Court at Tunis.

That the Petition, together with the particulars of the prison history of the prisoner, were transmitted to the Foreign Office through the Colonial Office, and would be found in the inclosures to the Colonial Office letter of the 30th June last.

That the opinion of Mr. Reade, Her Majesty's Consul-General at Tunis, would be found in his despatch No. 16, Consular, of the 5th August, which also inclosed a copy of the Minutes of Evidence of Dr. Arpa, the Judge of the Court before whom the case was tried.

That it would be seen from the particulars of the prison history that the prisoner was a dangerous criminal and an old offender, against whom fourteen previous convictions were recorded, and that your Lordship doubted whether the case was one in which the sentence should be interfered with.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether the sentence on George Jackson should be wholly or partly remitted.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, there do not appear at present to be sufficient grounds for interfering with the sentence.

At present no sufficient grounds for interfering.

Neither Jackson himself, in terms, nor Giarraffo assert Jackson's innocence, but the evidence, beyond his presence in the hut, is slight. It seems to consist of his running away and his jacket being off.

We would suggest that Mr. Reade, who says he has "carefully investigated this case," and recommends it for favourable consideration, should be asked whether he has any facts in his possession beyond those disclosed by the evidence, and, if so, what they are. He could probably obtain information from the Italian Consuls, if he does not possess it already, as to what led to the acquittal of Giarraffo.

Mr. Reade shoulb be asked for any further evidence he may have as to the case.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 93.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 29.)

My Lord, *Royal Courts of Justice, December* 24, 1884.

G. Jackson's Petition for remission of sentence of Consular Court at Tunis.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that he was to transmit to us, with reference to our Report of the 11th November respecting the case of George Jackson, a despatch from Her Majesty's Agent and Consul-General in Tunis,† containing the further particulars asked for in our Report.‡

That the papers which were previously submitted to us were also inclosed, and that Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and favour your Lordship with any further observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Sentence should be reduced from five to three years.

That having taken into consideration the contents of Mr. Reade's despatch of the 27th November, we suggest that your Lordship will be justified in partially remitting the sentence of George Jackson, by reducing the original sentence from five years' imprisonment to three, thus liberating the prisoner in September 1886.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Viscount Lyons, No. 71, Africa, July 31; Sir J. Walsham, No. 90, Africa, October 8; Mr. Reade, No. 15, April 16, 1884.

* Colonial Office, June 30; Mr. Reade, No. 16, Consular, August 5, 1884.
† Mr. Reade, No. 20, November 27, 1884.
‡ See Report of November 11, 1884.

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# Turkey.

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## No. 94.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 31.)

My Lord, *Royal Courts of Justice, January* 31, 1884.

Registration of native Indian subjects in Turkey.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd instant, stating that he was to transmit to us papers relative to the registration of native Indian subjects in the dominions of the Sublime Ottoman Porte, and that he was to request our opinion as to whether the proposed answer to Mr. Fawcett was right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approving answer.

That, in our opinion, the proposed answer to Mr. Fawcett is right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

Mr. Fawcett, No. 9, January 7. 1884.
Ottoman Orders in Council, Confidential No. 2354.
Draft of proposed instruction to Mr. Fawcett.

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### Annex.

*Draft of Despatch to Consul-General Fawcett.*

Sir, *Foreign Office, February* , 1884.

Indians not bound to register themselves, but cannot sue in Consular Courts unless registered.

WITH reference to the question raised in your despatch No. 9 of the 7th instant, as to whether Consular officers should or should not afford protection to Indian subjects of Her Majesty who, being involved in legal proceedings, come to the Consular office at the last moment to register themselves, I am directed by Earl Granville to inform you that his Lordship is advised that, under section 17 of the Order n Council of the 12th December, 1873, native Indian subjects are not bound to register themselves, but that unless they do so, they cannot sue in the Consular Courts in civil cases, though themselves liable to be sued before them.

Consular Courts have no jurisdiction unless Indian subject was registered at time of committing the offence.

As regards criminal cases, the Consular Courts have no jurisdiction if the native Indian subject was not registered at the time of committing the offence, and he or she must be tried by the Turkish Courts, but, subject to that provision, Indians are entitled to British protection in the Ottoman dominions immediately on registration.

I am, &c.

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## No. 95.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 6.)

My Lord, *Royal Courts of Justice, February* 5, 1884.

Application of new Bankruptcy Act to Ottoman dominions

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that he had the honour to transmit to us, by your Lordship's direction, the papers noted in the margin,* which related to the carrying out of the provisions of the new Bankruptcy Act by Her Majesty's Supreme Consular Court at Constantinople and by Her Majesty's Court for Egypt.

That Mr. Fawcett, the Judge of the Supreme Consular Court, raised the question whether the new Act was applicable at all to the Ottoman dominions; while Mr. Cookson, the Judge of the Court for Egypt, asked for the appointment, by the Board of Trade, of an Official Receiver, under section 66 of the new Act, and proposed that Her Majesty's Vice-Consul at Alexandria should be appointed to that office.

That Sir Julian Pauncefote was to refer us to section 6 of Her Majesty's Order in Council of the 12th December, 1873, for the regulation of British jurisdiction in the Levant, which provided that the Imperial statute law in force for the time being should be applied "as far as circumstances admit;" and also to section 87 of the same Order, conferring bankruptcy jurisdiction on the Consular Courts, "as far as circumstances admit."

That it had generally been considered that, under such provisions, the Judge might himself discharge any duties vested by the Imperial Act in any officer of the Court in England; and that as Mr. Cookson had urgently applied, by telegram, for an immediate reply to his despatch No. 4 of the 7th January (see telegram of the 19th January), he had been informed that the question had been referred to the Law Officers of the Crown, and that in the meanwhile he might himself discharge the functions of Official Receiver.

That your Lordship presumed that the new Act superseded the old one in the Ottoman dominions, and must be applied by Her Majesty's Consular Courts "as far as circumstances admit." But that the question arose whether the Official Receiver should be appointed by the Board of Trade or by the Secretary of State under section 13 of the Order in Council.

That Sir Julian Pauncefote was to request that we would take these papers into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and in the despatches of Mr. Fawcett and Mr. Cookson, and, with any general observations which we might have to offer on the subject.

In obedience to your Lordship's commands we have the honour to report—

New Act is applicable.

That Lord Granville is correct in presuming that the new Act supersedes the old one in the Ottoman dominions, and must be applied by Her Majesty's Consular Courts "as far as circumstances will admit."

Board of Trade cannot appoint Receivers.

We do not think the Board of Trade has jurisdiction to appoint the Official Receivers.

Duties of Receiver should be assigned by Judge.

We think that the duties of Official Receiver should be assigned by the Judge, with the approval of the Secretary of State, under section 13 of the Order in Council.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 96.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 12.)

My Lord, *Royal Courts of Justice, March* 11, 1884.

Service of process on British subjects in England by order of Consular Court in Ottoman dominions.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us the inclosed despatch from Consul-General Fawcett,* the Judge of Her Majesty's Supreme Consular Court at Constantinople, in which he asked for instructions as to the power of British Consular Courts in the Ottoman dominions to order service of process on British subjects in England.

That that question was answered negatively in our Report of the 2nd July, 1881, of which a copy was also inclosed, together with the Order in Council for the regulation of Her Majesty's jurisdiction in the Ottoman dominions.†

That your Lordship would be glad to be informed whether we saw any ground to modify the opinion expressed in that Report; and, if not, Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion whether, in cases where

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* Mr. Fawcett, No. 12, January 11, 1884; the new (1883) Bankruptcy Act, 46 & 47 Vict., cap. 52; the Bankruptcy Act (1869), 32 & 33 Vict., cap. 71; Ottoman Orders in Council, Confidential No. 2873; Mr. Cookson, No. 4, January 7; Mr. Cookson (Telegraphic), January 19, 1884.

* Consul-General Fawcett, No. 15, January 26, 1884.

† Law Officers' Report, July 2, 1881 (Confidential No. 4637, p. 87); Order in Council for the Ottoman Dominions, December 12, 1873 (Confidential No. 2873).

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the defendant was out of the jurisdiction, but the cause of action arose within it, the Consular Court could order service to be effected in one of the methods prescribed by section 53 of the Ottoman Order in Council of the 12th December, 1873.

In obedience to your Lordship's commands we have the honour to report—

Court has not power to order such service.

That we see no reason to modify the opinion expressed in our former Report, that the Judge of the Consular Court has no power to order service of process upon British subjects in this country.

Not proper to give opinion on questions as to service other than personal.

This, however, does not determine the question whether, in any particular case, he may properly order the service to be other than personal, and to be effected in either of the modes prescribed by section 53 of the Ottoman Order in Council.

We do not think it would be proper for us to express an opinion whether an order could fitly be made for the service to be thus effected in the case referred to in Mr. Fawcett's letter, seeing that the point might possibly be raised for judicial decision.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 97.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 17.)*

My Lord, *Royal Courts of Justice, March* 15, 1884.

Jurisdiction of British Consular Court at Constantinople over foreign sailors charged with murder on British vessel.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he was to transmit to us a despatch from Mr. Fawcett, Her Majesty's Consul-General and Judge of the Supreme Consular Court at Constantinople, relative to a charge of murdering a sailor on board a British vessel in the harbour of Sulina, brought against a German and an Italian, both being also sailors belonging to the same ship, in which he raised the question whether the British Consular Court had jurisdiction in the case.

That Mr. Fawcett referred to the instructions which were sent to him in 1877 in the case of Stiglitz, an Austrian sailor belonging to a British vessel, who murdered a shipmate on shore.

That Sir Julian Pauncefote was to inclose a copy of the instructions referred to, also copies of "The Foreign Jurisdiction Act, 1878," and of Her Majesty's Order in Council of the 3rd May, 1882, whereby section 11 of "The Merchant Shipping Act, 1867," was made applicable, with certain limitations, to the Ottoman dominions; and Sir E. Hertslet's collection of Treaties with Turkey; also a copy of our Report of the 7th September, 1880, on the case of J. M. Ross in Japan.

Proposed instruction. Court has no power to try foreign sailors belonging to British vessel.

That your Lordship proposed, with our concurrence, to inform Mr. Fawcett, in reply to his inquiry, that Her Majesty's Consular Courts in Turkey could only exercise criminal jurisdiction over British subjects, and, consequently, that they have no power to try a foreign seaman belonging to a British ship for any offence committed within or without the Ottoman dominions.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether the proposed instruction was right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve instruction.

That, in our opinion, the proposed instruction is right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

Mr. Fawcett, No. 13, January 15, 1884.
To Mr. Fawcett, No. 8, March 20, 1877.
"The Foreign Jurisdiction Act (1878)," 41 & 42 Vict., cap. 67.
Order in Council, May 3, 1882 (Confidential No. 4635*).
Treaties with Turkey. Collection by Sir E. Hertslet.
Law Officers, September 7, 1880 (Confidential No 4539), p. 62.

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## No. 98.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 10.)*

My Lord, *Royal Courts of Justice, April* 9, 1884.

Navigation of the Tigris and Euphrates.

Claim of Porte to stop traffic of Company.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th February last relating to the difficulty which had arisen between Her Majesty's Government and the Sublime Porte touching the right claimed by the Turkish Government to stop the traffic of the Tigris and Euphrates Steam Navigation Company.

We have also the honour to acknowledge the receipt of a further letter from Sir J. Pauncefote, dated the 25th ultimo, stating that he had the honour to transmit to us papers relating to the navigation of the Tigris and Euphrates with reference to those then before us.

That the first portion of the inclosed papers related to the rumoured desire on the part of the Ottoman authorities at Baghdad to settle the matters in dispute by buying up the existing Tigris and Euphrates Navigation Company, and that Sir Julian Pauncefote was to ask whether, in our opinion, any communication should be addressed to the Porte on the question of that rumoured action of their authorities at Baghdad.

That the second portion of the papers related to the claims of the Company to compensation for the losses they may have suffered through the action of the Porte; and that Sir Julian Pauncefote was to ask for an expression of our opinion on the action, if any, which Her Majesty's Government should take in regard to these claims.

That the particulars respecting the Company's claims would be found at p. 119 of the printed correspondence which was inclosed in Sir Julian Pauncefote's letter of the 19th February.

That your Lordship desired to be favoured with our opinion on the questions submitted in Sir Julian Pauncefote's letters.

In obedience to your Lordship's commands we have the honour to report—

Turkish note may be answered as proposed.

That we think the note of the Turkish Ambassador may properly be answered in the sense of the observations submitted thereon.

We may add that in the light of the fuller information now before us with reference to the extent to which navigation on the Tigris existed prior to 1846 and otherwise, we think the Vizirial letter of 1846 affords more evidence in support of Lord Stratford de Redcliffe's statement of the arrangement arrived at than it appeared to us to do when we made our former report.

Position of British Government stronger than stated in their previous report.

The position of the British Government seems therefore to be somewhat stronger than we then thought, though the difficulties arising from the action of the Embassy at Constantinople subsequent to 1846 still remain.

With regard to the further questions submitted in Sir Julian's Pauncefote's letter of the 25th March, it hardly seems necessary to make any communication at present to the Porte, as sanction only has as yet been given to the formation of an Ottoman Company on condition that it does not infringe upon the rights of Messrs. Lynch's Company.

Expedient to postpone action as to claim of Company.

We submit that it would probably be expedient to postpone any action for the purpose of enforcing the claim of the Company until an understanding has been arrived at upon the main question.

Opinion as to claims 2 and 3.

Claims 2 and 3 appear right in principle if the Company were entitled to run the barges, which, however, as appears from our former Report, is not altogether free from doubt.

The amounts strike us as somewhat exaggerated.

Information as to claim 1 not sufficient for forming opinion.

We are not sufficiently informed of the facts to express an opinion whether the first claim is one that can be supported.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers sent February 19, 1884.*

(A.) "Correspondence respecting the Question of the Navigation of the Tigris," Confidential No. 5017.
(B.) Memorandum (Mr. Kennedy), July 20, 1883, Confidential No. 4838.
(C.) Memorandum (Sir E. Hertslet), March 27, 1881, Confidential No. 4439.
(D.) Memorandum (Sir E. Hertslet), July 28, 1881, Confidential No. 4835.
(E.) Memorandum (Mr. Plowden), July 31, 1883, Confidential No. 4838, p. 17.
(F.) Law Officers, November 18, 1881, Confidential No. 4637, p. 98.
(G.) Correspondence 1873-74, MS. vol.
(H.) Memorandum (Lord E. Fitzmaurice), August 18, 1883.
(I.) Musurus Pasha, December 28, 1883, Confidential No. 5017, p. 122.
(J.) Memorandum (Sir E. Hertslet), February 8, 1881, Confidential No. 4802.
(K.) Memorandum (Sir L. Pelly), Confidential No. 4838, pp. 15 and 16.

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### APPENDIX.

No.

1. Firman, December 29, 1834, Confidential No. 4838.
2. Vizirial Letter, September 13, 1842, ibid.
3. Firman, December 17 (27), 1834.
4. Firman, September 8 (17), 1841.
5. Despatches from Sir S. Canning: No. 45, March 18, 1846; No. 53, April 4, 1846, Confidential No. 4838.
6. Vizirial Letter, April 2, 1846, ibid.
7. Vizirial Letter, January 15, 1861, ibid.
8. Note by Mr. Redhouse, Oriental Translator, January 5, 1884.

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*List of Papers inclosed in Sir Julian Pauncefote's Letter of March 25, 1884.*

Lord Dufferin, No. 53, Commercial, March 15, 1884; ditto, No. 57, Commercial, March 17, 1884.
Tigris and Euphrates Navigation Company, March 20, 1884; ditto, March 5, 1884.
To Tigris and Euphrates Navigation Company, March 10, 1884.

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## No. 99.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 29.)*

*Royal Courts of Justice, May 28, 1884.*

My Lord,

Right of British vessels to navigate the Tigris and Euphrates.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th instant, stating that he was to transmit to us the papers, together with a copy of our Report of the 9th ultimo, on the case of the Tigris and Euphrates Steam Navigation Company and the general question of the right of British vessels to navigate the Tigris and Euphrates.

That in that Report we stated that, in our opinion, the note of the Turkish Ambassador of the 28th January last might properly be answered in the sense of the observations thereon which were submitted in Sir Julian Pauncefote's letter to us of the 19th February.

That a draft reply to the Turkish note had accordingly been prepared, and that he was to request that we would take the same into our consideration, together with the other papers transmitted, and that we would be good enough to inform your Lordship whether the draft met with our approval or required any amendment.

In obedience to your Lordship's commands we have the honour to report—

That the draft meets with our approval.

Approve draft to Turkish Ambassador, with slight alteration.

The only amendment we would suggest is that made by us in the last paragraph but two. As worded at present, it might be taken as expressing a willingness to waive absolutely for the future any right to the claim of general navigation if the rights hitherto enjoyed by the Company are respected and maintained.

We do not gather that this is the intention of the Government.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

For List of Papers marked (A) to (K), and Appendices 1 to 8, see Law Officers' Report of April 9, 1884.
(L.) Draft to Law Officers, February 19, 1884.
(M.) Law Officers, April 9, 1884.
(N.) Draft to Musurus Pasha.

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### Annex.

*Draft of Letter from Earl Granville to Musurus Pasha.*

M. l'Ambassadeur, *Foreign Office*, , 1884.

HER Majesty's Government have given their most careful attention to your Excellency's note of the 28th December last respecting the forcible stoppage of the traffic of the Tigris and Euphrates Steam Navigation Company by the local authorities at Bagdad, and the general question of the right of British vessels to navigate the Tigris and the Euphrates. I now have the honour to communicate to your Excellency the replies of Her Majesty's Government to the various arguments adduced in that note.

Your Excellency denies that a general right to navigate the Rivers Tigris and Euphrates was ever conceded by the Porte to British vessels, and with regard to the Vizirial letters of 1846 and 1861, you argue that if those documents had been intended to concede a general right of navigation, the reference to the Firmans of 1834 and 1841 in the Vizirial letter of 1861 would have been superfluous; that it is impossible to hold that such a right could be accorded by simple Vizirial letters; that it must necessarily have formed the subject of a Treaty, the benefit of which, moreover, would be claimed at once by all the other Powers entitled to most-favoured-nation treatment. That the Vizirial letters had no reference to British vessels entitled to carry the British flag, but only to British-owned native craft which improperly carried the British flag, and thus escaped the payment of dues. That the object of the Vizirial letters was only to record the decision of the Porte, that British-owned native craft might continue to navigate the rivers on payment of the same dues as the vessels belonging to Ottoman subjects, and that accordingly they had continued to do so to this day, subject to such payment and without carrying the British flag. That the Report of the "Hôtel des Monnaies" referred to in the Vizirial letter of 1846 was only intended to lay down that native craft owned by foreigners engaged in the internal trade must pay the same dues as vessels owned by Ottoman subjects, and engaged in the same internal trade, and not to decide the question whether British vessels had the right to navigate the rivers, such a question not being within the competence of that Department. That owing to the vague terms of the Vizirial letters there had been confusion on the part of Her Majesty's Government between British vessels entitled to carry the British flag and British-owned native vessels, which caused them to place on those letters an interpretation as erroneous as it was inadmissible. Your Excellency added that the Tigris and Euphrates Steam Navigation Company would do well, therefore, to abandon untenable pretensions, and to restrict itself to the privilege conferred by the Firmans, which was limited to the navigation of the Euphrates only, by two British steamers. That right of navigation you maintain is derived solely from the Firmans of 1834 and 1841.

Her Majesty's Government are unable, however, to agree to this statement of the facts of the case, or to the interpretation thus sought to be placed on the documents relating to it.

In the first place, I would observe that the above-mentioned Firmans have no reference to the steamers of the Tigris and Euphrates Steam Navigation Company, but only to the two British Government steamers, which were authorized by those Firmans to ply on the Euphrates, and which had ceased to navigate that river long before the Company was established.

The Company was created in 1862, for the purpose of establishing a line of steamers between Mohammerah, Bussorah, and Bagdad, and in order to prevent any opposition on the part of the local authorities, the British Ambassador applied to the Porte for a renewal of the orders given to the Vali of Bagdad in a Vizirial letter dated the 2nd April, 1846.

That letter had been addressed to the Vali in 1846 in execution of an Agreement arrived at between Sir Stratford Canning and the Porte, by way of settlement of a dispute concerning the navigation of the rivers by British vessels and the payment of dues in the internal trade.

Sir Stratford Canning, in his despatches of that date, reports that the dispute had been settled as follows: That whereas British-owned native boats had for forty years carried on the internal trade on the rivers under the British flag and without payment of dues, they should in future pay the same dues as the native-owned boats engaged in the same trade. On the other hand, that British vessels entitled to carry the

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British flag would be entitled to navigate the rivers under their national colours, either for the purposes of the foreign trade or of the internal trade, subject to the payment of the local dues or Treaty Customs duties applicable to such trades respectively, and as regards British vessels passing up the rivers beyond the customary port of entry (Bussorah), subject to the payment of an anchorage due of 5 piastres only.

The corresponding record of the Agreement will no doubt be found in the archives of the Sublime Porte.

In February 1860 Messrs. Lynch and Co., being desirous of establishing a line of steamers on the rivers, applied to the Foreign Office for information as to the right of navigation, and they were informed in reply of the arrangement concluded by Sir Stratford Canning.

In 1861, with a view to the carrying out of their project, the Grand Vizier, at the request of the British Ambassador, addressed a letter to the Vali of Bagdad, dated the 15th January, 1861, renewing the orders given in the Vizirial letter of 1846.

The same orders were renewed again in 1862, when the Company formed by Messrs. Lynch put their first steamer on the Tigris, and opened their line between Bagdad and Bussorah, and that line has been in active operation ever since.

Your Excellency, with a view to vindicating the recent action of the Porte, endeavours to show that the two Vizirial letters of 1846 and 1861 have a totally different meaning from that which Her Majesty's Government attach to them. But the interpretation which your Excellency asks Her Majesty's Government to place on those letters appears inconsistent with the express terms of the documents.

The Grand Vizier, in the letter of the 2nd April, 1846, after distinctly stating that the British Ambassador had claimed the right of British vessels to trade in both rivers on payment of the dues "*established by Treaty*," cites the Report of the "Hôtel des Monnaies," to which the British Embassy had given its adhesion, and which had been submitted to and approved by the Sultan.

That Report declares what are the proper dues payable by vessels engaged in the internal trade, "*under whatever flag they may sail*," and those payable by British vessels entering the rivers, or issuing therefrom, for the purposes of the external trade, and it prescribes the amount of anchorage toll for the latter. The Grand Vizier then proceeds to declare that His Imperial Majesty had approved the Report, and had ordered that it should be put into execution; and he accordingly directs the Vali to levy on British-owned vessels engaged in the internal traffic the same dues as on native vessels, and to levy on the cargoes of British vessels "qui viennent du dehors et qui vont à l'étranger," the established customs duties, and an anchorage toll of 5 piastres.

The Vizirial letter of the 15th January, 1861, is still more explicit on the point.

The Grand Vizier commences by stating that the British Ambassador had requested "a renewel of the orders which were sent *concerning the British steamers and boats authorized by His Majesty to ply on the Rivers Tigris and Euphrates;*" and after referring to the privileges formerly granted by Imperial Firmans in 1834 and 1841, he proceeds to set out the Vizirial instructions issued in 1846 at the request of the British Embassy. He cites the distinction therein laid down between the internal trade and the trade carried on "by British vessels, whether coming loaded from abroad and entering one of those two rivers with their cargoes, or issuing therefrom to the sea laden with Ottoman produce, and bound for foreign countries," which (he states) are liable only to the Treaty Tariff and to the mooring toll "on entering or leaving the Tigris or Euphrates, like all other foreign ships coming to other ports of the Ottoman Empire;" and he renews the order that those rules should be carried out.

The above passages would be inexplicable were your Excellency's interpretation of the Vizirial letters to be accepted. On the other hand, they are entirely consistent with the Agreement of 1846, above mentioned, and recorded in Sir Stratford Canning's despatches of that year.

With respect to your Excellency's argument, that such an Agreement could not be concluded otherwise than by a Treaty, it is to be observed that if such an Agreement was made it is not the less valid as an International Agreement because the Porte did not think fit to give effect to it by an Imperial Firman, or to insist on making it the subject of a formal Treaty.

But even if it be conceded that the Contracting Parties were not *ad idem* in respect of the Agreement, and that there was no intention on the part of the Porte to grant to British shipping in general the right of navigating the rivers, Her Majesty's Government contend that the Vizirial letter of 1861, having been issued for the very purpose of enabling the Company to put their two steamers on the Tigris and Euphrates, was intended to confer, and did confer, that privilege on them.

The Company have enjoyed that privilege ever since, with the knowledge and acquiescence of the Porte.

It is true that, as stated by your Excellency, disputes have arisen as to the substitution of new steamers for old ones, the towing of barges, and other matters; but the right of navigation of the two steamers of the Company has never before been contested. This shows that the attitude of the Porte during the last twenty-two years has not been one of "friendly tolerance," as suggested by your Excellency, but one of acquiescence in a claim of right. On the faith of that acquiescence the Company have invested a large capital in depôts at convenient points on both rivers, and in establishments for working the mail, passenger, and cargo services, and they have developed a large trade, to the great benefit of the country.

Her Majesty's Government are not necessarily called upon, therefore, to invoke, in the present case, the general right of navigation claimed by them on the Rivers Tigris and Euphrates.

Whatever may be the true construction of the Agreement of 1846 as to the general right of navigation, Her Majesty's Government consider that the attitude of the Porte during the last twenty-two years debars them from now disputing the validity of the rights claimed and exercised by the Company under the Vizirial letter of 1861, and that they are entitled to insist on the *status quo* of the Company being maintained.

It is in that sense that during the discussion of the case it was pointed out to your Excellency that if Her Majesty's Government were to waive at the present time, insisting upon their claim to the right of general navigation, the rights hitherto enjoyed by the Company on the rivers must be respected and maintained.

Your Excellency remarks that the question is not one affecting the interests of British commerce in general, but of a private Company, and that if the British Parliament and public should evince so much solicitude for a private Company, how much more is the Porte bound to safeguard the rights of its subjects in general, and to secure to them the advantages of inland navigation, following therein the example of other civilized States. On this point it is hardly necessary for me to state that whatever solicitude may be evinced by Parliament and by the public in the case, it will not have for its object the pecuniary advantages of a private Company, but the maintenance of the just rights of a British Company, legitimately acquired by Agreement between the British Government and the Porte, and confirmed by long usage and acquiescence.

I have only to observe in conclusion, M. l'Ambassadeur, that the abrupt and arbitrary action of the Porte in forcibly stopping the traffic of the Company without notice, and for no other cause than the desire to secure their business and profits for an Ottoman Company, is marked by a singular lack of friendliness and courtesy towards Her Majesty's Government, and presents an incident unparalleled in the history of the commercial relations of this country in any part of the world.

I have, &c.

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## No. 100.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received July 2.*)

*Royal Courts of Justice*, *July* 1, 1884.

My Lord,

Bankruptcy Act, 1883. Difficulty of applying, under Order in Council of 1883.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 16th May last, stating that he was to transmit to us the papers relative to the difficulty of applying the administrative powers of the Bankruptcy Act of 1883 under the Ottoman Order in Council of 1883, and the desirability of making provision to obviate doubts and prevent inconsistencies, not only in the case of the Ottoman Order in Council, but in all other cases in which a similar difficulty might arise.

As to general Order in Council, as in Colonies, applying laws as they stand.

That it was suggested for consideration that it might be desirable, in view of these difficulties, to pass a general Order in Council for amending all the foreign jurisdiction Orders by adopting the principle already adopted in the case of Charters for Crown Colonies, where it had been usual to provide that the English law in force at the date of the Charter should be applied (and subsequent alterations of English law did not affect the Colony until applied to it by local legislation), and thus

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providing that the English law in force at the date of the Charter* should be applied, and should not be affected by subsequent alterations of the English law [? unless] applied to it by specific legislation.

That Mr. R. S. Wright, who had been consulted on that proposal, had furnished the accompanying Memorandum thereon, in which he reported favourably, and further suggested that it might retrospectively be applied in the case of the Bankruptcy Act, with the proper savings.

That our opinion was requested as to the advisability of the course suggested, and that we would also favour your Lordship with any general observations which we might have to offer.

In obedience to your Lordship's commands we have the honour to report—

Not advisable in Turkey.

That we doubt whether it would be advisable to adopt the course suggested, at all events as regards the Ottoman dominions. We have not before us the terms of the Capitulations which give this country jurisdiction within those dominions. But, as far as we are aware, the Orders in Council relating thereto have hitherto been confined to the creation of Tribunals and the regulation of their jurisdiction, the law from time to time existing in this country being, as circumstances will permit, applied by those Tribunals to British subjects within the Ottoman dominions.

The Orders in Council have, indeed, created some new offences, but these have been intended to prevent friction and difficulty arising with the Turkish authorities owing to our ex-territorial jurisdiction.

It is now proposed to make the law as it exists at a particular time alone applicable to British subjects in the Ottoman dominions, subject to its being changed from time to time by legislation by means of Orders in Council.

Question might arise as to power to legislate by Order in Council.

We think that this might possibly give rise to grave questions as regards the power to legislate by Order in Council, not merely as regards local matters, but generally in relation to British subjects in the Ottoman dominions.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

Mr. Wright, April 4, 1884.
Law Officers, February 5, 1884.

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## No. 101.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received October 21.)*

My Lord, *Royal Courts of Justice, October* 20, 1884.

Petitions for remission of sentences on J. MacDonald and G. Mercieca.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 8th instant, stating that he was to transmit to us the papers noted in the accompanying list,† which related to two Petitions from John MacDonald and Giuseppe Mercieca respectively, who were prisoners in the Corradino Civil Prison, Malta, and prayed for a remission of the sentences passed upon them by Her Majesty's Supreme Court at Constantinople.

That those Petitions, together with the "Particulars of Prison History" of the prisoners, were transmitted to the Foreign Office through the Colonial Office, and that they would be found in the inclosures to the Colonial Office letter of the 16th July last (marked A).

That a Report on the Petitions of both prisoners, by Consul-General Fawcett, would be found in his despatch No. 59 of the 25th August last.

Will not grant in case of Mercieca.

That, in view of that Report, and of the antecedents of Giuseppe Mercieca, your Lordship did not propose to accede to the prayer of his Petition. But that as regarded John MacDonald, your Lordship called for copies of the notes of evidence in his case, with a view to considering whether, having regard to the medical Report on his state of health (which was annexed to his Petition), the whole or any part of the residue of his sentence might properly be remitted.

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* *Sic.* Query "at the date of the *Order in Council.*" See Draft to Law Officers of the 16th May.

† Mr. Fawcett, No. 59, August 25; ditto, No. 63, September 22; Inclosure in Colonial Office letter of July 16, 1884.

That the evidence would be found in Mr. Fawcett's despatch No. 63 of the 22nd September last.

That Mr. Lister was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion as to whether, on the ground stated, the sentence of John MacDonald should be wholly or partly remitted.

We also beg to acknowledge the receipt of a letter from Sir Julian Pauncefote, dated the 9th instant, transmitting some further papers* relating to the case of MacDonald.

In obedience to your Lordship's commands we have the honour to report—

Proper to release J. Macdonald at once.

That, in our opinion, it would be proper, under the circumstances, to release John MacDonald at once.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 102.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November 6.)*

My Lord, *Royal Courts of Justice, November* 5, 1884.

Investigation by Greek Tribunals of disputed questions of title to land held by Turkish subjects in districts ceded to Greece under the Convention of the 24th May, 1881.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 13th September last, stating that he was to transmit to us papers relating to the adjudication of questions of title to land held by Turkish subjects in the districts ceded to Greece, under the Convention of the 24th May, 1881, between Great Britain, Germany, Austria, France, Italy, Russia, and the Porte.

That on the 24th April last the Turkish Ambassador communicated to your Lordship a despatch from the Porte, dated the 14th April, protesting against the proceedings of the Hellenic authorities, who, notwithstanding Articles IV and VI of the above Convention, insisted on the investigation by the Greek Tribunals of all disputed titles to real property in the districts in question (A).

That his Excellency, in handing that despatch to your Lordship, remarked that the proper way of settling the question was to appoint a Mixed Commission to investigate disputed claims.

That Article IV of the Convention of the 24th May, 1881, provided that the right of property on the farms, as well as on the pasturages, meadows, grazing grounds, forests, and every kind of lands, or other real estate, held by private individuals and communes in virtue of Firmans, hodjets, tapous, and other titles, or else by the Ottoman Law in the districts ceded to Greece, would be recognized by the Hellenic Government.

That, in accordance with Article XVIII, a Convention containing the same provisions was subsequently concluded between the Porte and Greece.

That we were referred to the reply returned to Musurus Pasha's communication.

That on the 25th June a further note from the Porte was communicated to your Lordship by Musurus Pasha, stating that the Greek Government had informed the Representatives of the Powers at Athens that the above-mentioned Articles of the Treaty did not indicate the procedure to be followed in contested cases relating to real property, that the Convention could not contain provisions contrary to the public law of Greece, that the Tribunals of the country were alone competent to decide as to the validity of titles to property, and that the Greek Government could not consequently, without violating the fundamental laws of the kingdom, decide "par voie administrative" as to the validity or otherwise of titles to property produced by Ottoman subjects.

That the Greek Minister for Foreign Affairs added that the Greek Government would never refuse its assistance in cases in which titles were not contested, but that they could not pronounce an opinion in contested cases without exposing themselves to claims on the part of one of the contending parties, who would consider himself deprived of his property in an arbitrary manner.

That in the same note the Turkish Government contended that that reply of the Greek Government was not justified by the terms of Article IV of the Convention of the 24th May, which it alleged imposed on the Greek Government the obligation to

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* Colonial Office, October 6, 1884.

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recognize "purement et simplement" the Turkish titles and the possession of the land founded thereon, and that the Porte expressed the desire that instructions should be sent to Her Majesty's Minister at Athens to require from the Greek Government compliance with the terms of the said Convention.

That the reply which your Lordship returned to that note would be found in Paper (E).

That the Turkish Ambassador, on the 2nd September, addressed a note to your Lordship, inclosing a further despatch from the Porte, in which the text of Articles IV and VI of the Convention of the 24th May was cited, and the request contained in the former despatches with regard to instructions to Her Majesty's Minister at Athens was reiterated.

That our opinion was requested as to whether the contention of the Greek Government was well founded, that disputed questions of title to land in the ceded provinces must be referred to and disposed of by the Greek Tribunals.

In obedience to your Lordship's commands we have the honour to report—

Such questions must be referred to the Greek Tribunals.

That we think that disputed questions of title to land between individuals in the ceded provinces must be referred to the Greek Tribunals, and that it is no violation of the Convention that disputes should be thus decided.

If the Tribunals were shown to disregard or to refuse to recognize the Firmans, hodjets, &c., under which properties were held, the Greek Government might justly be called to account.

We do not feel sure, however, that the complaint of the Turkish Government does not apply to something more than the mere reference to the Tribunals of disputed claims to particular properties.

If Greek authorities do not treat Turkish titles as they treat Greek titles, Turkish Government have ground for complaint.

Looking at the language used in the despatch of Aarifi Pasha of the 14th April and of Assim Pasha of the 21st August, it would seem that the Greek authorities did not treat the Turkish titles referred to in the Convention in the same manner as they would Greek titles, and as being *primâ facie* valid.

If this be so, we think the Turkish Government would have just ground for complaint; but in the absence of particulars of the dealings of which the Turkish Government complains, we are unable to form an opinion upon the point.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

*List of Papers in Foreign Office Letter of September* 13.

(A.) Porte to Musurus Pasha, April 14, 1884.  
(B.) Convention of May 24. 1881 (see Treaty No. 678).  
(C.) To Musurus Pasha, May 9, 1884.  
(D.) Porte to Musurus Pasha June 11, 1884.  
(E.) To Musurus Pasha, July 26, 1884.  
(F.) Musurus Pasha, September 2, 1884.  
(G.) Convention of July 2, 1881, between Turkey and Greece (see Parliamentary Paper No. 2585).

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## No. 103.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November* 7.)

My Lord, *Royal Courts of Justice, November* 5, 1884.

Case of Pitts *v.* Fawcett.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 27th August last, stating that he was to transmit to us the papers* relative to the case of Pitts *v.* Fawcett, which had been the subject of various reports by ourselves and previous Law Officers of the Crown.

That Mr. Fawcett, Her Majesty's Consul-General at Constantinople, and Chief Judge of Her Majesty's Supreme Consular Court for the Levant, was the defendant in an action for damages instituted against him in this country by Mr. Jos. Pitts (lately deceased), in respect of certain acts alleged to have been maliciously done by the defendant in his judicial capacity. That the action was about to be set down for trial when the plaintiff died. That Mr. Fawcett had now submitted to your Lordship the printed Memorandum contained in his letter of the 23rd May, in which he set out all the facts of the case, and asked to be indemnified by Her Majesty's Government against "the very heavy legal and other expenses" which the action had entailed upon him.

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* Mr. Fawcett, May 23; Lake and Beaumont, July 16, 1884; Law Officers, August 8; ditto, August 14, 1878; ditto, April 18, 1879; ditto, September 21, 1881; Mr. Reeve, December 8, 1880 (with two Judgments of Privy Council, bound volume, Consul-General Fawcett's Judgments, &c., 1878–82).

Application of Mr. Fawcett for reimbursement of his legal and other expenses.

That when the action was first commenced in 1881 Mr. Fawcett applied for the support of Her Majesty's Government in defending it, and that application having been submitted to us for our opinion (Law Officers, 21st September, 1881), we advised that there were no special circumstances in the case which should lead Her Majesty's Government to defend the action on behalf of Mr. Fawcett, or to support him in defending the action. But that we added "when the case is concluded it may be further considered whether any relief should be afforded to Mr. Fawcett."

That the complaints against Mr. Fawcett were that he declined to carry out the Judgment of the Judicial Committee of the Privy Council for reasons considered insufficient (Mr. Reeve's letter, 8th December, 1880), and that he took no steps to communicate to the proper Turkish Tribunals the reversal by the Court of Appeal of the orders made by him in the suit of Pitts *v.* Lafontaine, in pursuance of which Mr. Pitts was deprived of his property.

That as regarded the claim of Mr. Pitts in his action for damages against Mr. Fawcett for having imprisoned him for an alleged contempt of Court, Mr. Currie was to refer us to the Law Officers' Report of the 18th April, 1879, and to the printed Memorandum* which accompanied the reference.

That your Lordship was sensible of the difficulty of advising on Mr. Fawcett's Memorial, owing to the collapse of the action by reason of the sudden death of Mr. Pitts, but that your Lordship would be glad to know whether, on the facts submitted to us in Mr. Fawcett's Memorial and other papers transmitted therewith, we considered that there were sufficient grounds to justify your Lordship in submitting Mr. Fawcett's application to the favourable consideration of the Lords Commissioners of Her Majesty's Treasury, and that your Lordship would be glad to be favoured with any general observations we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

No misconduct has been established against him.

That the action of Pitts *v* Fawcett having terminated, no misconduct or insufficiency in the performance of his judicial duties has been established against Mr. Fawcett.

His application may go to Treasury, but he should only be paid expenses actually incurred.

We therefore are of opinion that your Lordship will be justified in submitting Mr. Fawcett's application to the favourable consideration of the Treasury.

We think that the assistance to be rendered to Mr. Fawcett should be limited to a moderate amount, and to the expenses actually borne by him.

We have, &c.  
(Signed) HENRY JAMES.  
FARRER HERSCHELL.  
J. PARKER DEANE.

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## No. 104.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received November* 12.)

My Lord, *Royal Courts of Justice, November* 11, 1884.

Consular jurisdiction beyond limits assigned by Berat.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 13th September last, stating that he was to transmit to us a despatch, with its inclosures, No. 57, Consular, of the 18th August, 1884, from the Earl of Dufferin, Her Majesty's Ambassador at Constantinople, and other papers† relating to a question which had been raised as to the right of Her Majesty's Consul at Trebizond to exercise jurisdiction over British subjects in the Vilayet of Sivas, which was included in his Commission, but for which the Porte had refused to grant him a Berat.

That in his despatches Nos. 22 and 29, Lord Dufferin explained the reasons of the Porte for refusing to grant the Berat in question.

That Mr. Lister was to invite our attention to the two Memoranda by Sir E. Hertslet, on the subject of Consular jurisdiction in Ottoman dominions, to which were annexed a copy of the Capitulations of 1675, and of the Protocol of the 28th July, 1868.

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* Memorandum, Sir J. Pauncefote, March 10, 1879, Confidential No. 3859.

† The Earl of Dufferin, No. 22, Consular, April 11; ditto, No. 29, Consular, May 1; Memorandum (E. H.), September 4; ditto, September 5, 1884; Capitulations of 1675, Confidential No. 86. Protocol, July 28, 1868, Treaty No. 510.

That our opinion was requested as to whether a British Consular officer who had received a Berat might or might not exercise jurisdiction over British subjects anywhere within the limits of the Consular district assigned to him by his Commission, without reference to the limits of his Berat.

In obedience to your Lordship's commands we have the honour to report—

Information on various points needed before giving opinion.

That the question submitted to us is one of very considerable difficulty, and we think it desirable that we should have further information before advising upon it.

We wish to see the form of Berat which has been in use, and also to know whether it has been the universal practice to define in the Berat the territorial limits within which the Consular jurisdiction is to be recognized, or whether it has followed the terms of the Consul's Commission. Also, whether there is any precedent for refusing to recognize a person who has been duly appointed Consul for a part of the district to which the Sovereign has appointed him. All the cases referred to by Sir E. Hertslet left the territorial jurisdiction of the Consular officer unchanged, and only affected his personal status and authority.

We also desire to be informed whether in the case of an ordinary Exequatur being granted, it has been the practice to grant it to the person, the extent of his jurisdiction being defined by his Commission from his own Sovereign.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 105.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 26.)

My Lord, *Royal Courts of Justice, December* 23, 1884.

Passenger traffic in the Gulf of Smyrna.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th ultimo, stating that he was to transmit to us the papers relating to the right of British vessels to participate to carry passengers in the Gulf of Smyrna.

Right of British vessels to engage in.

That British vessels had long engaged in that traffic when an attempt was made by the Ottoman authorities to stop it by force, but, on representations being made to the Porte by Her Majesty's Ambassador at Constantinople, the Governor-General of Aidin was instructed to permit the British vessels to run as usual, and the Ottoman Government expressed their regret that the incident should have arisen. (Lord Dufferin's despatch No. 76 of the 6th April.)

Claim of Porte to grant a monopoly to Turkish Company.

But that it appeared from the note of the 30th June last from the Ottoman Ambassador at this Court that the Porte had given those orders provisionally only, so that it might explain to Her Majesty's Government the grounds on which it claimed for the Imperial Government the right to prohibit the British steamers from engaging in the passenger traffic in the port and Gulf of Smyrna, and to grant a monopoly thereof to an Ottoman Company.

That his Excellency Musurus Pasha was then informed generally that Her Majesty's Government could not concur in the arguments he had put forward (see draft of the 3rd October, 1884). That his Excellency then called at the Foreign Office and expressed a wish that a more detailed reply might be given to his note, and that the draft (A) had been prepared, and that Sir J. Pauncefote was to request our opinion as to whether we concurred in its terms.

That the information in regard to right generally of British subjects to engage in the coasting trade of the Ottoman Empire, and in regard to the case of the British vessels which at one time carried passengers in the Bosphorus, we were referred to Sir E. Hertslet's Memorandum of the 28th November, 1872, at the end of which would be found extracts from the Treaties bearing on that question, and his further Memorandum of the 16th July, 1883, and the legal opinions thereto annexed.

That Sir Julian Pauncefote was to request that we would take the papers transmitted into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Approve, with slight alteration, note to Turkish Ambassador denying right to grant such monopoly.

That we concur in the terms of the draft marked (A). We have, however, to suggest the substitution of the words "by Treaty" for the words "by the XLIst Article of the Capitulations." If the right rested only on the terms of that Article it would be open to much controversy.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

To Colonel Rose (Constantinople), No. 12, January 17, 1853.
To Sir H. Elliot, No. 80, Commercial, December 23, 1872.
Memorandum by Sir E. Hertslet, November 28, 1872; appended to which will be found the extracts from the Treaties between Turkey and foreign Powers bearing on the question. Confidential No. 2575.
Mr. Goschen, No. 27, Commercial, April 18, 1881.
To Mr. Goschen, No. 38, Commercial, April 28, 1881.
Lord Dufferin, No. 65, Commercial, July 17, 1881.
To Lord Dufferin, No. 72, Commercial, July 28, 1881.
Mr. Wyndham, No. 17, Commercial, January 27, 1883.
To Mr. Wyndham, Nos. 22 and 52, Commercial, February 10 and March 6, 1883.
Consul Dennis, Nos. 4 and 7, Commercial, June 1 and June 9, 1883.
Mr. Wyndham, No. 158, Commercial, June 22, 1883.
To Mr. Wyndham, No. 96, Commercial, June 29, 1883.
Mr. Wyndham, Nos. 156, 167, and 174, Commercial, June 20, 29, and 30, 1883.
Memorandum by Sir E. Hertslet, July 16, 1883: Confidential No. 4793; appended to which will be found the Reports from the Law Officers on the subject of the Ottoman coasting trade.
To Mr. Wyndham, No. 122A, Commercial, July 31, 1883.
Mr. Wyndham, Nos. 226, 227, 247, and 264, Commercial, July 25, July 26, August 10, and August 22, 1883.
To Mr. Wyndham, No. 154, Commercial, September 4, 1883.
Consul Dennis, No. 10, Commercial, August 31, 1883; ditto, Telegraphic, September 13, 1883.
Mr. Wyndham, Nos. 272, 278, and 281, Commercial, August 30, September 3, and September 5, 1882.
To Mr. Wyndham, No. 161, Commercial, September 17, 1883.
To Consul Dennis, No. 1, Commercial, September 19, 1883.
To Mr. Wyndham, No. 165, Commercial, September 19, 1883.
Mr. Wyndham, Nos. 304, 309, and 312, Commercial, September 20 and 22, 1883.
To Lord Dufferin, Nos. 176 and 177, Commercial, October 2, 1883.
Consul Dennis, No. 11, Commercial, October 4, 1883.
Lord Dufferin, No. 329, Commercial, October 17, 1883.
Memorandum by Sir E. Hertslet, October 28, 1883.
To Lord Dufferin, Nos. 204 and 205, Commercial, November 21, 1883.
To Consul Dennis, No. 2, Commercial, November 21, 1883.
Lord Dufferin, No. 357, Commercial, December 13, 1883.
To Lord Dufferin, No. 231, Commercial, December 24, 1883.
Lord Dufferin (Telegraphic), March 2, 1884.
To Lord Dufferin, No. 27, Commercial, March 3, 1884; ditto (Telegraphic), March 4, 1884; ditto, Nos. 36, 37, 38, and 39, Commercial, February 25, March 1, and March 4, 1884.
Consul Dennis (Telegraphic), March 11, 1884.
Lord Dufferin, No. 46, Commercial, March 7, 1884; ditto (Telegraphic), March 12, 1884.
To Lord Dufferin, No. 30, March 12, 1884.
Lord Dufferin, Nos. 41, 42, and 50, Commercial, March 2, 4, and 11, 1884.
Consul Dennis (Telegraphic), March 17, 1884.
To Lord Dufferin, Nos. 33 and 34, Commercial, March 18, 1884.
Consul Dennis, No. 13, March 11, 1884.
Lord Dufferin, No. 58, Commercial, March 18, 1884; ditto (Telegraphic), March 25, 1884; ditto, No. 51, Commercial, March 12, 1884.
To Lord Dufferin, No. 37, Commercial, March 27, 1884.
Lord Dufferin, No. 62, Commercial, March 24, 1884.
To Lord Dufferin, No. 41, Commercial, April 1, 1884.
Lord Dufferin, Nos. 63, 68, and 71, Commercial, March 25 and 31, 1884.
To Lord Dufferin, No. 49, Commercial, April 16, 1884.
Lord Dufferin, Nos. 76 and 78, Commercial, April 6 and 10, 1884.
To Lord Dufferin, Nos. 52 and 53, Commercial, April 28, 1884.
To Musurus Pasha, April 29, 1884.
Lord Dufferin, No. 111, Commercial, June 7, 1884.
Musurus Pasha, June 30, 1884; with a Memorandum thereon by Sir E Hertslet, respecting the case of the British steamers which at one time carried passengers on the Bosphorus.
To Musurus Pasha, July 5, October 3 and 21.

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## Annex.

### *Draft of Letter (A.) from Earl Granville to Musurus Pasha.*

(A.)

M. l'Ambassadeur, *Foreign Office*, , 1884.

FROM the conversations which took place between your Excellency and Lord E. Fitzmaurice on the 14th and 15th instant, and the explanations which your Excellency then gave of the contents of your note of the 30th June last in regard to the passenger traffic in the port and Gulf of Smyrna, I gathered that the Sublime Porte lays especial stress on the view which is urged in that part of the abovementioned note in which your Excellency says:—

"I consider myself under no present obligation to discuss either the question of the coasting trade, or that of the right of Great Britain to most-favoured-nation treatment, or the right to which any foreign Power might be entitled, by basing itself upon that right, to claim for its subjects the benefit of the Articles of the Treaties of Commerce made by Belgium and Holland with the Sublime Porte in regard to the coasting trade, which Treaties covenanted expressly for reciprocity.

"I confine myself to putting on record that the Concession accorded by Imperial Firman to the Smyrna Steam Navigation Company is founded on a right inherent in the Sovereign Power of every independent State, and of which no Treaty and no State Paper interdicts the exercise by the Sublime Porte or subordinates to consultation with any foreign Power . . . . It is in virtue of this right, and within its limits, that the Sublime Porte has conceded by Imperial Firman to a native Company a monopoly of the passenger traffic in the port and Gulf of Smyrna."

In conversation your Excellency urged that a right to grant monopolies similar to that now contended for by the Sublime Porte, in the passage I have just quoted, was claimed and exercised by Her Majesty's Government, and you instanced the case of private Acts of Parliament, which, you argued, gave monopolies to Companies to perform the traffic between particular places. I desire at once to point out to your Excellency that such a view of the private legislation of Parliament is not one which would be accepted in this country.

Monopolies have long since been abolished in England, and are alien to the spirit of our laws.

When an Act of Parliament gives the right to a Company to perform a particular service, it does not grant a monopoly to that Company, neither would Parliament be estopped from granting to another Company the right to perform an analogous service as soon as it could be shown that such a concession would be to the public advantage.

But even were Parliament to grant a monopoly, it would certainly not be one which would conflict with the Treaty rights of foreigners.

The contention of your Excellency, therefore, that the Porte are only claiming for His Imperial Majesty the Sultan a right to grant monopolies which is exercised in this country by Parliament cannot be supported.

Her Majesty's Government have never denied the right inherent in the Sovereign Power of every independent State, as regards the grant of monopolies, to which your Excellency appeals, provided such grant did not invalidate any Treaty right; and this brings me to the important statements in your Excellency's note that the right claimed by the Porte to grant the monopoly in question is not affected by Treaty or other obligation towards foreign Powers; and further, that the right contended for was admitted by Her Majesty's Government in 1853 in the case of the Chirket-i-Khaïrie Company, to which exclusive power was granted to carry passengers in the Bosphorus.

On those two points I regret to say, M. l'Ambassadeur, that we are entirely at issue.

Her Majesty's Government have invariably maintained that the right to carry passengers between Turkish ports was secured to British vessels by the XLIst Article of the Capitulations. That right has been confirmed by long enjoyment, and indeed the Porte has not only acquiesced in it, but on the occasion of the correspondence relating to the passenger traffic in the Bosphorus, to which your Excellency refers, the Porte expressly admitted that "British vessels had a right to carry passengers from one Turkish port to another in the Danube, the Sea of Marmora, and the Dardanelles, but not in the Bosphorus, on the ground that the Bosphorus, including Constantinople and all the straits of the Black Sea, was one port; and that therefore these Bosphorus boats, being like 'caïques,' omnibuses, and hackney coaches, ought to be under the control of the police."

Her Majesty's Government did not admit the arguments, but owing to the particular circumstances of the locality in question, they offered no further opposition, providing no injury was inflicted on British subjects, and on certain other conditions which were clearly laid down at the time, and which had reference to the true meaning and extent of the "Bosphorus passenger traffic," and to the application of the same prohibition to all foreign vessels of whatever nationality.

The case of the Bosphorus, or port of Constantinople, has therefore no analogy to that of the Gulf of Smyrna, and any attempt to interfere with the passenger traffic of British vessels between Turkish ports or places in that gulf or along the Ottoman coasts would, in the opinion of Her Majesty's Government, constitute a violation of the rights of this country and of the other Powers, founded on the Capitulations, on prescription, and on the express provisions of certain Treaties of the Porte with Greece and Belgium to which your Excellency refers in your note of the 30th June, and of which the benefit is claimed by Great Britain under its right to most-favoured-nation treatment.

In the course of our conversation your Excellency alluded to the fact that it was not unusual for one country, in concluding a Treaty of Commerce and Navigation with another country, to insert a clause expressly reserving its coasting trade; but your Excellency is well aware that, where no such reservation has been made, it has been held that the coasting trade was open, or, in other words, was included in whatever privileges of navigation may have been conceded by such Treaty; and no such reservation has ever been made in the Treaties concluded between this country and the Porte.

As regards the effect of those Treaties, I can only express my entire concurrence in the views which are set forth with great clearness in Lord Dufferin's note to his Excellency Aarifi Pasha of the 8th December, 1883.

With respect to the general question of monopolies, there can be no doubt that they are opposed to the spirit of the commercial engagements of Turkey towards foreign Powers.

By the laws of the Ottoman Empire the State reserves to itself, as is well known, a monopoly in regard to the manufacture of salt, powder, and tobacco, and also in regard to the sale of stamps, and such monopolies do not infringe any Treaty rights. But no mention is made of other monopolies, and this is the first time that an attempt has been made by the Porte to increase its revenue by the sale of monopolies intended to deprive foreigners in Turkey of the right to continue a trade in which they have invested a large capital, and which they have carried on for many years by usage and acquiescence, and, as I have shown, by right of Treaty.

The proposed monopoly of the passenger traffic in the Gulf of Smyrna to a Turkish Company is an innovation which strikes at the root of the commercial relations established *ab antiquo* between Turkey and the Powers of Europe, who are all equally interested in the question; and Her Majesty's Government are not prepared to waive the right they claim for British vessels to participate in the passenger traffic between Turkish ports until such claim shall have been shown to be unfounded, and is abandoned by all the other Powers concerned.

I have, &c.

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## United States.

### No. 106.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May* 15.)

My Lord, *Royal Courts of Justice, May* 14, 1884.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th instant, stating that he had the honour to transmit to

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us the papers relating to certain lands in the United States' Territory of New Mexico, the property of Mr. J. Gerald Potter, a British subject, which were likely to be seriously affected by a Bill for dealing with private land claims now before the United States' House of Representatives.* That Mr. Potter invoked the aid of Her Majesty's Government to obtain the President's veto to the Bill in question.

Mr. J. G. Potter's property in New Mexico. Likely to be affected by United States' Bill as to private land claims.

That the facts of the case were clearly stated in Mr. Potter's letter and its inclosures; and that Sir Julian Pauncefote was to request that we would take that matter into our consideration, and favour your Lordship with our opinion as to whether Her Majesty's Government could properly interfere in the matter officially or otherwise, and, if so, as to the nature of the representation which Her Majesty's Minister at Washington might be instructed to make on the subject to the United States' Government.

That the Treaties between the United States and Mexico of the 2nd February, 1848, and of the 30th December, 1853, referred to in the papers, were also transmitted.†

In obedience to your Lordship's commands we have the honour to report—

That the Bill referred to in Mr. Potter's letter to Lord Hartington deals with a subject clearly within the legislative competency of the House of Representatives, and affects all holders of land within the Territory, be they American citizens or foreigners.

Her Majesty's Government cannot interfere diplomatically or make representations to President.

We think, therefore, that Her Majesty's Government are precluded by well-established principles from interfering diplomatically, or from making any representation in order to influence the President of the United States to veto the Bill.

But may assist Mr. Potter in bringing the matter under notice of President.

But, whilst such is the case, the provisions of the Bill will so seriously affect Mr. Potter's interests that we think he may be informed that Her Majesty's Government will assist him in bringing to the President's notice any representation he may wish to make as to the effect the Bill will have in depriving him of his property.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL
J. PARKER DEANE.

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## Uruguay.

### No. 107.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 20.)

My Lord, *Royal Courts of Justice, March* 19, 1884.

Proposed sale of British cemetery at Monte Video to Uruguayan Government.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 7th instant, stating that he was to transmit to us the papers relating to the British cemetery at Monte Video.‡ That the history of that cemetery was as follows: That Mr. John Hall, of the firm of Hall, Dutton, and Co., purchased of a priest named Solinas, out of funds subscribed by British residents, a piece of land to be turned into a cemetery for the use of the British community.

That on the 14th April, 1828, the property was transferred "to the British nation in the name of Mr. Hood, His Majesty's Consul for the time being."

That in consequence of a doubt having arisen as to the validity of the original title of the land held by Solinas, inasmuch as he had received it for a gift from the Portuguese Government when ruling the country, the Uruguayan Government confirmed by a Decree dated the 11th January, 1837, the validity of the title (Major Munro, No. 31, 9th June, 1874).

That that Decree granted "for the benefit of the pious establishment, &c., all the rights which may appertain to the land which was purchased by the said Consul" on certain conditions.

That a further Decree, dated the 22nd September, 1837, which was also quoted in the title "deeds" pp. 7 and 8), ordered that the "title of ownership" be "made out in favour of Mr. C. Hood and successors, Representatives of the British nation."

That in a Declaration signed by President Blanco and Mr. Hood (title-deeds, pp. 9-11), the date of which was not clear, but which appeared to be the 5th May, 1838, it was declared "expressly and definitely that the aforesaid land is the absolute and exclusive property of the British nation, and for that nation or her respective Consuls and Representatives in this Republic."

That the British cemetery, which was formerly on the outskirts of the city of Monte Video, was now, owing to the extension of that city, in a very central position, and was considered injurious to public health.

That the Uruguayan Government required it for the erection of public offices, and have expressed their intention of resorting to the expropriation of it for public purposes, under the provisions of the law, if they cannot obtain it by voluntary purchase.

Opposition of British community.

That negotiations had been going on for some time between that Government and the Government of Her Majesty for its purchase, and an arrangement satisfactory to both parties was on the point of being concluded, when the determined protest and opposition of the British community induced Her Majesty's Government to suspend the negotiations.

That in the voluminous correspondence which had taken place since the land was conveyed to His Majesty's Consul in 1828, it had been assumed by Her Majesty's Consuls and by the Uruguayan Government that the cemetery had become the absolute property of the British Government, without reference to the fact that it was originally purchased out of private funds for the use and benefit of the British community.

That it had been assumed also at times that the cemetery came under the provisions of the 6 Geo. IV, cap. 87. But that with the exception of a contribution of 1,265*l*. 16*s*. by the Treasury in 1841, towards inclosing the cemetery and building a chapel, and another of 295*l*. 2*s*. 5*d*. and 200*l*. respectively in 1873 and 1882, towards the expense of paving an adjoining street, an obligation imposed by the local authorities, there seemed to have been no donation of public funds towards the purchase of the cemetery, or annual contributions to its maintenance, as contemplated by the Act.

That there appeared various inaccurate statements in the "title-deeds," to which our attention was drawn by Sir Julian Pauncefote.

That so far as any opinion could be formed on the facts, from the point of view of English law, it would seem that the land was vested in Her Majesty's Consul as a trustee for the British community, for whose benefit it was purchased out of private funds, and that Her Majesty's Government could not dispose of it without the consent of the parties beneficially interested.

Proposed instructions leaving matter in the hands of Uruguayan Government.

That under those circumstances your Lordship was disposed to instruct Her Majesty's Consul to inform the Uruguayan Government that the power of Her Majesty's Government to dispose of the cemetery, without the assent of the British community, was extremely doubtful, and that as the latter had signified their opposition to the proposed sale, Her Majesty's Government must leave the matter in the hands of the Uruguayan Government, with a view to their taking such measures as the public necessities might require and as the law provides for the expropriation of the land, expressing a hope, at the same time, that proper care would be taken to provide for the removal of the graves in such a manner as might be satisfactory to the British community.

That our opinion was requested as to whether the proposed instruction was right and proper under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the proposed instruction is right and proper under the circumstances.

We would, however, suggest, for consideration, whether it would not be well,

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* Mr. Potter to the Marquis of Hartington, March 31, 1884.

† State Papers, vol. xxxvii, p. 567, and vol. xlii, p 724.

‡ Mr. Hood, No. 16, July 16, 1832; Major Munro (Memorandum), received October 9, 1872; Major Munro, No. 31, Consular, June 9, 1874, with title-deeds; Act 6 Geo. IV, cap. 87; Mr. Monson, No 3, January 9; ditto, No. 5 January 16, 1884.

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Approve instructions, subject to slight alterations.

instead of the words in the last paragraph, "Her Majesty's Government must leave the matter in the hands of the Uruguayan Government, with a view to their taking such measures," &c., to substitute the words, "Her Majesty's Government must leave the Uruguayan Government to take such measures," &c.

The expression now used seems rather to invite the action of the Uruguayan Government which is deprecated by the British community, whilst the modification suggested would be free from any such objection.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Venezuela.

### No. 108.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received November* 6.)

*Royal Courts of Justice, November* 5, 1884.

My Lord,

Request of Venezuelan Government that the action of General Pulgar may be watched.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th ultimo, stating that he was to transmit papers[*] relating to a request made by the Venezuelan Government through their Representative at this Court, that the action of the revolutionary General V. Pulgar might be watched during his residence in this country.

That the usual application in that sense having been made to the Board of Customs, through the Lords Commissioners of Her Majesty's Treasury, the Board had now requested to be supplied with the names of any foreign Powers whom they should, at present, regard as "belligerent" in the sense of our Report of the 30th March, 1881.[†]

That a draft of the reply which it was proposed to return to the Board of Customs, through the Lords of the Treasury, was inclosed, and that Sir J. Pauncefote was to request that we would inform your Lordship whether we concurred in its terms.

In obedience to your Lordship's commands we have the honour to report—

Approve draft reply to Board of Customs.

That we concur in the terms of the proposed reply.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] *List of Papers.*

1. To Colonel Mansfield, No. 29, August 8, 1884.
2. General G. Blanco, September 10, 1884.
3. To Treasury and Home Office, September 22, 1884.
4. Treasury, September 24, 1884.
5. Home Office, September 26, 1884.
6. Treasury, October 1, 1884.
7. To Treasury, October 8, 1884.
8 Treasury, October 14, 1884.
9. Treasury, October 22, 1884.
10. To Treasury, October 25, 1884.

[†] Confidential No. 4637, p. 42.

### Annex.

*Draft of Letter to the Treasury.*

*Foreign Office*, , 1884.

Sir,

In reply to your letter marked $\frac{16842}{84}$ of the 22nd ultimo upon the subject of the movements of General Pulgar, I am directed by Earl Granville to state to you, for the information of the Lords Commissioners of Her Majesty's Treasury, that it would be difficult to comply with the request of the Commissioners of Customs to be supplied with the names of any foreign Powers whom they should at present regard as "belligerent," inasmuch as hostilities may be going on in various parts of the world, in which the parties are not accorded the "status" of belligerents, but which are nevertheless within the purview of the Foreign Enlistment Act; such, for instance, as the hostile attempts made against Cuba, Venezuela, Haïti, and other countries by rebellious subjects.

Wars carried on between States are of public notoriety, and are usually made known by the Manifestoes and Proclamations of the belligerents and of the neutral States; but, in the absence of such documents, it is sometimes difficult to determine at what period a state of war has actually commenced.

Under these circumstances, it appears to Lord Granville that the best course to follow is that recommended by the Law Officers of the Crown in the second paragraph of their Report of the 30th March, 1881, namely, to keep watch on all vessels of war building in private yards, and to report all the information which the Customs officers can obtain respecting their ownership and destination, without undue interference, so as to enable Her Majesty's Government to take such further steps in any particular case as the circumstances may warrant.

I am, &c.

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### No. 109.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received December* 18.)

*Royal Courts of Justice, December* 17, 1884.

My Lord,

Vessels of war being built for belligerents in private yards.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th instant, stating that with reference to our Report of the 5th November, he was to transmit papers,[*] and to invite our attention to the letter dated the 10th November, which, with our concurrence, as expressed in our Report above-mentioned, your Lordship caused to be addressed to the Lords Commissioners of the Treasury, and to the reply, dated the 18th November, which had been received thereto.

That in that reply the Lords Commissioners take exception to the course of action recommended, as inaccurately conveying the opinion contained in our Report of the 30th March, 1881, to which reference was made in the Foreign Office letter.

That your Lordship understood the last-mentioned Report as laying down, in effect, that a watch should be kept on all vessels of war being built in private yards, and further, that those vessels suspected of being built for a foreign State which was at war, or for hostile use against a State at peace with the Queen, should be reported.

That if so, your Lordship considered that the last paragraph of the Foreign Office letter of the 10th November substantially conveyed our meaning, and laid down a proper and convenient rule, having regard to the practical difficulty which the Customs authorities would experience if left to determine what cases should or should not be reported.

That Sir J. Pauncefote was to request that we would inform your Lordship whether we concurred in the above view, and, if not, that we would favour your Lordship with our opinion as to what modification should be made in the practice recommended in the last paragraph of the letter from the Foreign Office to the Treasury of the 10th November last.

In obedience to your Lordship's commands we have the honour to report—

Course to be followed by Customs with regard to reports as to.

That we think the Customs authorities can hardly be in a position effectively to discharge the duty of reporting upon any vessels of war building in private yards which may be suspected as being in course of building or equipment for a foreign Power which is at war, unless they keep themselves informed as to all vessels of war building for foreign Powers in private yards. Of course, if they had reason to believe that any such vessels were building for belligerents, greater vigilance would be required.

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[*] Law Officers' Report, March 30, 1881, Confidential No. 4637, p. 42; Treasury, October 22; to Treasury, November 10; Law Officers' Report, November 5; Treasury, November 18, 1884.

But we cannot see any objection, provided the caution suggested by us in the third paragraph of our Report of the 30th March is observed, to the Customs authorities reporting, for the information of the Foreign Office, such facts as they may ascertain with regard to vessels of war building for foreign Powers in private yards.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# APPENDIX.

## General.

*In reply to the following Home Office letter, submitting to them at length the case of Mr. Walter Goldschmidt, of the material facts of which a short abstract is appended, the Law Officers gave on the* 13*th May*, 1884, *their opinion as below:—*

"Sir, "*Whitehall, March* 28, 1884.

Nationality of son, born abroad before, but resident in England at time of, his father's naturalization under Act of 1844. Case of Mr. W. Goldschmidt.

"I AM directed by the Secretary of State to transmit to you herewith a Memorandum, stating a case for the opinion of the Law Officers of the Crown as to the nationality of Mr. Walter Goldschmidt, who, born at the time when his father, Mr. Otto Goldschmidt, was a citizen of Hamburg and resided in that town, subsequently accompanied his father when he removed to and became naturalized in this country under "The Naturalization Act, 1844," and has since resided with his father in the United Kingdom, together with copies of letters from Sir Henry Thring, K.C.B., on the subject in question. And I am to request that you will lay the same before the Attorney- and Solicitor-General, and move them to favour the Secretary of State with their opinion thereon.

"I am, &c.
(Signed) "GODFREY LUSHINGTON.

"The Solicitor to the Treasury."

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The following is an extract from the Memorandum* referred to:—

"Mr. Otto Goldschmidt, a subject of Hamburg, was naturalized under 7 and 8 Vict., cap. 66, by a certificate of the Home Secretary, dated the 1st August, 1861. He had a son Walter, born abroad, but at the time of Mr. Goldschmidt's naturalization Walter Goldschmidt, then a child of eight years old, was resident with him in England, and has continued to be resident ever since, having been educated as an Englishman and taken his degree at Oxford. Mr. Walter Goldschmidt has never himself obtained a certificate of naturalization. A question has now arisen as to his nationality."

The Law Officers are requested to advise the Secretary of State with respect to Mr. Walter Goldschmidt (a person who was born in a foreign State, his father being at the time a foreign subject, and who has never himself obtained a certificate of naturalization, but who at the time of his father obtaining a certificate under 7 and 8 Vict., cap. 66, was an infant residing in this country with his father, and has continued thenceforth to reside here).

Questions as to—
1. Retrospective action of Act of 1844.

1. Whether the Act of 1870, section 10 (5), applies retrospectively to the case of a person who was naturalized under the Act of 1844, and, if so, whether Mr. Walter Goldschmidt is not a naturalized British subject (by

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* This Memorandum contains extracts from, and copies of, the following documents:—
The Naturalization Act, 7 & 8 Vict., cap. 66 (1844), secs. 6 and 8.
Certificate of Naturalization granted to Mr. Otto Goldschmidt, August 1, 1861.
Blackstone (sixth edition by Stephen), vol. ii, p. 438.
Law Officers' Report of August 13, 1860. see L.O. Reports of 1887 Conf. No 5597/30.
Naturalization Act, 33 Vict., cap. 14 (1870), sec. 7; and sec. 10, sub-sec. 5.
Sir H. Thring to Mr. Lushington, March 25, 1884.
Sir H. Thring to Mr. O. Goldschmidt, March 17, 1884.

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naturalized is meant invested with the rights of a person who has obtained a certificate of naturalization under the Act of 1870).

2. Position of Mr. W. Goldschmidt by Common Law under Act of 1844.

2. If the Act of 1870 does not apply retrospectively, then, considering the effect according to Common Law or otherwise of a certificate under the Act of 1844, is Mr. Walter Goldschmidt an alien or a natural-born British subject, or a naturalized British subject? (By naturalized is meant invested with the rights of a person who has obtained a certificate of naturalization under the Act of 1844.)

3. If an alien, as to grant of special certificate.

3. Whether, in the event of the Law Officers being of opinion that Mr. Walter Goldschmidt is, or would probably be deemed, an alien, it would be competent to the Secretary of State to treat him as a person with respect to whose nationality as a British subject a doubt exists, and accordingly give him a certificate as prescribed by paragraph 4 of section 7 of "The Naturalization Act, 1870."

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*Opinion.*

1. Act of 1870 not retrospective.

1. We do not think the Act of 1870, section 10 (5), applies retrospectively to the case of a person naturalized under the Act of 1844. The difficulties in the way of such a construction appear to us to be insuperable.

2. As to position at Common Law.

2. We do not think that at Common Law, or otherwise, the effect of the certificate under the Act of 1844 is to put Mr. Walter Goldschmidt in the position either of a natural-born or naturalized British subject.

3. No ground for special certificate.

3. We cannot advise that Mr. Walter Goldschmidt is a person with respect to whose nationality as a British subject any doubt exists, within the meaning of paragraph 4 of section 7 of "The Naturalization Act, 1870." It seems to us clear that he was an alien down to the year 1870, not having been born within the realm, or the son of a father, or grandfather, who were natural-born British subjects, and, as we have already stated, we do not think he became naturalized by virtue of the provisions of the Act of 1870.

(Signed) HENRY JAMES.
FARRER HERSCHELL.

*Royal Courts of Justice, May* 13, 1884.

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*Printed for the use of the Foreign Office. April* 1886.

**CONFIDENTIAL.**

# REPORTS

BY THE

# LAW OFFICERS OF THE CROWN.

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| 126 | Law Officers | 12, | Seizure of the "Overdale" for breach of blockade of Mollendo. Should pay fine under protest if it is not large, and release of ship cannot otherwise be obtained | 125 |
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**CONFIDENTIAL.**

# REPORTS BY THE LAW OFFICERS OF THE CROWN: 1885.

## Africa.

### No. 1.

*Note by the Lord Chancellor.*

West African Conference, third basis.

Inexpediency of new rules as to annexations and Protectorates.

I SEE nothing to differ from at all in the draft Report of the Law Officers,[*] but the considerations which they advert to, and all others which present themselves to my mind, appear to me to point strongly in the direction of the *inexpediency* of any attempt to settle, on the subject of annexations and Protectorates, new rules, or positive definitions, of international law.

The world has gone on until now well enough without them, and the questions are, in their own nature, such as hardly admit of solution on mere abstract grounds without reference to particular facts.

Difficulty of framing them.

So far as relates to *annexations* of territory, properly so called, the extravagant latitude of the pretensions sometimes advanced to claim, by reason of the occupation, or first discovery, of some points or point on a coast-line, the whole inland tract watered by any rivers or streams discharging themselves on that coast, is justly pointed out by the Law Officers, and yet it is probable that no nearer approach to a general abstract rule than this can be collected from the writings of jurists, or from the arguments which have been from time to time employed when controversies as to boundaries have arisen between States.

Distinction between annexations and Protectorates.

The Law Officers do not expressly advert to the distinction, which I think important (and which appears to me to be well elucidated by Sir E. Hertslet's Memorandum of the 24th April, 1883), between annexations and Protectorates. Annexation is the direct assumption of territorial sovereignty. Protectorate is the recognition of the right of the aboriginal, or other actual inhabitants, to their own country, with no further assumption of territorial rights than is necessary to maintain the paramount authority and discharge the duties of the protecting Power.

In a case (such as that of even our New Guinea Protectorate) the measure of the Protectorate, if assumed or asserted in general terms, would probably be the extent of territory occupied or inhabited by the races or tribes whom we have taken under our protection, from the coast-line inland until some natural or tribal boundary was reached.

(Signed) SELBORNE.

*January* 3, 1885.

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[*] See Report by the Law Officers of the 7th January, 1885.

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## No. 2.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 7.)

*Royal Courts of Justice, January* 7, 1885.

My Lord,

**West African Conference. Proposed third basis. Formalities to be observed in acquisition of territory.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was directed to transmit to us the following papers:—

(A.) Invitation to the Conference stating three bases. (Baron von Plessen, 8th October, 1884, Confidential 5023, p. 8.)

(B.) Summary by Mr. Hill of results of the Conference up to the present time. (23rd December, 1884, Confidential No. 5051, p. 149.)

(C.) Memorandum on the third basis by Mr. Hemming, of the Colonial Office (one of the British Delegates at Berlin). (Confidential No. 5051, p. 139.)

(D.) Two letters on the third basis from Sir Travers Twiss, Q.C. (Legal Adviser to Her Majesty's Embassy at Berlin during the Conference). (19th and 20th December, 1884, Confidential No. 5051, pp. 127-129.)

(E.) Earl Granville's despatch No. 59 of the 7th November, 1884, recording Count Münster's explanation of the meaning of the third basis. (Confidential No. 5033, p. 51.)

That we would observe from a perusal of the above papers that the Conference, which was adjourned on the 22nd ultimo until the 5th instant, would, on resuming its labours, proceed to the discussion of the third basis, namely, "the definition of the formalities to be observed in order to render future occupations on the coasts of Africa effective."

That in the Memorandum by Mr. Hemming (C), the subject was divided into two parts: (1) the formalities to be observed in the conclusion of Treaties for the acquisition of new territories, or the establishment of Protectorates thereover; (2) the formalities to be observed to constitute an effective occupation of newly-acquired territories as against other Powers.

That as regarded the first division above mentioned, it seemed doubtful whether it came within the third basis, having regard to the explanation of that basis given by the German Ambassador, and recorded in your Lordship's despatch No 59 of the 7th November (E), namely, that its object was to obtain assurances that, in future, the principles unanimously laid down by the jurists and Judges of all lands, including England, should be practically applied. That, indeed, so long as the parties to the transaction recognized it as binding, and the rights of third parties were not affected thereby, it would seem undesirable to open a door for challenging the title of the new occupant on the ground of the omission of some condition, or the non-observance of some formality to be prescribed by the Conference.

That the second division of the subject was therefore the one which would probably be alone discussed in the Conference, and to which the arguments on the third basis would be restricted.

That on that point Sir Julian Pauncefote was to invite our attention to the observations of Mr. Hemming as to the probable attitude of Germany at the Conference, and to the letters of Sir Travers Twiss (D), in which he stated his views as to the rules to which Her Majesty's Government might properly assent under the third basis of discussion.

That your Lordship would be glad to be informed whether we concurred in the views expressed by Sir Travers Twiss, and, if so, whether we had any further suggestions to make for the assistance of your Lordship in framing instructions to Her Majesty's Ambassador at Berlin on the subject.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer thereon.

In obedience to your Lordship's commands we have the honour to report—

That the recognized modes of acquiring new territory are (1) conquest, (2) cession, and (3) occupancy or settlement.

**Observations on acquisition of territory by cession;**

We apprehend that it is only to the latter of these modes of acquisition that the third basis, proposed in Baron Plessen's despatch, is intended to apply. Supposing it to apply also to the acquisition of territory by cession, the points suggested by Mr. Hemming in his Memorandum deserve consideration. But the importance of requiring that a cession of territory should be recognized as acquired by a Sovereign Power only applies when the cession has been made to a recognized and authorized Agent of such Power would not be great if a cession of sovereign rights to individuals is still to be recognized. For it would be impossible to prohibit individuals who had obtained such sovereign rights from afterwards ceding their rights to the Sovereign Power whose subjects they were. We have hitherto, as in the case of the Borneo Company for example, recognized as valid the transfer of sovereign rights to individual subjects of our own. We gather, too, that we have acknowledged the acquisition of such rights by the International Association, and we presume that it would not be consistent with our policy in this respect to deny the right to obtain future cessions of the same description.

**by occupancy or settlement.**

We proceed to deal with the question of the formalities to be observed to render future occupations on the coast of Africa effective, assuming it to apply to the acquisition of territory by occupancy or settlement. This is obviously a question of great difficulty; the more so as the explanation given by Count Münster asserts that it is not intended to establish, by agreement, any new basis, but only to secure in the future the observance of established principles of international law.

It is impossible, therefore, to consider it apart from its relation to acquisitions of territory past, as well as future, in other parts of the world. In this view we would suggest that information should be obtained from the Colonial Office with reference to our modern acquisitions of territory by occupation, more especially as regards the extent and definition of the territory over which sovereignty has been assumed beyond that actually occupied.

**No difficulty regarding points occupied;**

As regards the territory actually occupied, there is no substantial difficulty. The hoisting of the flag, and the assumption of sovereignty, whether with or without a notification of such assumption, would, no doubt, according to international law, be sufficient to establish a valid title to the territory.

**but only regarding limits of appurtenant territory.**

The real difficulty arises with reference to the extent of territory around and beyond that actually occupied, to which the assumption of sovereignty may extend, and which can be regarded as appurtenant to the territory so occupied. This is obviously a matter of cardinal importance.

We concur with Sir Travers Twiss in the view that the general principle is, that if a nation has made a settlement it has a right to assume sovereignty over all the adjacent vacant territory, which is necessary to the integrity and security of the Settlement. But the application of this principle manifestly gives rise to great practical difficulties. We agree that where there are natural boundaries, such as mountains or rivers, these may well be held to be the natural boundaries of the Settlement. But we think such a proposition must be taken to be subject to the proviso that these boundaries are within a reasonable distance of the Settlement, as the boundaries of some Settlements might otherwise be extended beyond any rational limits. But if there are no such boundaries, how are the limits to be defined? There are two elements which bear, in our opinion, upon the extent of territory which may be annexed with any Settlement. We think the Power annexing territory should be prepared to discharge the duties of sovereignty, in the way of protection and otherwise, to those within its boundaries. And we think the extent may also be influenced by the magnitude and population and probable growth of the Settlement.

If the matter be looked at with an eye to the future only, it would certainly appear to be expedient, and to the interest of this country, to agree to bases which should limit rather than extend the acquisitions, by means of settlement, and the assumption of sovereignty of and over territory contiguous to the Settlement. The spirit of annexation which apparently affects the Powers of Europe at present is likely otherwise to result in grave difficulties and complications.

It is conceivable that a Power might, by hoisting its flag on a spot upon the coast of Africa, claim sovereign rights to an indefinite extent in the interior of that continent.

But it is impossible to leave recent occurrences out of sight in dealing with this question. We are not aware what amount of occupation there has been by us of the southern coast of New Guinea, and our position in this respect will have to be kept in view in discussing the proposed basis.

We certainly think it desirable that any Power annexing territory in connection with a Settlement should be required to define, with reasonable accuracy, the limits of the territory over which sovereignty is so assumed, and a public notification to other Powers would probably be desirable.

But we think the suggestion of Sir Travers Twiss, that not only should notification be given, but that if no claim or objection be made for a year and a day the right to

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object should be gone, requires grave consideration. We entertain considerable doubt whether it would, on the whole, be advantageous, though it possesses some obvious recommendations.

It is, at least, possible that the existence of such a rule might lead to objection and difficulty being raised within the prescribed time, which otherwise would never occur at all.

It will be observed that we have not touched upon any questions arising out of the establishment of a Protectorate, as distinguished from occupation, inasmuch as they present considerations distinct from those affecting "the third basis."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE

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### No. 3.

*Memorandum by the Attorney-General and Dr. Deane.*—(*Communicated to Earl Granville, January* 8, 1885.)

West African Conference.

ASSUMING, as we do, that there is no desire to make any objection to the proposed Declaration respecting the third basis, unless it be one of substance, it will probably be thought that Sir E. Malet* should be instructed that no sufficient grounds exist for refusing assent to the Declaration in its principle.

Project of Declaration on third basis.

Suggesting alterations.

But we submit for consideration whether, in paragraph 1, it may not be well (if the telegram gives the project literally) to insert, for the sake of clearness of expression, the words "or assume protection" after "possession" in line 1, and to strike out the words "or shall assume protection of it" in lines 3 and 4.

It is a matter of policy, and therefore not for us to determine whether the two concluding lines of paragraph 1 may not be advantageously struck out. They must be read either as limiting the power of future objection or inviting the attempt to establish objections in the present. If action on receiving the notification be left ungoverned and unfettered by these words we think some advantage may arise therefrom.

Upon paragraph 2 we have only to observe that the word "jurisdiction" may be well explained or supplemented by the insertion of the words "or lawful authority," and that after the word "peace," in line 5, the words "order and tranquillity" may be inserted.

We are in doubt as to the meaning intended to be given to the words "respect for rights acquired," and probably Sir E. Malet might obtain some more clear expression of the meaning intended.

As we presume the telegram represents a translation of the original document, it may be that some of the above observations are not applicable to the wording of the original.

Whilst we suggest for consideration that the above observations, if carried out, may improve the Declaration as submitted to us, we do not suggest that they are objections which should be insisted upon as of vital consequence.

H. J.
J. P. D.

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### No. 4.

*Note by the Lord Chancellor.*—(*Received January* 9.)

West African Conference.
Project of Declaration respecting third basis.

Objections and alterations.

1. THE first clause in the "Project of Declaration respecting the third basis" is open to the objection stated by Sir Travers Twiss, that it might be taken to imply the necessity of consent or recognition by the Powers to which the notification is made. I would alter it, on this point, not by merely omitting the words objected to by Sir T. Twiss, but by making it run, "so as to enable them, if they have any objections to make thereto, to state such objections."

It will be observed that the point taken by the Law Officers as to the importance

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* Sir E. Malet's telegrams Nos. 4, 5, and 6 of the 7th January, 1885, Confidential No. 5080, pp. 20 and 21.

of defining the extent of territory to which the notification is meant to be applicable is not at all met. Whether it has been considered I do not know; but it is obvious that there is comparatively little use in a notification which leaves the subject to which it is meant to be applicable in any degree uncertain.

2. The words "*or taken under their protection*" ought, in my opinion, to be omitted from the second clause, and it should run, "occupied or taken possession of by them." So limited, I do not differ from the opinion which the Law Officers have expressed in favour of the principle, that "the Power annexing territory should be prepared to discharge the duties of sovereignty." But the Law Officers justly remark, at the end of their Report, that a Protectorate "presents considerations distinct from those affecting the third basis." It appears to me to be neither necessary, nor reasonable, nor expedient, that, in every case of a Protectorate, the protecting Power should take upon itself an obligation "to establish and to maintain" in and throughout the protected territory "a jurisdiction sufficient" for the purposes mentioned in the second clause.

To this objection, which is certainly not "captious" (Sir E. Malet's word), I attach great importance.

(Signed) SELBORNE.

*Blackmoor, Petersfield, January* 8, 1885.

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### No. 5.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 13.)

*Royal Courts of Justice, January* 10, 1885.

West African Conference.
"Project" of Declaration respecting third basis.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 7th instant, stating that with reference to Sir J. Pauncefote's letter* of the 29th ultimo, he was directed by your Lordship to transmit to us the telegrams noted in the margin,† which contained the Project of Declaration respecting the third basis of the programme of the Berlin Conference.

That Mr. Currie was to request that we would take the telegrams into our consideration, and that we would favour your Lordship with our opinion in order that (if possible) Sir E. Malet might be furnished with instructions before the Conference met to consider it.

In obedience to your Lordship's commands we have the honour to report—

Suggesting instructions as to alterations.

That assuming, as we do, that there is no desire to make any objection to the proposed Declaration respecting the third basis, unless it be one of substance, it will probably be thought that Sir E. Malet should be instructed that no sufficient grounds exist for refusing assent to the Declaration in its substance. But we submit for consideration whether in paragraph 1 it may not be well (if the telegram gives the project literally) to insert, for the sake of clearness of expression, the words "or assume protection" after "possession" on line 1, and to strike out the words "or shall assume protection of it" in lines 3 and 4.

It is a matter of policy, and therefore not for us to determine, whether the two concluding lines of paragraph 1 may not be advantageously struck out. They must be read either as limiting the power of future objection, or inviting the attempt to establish objection in the present. If action, on receiving the notification, be left ungoverened and unfettered by them, we think some advantage may arise therefrom.

Upon paragraph 2 we have only to observe that the word "jurisdiction" may be well explained, or supplemented, by the insertion of the words "or lawful authority," and that after the word "peace" in line 5 the words "order and tranquillity" may be inserted.

We are in doubt as to the meaning intended to be given to the words "respect for rights acquired," and probably Sir E. Malet might obtain some more clear expression of the meaning intended. The words "and where necessary" may perhaps advantageously be omitted.

As we presume, the telegram represents a translation of the original document; it may be that some of the observations are not applicable to the wording of the original.

Whilst we suggest for consideration that the above observations, if carried out,

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* To Law Officers, 29th December, 1884. Confidential No. 5051, p. 182.

† Sir E. Malet's telegrams Nos. 5 and 6 of the 7th January, 1885. Confidential No. 5080, pp. 20, 21.

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may improve the Declaration, as submitted to us, we do not suggest that they are objections which should be insisted on as of vital consequence.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 6.

### *Further Note by the Lord Chancellor.—(Received January* 12.)

West African Conference.

Project of Declaration respecting third basis. Obligations arising out of Protectorates. Remarks on letter of Sir T. Twiss.

I DO not construe Sir Travers Twiss' letter of the 9th January* (so far as relates to the subject of Protectorates) as Sir Julian Pauncefote appears to do.

Sir T. Twiss expresses his agreement with the distinction, as I had stated it, between the nature of an annexation and the nature of a Protectorate. He justly observes that this distinction is disregarded in the "Projet" as now framed; and that, if the Powers "accept the terminology of the 'Projet' they will, in fact, ignore it, and will affirm that a protecting Power has the same rights and obligations, as regards foreigners, as a Sovereign Power." In the sentence which follows, beginning with the words, "It may, however, possibly be decided to tear away the veil from the modern international Protectorates," &c., I do not understand him as expressing his own opinion to the effect that it is desirable "to affirm directly that a *protecting Power*" has the same rights and obligations, as regards foreign subjects and foreign Powers, as a Power avowing itself to be Sovereign," but merely as recognizing the possibility that, in view of the thinness of the line (in some cases) between annexation and Protectorate, those who have to decide the question of international policy may think the establishment of that principle desirable.

Undesirable effect of disregard in "Projet" of distinction between Protectorates and annexations.

To myself it appears to be eminently *undesirable* to lay down a principle; the inevitable effect will be to turn every Protectorate into an annexation. I think that, in many cases (*e.g.*, our present Protectorate, whether so-called or not, of Afghanistan, and the possible cases—though not contemplated by the policy of this Government—of our establishing a Protectorate over Zanzibar or Egypt) this would be in the last degree inexpedient, and would also be unjust towards the actual Rulers and inhabitants of the protected countries. I also think that to assume unnecessarily the burden of establishing in all parts of any protected territories Courts and magistrates with jurisdiction or authority capable of redressing all wrongs of which foreigners may complain; or, in the alternative, to accept a direct responsibility for all such wrongs, would be impolitic and unreasonable. Take, for instance, the case of New Guinea. Are we to make ourselves answerable for everything which the natives of the whole southern coast of New Guinea may do to any foreigners, in the same way as if it were territory annexed to the British Crown? I think we ought not to do so.

Difficulty of confining effect of "Projet" to Africa alone.

Sir Julian Pauncefote seems to lay stress upon the limitation of the present "Projet" to Africa, and upon some possible preponderance of interest, which we may have (*in Africa only*) in favour of making the assumption of a Protectorate burdensome to the Power assuming it. I always feel great respect for Sir Julian Pauncefote's opinions, but in this case I cannot but think that it would be most fallacious and dangerous to assent to the rules and principles of this "Projet" as to Africa, without being prepared to admit their application practically in other parts of the world also. If in Africa occupation and Protectorate mean the same thing, and are to carry with them the same obligations, why not in the rest of the world also? Can we assent to such a principle there, where *possibly* it might work in our favour, and deny it, where it might work against us? But the hypothetical cases which I have put of Zanzibar, &c., make it very doubtful to me whether, even in Africa, it would necessarily work in our favour.

Extent to which "Projet" ought to be recognized.

If it is thought expedient not (as I should myself think wisest) to leave all questions of obligations arising out of Protectorates to be settled as particular cases arise between the Powers interested in them, but to recognize in this "Projet" such obligations as may really in principle exist, I would certainly not go further than engage to use such means as may be in our power, in all countries over which we have established a Protectorate, to cause justice to be done to foreigners in any disputes between them and the natives of these countries.

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* Confidential No. 5080, p. 31.

Approve Sir J. Pauncefote's amendments to paragraph 1.

As to the first paragraph of the Declaration, I have no objection to Sir Julian Pauncefote's proposed amendments, and I do not insist on any definition (however imperfect a notification may be without it) of the occupied or protected territory.

(Signed) SELBORNE.

*Blackmoor, Petersfield, January* 11, 1885.

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## No. 7.

### *Sir J. Pauncefote to the Lord Chancellor.*

West African Conference.
"Projet" of Declaration respecting third basis.
Obligations of Protectorates.

SIR JULIAN PAUNCEFOTE presents his compliments to the Lord Chancellor, and has the honour, by direction of Earl Granville, to transmit to his Lordship the telegrams noted in the margin* from Sir E. Malet, showing the opinion of the Representatives of the Powers at the Berlin Conference on the points raised by Her Majesty's Government upon the Projet de Déclaration submitted by the German Government in regard to the third basis, relating to "nouvelles occupations sur les côtes d'Afrique."

Sending drafts (A) and (B).

A copy of the instructions to Sir E. Malet of the 14th instant, founded on the notes of the Lord Chancellor of the 3rd, 8th, and 11th January, is inclosed.† They were received by Sir E. Malet before the discussions of the Commission recorded in his telegram No. 11 took place. Sir Julian Pauncefote is now directed to submit to the Lord Chancellor the draft marked "A," which contains the form of paragraph proposed by Sir E. Malet with respect to Protectorates.

It will be observed that it throws on the protecting Power the obligation to "establish and maintain" sufficient authority to secure the objects therein mentioned, an obligation which the Lord Chancellor has already objected to as inadmissible. Sir Julian is therefore directed to submit, for the Lord Chancellor's consideration, the alternative draft, marked "B," and to request the favour of his Lordship's opinion as to whether Her Majesty's Government may properly accede to the views of the Commission to the extent indicated in draft (B), or whether they should adhere to the last paragraph of the instructions to Sir E. Malet of the 14th instant.

A copy in French of the German Projet is inclosed for convenience of reference.

Lord Granville is not aware when the Conference will meet, but Sir Julian is directed to say that his Lordship would be glad to be favoured with an early expression of the Lord Chancellor's opinion.

A telegram has been sent to Sir E. Malet, asking what meaning is attached by the Commission of the Conference to the term "côtes d'Afrique," to which alone the Declaration is apparently meant to apply.

*Foreign Office, January* 17, 1885.

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### *Draft (A).*

THE said Powers recognize the obligation to establish and maintain, in the territories taken under their protection, an authority sufficient "pour faire observer la paix, respecter les droits acquis, et, le cas échéant, les conditions sous lesquelles la liberté du commerce et du transit aura été garantie."

[For draft (B) see below.]

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### *The Lord Chancellor to Sir J. Pauncefote.—(Received January* 19.)

Dear Sir Julian, *Blackmoor, Petersfield, January* 18, 1885.

Returns draft (B) amended.
No objections to it if his alterations are accepted.

I RETURN these papers. It seems to me that, even in the most limited form which it can be made to take, any engagement *exceeding that suggested in my last Memorandum* as to protected territories ought to be mentioned to the Cabinet before it is undertaken. But if the form (*B*) (*as I have altered it in red ink*) should be adopted, I should not myself object.

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* Sir E. Malet, No. 10, Telegraphic, January 15; No. 11, Telegraphic, January 16, 1885; Confidential No. 5080, pp. 57 and 60.

† To Sir E. Malet, No. 14, January 14, 1885; Confidential No. 5080, p. 51.

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So altered, it would be (like Article 1) a Conventional arrangement limited to *African* Protectorates only; and, as to these, I appreciate your own view, that we should probably gain more by imposing it on other Powers than we should be liable to suffer by accepting it ourselves. For in the hypothetical cases which I before suggested of Zanzibar or Egypt, the "sufficient authority" does and would exist; and the burden we should be accepting is, in fact, no more than a certain degree of responsibility to foreign Powers for the petty native States under our protection on the Gold Coast and the banks and mouths of the Niger.

I think it of great importance to avoid the words "*recognize the obligation*," which imply a principle applicable (if sound) in all parts of the world, and not a limited local agreement.

Believe me, &c.
(Signed) SELBORNE.

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*Draft (B).—Protectorate.*

THE said Powers undertake to secure that in the territories on the coasts of Africa taken under their protection a sufficient authority shall be maintained to preserve order and respect for private rights, and, if necessary, the observance of the conditions under which liberty of commerce and of transit may have been guaranteed.

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## No. 8.

*The Lord Chancellor to Earl Granville.—(Received January 21.)*

West African Conference.
Third basis.
Sends draft form of engagement as to protected territories in Africa.
If it is not accepted explanations should be given.

Dear Lord Granville, 30, *Portland Place, W., January* 20, 1885.

I INCLOSE a draft which I have prepared, as promised, of the form in which we might enter into an engagement as to protected territories in Africa, so as to give effect to the view taken by Gladstone, which is the same (in principle) with my own.

Perhaps it would not be necessary to ask questions if this is accepted. But, if the other Powers press for more, I would suggest that some practical explanation should be given of the sense attached to the supposed obligation: as, *e.g.*, whether Germany would hold herself bound to create and maintain judicial establishments capable of securing the objects in view throughout the extent of the 300 miles coast-line of which she has assumed the Protectorate at Angra Pequeña, &c., and hold *us* bound to do the same throughout every district protected by us on the banks and near the mouths of the Niger; or, in the alternative, to admit a direct and absolute responsibility, under all circumstances, for all wrong-doings towards foreigners of the natives of the protected territories?

Believe me, &c.
(Signed) SELBORNE.

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*Draft as to Protected Territories in Africa.*

THE Signatory Powers also undertake, so far as relates to any territories on the coasts of Africa placed under their Protectorate, to use, in favour of foreigners of every nation, as effectual means of insuring the maintenance of peace, and obtaining justice or due reparation in respect of privately acquired rights, and securing liberty of commerce and of transit in the conditions in which they may have been established as they are enabled to use in favour of their own rights, or of the rights of their own subjects.

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## No. 9.

*Sir J. Pauncefote to the Lord Chancellor.*

West African Conference.

SIR J. PAUNCEFOTE presents his compliments to the Lord Chancellor, and has the honour, by direction of Earl Granville, to transmit herewith a copy of a telegram

Sir E. Malet's objections to course proposed by Her Majesty's Government respecting the third basis.

from Sir E. Malet[*] stating the objections felt by himself and his advisers to the course in regard to the third basis proposed by Her Majesty's Government in the telegram sent to Berlin after the Cabinet Council of yesterday, which is also inclosed, for convenience of reference.[†]

Sir Julian is directed to state that Earl Granville would be glad to be favoured with the Lord Chancellor's opinion on Sir E. Malet's telegram.

*Foreign Office, January* 22, 1885.

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*The Lord Chancellor to Sir J. Pauncefote.—(Received January 24.)*

Objects to proposed engagement, but will acquiesce in it on certain conditions.

My dear Sir Julian Pauncefote, *Blackmoor, Petersfield, January* 23, 1885.

IT is evident (and perhaps it may not be unnatural) that our diplomatists at Berlin place the smooth working of the Conference which is going on there upon a higher level than all other considerations connected with the question at issue. It is perhaps equally natural that I should place the principles involved, and the possible future consequences of a false step upon this occasion, upon a higher level than the temporary considerations connected with our being, or not being, in a minority of one at the Conference. If the greater matter of the European negotiations about Egypt were not regarded by the Foreign Office as indirectly relevant to what may, or may not, be done at this Conference, I should have certainly thought it wiser and more consistent with the position and dignity of this country to maintain our own ground on this point, though we might stand alone. But if it be the view of the Foreign Office that it is desirable to accept, so far as relates to Africa, the engagement proposed, I have already said (and I now repeat) that if Gladstone and my other colleagues acquiesce in that view I also am prepared to acquiesce in it, so long as the form of the engagement does not "recognize" the "obligation," which, I think, cannot safely or properly be recognized as a universal obligation in all cases of Protectorates, and does not bind us to "establish" jurisdiction, or authority, even in our Protectorates in Africa. The form which I would acquiesce in (though not liking it) was stated in my last Memorandum.

Difficulties in the way of accepting it.

I must observe that, of the Powers assembled in Conference, none are (at present) really interested in this matter except ourselves, Germany, and France; and the interests of Germany and France, besides being recent, and not yet subjected to the test of experience, is that of Powers who are much more certain to exact from us the fulfilment of any obligation which we may undertake, than loyally to fulfil towards us the like obligation themselves. (This remark, of course, ought to be taken as strictly confidential; nevertheless, I should not make it if I did not believe it to be true.) And, besides this, there is no substantial obstacle, in their case, to their treating the distinction between Protectorate and annexation as purely nominal; so that by Protectorate they mean (as Sir Travers Twiss said) annexation under another name. But it is otherwise with us, and that for reasons, some of which are of peculiar force in Africa. If we annexed any territory in Africa, the immediate consequence must be that, in that territory, slavery must at once cease to exist. I am not aware that any other Power is embarrassed with this difficulty; and, if to-day's intelligence about the German proceedings at the Cameroons is correct, the German idea of a Protectorate must be in other respects very different from ours.

It must never be forgotten that the engagement, in the terms in which it is proposed to us, seems to make us responsible for all that foreigners, as well as British subjects or natives, may do within British Protectorates, *e.g.*, in Pondoland; but the Law Officers have only just advised that over foreigners, in a protected territory which is not actually for all purposes part of the Queen's dominions, we cannot exercise any authority or jurisdiction; and for that very reason we have now determined to assume the direct sovereignty of that part of New Guinea in which we had before established a Protectorate.

I cannot think that on this subject the views of the "Colonial advisers" of Sir E. Malet at Berlin ought to have any preponderating weight. It is just one of those subjects on which the Colonial and the Imperial views may naturally differ.

Believe me, &c.
(Signed) SELBORNE.

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[*] Sir E. Malet, No. 17, Telegraphic, Africa, January 22, 1885, Confidential No. 5080, p. 90.

[†] To Sir E. Malet, No. 11, Telegraphic, Africa, January 21, 1885, Confidential No. 5080, p. 85.

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## No. 10.

*Sir J. Pauncefote to the Lord Chancellor.*

Neutralization of conventional basin of the Congo.

Proposal for.

SIR J. PAUNCEFOTE presents his compliments to the Lord Chancellor, and has the honour, by direction of Earl Granville, to submit the inclosed papers relating to the question of the neutralization of certain of the territories of Africa, known as the conventional basin of the Congo, which is now occupying the attention of the Berlin Conference.*

Sir E. Malet is anxious not to delay the meeting of the Conference, and Lord Granville would be glad if the Lord Chancellor would favour him, at his early convenience, with his opinion as to the answer which should be returned to Her Majesty s Ambassador.

*Foreign Office, February* 16, 1885.

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*The Lord Chancellor to Sir J. Pauncefote.—(Received February* 17.)

Dear Sir Julian, *Blackmoor, Petersfield, February* 16, 1885.

I AM disposed to agree with Mr. Villiers Lister, that it is difficult to foresee all the bearings and consequences of a proposition of this kind, and that it would be a good thing (if practicable) to communicate upon the subject with Sir J. Kirk.

No objection to proposal.

But, as far as my own judgment goes, I see no objection to the proposal.

Believe me, &c.
(Signed) SELBORNE.

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## No. 11.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 25.)

My Lord, *Royal Courts of Justice, March* 25, 1885.

Jurisdiction on the West Coast of Africa. Proposed Order in Council.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 21st instant, stating that he was to transmit to us the accompanying draft of an Order in Council,† prepared by Mr. R. S. Wright, giving jurisdiction in civil and criminal matters to Consular officers of Her Majesty and other persons on the West Coast of Africa.

That the details had been carefully considered in the Foreign Office, and had been examined and approved by the Treasury and the Colonial Office.

That it was originally intended that powers should be conferred by it on Consular officers only, but that recent events had rendered it necessary to empower the Secretary of State to vest judicial powers in persons not holding Consular posts.

That in the large districts on and near the Niger, taken under the Protectorate of Her Majesty, the officials might not be styled Consular officers, but possibly Commissioners and Deputy Commissioners; further, that it would be impossible to station Government officials at all points where Courts might be required in those Protectorates; and that it might be advisable to have power to confer judicial powers on officers of the National African Company, to which Company it was proposed to grant a Charter under such conditions as might thereafter be decided upon.

That the 3rd clause of the Order had been added by Mr. R. S. Wright to effect the above object; and that your Lordship would be glad to learn whether it met with our approval.

That the favour of an early answer was urgently requested, as it was important that the Order should be passed at the meeting of the Privy Council appointed for the 26th instant.

In obedience to your Lordship's commands we have the honour to report—

Approve Order generally.

Remarks on maintenance of power to inflict capital punishment.

That the draft Order was only received by us on the 23rd instant. We have considered its terms as carefully as was possible under the circumstances, and we approve of its contents generally. But we observe that where sentence of death is pronounced it is to be left to the Secretary of State to determine whether that sentence should be carried into effect, or what other sentence should be imposed.

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* Protocol No. 6 and Annexes, "Africa No. 4 (1885)," Parliamentary No. 2951, p. 178; Sir E. Malet, No. 105, Africa, February 14, 18‑5; and Sir E. Malet, No. 33, Telegraphic, February 15, 1883; Confidential No. 5103, pp. 59 and 63.

† For Order in Council as published, see Confidential No. 5094*.

In the case of the Consular Courts in Turkey and elsewhere, the sentence in capital cases is reserved for the consideration of the Secretary of State; but he can only sanction a sentence of penal servitude or imprisonment. If a sentence of death were directed by the Secretary of State to be carried out, as it might be according to the proposed West African Order, a long period would elapse between the sentence and its execution.

But we presume the expediency of maintaining the power of inflicting capital punishment, under the circumstances, has been carefully considered.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 12.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received July* 13.)

My Lord, *Royal Courts of Justice, July* 11, 1885.

Claim of F. D. Holder on the German Government on account of injuries to himself and property during bombardment of Joss Town.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 2nd instant, stating that he was directed to transmit to us the papers* relating to a claim which had been preferred against the German Government by a British subject named F. D. Holder for personal injuries received and damage done to his property during the bombardment of a German naval force at Hickory Town and Joss Town, on the Cameroons River, on the 20th December last.

That it appeared from Mr. Holder's statement that while he was peacefully and legally engaged in carrying on his business at the latter place the German flotilla appeared on the river, and, without any intimation or other declaration, began firing into the towns in question; his dwelling-house and premises, though situated at a considerable distance from the latter place, were completely riddled with shell, one of which wounded him in both legs.

Owing to the wound he received he was incapacitated from business, and had to place himself under a doctor for a period of three weeks.

That Mr. Holder further asserted that when he saw the flotilla coming up the river he hoisted his ensign and kept it flying all day, so that it could easily be seen that the premises belonged to a British merchant, and that Mr. Holder consequently claimed 1,000*l*. damages from the German Government.

That from a despatch from Consul Hewett, which which was also inclosed, it would be seen that the German officer in charge of the boats reported to the Admiral that his reason for getting his guns to bear on Mr. Holder's house was that he had seen natives firing from it. That that, however, was positively denied by Mr. Holder, who maintained, on the contrary, that there were no natives within 50 yards of his house at the time.

That Mr. Lister was to inclose a Memorandum, prepared in the Foreign Office, respecting the position of subjects of a neutral State residing in the country of a belligerent during a hostile invasion.

That that Memorandum, which was submitted to and approved by the Law Officers of the Crown, dealt, at p. 2, with the principle applicable to such claims as the present one, and that Mr. Lister was to observe that, having regard to the conflict of evidence, the claim was not likely to be admitted by the German Government, who would probably insist that the onus of showing that the circumstances of the case took it out of the general rule, that the belligerent was not liable for injuries caused by military operations, rested with the claimant.

That Mr. Lister was to request that we would take the papers transmitted into our consideration, and that we would favour your Lordship with our opinion as to whether a claim should be made on the German Government for compensation to Mr. Holder, and, if so, whether the sum of 1,000*l*. asked for by him was fair and reasonable.

In obedience to your Lordship's commands we have the honour to report—

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* Confidential Print (Niger River), No. ; Consul Hewett, No. 2, Africa, January 4; Mr. F. D. Holder, March 25, 1885; Memorandum, October 20, 1883, Confidential No. 5015.

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No claim should be made on German Government for compensation.

That, on the evidence submitted to us, no claim should be made on the German Government for compensation to Mr. Holder.

We have, &c.
(Signed) R. E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 13.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received August* 10.)

*Royal Courts of Justice, August* 8, 1885.

My Lord,

Royal Charter for the National African Company for administration of the Niger districts. Question as to grant of.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, the papers* which relate to an application by the National African Company (Limited), for the grant of a Royal Charter of Incorporation, with the necessary powers to enable the Company to undertake the administration of the Government of the Niger districts on the West Coast of Africa.

That the Company had long been established there, and had entered into so-called Treaties with the native Chiefs, vesting in them, as a Company, sovereign rights of government over the territory in question.

That since the date of those so-called Treaties the same Chiefs had entered into Treaties with Her Majesty the Queen, in pursuance of which a British Protectorate had been formally established over the district in question, as notified in the "London Gazette."

That it was to be observed that one of the results of the recent Berlin Conference was that the Powers there represented recognized the preponderance of British influences in the Niger districts, and that the responsibility of protecting the free navigation of the River Niger was left to Great Britain alone, although the duty of securing the free navigation of the Congo had been confided to an International Commission.

That Her Majesty's Government were therefore under an obligation towards other civilized Powers to make suitable provision for insuring the free navigation of the Niger, and in view of the assumption of a Protectorate by Great Britain over the Niger districts, to provide for the maintenance of peace and good order therein.

That it was in the month of February last, and consequently before the Proclamation of the British Protectorate, that the Company addressed their first application to Her Majesty's Government for the grant of a Royal Charter.

That that application, dated the 13th February, was made by Lord Aberdare, the Chairman, and was transmitted therewith, with its inclosures, consisting of a Petition and draft Charter, conferring on the Company authority to exercise the powers of government over the Niger districts, vested in them by their various Concessions from the native Chiefs.

That the draft Charter was prepared on the model of the Charter granted to the British North Borneo Company in 1881.

That it was unnecessary to consider whether at that period a Royal Charter of Incorporation similar to the Borneo Charter might have been granted to the National African Company. Such a Charter would have conferred no new powers of government on the Company, but would have controlled them in the exercise of the powers conferred upon them by the native Chiefs.

That on that point it might be convenient to draw attention to Lord Granville's despatch to Sir R. Morier of the 7th January, 1882, explaining the character of the Borneo Charter and its legal effect.

That from that despatch it would be seen that the Crown assumed no dominion or sovereignty over North Borneo, and, therefore, could confer no powers of government over it.

That the Borneo Charter merely conferred incorporation on the North Borneo Company, and, in return, reserved certain rights of control over the Company in their exercise of the powers of government vested in them by the territorial Sovereigns, the Sultans of Sulu and Brunei.

But that in the case of the National African Company and the Niger districts, it was conceived that the so-called Treaties between the Chiefs and the Company, whatever powers they may have conferred, became merged and extinguished in the Treaties subsequently entered into between the same Chiefs and Her Majesty the Queen, and that the establishment of a British Protectorate over those districts rendered it necessary that the Crown should provide directly for the administration of government and the maintenance of peace and good order therein.

That the conditions under which a Charter was granted to the North Borneo Company were therefore entirely different from those under which the application of the North African Company was made for a similar grant.

That, nevertheless, the Company insisted that it was competent to the Crown to grant to them a Charter which should vest in them, as a Company, the fullest powers of government over the Niger districts; that there was nothing to prevent the Crown vesting in a private Company the government of a Crown Colony, and in support of that view they instanced the case of the Hudson's Bay Company's Charter.

That it was not denied that under the Foreign Jurisdiction Acts the Queen might (as in the case of Cyprus, which was not British territory), appoint a High Commissioner and a Legislative Council for the Niger districts; and provide for the good government of those districts by employing the officers of the Company in the service of the Crown. But that was not what the Company desired.

They contended that it was competent to Her Majesty the Queen by Royal Charter, to confer on them, as a private Association, full powers of government over the territories in question, including the administration of civil and criminal justice.

That in order that we might be put in full possession of the exact views of the Company, Sir Julian Pauncefote was to invite our attention to a letter addressed to him on the 15th May by Mr. Goldie Taubman, the Secretary of the Company, and to his (Sir Julian Pauncefote's) reply dated the 22nd May.

Also to a letter from Lord Aberdare to your Lordship, dated the 1st July, inclosing a printed letter from Mr. Goldie Taubman to Sir Julian Pauncefote, dated the 18th June, in which it was argued that the Hudson's Bay Company's Charter was a precedent for the application of the National African Company, inasmuch as the Hudson's Bay Company exercised judicial, legislative, and executive powers, "solely under their Charter, and without any authority whatever from Parliament."

That Sir Julian Pauncefote observed, with reference to that last statement, that the administration of justice in the territories of the Hudson's Bay Company was provided for by two Statutes: 43 Geo. III, cap. 138, and 1 & 2 Geo. IV, cap. 66, and that it was notorious that the validity of the powers which that Charter purported to confer was hotly contested, and that the rights of the Company were chiefly supported by the recognition which they appeared to have received in certain Acts of Parliament.

That the same might be said of the Charters granted to the East India Company.

That there was no instance in modern times, in this country, of the grant by Royal Charter to a private Association of sovereign rights and powers of government, including the administration of civil and criminal justice over territories situated either within or without the British dominions.

That it was conceived that, whether in Crown Colonies or in foreign places where the Queen has power and jurisdiction by Treaty, usage, or sufferance, such power and jurisdiction must be exercised in her name by responsible officers, appointed by and under the control of the Crown.

That it was no doubt of pressing importance to decide what steps should be taken to provide for the maintenance of peace and good order in the Niger districts; and that, if we should be of opinion that the government of those districts could legally be vested by Royal Charter in the National African Company, your Lordship would consider at once the expediency of recommending the issue of such a Charter.

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* (A.) List of papers forwarded to the Law Officers in Sir J. Pauncefote's despatch of July 21, 1885:—
(B.) Map of Niger districts on the West Coast of Africa. (Admiralty Chart, Africa, No. 24 B.)
(C.) Copies of Treaties concluded between Company and native Chiefs (Confidential No. ).
(D.) Copies of Treaties concluded between the Queen and native Chiefs (Confidential No. 5064).
(E.) Notice in "London Gazette" of establishment of British Protectorate (Confidential No. 5119*).
(F.) Application for Charter, June 18, 1885.
(G.) Charter of North Borneo Company (Confidential No. 4528).
(H.) Parliamentary Papers, "Spain No. 1 (1882)," *vide* Parliamentary No. 2514, p. 202.
(I.) Mr. Goldie Taubman, May 15, 1885 (Confidential No. ).
(J.) To Mr. Goldie Taubman, May 22, 1885 (Confidential No. ).
(K.) Lord Aberdare, July 1, 1885.
(L.) Report of Parliamentary Committee on Hudson's Bay Charter.
(M.) West African Order in Council (Confidential No. 5095*).

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That if we should be of opinion that such a Charter could not properly be granted, the only other course which had suggested itself at the date of Sir Julian Pauncefote's letter was to issue an Order in Council under which a British Commissioner might be appointed on the spot, with power to nominate a local Council, and to make Rules and Regulations for the good government of those districts, to be approved by one of Her Majesty's Principal Secretaries of State.

That the administration of justice could be carried on under the new Order in Council for the West Coast of Africa, and the local officers of the Company could practically be intrusted with all the powers of government, by being appointed to civil and judicial posts, and by forming the local Council.

That the administration would thus be in the hands of the Crown, though practically carried out by the officers of the Company.

That Sir Julian Pauncefote was to request that we would take all the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether, having regard to the Treaties between Great Britain and the Niger Chiefs, and the British Protectorate established over the Niger districts, the government of those districts, and their civil and judicial administration, could be vested in the National African Company by Royal Charter, and, if not, that we would advise your Lordship as to the course which should be followed to provide for the maintenance of peace and good order in those districts.

In obedience to your Lordship's commands we have the honour to report—

Crown has power to grant jurisdiction to a Company.

That the Foreign Jurisdiction Acts have conferred upon Her Majesty the most ample discretion as to the mode of exercising any power and jurisdiction which Her Majesty has acquired by Treaty, usage, or sufferance, in the Niger districts.

In our opinion it would not be beyond the power of the Crown to vest such power and jurisdiction in a chartered Company, which should be authorized to exercise there, all such power and jurisdiction as Her Majesty may possess.

More usual for Crown to exercise direct jurisdiction.

It is, at the same time, more in accordance with precedent, that in such places as the Niger districts, Her Majesty's power and jurisdiction should be exercised under the authority of Orders in Council, and by officers directly responsible to the Crown. But by neither of these methods can any jurisdiction be acquired over the subjects of any civilized Power within territories which are not part of Her Majesty's dominions, but only under her protection.

Method of establishing jurisdiction over foreigners.

If it is necessary to the peace and good order of the Niger districts, and to the fulfilment of international obligations, that such jurisdiction should be obtained, it can only be done by establishing the sovereignty of Her Majesty over those territories, in the same manner as that of the German Emperor has been established in the territories to the west of Zanzibar.

We have, &c.
(Signed) R. E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## AS TO GRANTING A CHARTER TO THE NATIONAL AFRICAN COMPANY.

*Addendum to the Law Officers' Report of the 8th August,* 1885.

Not desirable to grant Charter.

ALTHOUGH in our Report of the 8th August, 1885, we expressed our opinion that it would not be beyond the power of the Crown to grant the Charter proposed, we are clearly of opinion that it would not be desirable, especially in a case in which, as in the Niger district, the Crown has not assumed sovereignty, and we intended to indicate this view in the concluding passages of our Report.

(Signed) R. E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

*Royal Courts of Justice, August* 20, 1885.

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## No. 13*.

*The Law Officers of the Crown to Colonel Stanley.*

Sir, *Royal Courts of Justice, August* 10, 1885.

Jurisdiction in Protectorates over foreigners.

WE were honoured with Mr. Wingfield's letter of the 11th ultimo, stating that he was directed to request our opinion upon the following matter:—

That in 1884 Her Majesty assumed a Protectorate over Bechuanaland, in South Africa, and that finding in the autumn that it was necessary to enforce her authority, she appointed Sir Charles Warren to be Special Commissioner for that country, under a Commission, of which a copy was inclosed. That that officer was also placed in military command of a force sent out with the object of repressing disorders caused by the actions of armed bodies of men from the adjacent South African Republic and elsewhere.

Order in Council of 1885.

That in order to provide some judicial machinery for the territory included in the Protectorate, an Order in Council under the Foreign Jurisdiction Acts, 1843 to 1878, was passed on the 27th January, 1885, empowering the High Commissioner (Sir H. Robinson) to establish Courts within certain geographical limits.

That a copy of that Order was inclosed, together with printed copies of three Reports of the late Law Officers, dated 3rd August, 1880,[*] 15th November, 1884,[†] and 23rd December, 1884.

That the Order in Council was duly published at Cape Town on the 6th March, 1885, and thereupon came into operation.

Districts affected by that Order.

That the country lying within the limits of the Order might be divided into three classes:—

(*a.*) The territories of the Chiefs Mankoroane and Montsioa.
(*b.*) The territories of certain other native Chiefs.
(*c.*) A portion of territory known as Stellaland.

That by virtue of Treaties with the Chiefs Mankoroane and Montsioa, which were recited in the Order in Council, Her Majesty had, it was apprehended, acquired full and definite legal jurisdiction over all persons within the territories of those Chiefs, with large powers of legislation and administration; and that Mr. Wingfield was to state that the primary object of the Order in Council was to provide a Court to deal with the case of a British subject named Bethell, who had been murdered in the territory of Montsioa.

That in the territories of the other Chiefs referred to above Her Majesty had not acquired jurisdiction by Treaty, but that having taken these Chiefs and their territories under her protection, it was apprehended that she had, by sufferance or other lawful means, acquired power and jurisdiction which she might enforce by Order in Council under the Foreign Jurisdiction Acts over British subjects, and over any natives living under her protection.

That Stellaland was formerly native territory, but was now the territory of certain persons who, as volunteers assisting certain contending native Chiefs, named Montsioa and Mankoroane, had possessed themselves of the land and had formed an independent Republic, and had appointed officers of Government. That our attention was invited to the documents printed at pp. 55 and 67 of Blue Book C.—3419.

That British officials had exercised much influence in the country; and that on the 8th September, 1884, an Agreement was come to between the Stellaland officials and Mr. C. J. Rhodes, British Commissioner, that, "pending the annexation to the Cape Colony, Stellaland shall continue its own government; however, recognizing Her Majesty's Protectorate, and subject to the conditions that all executive acts must be taken in concert with and with the consent of the Commissioner of Bechuanaland."

That that Agreement was again approved on the 24th December, 1884, at a meeting between Mr. Rhodes and the Stellaland officials; and that it might be taken that a Civil Government existed in Stellaland on the 14th February, 1885.

Sir C. Warren's Proclamations.

That on that day Sir Charles Warren, who was in Stellaland with a body of Her Majesty's forces, issued a Proclamation (printed in the accompanying Blue Book, C.—4432) to which our attention was specially invited.

That that Proclamation contained this sentence: "Military rule is hereby declared in Stellaland while Her Majesty's troops are in occupation, to be applied so far as is necessary to supplement the existing inadequate machinery of government."

That that Proclamation was withdrawn by another Proclamation of Sir Charles

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[*] Confidential No. 4539, p. 55 A.

[†] Confidential No. 5121, p. 2 A.

Warren, on the 15th April, 1885, of which a copy was inclosed in the accompanying despatch No. 200 from Sir H. Robinson of the 10th June, 1885.

Government of Stellaland.

That in the interval a body styled the "Bestuur" was elected, and exercised functions which, for the purposes of this case, might be taken to be a continuance of the system of government which had existed in Stellaland prior to the 15th February. That it was alleged that the operation of the Order in Council of the 27th January had been to deprive of legal validity the Bestuur and all other establishments not created by the High Commissioner under that Order; and that Mr. Wingfield was to invite our attention to paragraphs 3, 4, 5, and 6 of Sir H. Robinson's despatch of the 29th April, 1885, at p. 193 of C.—4432. That that was despatch No. 148 mentioned in the accompanying telegram from Lord Derby of the 25th May; and that Mr. Wingfield was also to inclose the telegram in reply of the 31st May.

That we were also desired to peruse the accompanying despatch No. 191 from Sir H. Robinson of the 3rd June, 1885, and the opinion inclosed in it, together with his No. 200 referred to above.

That we were also requested to read the telegram No. 1 of the 23rd March from Sir H. Robinson to Sir Charles Warren, at p. 101 of C.—4432, and two telegrams of the 10th April and the 12th April, between those officers, printed at pp. 146, 147 of C.—4432.

That those documents raised important questions as to the effect of the establishment of military rule upon the constitution of Stellaland.

That it was not clear what Sir Charles intended by the use of the term "military rule," but that, in fact, he detailed two military officers to supervise the actual civil government of the country as administered by the local officials; that his second Proclamation of the 15th April threw additional light upon the meaning of the former one. That it was alleged that the election of the present Bestuur during the existence of military rule was of no avail, especially as a large proportion of the electors abstained from voting.

Questions for opinion as to effect of Proclamations on Government of Stellaland:

That we were accordingly requested to advise as to what, in our opinion, was the effect upon the constitution of Stellaland of the Proclamation of the 14th February and of the second Proclamation of the 15th April, as to the effect of the Order in Council in Stellaland, and as to the legal status of the existing Bestuur and any other establishments which were not created under the Order in Council, but which apart from that Order would be properly constituted according to the law of the country.

That Mr. Wingfield was to add that specific questions had not been stated for our opinion, as the documents appeared to show clearly enough the view taken by the advisers of Sir Hercules Robinson; and that you would be glad if we would be good enough to state fully how far we agreed with them.

Effect of Order on Protectorates acquired by Treaties;

That Mr. Wingfield was further to inquire what, in our opinion, was the effect of the Order in Council as regarded the territories of the Chiefs Mankoroane and Montsioa, and whether in those territories Her Majesty had acquired, under the Treaties with these Chiefs, a general power of legislating by Order in Council for all purposes of government.

Powers in other Protectorates.

That lastly, whether in the territories of other Chiefs within the Protectorate Her Majesty had power and jurisdiction (*a*) over her own subjects; (*b*) over natives under her protection; and whether the Order in Council was a proper exercise of that power and jurisdiction.

That our reply was requested as early as might be possible, for in the circumstances of those territories it was desirable that the legal position of affairs should not be left undetermined longer than could be avoided.

In compliance with the request contained in Mr. E. Wingfield's letter, we have the honour to report—

British jurisdiction extends to British subjects only.

That, in our opinion, neither the native African Chiefs nor any of the bodies of freebooters settled in Bechuanaland could, either by Treaty or sufferance, confer upon Her Majesty jurisdiction over the subjects of any civilized Power other than Great Britain.

Meaning of Sir C. Warren's Proclamations.

The Proclamation of the 14th February was an announcement by Sir Charles Warren of his intention to disregard any authority then *de facto* existing in Stellaland, and to use his military power in a certain way and for certain purposes. It had no legal effect upon the laws and constitution of Stellaland, if any at that time existed.

The Proclamation of the 15th April is a mere withdrawal by Sir Charles Warren of his previous announcement, and is equally without operation on the laws and constitution of Stellaland.

Status of Government of Stellaland.

The so-called independent Government of Stellaland, being formed by a lawless association of freebooters, has, in our opinion, no legal status; its laws and Tribunals have no validity whatever as regards the subjects of other civilized Powers, and none as regards British subjects, except so far as such validity is given to them by the acts of Her Majesty's Commissioners.

Order of 1885 does not affect foreigners.

The effect of the duly promulgated Order in Council of the 27th January, 1885, is to enable the High Commissioner to constitute Tribunals in Bechuanaland, having jurisdiction over British subjects and protected natives, but not over the subjects of other civilized States.

Sir C. Warren's powers;

The Order in Council overrides, but does not supersede, Sir Charles Warren's Commission. Subject to the express provisions of that Order Sir Charles Warren may exercise the powers conferred on him by his Commission and instructions.

and status of the Bestuur under the Order.

The Bestuur or any other establishments in Stellaland which Sir Charles Warren has created or sanctioned, so far as they are consistent with the Order in Council, may be regarded as the particular methods by which he has thought fit to exercise his jurisdiction over British subjects and protected natives in Stellaland. In this sense, but in no other, they have a legal status. The subjects of other civilized States who are in Stellaland cannot be interfered with by the Bestuur, or any Tribunals that may be instituted under its authority, without the consent of their own Governments.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.

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## No. 14.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received September 19.)*

My Lord, *Royal Courts of Justice, September* 19, 1885.

Bombardment of Hickory Town, &c., in Cameroon River, by Germans.

Claims of Baptist Missionary Society and Messrs. Lucas Brothers for damages done.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers* relative to claims by the Baptist Missionary Society and by Messrs. Lucas Brothers for damage done to their property during the bombardment of Hickory Town and other places in the Cameroon River by German ships of war in December last.

That the two claims being precisely of the same character, it was proposed to deal with them together.

That the previous correspondence in each case was annexed, and that Sir Julian Pauncefote was to refer us to the replies which were returned by the Foreign Office to those claims respectively on the 23rd July last. That the Baptist Missionary Society, in their letter of the 27th July, and Messrs. Lucas Brothers, in their letter of the 4th August, had set out the special grounds and arguments on which they founded their respective claims to indemnity at the hands of the German Government.

That in both cases the buildings of the claimants had shared the fate of other property which, during the bombardment, was exposed to the fire of the German forces.

That Sir Julian Pauncefote was to inclose a copy of our Report of the 11th August† on the claim of Mr. Holder arising out of the same bombardment, and that he was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether there were any special circumstances which would warrant Her Majesty's Government in applying to the German Government for compensation on behalf of the complainants.

In obedience to your Lordship's commands we have the honour to report—

No ground for applying for compensation.

No objection to submitting claims for friendly consideration.

That, in our judgment, there are no special circumstances in the cases of the Baptist Missionary Society and Messrs. Lucas Brothers which would warrant Her Majesty's Government in applying to the German Government for compensation on behalf of the complainants. But there would be no objection to the Government submitting the claims to the friendly consideration of the German Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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* List of Papers sent to the Law Officers in Sir Julian Pauncefote's despatch of August 20, 1885:—

1. Baptist Missionary Society, January 27, 1885.
2. " " February 20, 1885.
3. To Baptist Missionary Society, July 6, 1885.
4. Baptist Missionary Society, July 8, 1885.
5. To Baptist Missionary Society, August 1, 1885.
6. Messrs. Lucas Brothers, June 30, 1885.
7. To Messrs. Lucas Brothers, July 6, 1885.

(A.) To Baptist Missionary Society, July 23, 1885.
(B.) To Messrs. Lucas Brothers, July 23, 1885.
(C.) Baptist Missionary Society, July 27, 1885.
(D.) Messrs. Lucas Brothers, August 4, 1885.

† Not inclosed.

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## No. 15.

### *The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received September* 30.)

[After recapitulating the following Reference, the Law Officers report as on page 17.]

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### *Sir J. Pauncefote to the Law Officers of the Crown and Sir J. Deane.*

Gentlemen, *Foreign Office, September* 7, 1885.

Application of the National African Company for Charter and powers to govern the Niger districts.

WITH reference to your Reports of the 8th and 20th ultimo, on the application of the National African Company for a Royal Charter of Incorporation with powers of government over the Niger districts, I have the honour to transmit to you, by direction of the Secretary of State, a further letter from the Company, dated the 15th ultimo, in which they suggest that, as a temporary measure, an Order in Council should be issued vesting in some of their principal local officers the necessary powers to exercise the Queen's jurisdiction in the Niger districts, such officers "reporting to and following the instructions of the Company as heretofore."

Proposed letter refusing Charter.

As regards the original application of the Company for a Royal Charter, I am to inclose the draft of a letter which it is proposed, with your concurrence, to address to them, to the effect that their application for a Charter, such as they desire, cannot be acceded to, and I am to request that you will be good enough to inform the Marquis of Salisbury whether you approve of the terms of that letter.

In view of the opinion expressed in your Reports against the grant of such a Charter, it becomes necessary to consider in what manner and to what extent the services of the Company and of its officers can be utilized in carrying on the Government of the Niger districts under the Foreign Jurisdiction Acts.

In the first place, I am to invite your attention to Article 30 of the General Act of the Berlin Conference (Protocols of West African Conference: "Africa No. 4, 1885," p. 312*), under which Great Britain undertakes to protect foreign merchants and all the trading nationalities on so much of the waters of the Niger, its affluents. branches, and outlets as may be under her sovereignty or "protection," as if they were her own subjects, provided they conform to the rules to be made for the navigation.

By Articles 31 and 32 a similar obligation is accepted by the other Powers as regards any portion of the Niger, its affluents, branches, or outlets, which may come under their sovereignty or protection respectively.

The above Articles, which have not before been brought to your notice, would seem to constitute an agreement as to the exercise of jurisdiction over foreigners of all nationalities by the protecting power in the territory in question.

If that be so, having regard to the Treaties between the Queen and the Niger Chiefs, under which jurisdiction over foreigners is conceded to Her Majesty, it is presumed that the difficulty pointed out in your Reports as to the exercise of such jurisdiction without the assumption of sovereignty would be practically disposed of.

As regards the scheme of government to be adopted for the Niger districts, I am to observe that the Act 6 Vict., cap. 13, makes provision for the government of Her Majesty's "Settlements" on the Coast of Africa by means of resident Commissioners, to whom the Queen may delegate her powers and authorities; and although it may be doubtful whether that Act applies to territories not placed under the sovereignty of the Queen, it is suggested that a similar system of government might be established under the Foreign Jurisdiction Act in the Niger districts, and that Her Majesty's power and jurisdiction might be delegated to certain officers of the National African Company as Commissioners, under instructions from the Crown, and under the control of Her Majesty's Government, to be exercised through the Company in manner hereinafter mentioned.

Proposed scheme for Government of the Niger districts.

The following is a brief outline of the scheme:—

1. The Company to receive a Royal Charter of Incorporation, which should provide for the formation of a Council to be placed under the immediate control and authority of Her Majesty's Government with respect to all matters relating to the exercise of the Queen's jurisdiction by its officers.

2. Certain resident officers of the Company to be appointed Commissioners to administer the government of the districts in accordance with instructions from the Crown.

3. The communications between the Crown and the Commissioners, and other officers of the Company intrusted with any public functions in connection with the government of the districts, to be usually carried on through the Council of the Company.

4. The administration of justice to be carried on under the West Africa Order, 1885, by officers of the Company appointed by the Crown under Article 3 of that Order.

5. Full power to be reserved to the Crown to exercise directly any of the authorities delegated to the Commissioners, as provided in the Act 6 Vict., cap. 13.

6. The scheme to be carried out by a short Order in Council based on the Act 6 Vict., cap. 13. The Order to contain no reference to the Company, and be equally applicable whether the government of the districts be carried on in connection with the Company or not.

7. The Charter of Incorporation to contain all special provisions necessary for carrying on the government of the districts through the Company and its officers, and to reserve to the Crown an absolute power of terminating the arrangement, and also of cancelling the Charter in case of the violation or non-observance of any of its provisions.

The above proposals are submitted for your consideration, and, if they should not meet with your approval, Lord Salisbury would be glad to be favoured with any suggestions you may have to offer as to the best mode of providing for the government of the Niger districts.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion on the questions submitted in this letter, that is to say:—

1. Whether the letter proposed to be addressed to the Company respecting their application for a Charter is right and proper.

2. Whether, under the Treaties with the native Chiefs and Article 30 of the General Act of the Berlin Conference, the Queen has power to exercise jurisdiction in the Niger districts over the subjects of the States represented at the Conference or who may adhere to the General Act.

3. Whether the scheme of government for the Niger districts of which an outline is given in this letter is open to any objection, or may properly be adopted by Her Majesty's Government, and, if not, what other mode of dealing with the subject you would advise.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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### *Report.*

Approve proposed letter.

1. That we approve the letter proposed to be addressed to the Company, subject to the slight alteration which we have made.

Treaties with Chiefs and General Act not sufficient to confer jurisdiction over foreigners.

2. Treaties with the native Chiefs and Article 30 of the General Act of the Conference of Berlin (p. 312 of Blue Book "Africa No. 4, 1885") are not sufficient of themselves to enable Her Majesty the Queen to exercise jurisdiction over the subjects of the States represented at the Conference, or who may simply adhere to the General Act. The Government of Her Majesty would not be secure in asserting jurisdiction in the Niger territories over the subject of any civilized State which had not assented to the exercise of such jurisdiction.

Approve scheme of Government subject to alterations.

3. A scheme of government for the Niger districts of the character given in outline may properly be adopted by Her Majesty's Government, subject to the following observations:—

Para. 1. A Council of which the powers are limited as therein provided, is not open to objection.

Paras. 2 and 4. The officers should be appointed under the West Africa Order of the 10th April, 1885,* which covers the district in question, and contains ample provisions.

Para. 3 should be omitted. It is not desirable to fetter in any way the means of

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* Parliamentary No. 2951.

* Order in Council of the 26th March, 1885, published in 'London Gazette" of the 10th April, 1885. Confidential No. 5094*.

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communication between Her Majesty's Government and the Representatives of the Crown.

Para. 5 is unnecessary if, as we suggest, the Commissioners are appointed under the West Africa Order of the 10th April, 1885. The Act 6 Vict., cap. 13, has no application to the present case.

Para. 6. No further Order in Council is necessary, the provisions of the West Africa Order, 1885, being sufficient for the purposes required.

Para. 7. We see no objection to the general propositions of this paragraph, but we must reserve our opinion upon the special provisions indicated, as well as upon the proposed Charter as a whole, until the same are placed before us in detail.

(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

### Annex.

*Draft of Letter to the National African Company (as approved by the Law Officers).*

Sir, *Foreign Office, September* , 1885.

I am directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 15th August, and to request that you will inform the Directors of the National African Company that their application for a Royal Charter, with powers of government over the Niger Districts, has been carefully considered by his Lordship, in consultation with the Law Officers of the Crown, who have reported that it is advisable that Her Majesty's power and jurisdiction in such places should be exercised under the authority of Orders in Council and by officers directly responsible to the Crown; and they are clearly of opinion that it would not be desirable to grant the Charter in the form proposed.

In these circumstances, Lord Salisbury is unable to accede to the application of the Company; but his Lordship is in consultation with the Law Officers on another proposal, which, if it should meet with their approval, would carry out substantially the objects in view; and a further communication will be addressed to the Company as early as possible.

I am, &c.

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### No. 16.

*Memorandum by the Lord Chancellor, November 24, 1885, on the Niger Charter.*

[Missing.]

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## Argentine Republic.

### No. 17.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 13.)*

My Lord, *Royal Courts of Justice, June* 13, 1885.

**Claim of Mr. Cantlon for losses and injuries caused by men of National Guard.**

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 14th ultimo, stating that he had the honour to transmit to us, by your Lordship's direction, the accompanying papers relating to a claim brought against the Argentine Government by a British subject named Patrick Cantlon.

That it appeared from the correspondence on the subject that Mr. Cantlon, when removing his effects on or about the 30th June, 1880, from a house in the country to the town of Chirilcoy during an insurrection, was attacked by a soldier, who ordered him to go to a neighbouring camp, and that on his refusal to do so was subsequently

maltreated by an officer and some soldiers belonging to the National Militia, when he received a bullet in his side, another passing through his right hand, as well as two minor wounds; that he was removed by his assailants to the town, and that on being brought before a magistrate the case was dismissed for want of evidence. (See paper marked A.)

That Mr. Cantlon estimated his losses at 1,000*l*., and left the amount to be paid on account of his bodily injuries for arrangement by Her Majesty's Minister. (See paper Inclosure 2 in paper F.)

That the case was brought to the notice of the Argentine Government at the time, and on subsequent occasions, by Her Majesty's Representatives at Buenos Ayres, and that on the 2nd March last Her Majesty's Minister was informed by Dr. Ortiz, the Minister for Foreign Affairs, that the lapse of time rendered investigation of the case impossible, and that therefore the Government, assuming that Mr. Cantlon's story was correct, would offer him a reasonable compensation. (See paper E.)

That accordingly Mr. Monson had informed Mr. Cantlon that the Argentine Government was willing to pay him the sum of 1,000 dollars in satisfaction of his claim, and that he inquired whether Mr. Cantlon would accept that arrangement. That no reply to that offer had yet been received from Mr. Cantlon.

That in a note renewing the above offer Señor Ortiz remarked that "acts of the nature in question, committed by collectitious troops such as the National Guard, which is a force independent of the regular army, are not subject to recognition by Government, and that complaints and claims against violent proceedings and attacks on the person must be brought before the judicial Tribunals for the purpose of obtaining the punishment of the offenders." (See Inclosure 6 in paper F.)

That Mr. Monson had subsequently reported that the Argentine Government had changed their ground, and that they had insisted that Mr. Cantlon solely was responsible for the treatment he had received at the hands of the soldiers of the National Guard, basing that view on a Report of the Justice of Peace of Chirilcoy, dated 28th December, 1880. (Inclosure 4 in paper G 1, and Inclosure 2 in paper G 2.)

That they had also denied, on the grounds stated by Señor Ortiz in his note of the 20th March, 1885 (Inclosure 2 in paper G), that any responsibility attached to them for the acts of the forces of the Government, and had asserted that Mr. Cantlon's case was not one for diplomatic intervention.

That in connection with the principle thus laid down by Dr. Ortiz, Mr. Currie was to call our attention to a Memorandum drawn up in the Foreign Office (K, pp. 9 to 12), to the Law Officers' Reports of the 12th September, 1876, and the 2nd August, 1879 (L and M), and to the instructions that had at various times been given to Her Majesty's Representatives as to the liabilities of the Governments of Central America for damages sustained by foreigners in times of revolution. (N, R, T.)

That Mr. Currie was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to the instructions which should be given to Her Majesty's Representative at Buenos Ayres in regard to claiming compensation from the Argentine Government for the treatment to which Mr. Cantlon had been subjected, and also with any observations which we might have to offer as to the position taken up by Señor Ortiz with reference to the liability of his Government in the case, and his denial of the right of diplomatic interference in the matter.

In obedience to your Lordship's commands we have the honour to report—

That three points appear to be raised by the letter of Dr. Ortiz:—

1. The question whether Mr. Cantlon sustained any wrong at all, or whether he merely suffered the consequences of his own misconduct in refusing to accompany the soldiers to head-quarters, and in offering a violent resistance to them.

2. That the Argentine Republic are not liable for the wrongful acts of the National Guard.

3. That even supposing a wrong to have been committed by the agents of the Government, it is not a case for diplomatic intervention, but Mr. Cantlon ought to be left to his remedy before the Tribunals.

**Mr. Cantlon has cause of complaint.**

The first question is purely one of fact. We think the evidence is strong to show that even if there was some cause of complaint as regards Mr. Cantlon's acts, the violence used by the soldiers was wholly unjustifiable. But the question of fact thus raised undoubtedly increases the difficulty of insisting upon compensation by means of diplomatic intervention. The Law Officers pointed out in their Report of the 26th August, 1879, that where the facts are in dispute legal proceedings ought to be taken, seeing that no claim for compensation can fairly be made against a

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Government for the wrongful acts of its agents unless it has been established that such wrongful acts have been committed.

Impossibility of now proving facts before Courts ought not to bar claim.

We concur generally in this view. But there may be cases, and the present appears to be one, where the effect of insisting upon such a course would be to preclude the possibility of any relief. Mr. Cantlon obviously could not hope to discover and bring to justice the authors of the outrage against him, seeing that the Government have, during all these years, been unable to do so. And looking at the late stage at which the suggestion that the soldiers of the National Guard were not to blame has been put forward, and to the fact that the Argentine Government were at one time prepared to make compensation, we think that, so far as this particular point is concerned, it ought not, in the peculiar circumstances of this case, to be regarded as a bar to a claim for compensation through diplomatic channels.

Claim exaggerated.

Details should be asked for.

At the same time, it appears to us that there has been a disposition on Mr. Cantlon's part rather to exaggerate his pecuniary losses, and it seems to us a matter for regret that the 500*l.* which at one time could have been obtained was not accepted. If the claim is to be insisted upon, and not settled by some moderate sum being agreed to, we think Mr. Cantlon should be required to give a detailed statement showing how the sum of 1,000*l.* at which he estimates his pecuniary loss is made up.

Government equally responsible for acts of National Guard and regular soldiers.

2. The second point raised appears to us to be wholly without foundation. When the National Guard are called out, and the Government are availing themselves of their services and assistance, we think the relation of the Government towards them, and the responsibility of the Government for their acts, must be precisely the same as in the case of the officers and soldiers of a regular army.

Case is one for diplomatic intervention.

3. We think the present is a case in which no adequate remedy is provided by the municipal law of the Republic, and we concur with the view of the Law Officers in their Reports of the 12th September, 1876, and 26th August, 1879, that in such a case diplomatic intervention may be resorted to.

There seems no reason to suppose that any compensation could be obtained, whatever legal proceedings were taken by Mr. Cantlon before the Tribunals of the Republic. And seeing that the Government of the Republic have been engaged in diplomatic negotiations upon this case for some years, it seems too late for them, after a delay which must necessarily increase the difficulty of pursuing any legal remedy, to remit Mr. Cantlon to the Tribunals. If such a course was to be taken it ought to have been adopted as soon as the complaint was laid before the Minister of the Republic.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers sent to the Law Officers, May* 14, 1885.

(A) Mr. Monson. No. 95, November 27, 1884.
(B) Mr. Cantlon, December 8, 1884.
(C) To Mr. Cantlon, January 19, 1885.
(D) To Mr. Monson, No. 1, January 19, 1885.
(E) Mr. Monson, No. 20, March 2, 1885.
(F) Mr. Monson, No. 25, March 16, 1885.
(G) (1) Mr. Monson, No. 33, March 31, 1885.
(2) Mr. Monson, No. 38, April 16, 1885.
(H) Treaty between Great Britain and the Provinces of Rio de la Plata of February 2, 1825 (Treaty No. 211).
(I) To Mr. West, No. 14, April 10, 1877 (in Argentine Confederation vol., January to December 1877).
(K) Memorandum respecting Outrages on Foreigners in British Dominions and on British Subjects Abroad (Confidential No. 3279).
(L) Law Officers, September 12, 1876 (Confidential No. 4028, p. 45).
(M) Law Officers, August 26, 1879 (Confidential No. 4328, p. 30).
(N) To Mr. Corbett, No. 5, 1869 (in Guatemala vol., 1869).
(O) Mr. Graham, No. 79, 1879 (in Guatemala vol., 1879).
(P) (1) Mr. Graham, No. 87, 1879 (in Guatemala vol., 1879).
(2) To Mr. Graham, No. 7, 1880 (in Guatemala vol., 1880).
(Q) Mr. Howard, No. 161, 1883.
(R) To Mr. Bennett, No. 6, 1884.
(S) Mr. Harriss-Gastrell, No. 91, 1884.
(T) Memorandum by Sir E. Hertslet, October 21, 1884.
(U) To Mr. Harriss-Gastrell, No. 53, 1884.
(V) Memorandum by Mr. Oakes, December 6, 1884 (in Confidential No. 5071).

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# Brazil.

## No. 18.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received December* 10.)

*Royal Courts of Justice, December* 9, 1885.

My Lord,

Marriage by Acting Consul at Pernambuco before issue of warrant to newly-appointed Consul.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 9th ultimo, stating that he was to transmit to us the papers noted in the accompanying list* relating to a marriage performed by the Acting British Consul at Pernambuco, under the following circumstances:—

That Mr. Gollan, late Her Majesty's Consul at that port, was absent from his post, with the permission of the Secretary of State, since the 16th March, 1884, and that Mr. Hughes was placed in charge of the Consulate as Acting British Consul, which position he held till the 25th of September last, when Mr. Cohen, who succeeded Mr. Gollan, took charge of the Consulate.

That Mr. Hughes, in his capacity of Acting British Consul, was empowered (see 31 & 32 Vict., cap. 61) to solemnize marriages of British subjects under the marriage warrant issued to Mr. Gollan under the 12 & 13 Vict., cap. 68, sec. 19.

That no marriage warrant was therefore issued to Mr. Hughes.

That, on the 15th June last, Mr. Gollan was transferred to another post, and, on the same day, Mr. Cohen was appointed his successor, but, by an oversight, no marriage warrant was at the time issued to him, and that it was not until after your Lordship had succeeded Lord Granville as Secretary of State, which event took place on the 24th June, that a marriage warrant was issued to Mr. Cohen, which bore date the 25th of that month.

That inquiry having been made whether Mr. Hughes had celebrated any marriages between the 15th and 25th June, Mr. Cohen had reported by telegraph that one marriage had been solemnized on the 17th of that month. That at that date there was no Consul authorized to solemnize marriages at Pernambuco, Mr. Gollan having vacated the post on the 15th June, and no marriage warrant having been issued to his successor, Mr. Cohen, until the 25th.

Question as to warrant of late Consul having lapsed.

That the question arose whether, looking at the terms of the Act 31 & 32 Vict., cap. 61, sec. 2, Mr. Gollan's marriage warrant became null and void on his vacating the Consulship, or whether it remained in force as regards the authority of the Acting Consul to solemnize marriages thereunder, until the latter had notice of its determination by reason of Mr. Gollan's transfer.

That your Lordship desired our opinion as to whether the marriage solemnized by Mr. Hughes on the 17th June is invalid, or whether its legality could be supported on the ground above suggested.

In obedience to your Lordship's commands we have the honour to report—

Marriage valid, but Act should be passed to remove all doubt.

That, in our opinion, the marriage solemnized by Mr. Hughes on the 17th June was valid; but we suggest that an Act of Parliament might properly be passed to remove all doubt upon the matter.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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* To Mr. Cohen (Telegraphic), October 27; Mr. Cohen (Telegraphic), October 28, 1885; 31 & 32 Vict., cap. 61.

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# Burmah.

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## No. 19.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received December 19.)*

*Royal Courts of Justice, December* 18, 1885.

My Lord,

Conquest of Upper Burmah.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 11th instant, stating that the British military expedition which was dispatched last month to Upper Burmah had resulted in the surrender to Her Majesty's forces by King Theebaw of the capital, and that the King himself had been removed to British territory.

Annulment of Treaties with foreign Powers.

That Sir J. Pauncefote was to transmit to us, by direction of your Lordship, a letter from the India Office,* inclosing copies of telegrams which had passed between the Secretary of State for India and the Viceroy, together with a Minute by Sir Henry Maine, relative to the procedure which should be adopted in order to annul the Treaties and engagements which had been contracted by King Theebaw and his predecessors with foreign Powers, while reserving for further consideration the question of the precise position in which the Burmese territory should eventually stand towards the British Crown and the Government of India.

That the points to which our attention was specially invited were contained in the Minute, which formed Inclosure 3 in the India Office letter.

That with reference to Sir H. Maine's observations as to the power of the Crown to cede British territory, Sir J. Pauncefote was to inclose a Report of the Law Officers of the 3rd June, 1884, in which various authorities were cited.

That copies of the Treaties† between Burmah and foreign Powers, so far as they were known at present to exist, were transmitted therewith.

That our opinion was requested on the points referred to in the communication received from the India Office, together with any further observations we might have to offer on the subject.

In obedience to your Lordship's commands we have the honour to report—

Extinction of independence confers right of annulling Treaties.

That the conquest of the King of Burmah and the military occupation of his territory have given the Crown the right to extinguish the independent existence of the State of Upper Burmah.

If the Crown thinks fit to exercise this right, all Treaties which the King or his predecessors may have made with foreign Powers will thereupon cease to exist.

Communication of fact to foreign Powers.

The fact of their having so ceased may properly be communicated by Her Majesty's Government to foreign Powers.

Administration of country.

The territory thus acquired by conquest may be administered during the pleasure of the Crown by officers under its immediate orders. If the Viceroy of India is to perform this duty, he should be furnished with special authority and instructions in that behalf.

Cession of conquered territory.

Without expressing an opinion upon the general question, whether the Crown can cede any part of the British dominions without the authority of Parliament, we think territories acquired by conquest may be so ceded, at least so long as the power of the Crown in that respect has not been limited, either by its own acts or by Legislation.

Steps for preventing revival of Treaties on restoration of independence.

In case the full right of sovereignty over Upper Burmah should be hereafter ceded to King Theebaw, or to any one who may be regarded as his successor in title, we think that unless a formal notification be now given by Her Majesty's Government that Upper Burmah has, by conquest, become part of Her Majesty's dominions, the Powers who have made Treaties with Burmah would probably contend—

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* India Office, December 9, 1885.

† Italy and Burmah, Treaty, March 3, 1871; ditto, Notes explanatory of Articles X and XI, December 19 and 24, 1872; ditto, Additional Article, Consular, December 26, 1872; France and Burmah, January 24, 1873. (State Papers, vol. lxiii, pp. 644, 1171, and 1325.)

1. That the action of the British Government in Burmah partook of the character of a mere military occupation as distinguished from a conquest.
2. That the Burmese sovereignty was suspended rather than extinguished.
3. That therefore the Treaties with foreign Powers, which were in abeyance during the military occupation of Upper Burmah by the British troops, had revived, and were in full force.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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# Chile.

## No. 20.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 14.)*

*Royal Courts of Justice, March* 13, 1885.

My Lord,

Claims of neutrals in Peru for losses sustained in late war between Chile and Peru.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 29th January, stating that he was to transmit to us the despatch noted in the margin,* containing a joint Memorial addressed to the Representatives in Lima of Great Britain, France, Germany, and Italy by the International Committee acting on behalf of the foreign residents in Peru who had presented claims against the Chilean Government on account of losses sustained by them during the late war between Chile and Peru.

That that document dealt with certain principles which had governed the decision of the Tribunal in its rejection of several British claims, the particulars of which were given in an Appendix.

That those principles were enumerated at p. 4, and that it was contended by the memorialists that they were of such a character as would tend to render the supposed rights attaching to the status of neutral of no avail, and would, at all events, very gravely impede the prospect of neutrals obtaining ultimate redress.

That Sir J. Pauncefote was to transmit to us, for convenience of reference, a printed copy of our Report of the 28th November last, together with the papers† which had been previously referred to us; and that he was to request that we would take the papers transmitted therewith into our consideration, and favour your Lordship with our opinion as to the reply which might properly be returned to the Memorial, and with any general observations which we might have to offer in regard to the points submitted by the memorialists.

In obedience to your Lordship's commands we have the honour to report—

Proposed answer to Memorial.

That we are of opinion that Mr. Barrington may properly be requested to inform the memorialists that your Lordship has given very full consideration to the matters referred to in the Memorial dated the 15th November, 1884, and that your Lordship has forwarded to Mr. Drummond Hay, the British Agent appointed under Article V the Convention, the views your Lordship entertains in relation to the different points raised by the memorialists.

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* Mr. Barrington, No. 117, November 24, 1884.

† (A.) Count Nigra, October 30, 1884, with translation. Confidential No. 5070.

(B.) Report by Her Majesty's Agent of proceedings and Awards of the Mixed Commission on British and United States' Claims. Parliamentary No. 1631.

(C.) Correspondence, "Conduct of War between Chile and Peru" (1882). Confidential No. 4764.

(D.) Ditto (1882-83). Confidential No. 4936.

(E.) Memorandum (J. P.), "Position of Neutrals in an invaded country," October 20, 1883. Confidential No. 5015

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Sending Memorandum on points raised in Memorial.

We have drawn up, and forward herewith, a Memorandum expressing our opinion upon the seven points raised in the Memorial (see p. 4), and we suggest that, if your Lordship approves of such opinion, the Memorandum may be forwarded to the British Agent with directions to urge the views so expressed before the International Commission.

It must be for your Lordship to determine whether the contents of such Memorandum should, or should not, be communicated to the memorialists.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Annex.

### *Memorandum.*

Qualifications and rights of British subjects in Peru.

1. It seems clear that the mere fact of a person having been born in Peru ought not to disentitle him to be regarded as a British subject. A person, being the child or grandchild of English subjects, and born in Peru, is *primâ facie* clearly a British subject; and inasmuch as the Convention is entered into by England on behalf of its subjects, it must be taken that those who are English subjects according to the law of England are entitled to its benefits.

The fact of a British subject being domiciled in Peru clearly does not interfere with his rights as such.

Exclusion of evidence by the Commission.

2 and 3. The terms of Article IV of the Convention give such a wide discretion to the members of the Commission, in relation to the admission and rejection of evidence, that it seems difficult to interfere with any reasonable exercise of such discretion. But the refusal to receive the evidence of Chilean officers, and that of a person, who is a claimant, in support of a claim not his own, seems so extraordinary that we think the injustice of excluding such evidence should be most strongly urged upon the Commission.

Non-liability of invaders for losses caused by war.

4 and 5. It is no doubt correct to say that an invading Power is not liable to afford recompense for acts which are the natural consequence of carrying on military operations, and in relation to such acts neutrals are in the same position as the natives of the invaded State. But this general rule must be accepted subject to the exceptions mentioned in our Report of the 28th November, 1884, and which we ask may be regarded as incorporated in this Memorandum.

If war is carried on according to recognized usages.

6. As a general principle the exigencies of war exempt Governments from responsibility. But to effect this exemption the war must be carried on according to the recognized usages of warfare.

Application of martial law to neutrals and natives.

7. If martial law be proclaimed it applies, with equal force, to neutral and native inhabitants of the invaded country.

Admission of hearsay evidence.

*General.*—The view taken by the memorialists that "la notoriété" should be treated as evidence may well be dissented from by the members of the Commission, but it certainly should be pointed out that if hearsay evidence be admitted on behalf of the Chilean Government, it should equally be received when tendered by claimants.

H. J.
F. H.
J. P. D.

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# China.

## No. 21.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 7.)

*Royal Courts of Justice, February* 6, 1885.

My Lord,

Surrender of Chinese criminals from Hong Kong, demand of Chinese Government for.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 2nd instant, stating that he was to transmit to us the papers relating to an application made by the Chinese Minister at this Court for the rearrest and surrender to the Chinese Government, under Article XXI of the Treaty of Tien-tsin, of the eleven Chinese prisoners whose extradition had lately been refused by the Government of Hong Kong. That that request having been referred to the Colonial Office, a reply had been received from that Department, dated the 15th ultimo, and that, in accordance with Lord Derby's suggestion, the accompanying draft reply to the Marquis Tsêng's communication had been prepared.

That our opinion was requested as to whether the proposed reply to that fresh application for the surrender of the eleven fugitives to the Chinese authorities was right and proper.

Approving answer to Chinese Government refusing to order the rearrest of fugitives.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, the proposed reply is right and proper.

There appears to be a clerical error in the last word but four of the draft, which should be "rearrest," instead of "discharge."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers submitted to the Law Officers, February* 2, 1885.

A. Treaty of Tien-tsin of June 26, 1858, Treaty No. 448.
B. Ordinance of Hong Kong, No. 2, 1850.
C. Marquis Tsêng, August 16, 1884.
D. Marquis Tsêng, September 24, 1884.
E. Law Officers, September 18, 1884, Confidential No. 5121, p. 12.
F. To Colonial Office, September 30, 1884.
G. Colonial Office, October 3, 1884.
H. To Colonial Office, October 4, 1884.
I. Colonial Office, October 7, 1884.
J. To Colonial Office, October 9, 1884.
K. Colonial Office, October 14, 1884.
L. To Marquis Tsêng, October 18, 1884.
M. Colonial Office, December 5, 1884.
N. Marquis Tsêng, December 8, 1884.
O. Colonial Office, January 15, 1885.
P. To Marquis Tsêng.

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## Annex.

### *Draft of Letter to the Marquis Tsêng.*

*Foreign Office, February* , 1885.

M. le Ministre,

I HAVE had under my careful consideration the requisition preferred in your letter of the 8th December for the rearrest and surrender to the Imperial Government of the eleven Chinese prisoners whose extradition under Article XXI of the Treaty of Tien-tsin was lately refused by the Government of Hong Kong.

In reply, I now beg leave to submit to you the following observations on the grounds stated in your letter for that application:—

In the first place, you call attention to the bearing of the Extradition Acts of

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1870 and 1873 on the case, and you suggest that, according to the Extradition Act of 1870, the magistrate having committed the prisoners, it only remained for the Governor to issue the usual warrant of surrender required in extradition cases, and further, that by the Extradition Acts of 1870 and 1873 it is not given to the Executive, or to any authority whatever, either to review the decision of the magistrate, or, after the commitment of the prisoner by the magistrate, to refuse to issue the warrant of surrender, excepting in the case of the Executive being of opinion that the offence of the fugitive criminal is of a political nature.

On these points I have to observe that the Extradition Acts of 1870 and 1873 do not apply to the case under discussion.

The extradition of Chinese fugitives in Hong Kong is exclusively regulated by Article XXI of the Treaty of Tien-tsin and the Colonial Ordinances passed to carry it into effect.

In regard to the interpretation to be attached to the words "proof of guilt" occurring in Article XXI of the Treaty of Tien-tsin, I have to state that the Treaty does not prescribe the manner in which the question of the proof of guilt required by that Article is to be ascertained. By section 3 of the Hong Kong Ordinance of 1850, to which reference has been made in previous correspondence, the magistrate is empowered, if there appears to him to be probable cause for believing the person to have committed the offence, to commit him to prison "until the gaoler shall receive some order from the Governor relative to the further detention, discharge, or transmission of such person to the Chinese authorities; but before deciding to discharge a prisoner already committed by the magistrate, the Governor would naturally consult his Council."

Her Majesty's Government, however, cannot admit that the Government is bound either by the Treaty or the Colonial Ordinance to accept the decision of the magistrate as conclusive, especially when further evidence is forthcoming after the magistrate has committed or discharged the person whose extradition is sought.

They do not contend that the words "proof of guilt" mean such absolute proof as would be necessary to support a final conviction. But in the case of the eleven prisoners who have been discharged from confinement, it would appear that the Governor's Executive Council were not satisfied that there was presumptive proof of their guilt.

On these grounds I regret to have to state to you, M. le Ministre, that Her Majesty's Government are unable to comply with the request made in your letter of the 8th December for the rearrest of these fugitives.

I have, &c.

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## No. 22.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 4.)*

My Lord, *Royal Courts of Justice, March* 3, 1885.

English Secretaries attached to the Chinese, Japanese, and Siamese Legations.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 20th ultimo, transmitting to us the papers* relating to the position occupied by the English Secretaries attached to the Legations of China, Japan, and Siam, in London, and to the question of their exemption from the payment of taxes.

Proposal that Crown should remit certain taxes in their favour.

That, from communications with the respective Legations, it was believed that what was desired was, not that the practice of inserting the names of the English Secretaries in the lists furnished to the Sheriffs of London and Middlesex should be continued, but that they should be relieved from the payment of such taxes as the Crown had legal power to remit in this country, and had hitherto been remitted by the Crown in favour of Mr. Stuart-Lane, the English Secretary of the Japanese Legation for many years past.

That Sir J. Pauncefote was to state that your Lordship was disposed to think that that course would be an equitable settlement of the question, and that it might be adopted in favour of the present three English Secretaries (the first ones employed by the three Legations) as a matter of favour, in view of the fact that, until the question was recently raised, no taxes had been demanded of them by the

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* (A.) Print, August 11 to November 26, 1884. Confidential No. ; (B.) Marquis Tsêng, January 19, 1885; (C.) Jushie Kawasé, January 28, 1885

Board of Inland Revenue, and that one of them had enjoyed the exemption for nine years.

That our opinion was desired as to whether the course above indicated might properly be followed.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed course.

That we think the course suggested may properly be followed.

We have, &c.

(Signed) **HENRY JAMES.**
**FARRER HERSCHELL.**
**J. PARKER DEANE.**

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## No. 23.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received August 22.)*

My Lord, *Royal Courts of Justice, August* 20, 1885.

Pillage of the stranded vessel "Flodden."

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers* relative to the case of the British barque "Flodden," which was stranded on the south bank of the River Yang-tze on the 23rd August, 1883.

That the facts of the case were briefly stated in Mr. O'Conor's despatch No. 136 of the 30th March last, and that Sir Julian Pauncefote was to refer us to Sir H. Parkes' letter to the Yamên of the 6th February, 1884, and to the Minutes and finding of the Naval Court which inquired into the circumstances attending the loss of the vessel. That that Report, which would be found in Inclosure No. 13 of Mr. O'Conor's despatch, tended to show that blame attached to the master of the vessel for having failed to take sufficient precautions for the protection of the cargo and hull, and for not having reported, by letter to Shanghae, the circumstances under which the "Flodden" was stranded, and returned himself with his crew to look after her safety, instead of abandoning her to the rapacity of the natives.

That although the Chinese local authorities might have been remiss in not affording timely or sufficient protection, the question arose whether, under all the circumstances, and in view of the Report of the Naval Court, the claim for indemnity could properly be pressed in this case.

That, as regarded the liability of the Chinese Government, Sir Julian Pauncefote was to refer us to Articles XIX and XX of the Treaty of Tien-tsin of the 26th July, 1858; and that he was to state that the Chinese Government had admitted their

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* List of Papers sent to the Law Officers, July 29, 1885:—
- (A.) Mr. O'Conor, No. 136, March 30, 1883.
- (B.) Inclosure No. 78 in Mr. O'Conor's No. 136, 1883.
- (C.) Inclosure No. 13 in Mr. O'Conor's No 136, 1883.
- (D.) To Mr. Grosvenor, No. 109, July 24, 1883.
- (E.) Mr. Grosvenor, No. 111, October 15, 1882.
- (F.) ,, ,, No. 143, November 25, 1882.
- (G.) ,, ,, No. 2, January 4, 1883.
- (H.) ,, ,, No. 4, January 13, 1883.
- (I.) ,, ,, No. 97, June 23, 1883.
- (J.) ,, ,, No. 105, July 16, 1883.
- (K.) ,, ,, No. 139, November 9, 1883.
- (L.) Sir H. Parkes, No. 340, December 30, 1884.
- (M.) Mr. O'Conor, No. 148, April 6, 1885.
- (N.) ,, ,, No. 176, April 20, 1885.
- (O.) Mr. Grosvenor, No. 106, July 16, 1883.
- (P.) Board of Trade, November 3, 1883.
- (Q.) To Board of Trade, November 13, 1883.
- (R.) Board of Trade, November 20, 1883.
- (S.) To Sir H. Parkes, No. 83, November 23, 1883.
- (T.) Board of Trade, December 1, 1883.
- (U.) To Sir H. Parkes, No. 104, 1883.
- (V.) Messrs. Miles, Brothers, and Co., September 10, 1884.
- (W.) To Sir H. Parkes, No. 196, September 17, 1884.
- (X.) Messrs. Miles, Brothers, and Co., September 18, 1884.
- (Y.) ,, ,, ,, January 29, 1885,
- (Z.) To Sir H. Parkes, No. 35, February 2, 1885.
- (AA.) To Messrs. Miles, Brothers, and Co., February 2, 1885.
- (BB.) Hertslet's Treaties on Trade—"China," 1877.

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responsibility to make compensation in numerous cases of the same kind on the representations of Her Majesty's Government, and of various foreign Governments, some of the latter of which were enumerated in Lord Granville's despatch to Mr. Grosvenor No. 109 of the 24th July, 1883, in which instructions were given to him to demand redress for the pillage by Chinese wreckers of the British vessels "Garstang" and "Hong Kong," a demand which was eventually complied with.

That we would observe that the Chinese Government had not denied their liability in the present instance.

That Sir Julian Pauncefote was to call our attention to a Proclamation issued in the month of March 1883 by the Chinese authorities of the Province of Fuhkien, reissuing certain Salvage Regulations promulgated in 1876, in which officials and people were warned alike against plundering shipwrecked vessels, and copies of which were inclosed in Mr. Grosvenor's despatch No. 106 of the 16th July, 1883.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration and favour your Lordship with our opinion whether, under the circumstances of the case, the claim for compensation on account of the plunder of the "Flodden" and her cargo could properly be urged on the Chinese Government.

We were also honoured with Sir Julian Pauncefote's note of the 12th instant, inclosing a further letter from Mr. O'Conor, dated the 12th June, 1885.

In obedience to your Lordship's commands we have the honour to report—

**No strictly legal right to compensation.**

That if this matter be treated as one of strict legal right no claim can, in our opinion, be properly enforced against the Chinese Government for compensation on account of the plunder of the "Flodden" and her cargo, inasmuch as it is clear that the master and crew of the "Flodden" were guilty of negligence in leaving the ship and her cargo unprotected, and that but for this negligence the plunder would either not have occurred, or might have been, to a great extent, prevented.

**Case should be urged on Chinese Government, but should not be enforced if disputed.**

It may, however, be urged, that notwithstanding such negligence on the part of the master and crew, the Chinese authorities did not fulfil the obligations of Article XX of the Treaty of the 26th June, 1858, and that although the claims should not be enforced by extreme measures, they might be urged upon the Chinese Government with a view to settlement.

The letter of Mr. N. R. O'Conor of the 12th June, 1885, which was handed to us on the 13th instant, indicates that the Chinese Government do not wholly repudiate the claim, and this being so, we think they should be urged to deal with it, though we do not consider it a case in which it should be enforced if ultimately disputed.

We have, &c.
(Signed) R. E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 24.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received August* 26.)

My Lord, *Royal Courts of Justice, August* 24, 1885.

**Abduction of Chan Tim from Hong Kong.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 11th instant, stating that he had the honour to transmit to us, by direction of your Lordship, the papers* relating to the alleged abduction of a Chinaman named Chan Tim from Hong Kong by the Chinese authorities.

That the man was said to have been charged with being a rebel, and to have been tortured after his arrest.

That it would be seen that the Ministers of the Tsung-li Yamên alleged that no violation of British territory took place; that the man was decoyed from Hong Kong by his own relatives, and that the Chinese authorities had a right to arrest him on Chinese territory without inquiring how he came there.

**Supposed to have been decoyed under instructions of Chinese Government.**

That, on the other hand, the information furnished by the Governor of Hong Kong hardly left room for doubt that the persons who decoyed the man from Hong Kong were acting as the paid agents of the Chinese authorities and under their instructions.

That, if so, the Chinese authorities had committed a violation of the rules which govern the relations between civilized States, and had departed from the stipulations of the Treaty which laid down the course to be pursued for the recovery of fugitive criminals.

That the facts were fully stated in Sir G. Bowen's despatch to Her Majesty's Chargé d'Affaires at Peking, of which a copy was transmitted.

That Sir J. Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether the circumstances of the case were such as to call for a remonstrance on the part of Her Majesty's Government, and whether the evidence was sufficient to justify a demand for Chan Tim's restoration to the jurisdiction of the Colony, as suggested by the Attorney-General of Hong Kong.

In obedience to your Lordship's commands we have the honour to report—

**Remonstrance should not be withdrawn.**

That a remonstrance on the part of Her Majesty's Government appears to have been already addressed to the Chinese Government.

We do not think it necessary that this remonstrance should be withdrawn. If it is allowed to take its course, further evidence may be forthcoming before negotiations are closed.

**Evidence not sufficient to justify a demand for his restoration.**

But we are of opinion that the evidence at present in possession of Her Majesty's Government is not sufficient to justify a demand for Chan Tim's restoration to the jurisdiction of the Colony.

We have, &c.
(Signed) R. E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

* List of papers:—
(A.) Mr. O'Conor, No. 174 of 1885.
(B.) Ditto, No. 202, May 1, 1885.
(C.) Colonial Office, June 23, 1885.
(D.) Ditto, June 26, 1885.

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## No. 25.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received September* 19.)

*Royal Courts of Justice, September* 19, 1885.

My Lord,

**Extradition of fugitives from Hong Kong;**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th ultimo, stating that, by direction of the Secretary of State, he had the honour to transmit to us the papers noted in the accompanying list, which related to an application made by the Chinese Minister in London for the rearrest and extradition from Hong Kong of eleven fugitives from justice who were detained originally on an extradition demand, but who were discharged by the Governor of the Colony after a long and careful inquiry.

**Further demand for.**

That the surrender of Chinese fugitives by the Government of Hong Kong was regulated by Article XXI of the Treaty of Tien-tsin (A), and by the Colonial Ordinances No. 2 of 1850 (B) and No. 2 of 1871 (C).

That the history of the case would be found in the following Reports of the Law Officers of the Crown, and in the documents to which they referred:—

(D) Law Officers' Report of the 14th June, 1882.
(E) Law Officers' Report of the 18th September, 1884.
(F) Law Officers' Report of the 6th February, 1885.

**Proceedings on former demands.**

That the demand for the surrender of the fugitives in question, and others, numbering in all thirteen, was originally made in 1881. They were arrested in Hong Kong, but released by the Supreme Court of the Colony on *habeas corpus*, by reason of some informalities.

They left the Colony, but subsequently returned, and in 1883 they were rearrested on a fresh demand of the Viceroy of Canton. Two of them were discharged, and the remaining eleven were committed to prison to await the orders of the Governor respecting their extradition, as provided by Ordinance No. 2 of 1850.

That Sir Julian Pauncefote was to refer us to the Report of the Law Officers of the 18th September, 1884 (E), and to the despatches of the Governor of Hong Kong therein referred to, and transmitted therewith, for a full account of the subsequent proceedings, which resulted in the discharge of the prisoners, on the ground that the "proof of guilt" required by Article XXI of the Treaty of Tien-tsin was not on the whole such as to satisfy the minds of the Governor and Executive Council.

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That the Chinese Minister thereupon addressed a letter, dated the 8th December, 1884, to the Secretary of State, demanding the rearrest and surrender of the eleven fugitives, on the ground set out in his communication (G). That demand was refused, for the reasons stated in the reply to the Marquis Tsêng of the 9th February, 1885, which had been approved by the Law Officers, and a copy of which would be found appended to their Report of the 6th February, 1885 (F). That the Marquis Tsêng, being dissatisfied with that reply, addressed a further letter to the Secretary of State, dated the 13th June, 1885, in which he still insists on the rearrest and surrender of the fugitives (H).

That that letter was referred to the Colonial Office, who, in their reply of the 25th June, 1885 (I), dealt with the arguments of the Chinese Minister, and suggested a further reference to the Law Officers.

That it appeared to your Lordship that the answer of the Colonial Office contained a satisfactory refutation of the contention of the Chinese Minister on all points, both of law and of fact; and Sir Julian Pauncefote was to request that we would take all the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the demand of the Chinese Minister should again be refused, and, if so, whether his letter of the 13th June last might properly be answered in the sense indicated by the Colonial Office in their letter to the Foreign Office of the 25th June.

That Sir Julian Pauncefote was to add, with reference to paragraph 2 of that letter, that the Imperial Extradition Acts had not been applied by Order in Council to section 21 of the Treaty of Tien-tsin.

In obedience to your Lordship's commands we have the honour to report—

That our reply to the questions contained in the Colonial Office letter of the 25th June is as follows:—

Extradition Acts not applicable to Treaty of Tien-tsin, but bear upon case.

1. The Extradition Acts 1870 and 1873 do not apply to the Treaty of Tien-tsin; but the provisions of those Acts, which might at any time, at the will of Her Majesty's Government, be applied to the Treaty of Tien-tsin, have some bearing on the controversy, as showing the measures taken by Her Majesty's Government to fulfil their Treaty obligations for the surrender of fugitive criminals to Governments other than the Chinese, and especially that in the case of other Treaties, the proof of the guilt of any person whose surrender is claimed is left to the Judicial and not to the Executive authorities.

Ordinances regulating procedure.

2. The procedure in cases under Article XXI of the Treaty of Tien-tsin is at present regulated by Colonial Ordinances No. 2 of 1850 and No. 2 of 1871.

Discharge of prisoners not an infraction of British Law.

3. We think it is the intention of the Colonial Ordinance No. 2 of 1850 that the "proof of guilt" required by Article XXI of the Treaty of Tien-tsin shall be submitted to, and judged of by, the magistrate. But we cannot say that the terms of the Ordinance excludes the exercise by the Governor of a discretionary power to discharge a prisoner who has been committed to prison by a magistrate. We are therefore of opinion that the discharge of the Chinese prisoners by the Governor of Hong Kong was not an infraction of British Law.

But we are asked a further question in your Lordship's letter. Whether the demand of the Chinese Minister shall be again refused?

What constitutes sufficient "proof of guilt"?

We must observe that the Treaty obligation of Her Majesty's Government to that of China cannot be diminished or qualified by the municipal law at any time existing in Hong Kong. Upon tendering "proof of guilt," the Chinese Government is entitled by the Treaty to have a fugitive criminal surrendered.

As to what is "proof of guilt" under the Treaty, we concur with the opinion of the Law Officers in 1863, that "reasonable evidence ought to be accepted as sufficient, such, for example, as would lead a Grand Jury in this country to find a true Bill, where the evidence is *ex parte* only, or such as, with evidence on both sides, would induce a magistrate to commit for trial."

This view is confirmed by the opinion of the Privy Council in the case of the Attorney-General of Hong Kong *v.* Kwok-a-Sing (5 L. R., P. C., App. 199), and in the despatch of Lord Granville to Marquis Tsêng of the 9th February, 1885, it is admitted that "proof of guilt" does not mean such absolute proof as would be necessary to support final conviction.

We think that in the present case such proof of guilt as is required by the Treaty has been brought forward by the Chinese Government. The two magistrates at Hong Kong who successively heard the evidence against the prisoners thought there was probable cause for believing that the prisoners had committed the crime alleged, and accordingly committed the prisoners under section 3 of the Hong Kong Ordinance No. 2 of 1850. The Governor of Hong Kong and the majority of his Council "concur with the magistrates who tried the case, and saw the demeanour of the accused and of the witnesses, that there is a *primâ facie* case against the prisoners." They had, however, received instructions from the Colonial Office that "proof of guilt should be such as, on the whole, to satisfy the minds of the Council;" and this they seem to have erroneously understood to mean that it should be such as to support a final conviction.

On legal grounds do not advise refusal of demand.

We cannot therefore advise your Lordship upon legal grounds to again refuse the demand of the Chinese Minister.

There may be considerations of expediency which, in the judgment of Her Majesty's Government, justify such refusal.

Torture should be guarded against.

We feel as strongly as any one that if it be the fact that prisoners so surrendered are subjected to torture means should, if possible, be taken to render it impossible that torture should be applied. We think, further, that it would be preferable that there should be no agreement for the surrender of prisoners to the Chinese Government as long as there is substantial reason to believe that the horrible practice of torturing accused persons is followed. But we, as the Legal Advisers of the Government, are bound, with great reluctance. to express our opinion that the Chinese Government have done what is requisite to entitle them under the Treaty of Tien-tsin to the surrender of the persons in question.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.

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Report that the Ordinance No. 2, 1850, governs this case.

Procedure not regulated by Extradition Acts;

The Treaty of Tien-tsin, Article XXI, merely directs that Chinese criminals, upon requisition by the Chinese authorities, shall, on proof of their guilt, be delivered up.

The Treaty is silent as to the course to be taken with the view of deciding finally on proof of guilt.

The Extradition Acts, 1870 and 1873, do not apply.

The several Extradition Treaties can be referred to but as analogies, or illustrations, if they can be used even to that extent; they are binding only as between the two countries who enter into the particular contract.

but by Hong Kong Ordinance.

The course of procedure must therefore be sought for, and is to be found in the Ordinance, which it was, I conceive, within the power of the Legislative Council of Hong Kong to issue.

Article 1 of this Ordinance gives the magistrate or Court the power to detain the person charged with the commission of a crime and to investigate the alleged crime.

Article 3 gives the magistrate, if there is probable cause for believing that the said person has committed the crime, power to commit him to prison for safe custody, and to direct the gaoler to detain him in prison until the said gaoler shall receive some order from the Governor relative to the further detention, discharge, or transmission of such person to the Chinese authorities. And the said magistrate or Court shall, upon making such committal as aforesaid, transmit to the said Governor the Minutes of such investigation, and all documents in his or its possession connected with the charge against such person, in order that such person may be dealt with according to the Treaties aforesaid.

Governor has power to discharge prisoners.

This Article, in my opinion, gives the Governor authority to inquire into the charge and the evidence adduced before the magistrate or the Court. (The Minutes and documents are sent to him seemingly for that purpose.)

The Governor, in accordance with his view of the charge, and evidence in support of the charge, may order the further detention, discharge, or transmission of the person committed by the magistrate.

The Governor has in this instance, upon a review of the proceedings, ordered the release or discharge of the men.

Disagreeing as to necessity for granting demand for extradition.

I am unable to agree with the Attorney- and Solicitor-General in advising your Lordship that there are no legal grounds for refusing the demand of the Chinese Minister, for I consider that the demand may properly be refused upon legal grounds.

I have, &c.
(Signed) J. PARKER DEANE.

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*List of Papers.*

(A) Treaty of Tien-tsin, June 26, 1858 (Treaty No. 448).
(B) Hong Kong Ordinance No. 2 of 1850.
(C) Ditto No. 2 of 1871 (Confidential No. 2855).
(D) To Law Officers, June 14, 1882, with Report attached (Confidential No. 4783, p. 14).
    Inclosures: Consul Hewlett, No. 14, of April 29, 1881; Colonial Office, March 2; ditto, May 5; ditto, May 8; ditto, May 19; ditto, May 27; to Colonial Office, April 18, 1882; to Sir R. Alcock, December 11, 1865.
(E) Law Officers, September 18, 1884 (Confidential No. 5121, p. 12).
    Inclosures: Law Officers, February 24, 1863; ditto, November 25, 1865; Colonial Office, April 12, 1883; Law Officers, July 22, 1882; to Marquis Tsêng, July 27, 1883; Colonial Office, January 15; ditto, February 8; to Colonial Office, February 23, 1884.
(F) Law Officers, February 6, 1885.
    Inclosures: Marquis Tsêng, August 16; Law Officers, September 18; Marquis Tsêng, September 24; to Colonial Office, September 30; Colonial Office, October 3; to Colonial Office, October 4; Colonial Office, October 7; to Colonial Office, October 9; Colonial Office, October 14; to Marquis Tsêng, October 18; Colonial Office, December 5, 1884; ditto, January 15, 1885.
(G) Marquis Tsêng, December 8, 1884.
(H) Ditto, June 13, 1885.
(I) Colonial Office, June 25, 1885.

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## Colombia.

### No. 26.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 3.)

My Lord, *Royal Courts of Justice, April* 2, 1885.

Revolution in Colombia.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 21st ultimo, transmitting to us papers* relating to the state of affairs in the Republic of Colombia in consequence of the outbreak of a revolution in that country.

Ports of Savanilla and Barranquilla closed by Decrees.

That Sir J. Pauncefote was to point out that Decrees had been issued at Panamá and Carthagena on the 14th and 17th January last respectively by the President of the State of Panamá and by the Fiscal Inspector of the Custom-houses of the Atlantic coast, declaring the ports of Savanilla and Barranquilla to be closed to foreign trade, as well as to the coasting trade of the Republic of Colombia, during the time a state of war exists in the said ports of the State of Bolivar. That it appears that neither of those ports were actually blockaded up to the 4th February, and that up to that date ships had continued to enter and leave without interruption, although the mail and other steamers did not touch there, in consequence of those Decrees.

Decrees stated to be illegal.

That the authorities at Barranquilla declared the Decrees to be illegal, inasmuch as neither of the functionaries named had been delegated by the National Executive with the requisite authority, notwithstanding the fact that the Fiscal Inspector of the Custom-houses, in one of the Decrees, declared himself to be the immediate representative of the National Executive Power.

Blockade of Carthagena.

That the Secretary-General of the State of Bolivia had also addressed a note to Her Majesty's Consul at Barranquilla, stating that the port of Carthagena would be blockaded by a man-of-war belonging to that State.

That our opinion was requested as to whether, under the circumstances stated in the correspondence, it would be advisable to insert a notice in the "London Gazette" of the closing of the ports of Savanilla and Barranquilla, and of the intended blockade of the port of Carthagena, and, if so, whether a notice in the accompanying form would be right and proper.

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* Consul Stacey, No. 3, Political, February 4; ditto, No. 7, Political, February 21, 1885; Proposed Notice in the "London Gazette."

In obedience to your Lordship's commands we have the honour to report—

Should merely publish text of reports as to closing of ports.

That the information before us is not sufficient to enable us to determine with certainty whether the closing of the ports in question was or was not effectual in law.

We think, under the circumstances, the best course would be to publish in the "Gazette" the text of Mr. Stacey's Reports, without any introductory words such as those suggested in the draft, which would seem to recognize that the ports were validly closed.

No objection to notification of blockade.

As regards the intended blockade of Carthagena, there seems to be no objection to notifying it in the ordinary way.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 27.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 24.)

(A.)

My Lord, *Royal Courts of Justice, June* 23, 1885.

Revolution in Colombia.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 10th instant, stating that he had the honour to transmit to us, by your Lordship's direction, the papers noted in the accompanying list, relative to the state of affairs in the Republic of Colombia, arising out of the revolutionary outbreak in that country.

Decrees, &c., closing ports and declaring vessels of insurgents to be pirates.

That Mr. Currie was especially to call our attention to two despatches from Mr. West, referring to a correspondence between the Colombian Minister at Washington and the United States' Government in regard to two Decrees by the Colombian Government.

That by the first of those Decrees it was notified that the ports of Savanilla, Santa Marta, and Barranquilla were closed to foreign commerce; by the second Decree, it was declared that the existence and action of the vessels belonging to the insurgents stationed at the entrance to the Bay of Carthagena put them beyond the pale of international law (Mr. West's Nos. 173 and 175, 27th and 28th April, 1885).

That a telegram had also been addressed by the President of the United States of Colombia to the Governor of Jamaica, announcing that the Colombian Government had declared the vessels which blockaded the port of Carthagena to be pirates. That that notice had been published in the Jamaica Gazette for general information.

That a despatch had been received from the British Consul at Barranquilla, reporting that the right of the Fiscal Inspector of the custom-houses of the Atlantic and of the President of the State of Panamá to declare the ports of Barranquilla and Savanilla to be closed to foreign shipping was contested by the Commander-in-chief of the revoluntary forces and the Chief of his Staff.

That a copy of our Report of the 2nd April relative to the closing to foreign trade of the ports of Savanilla and Barranquilla, and to the blockade of the port of Carthagena by a man-of-war belonging to the State of Bolivar, with the papers on which it was founded was annexed for convenience of reference.

Action of Governor of Jamaica in publishing telegram from President of Colombia.

That Mr. Currie was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to the right of the Colombian Government to assume the position they have taken up with regard to the vessels belonging to the revolutionary party, and as to the propriety of the action taken by the Governor of Jamaica in publishing the telegram received by him from the President of the United States of Colombia; and also with any observations we might have to offer upon the correspondence alluded to in Mr. West's despatches above referred to relative to the closing of certain ports in the possession of rebels against the Federal Government of Colombia, and to the status of vessels belonging to the insurgents.

In obedience to your Lordship's commands we have the honour to report—

Colombian Government not warranted in declaring insurgent vessels to be pirates.

That we do not think it was in accordance with the usage of civilized nations to declare the vessels of the revolutionary party to be pirates. That party appear clearly to have acquired the status of belligerents, and to have been so treated by the Colombian Government. And we entirely concur with the United States' Minister

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that such a Decree should not be regarded by other Powers as warranted by the circumstances.

Cannot express opinion as to validity of Decree closing ports.

We are not sufficiently informed as to the relation to each other, and to the central power of the different authorities, or the position of the belligerents, to enable us to express any opinion as to the validity of the Decree purporting to close the ports.

Such Decrees would have no exterritorial effect.

We quite agree with the United States' Minister in thinking that such Decrees would have no exterritorial effect, and would not justify any exterritorial action.

No action necessary with regard to telegram published by Governor of Jamaica.

How far they might be legitimate for fiscal purposes, and would justify municipal action by the competent authority, is a different question. It would, we think, have been better if the Governor of Jamaica had not published the telegram, but it hardly seems necessary now to take action in relation to such publication.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers sent to the Law Officers, June* 10, 1885.

(A.) Consul Stacey, No. 3, February 4, 1885.
(B.) Ditto, No. 7, February 21, 1885.
(C.) To "London Gazette," April 6, 1885.
(D.) Ditto, April 6, 1885.
(E.) Admiralty, April 9, 1885.
(F.) Messrs. Leech, Harrison, and Forwood, April 14, 1885.
(G.) Admiralty, April 14, 1885.
(H.) Ditto, April 20, 1885.
(I.) Mr. West, No. 173, April 27, 1885.
(K.) Ditto, No. 175, April 28, 1885.
(L.) Mr. St. John (Telegraphic), May 9, 1885.
(M.) Admiralty, May 23, 1885.
(N.) To Admiralty, May 27, 1885.
(O.) To Mr. St. John (Telegraphic), May 27, 1885.
(P.) Colonial Office, June 4, 1885.
(Q.) Consul Stacey, No. 13, April 21, 1885.

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## No. 28.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 24.)*

(B.)
*Royal Courts of Justice, June* 23, 1885.

My Lord,

Convoy of British vessels carrying supplies into Port of Cartagena, now besieged by rebels.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th instant, stating that with reference to Mr. Currie's letter of the 10th instant he was to transmit to us a letter from the Board of Admiralty,* inclosing a copy of a letter from Captain Curtis, of Her Majesty's ship "Canada," with remarks by Vice-Admiral Sir J. Commerell, relative to the question of convoying into the port of Cartagena British vessels containing provisions, &c., for the forces of the National Government of Colombia; that Sir J. Pauncefote was to request that we would take those papers into our consideration with the correspondence already before us,† and favour your Lordship with any observations we might have to make thereon.

In obedience to your Lordship's commands we have the honour to report—

Concur in view of Captain Curtis, that such convoy would be a breach of neutrality.

That we concur in the view taken by Captain Curtis.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* June 15, 1885.
† See List of Papers annexed to Law Officers' Report of June 23 (marked A).

### Annex No. 1.

(Inclosure 1 in Admiralty Letter of June 15, 1885.)

*Relative to Convoying British Vessels into the Port of Cartagena.*

*H.M.S. "Canada," at Halifax, May* 20, 1885.

Sir,

IN compliance with your order to me to give you my opinion on the question of convoying British vessels containing provisions, &c., for the national forces into the port of Cartagena, I have the honour to say that, if such were done, it would be a distinct breach of neutrality, in the interest of President Nunez and against that of the insurgents.

2. By the constitution of the Republic of Colombia each State is entitled to sovereign rights, and as a *de facto* Government has been established in the State of Bolivar by the insurgents after successes in the field I maintain that they are entitled to all the rights of belligerents, and to convoy British vessels into the port of Cartagena, if it is still being besieged, would be a direct interference with those rights, for by so doing the siege might be indefinitely prolonged.

I have, &c.
(Signed) A. CURTIS, *Captain.*

Vice-Admiral Sir J. E. Commerell, K.C.B., V.C.,
Commander-in-chief.

Submitted, in compliance with the directions contained in your telegram of the 15th instant and my reply thereto dated the 19th instant, observing that in forwarding the inclosed letter from Captain Curtis relative to the state of affairs at Cartagena, I would beg to observe that the directions received by telegram would conflict very much with the orders of strict neutrality which my Lords have already sanctioned.

2. No doubt the town of Cartagena was (at last accounts) in an efficient state of siege, though not of blockade; any vessels endeavouring to enter the inner harbour were fired upon by a battery on Manzanilla Point, and prevented from doing so.

3. Assistance to English vessels wishing to trade with Cartagena means informing the opposition General, Gaylan, that any fire (in their undoubted right) opened upon English ships entering the harbour would be returned.

4. The question is, are my Lords prepared to adopt this course, or to remain as before in a position of neutrality? I am in accord with Captain Curtis, and strongly of opinion that the latter course should be adhered to.

(Signed) J. E. COMMERELL, *Vice-Admiral.*

The Secretary to the Admiralty.

### Annex No. 2.

(Inclosure 2 in Admiralty Letter of June 15, 1885.)

*Telegram of May* 30 *to British Admiral at Halifax.*

(No. 23.)

YOUR No. 14.

Direct British Naval Officer Cartagena to protect British subjects and property afloat, if actually in danger of injury by rebels or other persons, avoiding giving assistance to either party.

*Telegram of June* 11 *to British Admiral, Halifax.*

(No. 27.)

MY No. 23.

After "other persons" read "unless British vessel is attempting to break a blockade or to infringe the laws involved by a state of siege."

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## No. 29.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.*—(*Received August* 26.)

*Royal Courts of Justice, August* 24, 1885.

My Lord,

Payment a second time of import duties already levied by rebels.

Venezuelan Decree enforcing, with fine in case of refusal.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 11th instant, stating that he had the honour to transmit to us, by direction of your Lordship, a despatch from Her Majesty's Minister at Bogota, inclosing a translation of a Decree of the Columbian Government, dated the 10th February last, whereby it was declared that payment of import duties made to the rebel forces in temporary possession of any custom-house of the Republic would be exacted over again by the Government, together with an additional duty, by way of fine, in case of refusal by the importers to make such second payment.

That it was admitted that the importers affected by the above Decree paid the import duties under compulsion at the ports in possession of the rebel forces.

Ports occupied by rebels not blockaded, but closed by Decrees.

That no blockade of those ports had ever been established, but that they were closed to foreign commerce in January last under Decrees, of which copies were transmitted in Mr. Consul Stacey's despatch of the 4th February, published in the "London Gazette" of the 10th April, to which our attention was invited.

That the question arose whether, under the circumstances, Her Majesty's Government were entitled to object to the exaction of such second payment by British subjects of import duties, and of an additional duty in case of refusal.

That Sir J. Pauncefote was to inclose copies of the Treaty between Great Britain and Colombia the 16th February, 1866, and of the "London Gazette" of the 10th April, 1885.

That, as bearing upon that question, Sir Julian Pauncefote was to call our attention to the Reports from the Queen's Advocate and from the Law Officers of the Crown, inclosed.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the above question.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government entitled to object to such exaction.

That Her Majesty's Government are entitled to object to the exaction of such second payment by British subjects of import duties, and of an additional duty in case of refusal, in respect of the importation of goods into territory which was not under the *de facto* sovereignty of the Colombian Government at the time of such importation.

We have, &c.
(Signed) R. E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

*List of Papers.*

Mr. F. St. John, No. 3, Commercial, May 3, 1885.
Treaty, Great Britain and Colombia, February 16, 1866, No. 495.
"London Gazette," April 10, 1885.
Queen's Advocate, May 15, 1858.
Ditto, July 26, 1858.
Ditto, November 21, 1859.
Ditto, May 18, 1860.
Ditto, May 6, 1861 (Confidential No. 1123, p. 87).
Ditto, May 11, 1865 (Confidential No. 1489, p 96).
Law Officers, July 22, 1872 (Confidential No. 4098, p. 100).
Ditto, July 13, 1875 (Confidential No. 4370, p. 50).

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## No. 30.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received October* 14.)

*Royal Courts of Justice, October* 13, 1885.

My Lord,

Seizure of goods supplied by Messrs. Schloss, Brothers, to Messrs. Cerruti.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th ultimo, stating that he was directed by your Lordship

to transmit to us the papers noted in the accompanying list,* relative to the seizure in the United States of Colombia of certain goods supplied by Messrs. Schloss, Brothers, of London, and other British firms, to Messrs. Cerruti and other firms trading in Colombia, under circumstances which were fully set forth in the accompanying despatches from Her Majesty's Legation at Bogotá.

That Sir Julian Pauncefote was also to inclose a draft of a despatch which your Lordship proposed to address to Mr. O'Leary, with regard to the matter, but that your Lordship would first be glad to be favoured with our opinion as to whether the instructions therein contained might properly be sent to Mr. O'Leary under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

Approve, as altered, instructions not to press claim, but to support Italian Minister in doing so.

That, in our opinion, the instructions contained in the draft despatch which has been submitted to us may properly be sent to Mr. O'Leary.

We have made a slight alteration, and approve the draft.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

### Annex.

*Draft of Despatch to Mr. O'Leary.*

(No. . Commercial.)

*Foreign Office, October* , 1885.

Sir,

I have received your despatch No. 7, Commercial, of the 2nd August, respecting the case of Messrs. Cerruti and Co. and others. No application has yet been addressed to this Office by or on behalf of Messrs. Schloss, Brothers, and indeed it would be difficult to support any claim against the Colombian Government, based on the ground of any alleged property in or title to the goods which have been seized on the part of the sellers.

Those goods appear to have been actually sold and delivered to Messrs. Cerruti and Co. The property in them has, therefore, passed to the buyers, and the sellers, in the absence of any special contract to the contrary, have lost all title to the goods, and their only remedy for non-payment of the purchase-money is by action in the Courts of Law. If from any other cause Messrs. Cerruti and Co. had become insolvent there could be no question of "stoppage *in transitu*," the goods having been delivered, and the sellers could not have recovered the goods, but would have had to be content with the dividend under the bankruptcy. If the goods had been sent to Messrs Cerruti and Co., as agents for sale against advances, different considerations might arise.

The case of Messrs. Cerruti and Co. is one in which the Italian Government will probably continue to press for restitution; and I have to instruct you to give to the Italian Representative all the support you can by reason of the hardship inflicted on British firms by the seizure of Cerruti and Co.'s goods.

I am, &c.

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# Ecuador.

## No. 31.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 27.)

*Royal Courts of Justice, February* 27, 1885.

My Lord,

Closing of Ecuadorian ports by Decree of Government.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st instant, stating that he was directed by your Lordship

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* Mr. F. St. John, No. 4, Commercial, June 20; ditto, No. 5, Commercial, June 29; Mr. O Leary No. 7, Commercial, August 2, 1885.

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to transmit to us the accompanying despatch* from Her Majesty's Minister at Quito, reporting that the Commander of the Government troops in the coast provinces of Ecuador had published a Decree stating that, as almost all the inhabitants of the Province of Manabi took part in the rebellion organized by General Alfaro, and had fought against the national troops, all commerce by sea or land between the Provinces of Manabi and Esmeraldas with foreign countries and the rest of the Republic was forbidden until the chiefs of the late rebellion should have submitted to the Government authorities.

That the question how far a Government was legally justified in closing one or more of its ports in times of civil commotion to the commerce of all nations was recently submitted to us in the case of the "Overdale" at Mollendo, and that Sir Julian Pauncefote was to request that we would take Mr. Lawrence's despatch into our consideration, and favour your Lordship with our opinion as to whether there was any objection to the announcement in the "Gazette" of the closing of the ports in question, under the circumstances reported by Mr. Lawrence.

In obedience to your Lordship's commands we have the honour to report—

No objection to notice in "Gazette" of the closing of the ports.

That we think there is no objection to the announcement in the "Gazette" of the closing of the ports in question, under the circumstances reported by Mr. Lawrence.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# Egypt.

## No. 32.

*The Lord Chancellor to Earl Granville.*—(*Received January* 7.)

*Blackmoor, Petersfield, January* 6, 1885.

Dear Lord Granville,

Caisse *v.* the officers of the Egyptian Government. Condemnation of the latter.

I HAVE been studying the text of the Law of Liquidation and the Khedivial Decrees establishing the Caisse, and of the Law establishing the International Tribunals, in order to see what grounds there may be for contesting the validity of the Judgment pronounced in the suit of the Caisse, against which the Egyptian Government, and the individuals condemned, have appealed.

It appears to me that the jurisdiction of the International Tribunal to entertain, or adjudicate upon, the suit, may be open to a substantial question, upon the grounds which I shall proceed to indicate, and which (unless, upon full consideration, they should appear to be of less weight than I am at present disposed to think) ought to be urged before the Court of Appeal, whether they were or were not urged before the Court of First Instance.

By the Judgment ("Egypt: Finance, No. 107," Inclosure in No. 1),† it appears, first, that the Tribunal declared its own competency; second, that the parties defendants were "*the Egyptian Government*" (by that designation); *Nubar Pasha* (who was exonerated); *Moustapha Pasha Fehmi* (I presume, the "Minister of Finance," though this does not expressly appear, but I infer it from the statement, that "the State" was "*represented by its Finance Minister*"); the *four Mudirs* of (I presume) the four provinces of which the revenues are specially assigned to the Caisse; the *Director of Customs* and "*Le Mesurier and Ali Pasha*" jointly—whose character is not described, but whom I presume to constitute the Railway Administration.

Of these, Moustapha Pasha Fehmi is condemned (together with "the Egyptian Government") in *the whole amount*, the others in the sums for which (as I presume) they were severally considered accountable.

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* Mr. Lawrence, No. 1, January 7, 1885.

† See Confidential No. 5108, pp. 25, 26.

Competence of the International Tribunals:

How is the competency of the International Tribunals to pronounce such a Judgment against these parties established? It must, I suppose, be either (1) by the "*Règlement d' Organisation Judiciaire pour les Procès Mixtes en Égypte*" of 1874;* or (2) by the Decrees establishing the Caisse;† or (3) by the Law of Liquidation.‡ If none of these confer such a jurisdiction it seems to follow that it does not exist, and that the Tribunals were incompetent.

(1) under Règlement of 1874;

1. The "Règlement" of 1874, under Head (II) "*Compétence*," Articles 10 and 11, provides (Article 10) that "the Government, the Administrations, the Daïras of His Highness the Khedive, and the members of his family shall be subject to the jurisdiction of these Tribunals, '*dans le procès avec les étrangers;*'" and (Article 11) that these Tribunals ("without having power to determine anything as to the property in the public Domains, or to interpret, or stop the execution of, any administrative measure") shall "have power to judge, *in the cases provided for by the Code Civil, les atteintes portées à un droit acquis d'un étranger par un acte d'administration.*"

The 11th Article seems to me to be clearly inapplicable to this case. The applicability of the 10th Article depends on the question, whether this is a "*procès avec les étrangers?*" It seems to me that it is *not* such a "procès."

The Caisse, under the Khedivial Decree of 2nd May, 1876, is not a Body either itself "*foreign*" (in the proper sense of the word "*étranger*"), or representing, properly and exclusively, merely foreign interests. It is "*a special* (*Egyptian*) *Treasury, charged with the regular service of the Public Debt;*" its members are expressly declared to be appointed *by the Khedive* "*in the quality of Egyptian officials.*" The Law of Liquidation makes no difference in this respect; and the Italian Government has lately excused itself on this very ground from all responsibility for the acts, as a member of the Caisse, of the Commissioner nominated by it, Signor Baravelli. It is true that (in Article 4 of the same Khedivial Decree, to which I shall presently have occasion to refer) the Caisse and its Directors are authorized to take certain proceedings "in the name and in the interests of the creditors," who are there described as "*mostly of foreign nationality.*" But, even if the proceeding actually taken had been such, and only such, as is there contemplated and authorized, I should not have thought that it was a "*procès avec les étrangers*" within the meaning of Article 10 of the "Règlement."

(2) under Decrees establishing the Caisse;

2. The next question is, whether Article 4 (the only Article in point) of the Khedivial Decree of the 2nd May, 1876, authorizes this suit and Judgment? It appears to me that this Article contemplates and authorizes a suit before the International Tribunals, to enforce the provisions of the same Decree by which the Debt "confided to the said Treasury" (*i.e.*, the Caisse) is guaranteed, not against individual subordinate officers of the Egyptian Government (coming or not coming within the several descriptions contained in the preceding Article 2), but "*against the financial administration, represented by the Minister of Finance*"—that is, against the Government of Egypt, to be sued for this purpose in the name of its Finance Minister. But there is nothing here (as it seems to me) to give the Tribunals jurisdiction over the individual filling the office of Finance Minister in his personal as distinguished from his official capacity, or to make him personally liable to be condemned to pay any sum which might be claimed in any such suit.

(3) under Law of Liquidation.

3. The 38th Article of the Law of Liquidation is, in substance, a reproduction of the 4th Article of the Decree of 1876, and (so far as there is any difference in its terms) it appears to me to confirm the view which I have suggested.

Tribunals not competent, except as against Egyptian Government, against which they cannot *execute* their Judgment.

The conclusion appears to be, that these Tribunals were not competent to entertain the suit of the Caisse, *except as against the Egyptian Government, officially represented by the Minister of Finance.* And as against the Egyptian Government so represented they do not appear to have any power to *execute* their Judgment.

Against this view it may be urged that Article 2 of the Decree of 1876 and Article 31 of the Law of Liquidation provide that (in the terms of the latter Article) "the accountable heads of these provinces and administrations, whose revenues are appropriated to the service of the Privileged Debt and of the Unified Debt, shall pay these revenues direct to the Caisse of the Debt, and *shall only be relieved by the discharge of the Commissioners of the Debt.*" But this does not appear to me to be enough to give the International Tribunals jurisdiction over the persons so accountable (of whom, it is to be observed, the Finance Minister is *not* one) unless it is otherwise given them.

As these views (if well founded) may be important, not merely for the purpose of argument before the Appellate Court, but (if necessary) for the ulterior purpose of protest and resistance as against a usurped and incompetent jurisdiction, I would

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* See Confidential No. 2548, p. 194.

† Confidential No. 3539, p. 59.

‡ Parliamentary No. 2322.

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suggest that the opinion of the Law Officers of the Crown should *immediately* be taken upon them.

Believe me, &c.
(Signed) SELBORNE.

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## No. 33.

*The Lord Chancellor to Earl Granville.*—(*Received January* 9.)

My dear Lord Granville,
*Blackmoor, Petersfield, January* 8, 1885.

Caisse *v.* officers of the Egyptian Government.

I WRITE this as a sort of P.S. to my Memorandum of the 6th January on the question of the competence of the Mixed Tribunals in the action of the Caisse against the *officers* of the Egyptian Government.

I had not then seen the Confidential papers, "Egypt: Finance, No. 17," s. No. 108, which only reached me this morning.

Points in his Memorandum overruled, but still thinks them good.

The inclosure in No. 1 of that section gives the *full reserved Judgment* of the Tribunal on the question of competence. I am glad to see that my points *were* taken, and, though they were overruled, I continue to think them good.

Should consult Law Officers.

The attention of the Law Officers will of course be called to this "*Jugement in extenso.*"

Believe me, &c.
(Signed) SELBORNE.

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## No. 34.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 15.)

My Lord,
*Royal Courts of Justice, January* 14, 1885.

Caisse *v.* the officers of the Egyptian Government. Observations of Lord Chancellor.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 8th instant, stating that he was to transmit to us papers relating to the recent Judgment of the International Tribunals in Egypt, in the suit of the Caisse de la Dette Publique, and to submit to us the following observations, which had been communicated to your Lordship by the Lord Chancellor as to the grounds which might exist for contesting the validity of that Judgment, against which the Egyptian Government and the individuals concerned have appealed.

That the jurisdiction of the International Tribunals to entertain or adjudicate upon the suit might be open to a substantial question upon the grounds hereafter indicated, and which might be urged before the Court of Appeal, whether they were or were not urged before the Court of First Instance.

That by the Judgment (A) it appeared, first, that the Tribunal declared its own competency; secondly, that the parties defendants were the Egyptian Government (by that designation); Nubar Pasha (who was exonerated); Moustapha Pasha Fehmy (presumably the Minister of Finance, though that did not expressly appear, but it might be inferred from the statement that the State *was represented by its Finance Minister*); the four Mudirs of (presumably) the four provinces of which the revenues were specially assigned to the Caisse; the *Director of Customs* and *Le Mesurier and Ali Pasha jointly*—whose character was not described, but who constituted the Railway Administration.

That of those Moustapha Pasha Fehmy is condemned (together with the Egyptian Government) in the whole amount; the others in the sums for which they were severally considered accountable.

Question as to competence of the International Tribunals:

That the question arose, how the competency of the International Tribunals to pronounce such a Judgment against those parties was to be established? That it must be either (1) by the "Règlement d'Organisation Judiciaire pour les Procès Mixtes en Égypte" of 1874 (B), or (2) by the Decrees establishing the Caisse (C), or (3) by the Law of Liquidation (D). That if none of those conferred such a jurisdiction it seemed to follow that it did not exist, and that the Tribunals were incompetent.

under Règlement of 1874;

(1.) The "Règlement" of 1874, under Head (II) "*Compétence*," Articles 10 and 11, provided (Article 10) that "the Government, the Administrations, the Daïras of His Highness the Khedive, and the members of his family, shall be subject to the jurisdiction of these Tribunals '*dans les procès avec les étrangers;*'" and (Article 11) that those Tribunals (without having power to determine anything as to the property in the public Domains, or to interpret or stop the execution of any administrative measure) should have power to judge *in the cases provided for by the Code Civil, "les atteintes portées à un droit acquis d'un étranger, par un acte d'administration.*"

That the 11th Article seemed to be clearly inapplicable to that case. The applicability of the 10th Article depended on the question whether there was a "*procès avec les étrangers?*" That it seemed that it was *not* such a "procès."

That the Caisse, under the Khedivial Decree of the 2nd May, 1876, was not a Body either itself "foreign" (in the proper sense of the word "étranger"), or representing, properly and exclusively, merely foreign interests. That it was "*a special* (*Egyptian*) *Treasury, charged with the regular service of the Public Debt;* its members were expressly declared to be appointed *by the Khedive in the quality of Egyptian officials.*" That the Law of Liquidation made no difference in that respect; and the Italian Government had lately excused itself on that very ground from all responsibility for the acts, as a member of the Caisse, of the Commissioner nominated by it, Signor Baravelli.

That it was true that (in Article 4 of the same Khedivial Decree to which reference would be made hereafter)—

1. The Caisse and its Directors were authorized to take certain proceedings in the name and in the interests of the creditors, who were there described as *mostly of foreign nationality.*

But that, even if the proceeding actually taken had been such, and only such, as is there contemplated and authorized, it was doubtful whether it was a "procès avec les étrangers" within the meaning of Article 10 of the "Règlement."

under Khedivial Decree;

2. That the next question was, whether Article 4 (the only Article in point) of the Khedivial Decree of the 2nd May, 1876, authorized that suit and Judgment?

That that Article seemed to contemplate and authorize a suit before the International Tribunals to enforce the provisions of the same Decree by which the Debt confided to the said Treasury (*i.e.*, the Caisse) was guaranteed, not against individual subordinate officers of the Egyptian Government (coming or not coming within the several descriptions contained in the preceding Article 2), but *against the financial administration, represented by the Minister of Finance*—that is, against the Government of Egypt, to be sued for that purpose in the name of its Finance Minister.

But that there seemed to be nothing there to give the Tribunals jurisdiction over the individual filling that office in his personal as distinguished from his official capacity, or to make him personally liable to be condemned to pay any sum which might be claimed in any such suit.

under the Law of Liquidation.

3. That the 38th Article of the Law of Liquidation was, in substance, a reproduction of the 4th Article of the Decree of 1876, and so far as there was any difference in its terms it appeared to confirm the view above suggested.

Not competent, except against Egyptian Government.

That the conclusion appeared to be that those Tribunals were not competent to entertain the suit of the Caisse, *except as against the Egyptian Government, officially represented by the Minister of Finance.* And that, as against the Egyption Government so represented, they did not appear to have any power to *execute* their Judgment.

That against that view it might be urged that Article 2 of the Decree of 1876 and Article 31 of the Law of Liquidation provide that (in the terms of the latter Article) the accountable heads of those provinces and administrations whose revenues were appropriated to the service of the Privileged Debt and of the Unified Debt should pay those revenues direct to the Caisse of the Debt, *and should only be relieved by the discharge of the Commissioners of the Debt.* But that this did not appear to be enough to give the International Tribunals jurisdiction over the persons so accountable (of whom, it was to be observed, the Finance Minister is *not* one) unless it is otherwise given them.

That Mr. Currie was to request that we would favour your Lordship with our opinion as to the advisability of these views being advanced not only in argument before the Appellate Court, but, if necessary, for the ulterior purpose of protest and resistance as against an usurped and incompetent jurisdiction.

That Mr. Currie was to include amongst the papers for our consideration a copy of the Act just received from Cairo, in which the Egyptian Government gave notice of appeal against the Judgment delivered by the Court of First Instance at Cairo.

In obedience to your Lordship's commands we have the honour to report—

Above views should be brought before Appellate Court.

That we think it advisable that the views suggested by the Lord Chancellor should be advanced in argument before the Appellate Court.

We gather that they were not put forward in the Court of First Instance in the precise manner now suggested, for no reference is made in the Judgment, which deals at length with the arguments used, to that which seems to lie at the very root of the

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Agree that Caisse cannot be considered a foreigner.

question, viz., that the jurisdiction of the Mixed Tribunals to determine causes instituted against officials of the Government exists only where the person instituting such process is a foreigner. And we agree with the Lord Chancellor in thinking that the Caisse cannot be said to be a foreigner, or foreign subject, seeing that it is the creature of an Egyptian Decree constituting as a Caisse of the Public Debt certain persons who, though "indicated" by foreign Governments as "fit to fill the post," were, nevertheless, "appointed" by the Khedive as "Egyptian officials."

Object of powers granted by Law of Liquidation.

If this view be correct, it answers a great part of the reasoning of the Judgment of the Court of First Instance. The argument that acts done by Egyptian officials and the Egyptian Government are *primâ facie* within the competence of the Tribunal, and that the special provisions of Article 38 of the Law of Liquidation do not derogate from this general jurisdiction, are all beside the point, if the suit, not being by a foreigner, was one which the Tribunal was, *primâ facie*, not competent to entertain. And the incompetence of the Tribunals to entertain otherwise an action by the Caisse seems to explain the introduction of Article 38, giving the Caisse power to bring an action before the Mixed Tribunals against the Government, represented by the Minister of Finance.

We observe that the objection to the jurisdiction, resting on the fact that the Caisse cannot be regarded as a foreigner, is not specifically taken in the Notice of Appeal, but it is probably covered by the first objection.

Difficulty created by need for discharge from Commissioners of Public Debt.

We may add that the provision, that the heads of the provinces and administrations whose revenues are appropriated to the service of the Debt shall only be relieved from payment by a discharge from the Commissioners of the Debt, certainly creates considerable difficulty.

It is clearly inserted for the purpose of securing the arrangement made by the Decree constituting the Caisse. And if it can in no way be enforced by the Caisse, it is difficult to see what effect would be given to it. At the same time, if no power existed in the Caisse to sue before the Tribunals except that created by the Decree and Law of Liquidation, we do not see that, in the face of the express provisions of Article 38, any other power could be inferred.

Resistance in event adverse decision of Court of Appeal.

Want to see reasons for Judgment before advising as to.

As regards the question, whether these views should be the foundation of resistance as against an usurped and incompetent jurisdiction in case the Court of Appeal should affirm the Judgment against the individuals sued other than that against the Minister of Finance in his official capacity, we should desire to see the reasons on which the Judgment is founded before definitely advising such a course.

We feel that possibly there may be some arguments in support of the jurisdiction, based on matters not within our knowledge.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers inclosed in Foreign Office Letter of January* 8, 1885.

(A.) Judgment of the Court of First Instance. (In Sir E. Baring's No. 1137, December 14, 1884. See Confidential No. 5061, p. 230, and No. 5108, p. 25.)
(B.) Règlement d'Organisation Judiciaire pour les Procès Mixtes en Égypte, 1874. (See Sir H. Elliot's No. 69 of March 4, 1873, Confidential No. 2548, p. 194).
(C.) Decree of May 2, 1876, establishing the Caisse. (Confidential No. 3539, p. 59).
(D.) Law of Liquidation. (In Sir E. Malet's despatch of July 23, 1880: "Egypt No. 4 (1880)," Parliamentary, No. 2322).
(E.) Appeal against the Judgment. (In Sir E. Baring's No. 1196 of December 31, 1884, Confidential No. 5108, p. 29.)

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## No. 35.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 14.)

My Lord, *Royal Courts of Justice, February* 14, 1885.

Egyptian tribute to Sultan as Suzerain.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th instant, transmitting to us the papers* relating to the question

whether the tribute paid by the Khedive of Egypt to the Sultan as Suzerain is a first charge upon Egyptian revenues, and whether His Highness was bound to continue to pay it in its entirety, even if the territory which he holds under the Sultan was diminished in extent, owing to circumstances over which he had no control.

Is Khedive liable for the whole in spite of diminution of territory?

That the question of the continued liability of the Khedive had been raised by Her Majesty's Agent and Consul-General at Cairo in his No. 1164 of the 22nd December, with reference to the proposed abandonment by the Egyptian Government of its jurisdiction over certain territories on the Red Sea and the Gulf of Aden, which were ceded to His Highness' predecessor under Firmans, or Hatts, from the Sultan.

That our attention was called to the Firman of May 1865, under which the Khedive held the ports of Massowah and Suakin on the Red Sea, the tribute being fixed at 33,250*l.*, and to the Imperial Hatt quoted by Sir E. Baring, which showed that the cession to His Highness of the Government of Zeyla, on the Gulf of Aden, entailed an annual payment of £ T. 15,000.

That Sir J. Pauncefote was to explain that the Khedive, having found that the revenues of Egypt were insufficient to meet the expenses of administering those territories, had requested the Sultan to resume direct control over them, and that Sir Julian Pauncefote was to inquire, in the first place, whether, in our opinion, His Highness would be justified in claiming a reduction of the tribute by the amount paid for the territories in question.

Is tribute a first charge on Egyptian revenue?

That, secondly, Sir Julian Pauncefote was to observe that a question had been raised as to whether the Khedive, who held Egypt in consideration of the payment of a large tribute to the Sultan, was bound to treat that tribute as a first charge on Egyptian revenues, regardless of the claims of the bondholders under the Law of Liquidation, to the interest on the Egyptian Debt. That it had been suggested that the tribute might properly be classed as an administrative charge on a footing analogous to the Civil List in this country, which comes after the National Debt.

That a collection of the Firmans relating to Egypt was inclosed, and that our attention was called to certain passages marked therein.

That we were also referred to the opinion of the Earl of Northbrook as to the danger of interfering with that charge, expressed at the end of his despatch of the 5th October, and that Sir J. Pauncefote was to point out that the tribute had always been dealt with by the Sultan as his property, and was assigned by His Majesty as a security to the Turkish bondholders before the passing of the Law of Liquidation.

That that measure could only be looked upon as a private transaction between the Khedive and his creditors, irrespective of the conditions under which he held Egypt.

That our opinion was requested upon the two questions submitted in that letter, together with any general observations we might have to offer thereupon.

In obedience to your Lordship's commands we have the honour to report—

Liability for whole tribute must be got rid of by agreement with Sultan.

That, the territories having been ceded to the Khedive upon the terms of his paying a certain tribute to the Sultan, we are of opinion that that arrangement can only be got rid of, so far as the liability to the Sultan is concerned, by a new agreement with him, except it may be in the case of the territories being lost to Egypt by conquest.

If the Sultan should consent to resume direct control over them, it would be a matter of agreement on what terms he did so, and certainly, in such case, it would be reasonable that the tribute should cease.

The tribute is a first charge on the Egyptian revenue.

As to the second question submitted to us, we are clearly of opinion that the payment of the tribute is a first charge on the revenues of Egypt. Perhaps, strictly speaking, it ought to be put even higher than that, for the payment is one of the terms upon which the Khedive has acquired such sovereign rights as he now possesses.

The Sultan only gave up the right to exercise sovereign rights in relation to the direct receipt of the revenue on the condition of receiving this payment, and he might, with great force, insist that he was entitled to resume his sovereign power in this respect, if default were made in payment of the tribute.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* A. Sir. E. Baring, No. 1164, December 22, 1884, Confidential No. 5056, p. 262.
B. Inclosure in above.
C. "Egypt No. 4 (1880)," Parliamentary No. 2322.
D. Firmans, &c., 1841-1879, Confidential No. 4747.
E. Lord Northbrook, October 5, 1884, Confidential No. 5061, p. 112.

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## No. 36.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 11.)

My Lord, *Royal Courts of Justice, March* 10, 1885.

Xuereff *v.* Xuereff. Jurisdiction of Consular Courts over real property of European dying intestate.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 17th ultimo, stating that he was to transmit to us papers* relating to the question of the jurisdiction of Consular Courts in Egypt over the succession to the real property of Europeans in Egypt dying intestate. That in the despatch from Mr. Fawcett, Her Majesty's Consul-General, and the Judge of the British Consular Court at Constantinople (A), the question was raised in the case of one Giuseppe Xuereff, a Maltese, who died at Malta intestate, leaving real and personal property in Egypt. That the facts were stated in that despatch, as also in the letter of M. Mattei to the Foreign Office of the 11th December last (G), from which it appeared that the widow of Xuereff claimed a share of the real estate from her stepsons, who were in possession of the land. That Mr. Cookson, the Judge of the British Consular Court at Alexandria, who was in England when Mr. Fawcett's despatch was received, was consulted on the subject, and that his opinion would be found in his note of the 26th September (B). That his opinion was to the effect that the Consular Courts in Egypt have not the power to deal with the succession to the immovable property of foreigners in Egypt in cases of intestacy, and that the British Consular Court at Alexandria had consequently no jurisdiction to entertain the claim of the widow of the intestate against his stepsons for a share of the realty.

Claim of widow to share of real estate of G. Xuereff.

That, on the receipt of that opinion, Sir E. Baring, Her Majesty's Agent and Consul-General in Egypt, was instructed (D) to obtain the opinion of the Egyptian Government as to what Tribunal in Egypt was competent to deal with the succession to landed property there of a foreigner dying intestate, and that that Government, in reply, communicated to Sir E. Baring the opinion of the legal adviser of the Egyptian Foreign Office, M. Pietri (Inclosure 2, E), to the effect that the Consular Tribunals in Egypt were competent to take cognizance of questions of inheritance even in cases including landed property left by a foreigner dying intestate, unless foreign law has expressly taken away the competency of the Consular Tribunal and transferred it to another.

That as that opinion differed from that given by Mr. Cookson, it was submitted to him for his observations, and that his Report, in which he adhered to his former opinion, would be found in Sir E. Baring's despatch (F).

That Sir J. Pauncefote inclosed a Memorandum by Sir E. Hertslet on the question (C), in addition to the various documents referred to in the correspondence; and that he was to request that we would favour your Lordship with our opinion on the question whether the British Consular Court at Alexandria was competent to entertain the claim of Mme. Xuereff.

In obedience to your Lordship's commands we have the honour to report—

Consular Court not competent to entertain her claim.

That, in our opinion, the British Consular Court at Alexandria is not competent to entertain the claim of Mme. Xuereff.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* *List of Papers.*

(A.) Mr. Fawcett, No. 61, Judicial, September 8, 1884.
(B.) Mr. Cookson, September 26, 1884.
(C.) Sir E. Hertslet's Memorandum, October 9, 1884.
(D.) To Sir E. Baring, No. 52, Consular, October 25, 1884.
(E.) Sir E. Baring, No. 80, Consular, December 22, 1884.
(F.) Sir E. Baring, No. 9, Consular, January 25, 1885.
(G.) M. Mattei, December 11, 1884.
(H.) Levant Order in Council (Confidential No. 2354).
(I.) Turkish Real Property Law and Protocol (Treaty No. 410).
(J.) Egyptian Codes (Mixed Tribunals), (12mo. 1053).
(K.) Sultan's Firmans of 1873 and 1879 (Confidential No. 4747).
(L.) Law Officers' Report (with reference as to effect of Firmans) of November 21, 1883 (Confidential No. 4974, p. 37).

## No. 37.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 13.)

My Lord, *Royal Courts of Justice, March* 12, 1885.

Registration of British officers of the Army of Occupation and in Egyptian service, their families, &c.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 3rd instant, stating that he was to transmit to us a despatch from Her Majesty's Consul at Cairo,* in which a question was raised as to the application of section 4, paragraphs 16–19, of the Ottoman Order in Council of the 12th December, 1873,† to British officers in Egypt, forming part of the Army of Occupation or serving in the Egyptian army, and to their wives, children, and English servants.

That we were referred to the opinion of Mr. Cookson, Judge of Her Majesty's Consular Court at Alexandria, on the particular points raised by Mr. Borg; and that a copy of the Order in Council was transmitted to us by Sir J. Pauncefote.

That our opinion was requested as to whether we concurred in the opinion of Mr. Cookson.

In obedience to your Lordship's commands we have the honour to report—

Concur in Mr. Cookson's opinion, but no objection to non-registration of such officers, &c.

That we concur in the opinion of Mr. Cookson.

At the same time, we think that the case of an English officer, by the permission of his Government in the Egyptian service, though within the letter, is perhaps hardly within the spirit of the Ottoman Order in Council. And if it has not been the practice to require such persons to register themselves, and it should be thought expedient to continue this practice, we do not see any serious objection to it.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Consul Cookson to Vice-Consul Borg.*

Sir, *Alexandria, January* 17, 1884.

IN reply to the questions in your despatch of the 10th instant as to the registration of officers in the service of the British Government, and their families, I am of opinion—

1. That officers and men in Her Majesty's Army of Occupation are not bound to register themselves, and that their wives and children are in the same position.

2. That the servants of officers of the Army of Occupation, being British subjects, and not forming part of the Army of Occupation, are bound to register themselves.

3. That British officers in the service of His Highness the Khedive, though still holding commissions in Her Majesty's army or navy, are bound to register themselves as British residents in Egypt.

I am, &c.

(Signed) C. A. COOKSON.

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## No. 38.

*The Law Officers of the Crown to Earl Granville.—(Received April* 10.)

My Lord, *Royal Courts of Justice, April* 10, 1885.

Arrest of Zebehr Pasha and his party, and their detention at Gibraltar.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 6th instant, stating that he was to transmit to us the inclosed letter from the Colonial Office,‡ relating to the arrest of Zebehr Pasha and his party, and their detention at Gibraltar.

That our opinion was requested as to whether the terms of the Ordinance issued, in order to legalize such detention, by the Governor of Gibraltar, might properly be approved, provided that the words "Ottoman subjects within the jurisdiction of the Khedive of Egypt," be substituted wherever the words "Egyptian subjects" at present occur.

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* Mr. Borg, No. 4, February 17, 1885.

† Confidential No. 2354.

‡ April 4, 1885.

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In obedience to your Lordship's commands we have the honour to report—

Approve Ordinance with certain exceptions.

That we think that the terms of the Ordinance are sufficiently correct in form, and, therefore, may be approved.

We should have suggested some verbal alterations, but as we understand that the Ordinance is already published, we do not consider them so vital as to justify the cancellation of the present and publication of a second Ordinance.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 39.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 15.)

My Lord, *Royal Courts of Justice, April* 15, 1885.

Suppression of the "Bosphore Égyptien."

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 13th instant, stating that he was to transmit to us a despatch from Her Majesty's Consul-General at Cairo,* forwarding a letter addressed to him by Nubar Pasha, stating that, in the opinion of the Government of the Khedive, the publication of the "Bosphore Égyptien" should, in the present state of public opinion, no longer be allowed.

That Nubar Pasha inclosed a statement showing the occasions on which such action had been taken by the Egyptian Government, and sent copy of an arbitral sentence delivered in 1871 in the case of a French newspaper, which supported his contention that the Government had a right to suppress any newspaper.

That Nubar Pasha further stated that, as the action of the Egyptian Government might give rise to remonstrance on the part of the French Government, he would be glad to know beforehand whether he might count on the diplomatic support of Her Majesty's Government.

That the substance of that despatch was received at the Foreign Office on the 29th ultimo, by telegraph, and that, on the 1st instant, a telegram was sent to Sir E. Baring,† stating that, as the suppression of the paper appeared to be subject to a legal appeal, Her Majesty's Government saw no cause for interfering adversely to stop or impede the action of the Egyptian Government.

That a copy of a telegram from Sir E. Baring‡ was inclosed, stating that the "Bosphore Égyptien" was suppressed on the 8th instant, and that the French Consul-General had opposed the measure on the ground that the Egyptian Government had not legal power to suppress.

French demand for cancellation of Decree.

That a subsequent telegram from Sir E. Baring stated that the Acting French Consul had informed Nubar Pasha that he was instructed to ask that the Decree should be cancelled, and that the officials who had taken part in the suppression should be dismissed.

That Nubar Pasha declined to cancel the Decree, on the ground that he considered that the action taken was perfectly legal.

That he also declined to dismiss the officials, who, he explained, had acted under his orders.

That our opinion was requested as to whether the precedents relied on by Nubar Pasha were valid, and such as legally to justify Her Majesty's Government in giving their diplomatic support to the Egyptian Government in their refusal to comply with the demands of the French Government.

We are also honoured with your Lordship's commands signified in Mr. Currie's further letter of the 14th instant, stating that, with reference to his letter of the 13th instant, he was to transmit further papers§ relative to the suppression of the French newspaper the "Bosphore Égyptien" by the Egyptian Government.

That in his despatch No. 297 of the 2nd April, 1885, Sir E. Baring inclosed copy of a Judgment recently given by the Mixed Court of First Instance at Alexandria, in the case of the newspaper "El Ahram," published by a French subject, which was lately suspended by the Egyptian Government. That the Court fully admitted the right of the Government to execute its own Press Law, and rejected the claim for damages by reason of the suppression of the paper.

Case of the suspension of the "El Ahram" and closing of the printing-office.

That, on the other hand, damages were given for the suppression of the printing establishment, considered as a commercial undertaking, independently of its work connected with the printing of the "El Ahram" newspaper.

That copy of the Press Law, referred to in the Judgment, was inclosed.

That in his telegram of that day's date Sir E. Baring forwarded the text of the Decree authorizing the suppression of the "Bosphore Égyptien."

That our attention was also called to Article LXX of the French Capitulations of 1740 (Hertslet, Treaties on Trade, Turkey, p. 130), which provided that officers of justice shall not, without necessity, enter a house inhabited by a Frenchman, and that when the case should necessitate an entrance the Ambassador or Consul shall be informed thereof, and the interested parties shall proceed to the place in question with the person who shall have been charged (appointed) by them, and if any one infringes this disposition he shall be punished.

Protocols signed by France and England with Turkey.

That in the Protocol signed by the Representatives of France and Turkey on the 9th June, 1868 (State Papers, vol. lix, p. 389), it was stipulated that "the dwelling of every person inhabiting the Ottoman territory being inviolable, and no one being entitled to enter it without the consent of its master, unless in virtue of orders issued by the competent authority, and with the assistance of the magistrate or functionary invested with the necessary powers, the dwelling of a foreign subject is inviolable by the same right, in conformity with the Treaties; and the officers of police cannot enter therein without the assistance of the Consul of the country to which the foreigner belongs or of his Delegate."

That a similar Protocol was signed on the 28th July, 1868, between Great Britain and Turkey, of which a copy was inclosed.

That we were requested to take those papers into our consideration, together with those previously forwarded to us.

Further cases of suspension of papers and seizure of books in Turkey.

We have also the honour to acknowledge the receipt of a further letter from Mr. Currie on the above subject, and transmitting to us the Reports of our predecessors* relating to the suspension of the "Levant Herald" at Constantinople in 1867 and 1872, and the refusal by Her Majesty's Government to interfere on the editor's behalf; also to the suppression of the "Levant Times" and the "Progrès d'Orient" at Constantinople in 1874 and 1875.

That Mr. Currie also transmitted a Parliamentary Paper† on the confiscation at the Smyrna Custom-house of certain books by M. Stephanos Xenos, which were considered offensive by the Turkish Government, a matter also in which Her Majesty's Government also declined to interfere.

In obedience to your Lordship's commands we have the honour to report—

Government appears to have power to suppress.

That, upon the imperfect information before us we are only able to express to your Lordship the opinion that there appears to be a legal power in the Egyptian Government to suppress, in the interest of public order, any newspaper published within the jurisdiction of the Khedive, whether belonging to a native or a foreign resident.

In this latter case, however, it appears that by virtue of the Protocol of the 9th June, 1868, entrance into the dwelling of a French resident cannot, even when orders have been issued by a competent authority, "be made without the assistance of the Consul of the country to which the foreigner belongs."

Effect of the Protocols.

But it will be observed, by reference to the Protocols, both French and English, that this assistance is only required when the entrance is on the actual house of residence of the foreign subject.

In the case of the residence, the Protocols require that upon notice to the Consul, he shall, within a limited time, render the assistance required.

Further information necessary.

But we are not in a position to apply such principles and rules to the circumstances of the present case, inasmuch as we are not informed what course was pursued in relation to or by the French Consul on the occasion in question, or what was the nature of the premises entered, and the action taken in order to

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* Sir E. Baring, No. 286, March 29, 1885.

† To Sir E. Baring, No. 94, Telegraphic, April 1, 1885, Confidential No. 5148, p. 1.

‡ Sir E. Baring, No. 195, April 9, 1885. Confidential No. 5148, p. 17.

§ Sir E. Baring, No. 297, April 2, Confidential No. 5148, p. 2; ditto, No. 209, Telegraphic, April 14, 1885, Confidential No. 5148, p. 37; Anglo-Turkish Protocol, July 28, 1868 (Treaty No. 510); Egyptian Press Law of November 26, 1881, Parliamentary No. 2552.

* Queen's Advocate, February 14, ditto, March 23, ditto, May 7, 1867 (in Confidential No. 1745); Law Officers, July 25, ditto, August 9, 1872 (in Confidential No. 4098); ditto, October 12, 1874 (in Confidential No. 4331); ditto, March 8, 1875 (in Confidential No. 4370).

† Parliamentary Paper, Stephanos Xenos, August 12, 1871, No. 1403.

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carry the decree of suppression into effect, and whether the printing establishment has been interfered with.

And before we express a definite opinion we ought to be supplied with specific information as to the nature of the French complaint, *i.e.*, whether it is founded upon the fact of the suppression having taken place at all, or whether on the ground of informality with respect to the French Consul or otherwise.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 40.

*Memorandum by the Law Officers respecting the "Bosphore Égyptien."*

Right of Government to suppress a newspaper.

IT seems clear that the Egyptian Government has the right to suppress a newspaper the publication of which tends to create disorder. Such being the right in respect of the natives of the country, it equally exists in relation to foreigners, of course including French subjects.

Proper procedure in such cases.

The procedure in order to carry such suppression into effect (in cases where it is necessary to enter a dwelling-house) is regulated and controlled by the Protocol, under which, if the domicile, a dwelling-house of a Frenchman, be entered, notice of the intended entrance should be given to the French Consul.

Good cause for suppression in this case.

In the present case we think there can be no doubt that the Egyptian Government had good cause for, and was well within its right, in suppressing the "Bosphore Égyptien." Such would have been the case if the newspaper had been published by an Egyptian subject, and in relation to the Press Laws a Frenchman seems to be in no way exempt from their operation, they being equally applied. If, in the execution of these Laws, a wrong be done to a Frenchman, his remedy is to be sought from the International Tribunals, which have full authority to afford redress.

Remedy to be sought from International Tribunals.

Government exceeded their powers in closing the printing-office.

So far as we can gather from the facts before us, the suppression of the newspaper was justified for the reasons we have referred to, and therefore, so far as the substance of the complaint extends, the Egyptian Government has a good answer to make. But the right to suppress the newspaper gives no excuse for doing more than taking possession of the paper itself and preventing its publication.

It seems, however, that the Police Agent, Mr. Fenwick, has entered the printing-office belonging to Serrière, caused the printers to leave the office, and closed its doors so as to prevent the business of the printer being there carried on. That business does not appear, as far as we can judge, to have reference only to the printing of the "Bosphore Égyptien." It seems likely to be of a more general character. But whether such be the case or not, we think that there has been an excess of interference with Serrière's property and his right of action, in closing the printing-office and preventing any business being there carried on.

The distinction we have thus drawn between the suppression of a newspaper and the closing of premises upon which the business of printing was carried on was fully recognized in a case lately determined by the International Tribunal at Alexandria, in which it was held that a French subject had no cause of complaint on account of the suppression of the newspaper belonging to him, but that he was entitled to recover substantial damages in respect of the closing of his printing business, an act held not to be necessary for, or incidental to, the suppression of the newspaper.

*April* 18, 1885.

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## No. 41.

*Opinion of the Law Officers of the Crown with regard to the Suppression of the "Bosphore Égyptien."*

*April* 22, 1885.

Suppression of the "Bosphore Égyptien," and forcible closing of the printing-office.

WE have now obtained possession of much fuller information than when we wrote the former Memorandum for Lord Granville's assistance.

It seems now clear that the Egyptian Government, in issuing the Decree of the 14th April, and in acting under it, assumed that they were putting in force the Press Law of 1881.

Provisions of the Press Law of 1881 affecting the case.

It becomes necessary, therefore, in the first instance, to determine what are the powers conferred by that Law. By Article 1 no person can carry on the business of a printer in Egypt without the authorization of the Minister of the Interior, and such authorization can always be withdrawn "s'il y a lieu."

Article 2 provides that clandestine printing establishments shall be closed, and the owners and occupiers punished with a penalty of 5,000–15,000 piastres and the confiscation of the material; and every printing establishment not authorized is to be deemed to be "clandestine."

Under Article 13 the Egyptian Government has the power, in the interests of good morals, religion, or order, to suppress or suspend any newspaper by Decree of the Minister of the Interior after two warnings, or without warning by virtue of a decision of the Council of Ministers.

Article 16 provides that if the publication of a newspaper ordered to be suppressed continues under the same or a disguised title, the authors, managers, or printers shall be punished with a money-penalty for each number published in contravention of such order, without prejudice as against the printer to the withdrawal of his authorization, and the closing of the printing establishment.

By Article 20 seizures and confiscations are to be effected by administrative process, and in the same Article it is provided "that the penalty, the suppression, and suspension in the cases dealt with by the present Law shall be inflicted, without appeal, by our Minister of the Interior, independently of all judicial action."

Such appear to be the portions of the Press Law affecting the present case. But we postpone the consideration of the question whether this Law, as a whole or in part, affects French subjects. We proceed to consider what have been the acts and proceedings of the Egyptian Government in connection with, and incidental to, the suppression of the "Bosphore Égyptien."

Action of the Egyptian Government in connection with the suppression.

It appears that on the 29th February, 1884, an Order was issued by which the "Bosphore Égyptien" was suppressed; but no step was taken to carry such Order into effect until the events of the 10th April, 1885. At that date the newspaper was printed by a French subject—one Serrière—who appears to have carried on a general printing business at a distance from the office where the "Bosphore Égyptien" was edited.

We can find no trace of any withdrawal from Serrière of the authorization which he had received to act as a printer.

On the 8th April the Order under which the seizure took place was published. It recites the former Order of Suppression (29th February, 1884), that, notwithstanding that Order, the publication of the journal had continued, and that, in certain numbers, most objectionable articles had been published; that, without authorization, the newspaper had been published in Arabic; and then orders that, by virtue of the Press Law of the 26th November, 1881, the Governor of Cairo is charged to proceed to the closing of the printing establishment of the "Bosphore Égyptien," in order to prevent the printing of the newspaper.

In pursuance of this Decree, and in order to carry it into effect, the Egyptian police proceeded to enter, by force, upon the premises on which Serrière carried on his printing business. They expelled his employés, and then closed and sealed the doors and put a guard upon them, a condition of things which has been substantially maintained until the present time.

Egyptian action not strictly legal;

Still, considering the bare question whether the terms of the Press Law justified the proceedings, if taken in respect to an Egyptian subject, we are of opinion that the course pursued was not strictly legal.

The entry upon and closing of the printing premises must be justified, if justification can be found, under Article 16 of the Press Law, above set out; but that Article appears to us to impose, for the continued publication of a journal after suppression, a money penalty; and in the case of the printer the withdrawal of the authorization and the closing of the printing establishment are reserved, as not being interfered with by the imposition of the money penalty. The authorization and closing referred to in this Article 16 must have reference to the authorization and power of closing mentioned in Articles 1 and 2. It will be observed that the closing of the establishment mentioned in Article 2 can only take place after the authorization has been withdrawn.

As we have above stated, the authorization which had been granted to Serrière does not appear to have been withdrawn; and the Decree itself does not allege in its recitals that he was carrying on his printing business without authorization, and

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therefore the condition precedent to the right to enter upon and close the printing establishment appears to be wanting.

owing to the absence of the withdrawal of the printer's authorization.

The result, therefore, we have arrived at is, that in the absence of the withdrawal of Serrière's authorization, there was no legal power in the Egyptian Government to enter upon and close the printing establishment, even if it had belonged to an Egyptian subject.

Question as to the applicability of the Press Law of 1881 to French subjects.

But the grave question now arises whether the Press Law of 1881 applies wholly or in part to French subjects.

The Capitulations which confer rights upon foreigners are in many respects based upon the view that the Ottoman Tribunals are not sufficiently trustworthy to administer justice to foreigners, and therefore the result appears to be arrived at that if it be sought to punish subjects of the nations enjoying the benefit of the Capitulations, either in respect of their person or property, the necessary trial should be held before, and sentence imposed by, a foreign and not a native Tribunal.

On the other hand, apart from this consideration of inflicting punishment for offences, the Egyptian Government retains to itself the right to regulate and control the manner in which its internal affairs shall be conducted, and if its laws be equally applicable to natives and foreigners, foreign subjects who seek the protection of the Egyptian laws by residing in Egypt become subjected to them.

It, therefore, has to be determined whether the penalties and suppression of the Press Law can, in accordance with Article 20, be imposed and carried into effect by means of an administrative act as would be the case if the offender were an Egyptian subject, or whether the proceedings are so much of a punitive character as to entitle the French subject to claim that his liability to them should be imposed by a Judical Tribunal of foreign composition.

It is material to this consideration (and also to the diplomatic view of the case) to remember that the French Government have protested that French subjects were not bound by the Press Law of 1881 in its entirety. And this view appears to a certain extent not to be unreasonable, because the present English Law Officers, on the 1st February, 1882, expressed the opinion which appears to have been in accordance with the views of the Foreign Office, that whilst the portion of the Press Law, which regulated the terms upon which newspapers might be published, was well enacted by the Egyptian Government, yet that some of the Articles (amongst others Article 20) were objectionable in their character, and ought to be modified. But applying the French protest against the Press Law to Article 20 only, which raises the question whether that Article is of a penal character or only one of regulation, it is a most important fact, when determining that question, to remember that in 1880, when the Turkish Government called upon the British Consul at Constantinople to be present when the Turkish officials entered upon the domicile of the editor of the "Levant Herald," whose printing press had been ordered to be closed "par voie administrative," the English Government refused to accede to such request, upon the ground that there had been no previous trial and Judgment in accordance with the Capitulations.

There is no doubt that if the view be adopted that the Egyptian Government cannot by a mere administrative act close the printing establishment of a foreigner, it may cause considerable embarrassment and difficulty to that Government. On the other hand, it must be borne in mind that if the Turkish or Egyptian Government could in any part of the Ottoman dominions by administrative acts affect the persons or property of foreigners to the extent even of closing their premises against them, the protection intended to be secured by the Capitulations might be most seriously interfered with.

Strong arguments in favour of French view.

It appears to us therefore that a question of much gravity is raised by the contention in this respect of the French Government, which can be supported by strong arguments, and certainly cannot be said to be groundless.

It must also be remembered that the protest now made against the action of the Egyptian Government is not made in consequence of these very acts. The protest against the applicability of the Press Law to French subjects was made some time ago, and has been persisted in ever since.

Case as to closing of Serrière's office one for consideration of Her Majesty's Government.

The proceedings immediately preceding and in relation to the entry and closing of Serrière's establishment have still to be dealt with. Notice appears to have been given to the French Consul of the intention to enter upon the premises, and this notice was no doubt intended as a compliance with the Article of the Capitulations which requires such notice to be given before the premises of a Frenchman are entered.

The French Consul, in reply to this notice, protested against the threatened action of the Egyptian Government, contending that they were not entitled to take such steps against a French subject; and he stated that he should feel it his duty to resist the attempt by force.

Notwithstanding this intimation the police authorities proceeded to the premises of Serrière, and upon an official of the French Consulate, who arrived on the spot, protesting against their action, and saying he would only yield to force, Major Fenwick, the officer in command of the police, touched him on the shoulder, which it was agreed should be regarded as an intimation that Major Fenwick was prepared to remove the French official by force, and the establishment was then cleared of the employés of Serrière and closed. Although no actual violence was used, the intervention of the French Consular Officer was thus forcibly put aside.

It is entirely for Her Majesty's Government to determine what is the proper deduction to be drawn from the above facts.

Advisable to have communicated with the French Government before taking forcible action.

There is, as we have pointed out, much to be said in support of the view taken by the French Government, that the action of the Egyptian Government in closing the printing establishment was wholly illegal. And, though there are arguments of weight on the other side, it certainly cannot be said that their view is clearly wrong. Under these circumstances, even if the better opinion be that French subjects are liable to such administrative action as that complained of, it is matter for consideration whether, in view of the protest of the French Consul, it was right to settle the controversy by forcibly removing the Representative of the French Government, and whether the proper course would not have been, in view of the attitude which he announced his intention of taking, to communicate first with the French Government on the subject.

Suppression of the paper and closing of printing office are distinct matters.

Whilst, therefore, it seems that the Egyptian Government was well within its right in suppressing the "Bosphore Égyptien," a view which M. de Freycinet himself appears to accept, we think that that subject must be separated from the proceedings taken to close the business premises of a Frenchman under the circumstances above related.

Upon the legality of this latter proceeding we have already expressed our doubts, and have also pointed out the considerations affecting it from a diplomatic point of view.

H. J.
F. H.

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*List of Papers.*

Sir E. Baring, No. 286, March 29, 1885.
To ditto (Telegraphic), No. 94, April 1, 1885. Confidential No. 5148, p. 1.
Sir E. Baring (Telegraphic), No. 195, April 9, 1885. Confidential No. 5148, p 17.
Ditto, No. 297, April 2, 1885. Confidential No. 5148, p. 2.
Ditto (Telegraphic), No. 209, April 14, 1885. Confidential No. 5148, p. 37.
Anglo-Turkish Protocol, July 28, 1868. Treaty No. 510.
Egyptian Press Law, November 26, 1881: "Egypt No. 5 (1882)," Foreign Office No. 2552, p. 18
Hertslet's Treaties on Trade, Turkey, p. 130.
State Papers, vol. lix, p. 389.
Queen's Advocate, February 14, 1867. In Confidential No. 1745.
Ditto, March, 23, 1867. In Confidential No. 1745.
Ditto, May 7, 1867. In Confidential No. 1745.
Law Officers, July 25, 1872. In Confidential No. 4098.
Ditto, August 9, 1872. In Confidential No. 4098.
Ditto, October 12, 1874. In Confidential No. 4331.
Ditto, March 8, 1875. In Confidential No. 4370.
Parliamentary Paper, Stephanos Xenos, August 12. 1871, No. 1403.
To Sir E. Baring (Telegraphic), No. 106, April 14, 1885. Confidential No. 5148, p. 37.
Sir E. Baring (Telegraphic), No. 211, April 15, 1885. Confidential No. 5148, p. 41.
Ditto (Telegraphic), No. 213, April 16, 1885. Confidential No. 5148, p. 49.
Hertslet's Treaties, vol. xiv, p. 305: Organic Law of the Mixed Tribunals.
Lord Lyons (Telegraphic), No. 13, April 16, 1885. Confidential No. 5148, p. 50.
Sir E. Baring (Telegraphic), No. 216, April 17, 1885. Confidential No. 5148, p. 51.
Ditto (Telegraphic), No. 219, April 18, 1885. Confidential No. 5148, p. 54.
Ditto (Telegraphic), No. 221, April 19, 1885. Confidential No. 5148, p. 55.
Ditto (Telegraphic), No. 227, April 21, 1885. Confidential No. 5148, p. 63.
Ditto (Telegraphic), No. 228, April 21, 1885. Confidential No. 5148, p. 63.

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## No. 42.

*The Law Officers of the Crown to Earl Granville.*—(*Received May* 21.)

Egyptian Loan.

as to issue of without waiting for approval of the guarantee by the Austro-Hungarian Chambers.

My Lord, *Royal Courts of Justice, May* 20, 1885.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 14th instant, stating that he was to transmit to us the accompanying copy of a Convention* between Her Majesty's Government and the Governments of Germany, Austria-Hungary, France, Italy, Russia, and Turkey relative to the raising of a loan for the Egyptian Government.

That Mr. Currie was to call our attention to Article VII, by which the Signatory Powers undertook to guarantee, jointly and severally, or to ask authority of their Parliaments to guarantee, jointly and severally, the regular payment of the annuity of the loan in question.

That Mr. Currie was to state that Her Majesty's Government had urged the Governments of those countries which had representative institutions to obtain legislative sanction to the guarantee with as little delay as possible, and that as regarded France, Italy, and Germany, they had received assurances which lead them to hope that the necessary Bills would be brought in and passed by the Chambers in the course of the present month.

That as, however, the Austrian Parliament was about to be dissolved, the Austro-Hungarian Government had decided to defer the consideration of the matter until the meeting of the new Chamber in the autumn, when they had no doubt of obtaining Parliamentary assent to the Convention; and that Mr. Currie was to request us to favour your Lordship with our opinion whether, in those circumstances, Her Majesty's Government would be justified in proceeding forthwith with their arrangements for the issue of the loan without waiting for the necessary Bill to be passed by the Austro-Hungarian Chambers. Whether the guarantee of the Austro-Hungarian Government (without the sanction of their Parliament) should be expressed in the prospectus for the bonds; or whether the arrangements should be made altogether irrespective of Austria-Hungary; and generally as to what course we would recommend for adoption by Her Majesty's Government under the circumstances.

In obedience to your Lordships commands we have the honour to report—

Convention empowers Egyptian Government to issue the loan.

That by Article I of the Convention power is given to the "Egyptian Government" to issue the loan "under the guarantee resulting from the present Convention."

Egyptian Government may issue it without waiting for the consent of the Austro-Hungarian Chambers.

By Article VII the Governments named do not absolutely undertake to guarantee the interest, but they only undertake either to guarantee, jointly and severally, or to ask authority from their Parliaments to guarantee, jointly and severally, the regular payment of the annuity. Under these circumstances we think the Egyptian Government would be justified in issuing the loan without waiting for the necessary Bill to be passed by the Austro-Hungarian Chambers.

Suggesting form of prospectus.

We think the best course would probably be to set out in the prospectus the VIIth Article of the Convention; and to state that the Austro-Hungarian Government propose submitting the matter to their Parliament in the coming autumn.

We gather that it is not intended to issue the prospectus until the matter has been submitted by the other Governments to their Parliaments.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 43.

*The Law Officers of the Crown to Earl Granville.*—(*Received May* 22.)

Decree deducting 5 per cent. from the coupons of the Egyptian Debt.

My Lord, *Royal Courts of Justice, May* 22, 1885.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 21st instant, stating that he was to transmit to us therewith the papers noted in the accompanying list,† relative to the issue on the 12th ultimo by the Egyptian Government of a Decree authorizing the deduction of 5 per cent. from the coupons of the Egyptian Debt falling due on the 15th April and 1st instant.

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* "Egypt No. 7 (1885)." Treaty No. 740.

† (A.) Declaration of March 17, "Egypt No. 6 (1885)," Treaty No. 739; (B.) Sir E. Baring, No. 203, Telegraphic, April 11, Confidential No. 5147, p. 14; (C.) Sir E. Baring, No. 323, April 14, Confidential No. 5147, p. 22; (D.) Sir E. Baring, No. 282 Telegraphic, May 20, 1885, Confidential No. 5147, p. 44.

That by the Declaration signed in London on the 17th March (Inclosure A), the Governments of Great Britain, Germany, Austro-Hungary, France, Italy, and Russia declared their willingness to accept a Decree of His Highness the Khedive expressed in the terms of the draft Decree annexed to that Declaration, and by Article 12 of that Decree a tax of 5 per cent. was established on the amount of the coupons of the Egyptian Debt; the tax, however, only to be levied on the amount of the half-yearly payments falling due in 1885 and 1886.

That it would be seen from the telegram from Her Majesty's Agent and Consul-General at Cairo, of which a copy was inclosed (Inclosure B), that the Egyptian Government having informed the Treasury of the Public Debt that that Decree would be promulgated on the 11th April, and that in virtue of that Decree 5 per cent. should be deducted from the coupon of the Preference Debt due on the 15th, the Commissioners replied by expressing the opinion that the Decree could not be considered valid until the guarantee of the loan, provided for by Article 2 of the Declaration of the 17th March, had been approved by the Chambers of the different Powers concerned. That they, however, stated that they were prepared to deduct the 5 per cent. on the strength of a temporary Decree to be issued by the Khedive.

That the Egyptian Government accordingly issued the Decree, of which a copy was annexed (Inclosure C), authorizing the Treasury of the Public Debt and other officials concerned to levy the tax in question upon the amount of the coupons falling due on the 15th April and 1st May.

Protest of Austria, France, Germany, and Russia.

That Mr. Currie was to forward a copy of a telegram from Sir E. Baring (Inclosure D), in which he stated that the German Consul-General at Cairo had protested against the Decree, that action being supported by the Representatives of Austria, France, and Russia.

That Nubar Pasha had replied that, as the Decree was considered illegal, it should be at once cancelled, and that the 5 per cent. which had been deducted should be repaid to the bondholders. That a Decree, cancelling that of the 12th April, had been signed by the Khedive, but that Sir E. Baring had requested Nubar Pasha not to issue it until he had time to refer the question home.

That our opinion was requested as to whether the Egyptian Government were legally justified in issuing a temporary Decree directing the 5 per cent. deduction to be made before the Parliaments of the several countries, parties to the Convention of the 17th March, had given their assent to its provisions, and, if so, in what terms a statement to that effect should be addressed to the protesting Powers, either by the Egyptian Government, or by Her Majesty's Government; and if such provisional Decree was not proper, in what manner its withdrawal should be made and announced to the Powers, parties to the Convention.

In obedience to your Lordship's commands we have the honour to report—

That, by the second paragraph of the Declaration issued on the 17th March, the Governments of Germany, Austria, France, Great Britain, Italy, and Russia undertake to sign a Convention in the terms of the annexed draft. They also "declare their willingness to accept a Decree of His Highness the Khedive expressed in the terms of the annexed draft Decree."

Egyptian Government not legally justified in issuing the Decree.

We reserve for consideration the question whether this Decree is dependent on, and can only be issued after the consent of the various Parliaments have been obtained to the Convention, and consider, first, whether the temporary Decree of the 12th April was one which the Egyptian Government was legally justified in issuing. It appears to us that it was not. It was designed to give effect to one only of the many provisions contained in the draft Decree annexed to the Declaration of the 17th March. And we do not think that the Governments which had declared their willingness to accept a Decree "in the terms of the annexed draft" were precluded from objecting to the temporary Decree of the 12th April.

Issue of the Decree need not be postponed until the guarantee of the loan has been approved by the Chambers of the different Powers concerned.

We turn now to the question whether the Khedive is in a position to issue the Decree in the terms annexed to the Declaration, without waiting for the Parliamentary sanction of the different countries to the guarantee contemplated by the Convention. We can find nothing in the terms of the Declaration, or of the draft Decree itself showing that the issuing of the Decree must be postponed.

The declaration of the willingness of the Governments to accept the Decree is made in explicit terms, and does not purport to be subject to any condition. It immediately follows the undertaking to sign the Convention, and is couched in similar language; and the undertaking was clearly intended to create an immediate obligation, which was, in fact, at once fulfilled.

The terms of the draft Decree appear to us to support the same view. Article 1

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merely states the authority to issue the loan, leaving the rate, conditions, and dates of issue for a subsequent Decree. Moreover, Article 12, which provides for the tax on the coupons, limits its operation to the half-yearly payments falling due in 1885 and 1886, clearly implying, as it seems to us, that the Decree was to be issued prior to the first half-yearly payment in 1885.

And it could not have been anticipated that all the Parliamentary sanctions would have been obtained by that date. If the contention that the Decree cannot legally be issued until after their Parliamentary sanctions are obtained be well-founded, the two years for which the tax is established might not improbably be reduced to one.

In our opinion, therefore, the true view is that the issuing of the Decree need not be postponed, as the Commissioners of the Caisse contend, until the guarantee of the loan has been approved by the Chambers of the different Powers concerned.

If, indeed, the Egyptian Government were not in a position to raise the 9,000,000*l.* at 3½ per cent. interest, it might be contended that the foundation of the whole transaction failed; but we apprehend this is not the case.

**Course to be taken is a question of policy.**

What course should be taken under the circumstances is a question of policy which cannot be dissociated from the point raised in your Lordship's second letter of the 21st May, and we have made such suggestions as occur to us in our Report in answer to that letter.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 44.

*The Law Officers of the Crown to Earl Granville.*—(*Received May* 22.)

(B.)

My Lord,

*Royal Courts of Justice, May* 22, 1885.

**Egyptian Loan.**

**As to issue of without waiting for approval of the guarantee by the Parliaments of the Powers.**

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 21st instant, stating that, by direction of your Lordship, he had the honour to inform us that, subsequently to the reference to us upon the subject of the proposed issue of the Egyptian Loan contained in his letter of the 14th instant, your Lordship received from Her Majesty's Ambassador at Berlin a despatch* stating that, in reply to an intimation from him to the German Minister for Foreign Affairs of his regret that the Bill concerning the guarantee of the loan had not been submitted to the German Reichstag, Count Hatzfeldt observed that the loan could not be raised until all the Powers had obtained the sanction of their Parliaments to the guarantee, except in the case of Russia, and that time would not be lost through the delay, as a similar delay was unavoidable in the case of Austria.

That the present position as regarded the guarantee of the several Powers was as follows:—

The Austro-Hungarian Government has deferred bringing the matter before its present Parliament, as it is about to be dissolved, and intends to submit the question to the new Parliament, probably in September.

The German Government defers submitting the guarantee to its Parliament, on the alleged ground that until the Austro-Hungarian Parliament can be consulted the loan cannot be issued.

The French Government has brought in a Bill to authorize the ratification of the Convention. It has been favourably reported upon by the Committee of the Chambers to which it was referred, and the French Minister for Foreign Affairs has informed Her Majesty's Ambassador that he has every reason to expect that the Bill will be passed with fair speed by both Chambers.

The Italian Government laid the Bill, to sanction the Convention, before the Chamber of Deputies on the 28th ultimo, and the question will be discussed as soon as the necessary papers have been printed.

That there being no Parliament to consult, either in Russia or Turkey, no question arose as to delay being caused by a reference to such a body, but that Article I of the Convention recorded the consent of the Sultan to the issue of the loan (the Khedive being precluded from issuing loans without the assent of the Sultan), and that until the Convention should have been formally ratified, it might be contended that it was not technically valid.

That, under the circumstances above set forth, and those stated in Mr. Currie's letter to us of the 14th instant, your Lordship desired to be favoured with our opinion on the course which should be pursued by Her Majesty's Government as to the issue of the loan before assent had been given to the Convention by the Parliaments of some, or all, of the countries concerned, or which had been ratified by the Sultan and the Emperor of Russia, and also as to the form in which the prospectus should be drawn in the event of our advising that the loan could properly be issued at once, and what communications should be addressed by Her Majesty's Government to the other Powers on the subject.

That Mr. Currie was further to call our attention to the fact that your Lordship had been in communication with Russia, Italy, Germany, and Austria as to the declaration of the guarantee on the bonds being signed on their behalf by a French and an English official, and that the question arose as to the terms in which the Declaration should be worded in the absence of the Parliamentary confirmation of the Convention of one or more of the countries concerned.

In obedience to your Lordship's commands we have the honour to report—

**As to ratification of the Convention by the Sultan.**

That we are not sure that we understand what is meant by the ratification of the Convention by the Sultan. We presume that both the Declaration and the Convention have now been signed by the Turkish Ambassador, under the authority of his Sovereign. If so, there would appear, as far as we are able to judge from the information before us, to have been a sufficient consent by the Sultan to the loan.

**Egyptian Government may issue the loan without waiting for the approval of the guarantee by the Parliaments of the Powers.**

We have already expressed our view that upon the true construction of the Convention the Egyptian Government may issue the loan without waiting for the submission to the various Parliaments provided for by Article VII.

In addition to the reasons for this opinion contained in our Report of the 20th May, we would point out that by the terms of the Convention, the Agreement embodied in it has immediate effect, and that the Convention is binding on the different Powers, without its being referred to the Parliaments of the different countries, to which bodies the question of the *guarantee alone* has to be submitted. The considerations to which we have drawn attention in our Report of this date on the question of the temporary Decree, afford further arguments in support of the same view.

**Suggestions on the question of policy.**

Upon the question of policy we feel that we can only submit certain suggestions for your Lordship's consideration. If your Lordship concurs in the opinion which we have expressed that the Egyptian Government is entitled to issue the loan without waiting for the approval of the guarantee by the Parliaments of the Powers, we suggest that this view should be communicated to the Powers, and enforced by the arguments which exist in its favour. It would also be desirable strongly to urge upon the different Governments the disastrous effects of any further delay in issuing the loan.

**Disastrous effects of further delay in issuing the loan should be strongly urged on the different Governments.**

As it is impossible to anticipate the replies that may be made to such representations, we can offer no advice as to the course that should be taken until the replies have been received. In connection with these representations to the Powers, we think great stress should be laid upon the fact that it was clearly intended by the parties to the Declaration of the 17th March that the half-yearly coupons falling due in the present year should be subject to the tax provided for by Article 12 of the Decree.

**Mode of dealing with the difficulty in respect of the taxation of the coupons now falling due.**

There seem to be only two ways of dealing with the difficulty which arises in respect of the taxation of the coupons now falling due. The one course would be to issue the Decree in its entirety, and act under it. But this step gives rise to substantially the same questions as those which affect the immediate issuing of the loan, and would have to be dealt with on the same basis of argument, when communicating upon the subject with the other Powers. We must, however, point out that it is very unfortunate that in the temporary Decree of the 12th April it is recited that the Decree annexed to the Declarations of the 17th March cannot be promulgated until the guarantee "sera définitive." Although it appears to be in contemplation to recall this Decree, this admission will probably be strongly urged against any departure from the terms of such recital. But the only alternative course would be to adhere to action under the temporary Decree, a course which we have already stated, in our opinion, cannot be maintained against the opposition of the Powers. Whether that opposition can be removed, and the consent of the Powers to a solution of the existing difficulty, by the issue of such a Decree, can be obtained, it is for your Lordship to consider.

**Form of the prospectus to be adopted.**

As regards the questions of form submitted to us, we do not regard your Lordship as desiring us to express our opinion upon the form, in all particulars, of the

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* Sir E. Malet, No. 218, May 12, 1885. Confidential No. 5147, p. 42.

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prospectus to be adopted when the issue of the loan is determined on; we would refer your Lordship to our Report of the 20th May as indicating our views as to the statements relating to the position of the guarantee, which should be contained in the prospectus.

**As to necessity for the Declaration appearing on the bonds.**

We do not understand that there is any necessity for the Declaration appearing on the bonds. They are issued by the Egyptian Government, and the guarantee resulting from the Convention is only collateral to the principal contract.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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### No. 45.

*The Law Officers of the Crown to Earl Granville.*—(*Received May* 25.)

*The Attorney-General's Chambers, New Court, Temple,*
*May* 24, 1885.

My Lord,

Egyptian Loan.

**Difficulty in framing a form of guarantee to appear on the bonds.**

IT is impossible to frame any form of guarantee to appear on the bonds without raising grave questions of substance.

In 1855 England and France had finally acquiesced as to their joint guarantee and its terms, and we presume the form of the bonds was approved by both countries. In the present instance, although it cannot yet be anticipated whether Austria-Hungary and Germany, or even France, will or will not acquiesce in the present issue of the loan, there can be no doubt the two former countries will not be disposed to regard any guarantee at the present time as absolute.

If, therefore, the Egyptian Government were to make any statement on the bonds appearing to pledge the absolute credit of those Governments, grave complaint would be made both on the part of the Governments and of the subscribers to the loan.

The answer of the German Government to the representation about to be made in respect of the necessity of immediately issuing the loan may tend to mitigate the difficulty. But under present conditions, if it be regarded as absolutely necessary to refer in the bonds to the guarantee, we think it will be difficult to do more than state—

Submit form of statement to appear on the bonds.

"That this bond is issued under and by virtue of the powers conferred on the Khedive of Egypt by the Declaration and Convention of the 17th March, 1885, agreed to by common consent between the Governments of Great Britain, Germany, Austria-Hungary, France, Italy, Russia, and Turkey."

If the French and English signatures be attached to this statement, probably it will be regarded as sufficient by persons desirous of subscribing to the loan.

If before the loan be issued a protest should be received from any of the Governments against its being issued before their Parliaments have been consulted, we think that the desirability of making even the above statement may have to be reconsidered.

**Its adoption should be notified to the Contracting Governments before issuing the bonds.**

We would also suggest, for your Lordship's consideration, whether, before issuing the bonds containing any reference to the Declaration, some notification of the fact should or should not be conveyed to the Contracting Governments.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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### No. 46.

*The Solicitor-General to Mr. Currie.*—(*Received May* 25.)

Dear Mr. Currie,
*Paris, May* 24, 1885.

Egyptian Loan.

**Approve draft Circular generally, but propose addition as to views of Her Majesty's Government relative to delay in issue of loan.**

THE Attorney-General and I have perused the draft forwarded by you to us. We approve of it generally, but suggest certain alterations in pencil.

It occurs to us that the draft should contain also some reference to the question of delaying the issue of the loan until all the Parliaments have joined in the guarantee; otherwise it might be taken that Her Majesty's Government concur in the view that the loan cannot be issued until that date. Mr. Gladstone suggested that

we should take credit with the Powers for a willingness to assist in issuing at an early date the loan which all the Powers thought expedient and urgent, and to the immediate issue of which with the guarantee their Parliamentary difficulties are the only suggested obstacle, and that we should not admit that the Khedive cannot issue the loan until all the Contracting Parties have brought the matter before their Parliaments, inasmuch as we do not entertain this view.

Yours, &c.
(Signed) FARRER HERSCHELL.

P.S.—Whether what we suggest above should be an addition to your draft or form the subject of a despatch of cotemporaneous date it will be for you to consider. Subject to your better opinion I venture to suggest the former.

F. H.

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### Annex.

(*Circular as finally amended.*)

*Earl Granville to Viscount Lyons.*[*]

(No. 531.)
*Foreign Office, May* 26, 1885.

My Lord,

IT appears from a remark recently made to Her Majesty's Ambassador at Berlin by Count Hatzfeldt, that the German Government do not consider that the new Egyptian Loan can be raised until all the Powers parties to the Convention of the 17th March, except Russia, shall have obtained the sanction of their Parliaments to the guarantee.

Her Majesty's Government are unable to concur in this view.

By the terms of the Convention the agreement embodied in it has immediate effect, and the Convention is binding on the different Powers without its being referred to the Parliaments of the respective countries. It is the question of the guarantee alone which has to be submitted to the Parliaments.

By Article VII of the Convention the Governments therein named do not absolutely undertake to guarantee the interest on the loan, but they only undertake either to guarantee jointly and severally, or to ask authority from their Parliaments to guarantee jointly and severally, the regular payment of the annuity; and by the 1st Article power is given to the "Egyptian Government" to issue the loan "under the guarantee resulting from the present Convention."

By the second paragraph of the Declaration signed on the 17th March the Governments of Germany, Austria, France, Great Britain, Italy, and Russia undertook to sign a Convention in the terms of a draft thereto annexed. They also declared "their willingness to accept a Decree of His Highness the Khedive expressed in the terms of the annexed draft Decree."

Under the circumstances above set forth, and those described in my despatch of this day relating to the deduction of the 5 per cent. from the coupons, Her Majesty's Government are of opinion that the Egyptian Government would be justified in issuing the loan without waiting for the sanction of the guarantee by all the Parliaments concerned.

I am, &c.
(Signed) GRANVILLE.

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### No. 47.

*The Law Officers of the Crown to Earl Granville.*—(*Received May* 30.)

[In reply to the following Reference, the Law Officers report as below:—]

*Mr. Currie to the Law Officers of the Crown.*

*Foreign Office, May* 28, 1885.

Gentlemen,

**Sinking fund of the Domains Loan.**

I HAVE the honour to transmit to you, by Earl Granville's direction, the inclosed telegram (A) from Her Majesty's Agent and Consul-General at Cairo,

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[*] Also to Sir J. S. Lumley (No. 156), Sir A. Paget (No. 116), Sir E. Malet (No. 245), and Sir E. Thornton (No. 204). See Confidential No. 5147, p. 60.

Claim of Commissioners for its payment.

relative to the question of the claim by the Commissioners of Domains against the Egyptian Government for the payment of the sinking fund of the Domains Loan, which, by Article 16 of the draft Decree annexed to the Declaration recently signed in London, was to be suspended from the date of the signature of the Convention of the 18th March (Inclosure B). I am to state that, in view of the embarrassment in which the Egyptian Government may be placed if this claim is pressed, as under the contract of April 1880 between Messrs. Rothschild and the Egyptian Government (Inclosure C) the Province of Keneh may become pledged to the Domains Loan, his Lordship addressed a letter to Messrs. Rothschild, as the agents for the loan (Inclosure D), suggesting that the Commissioners of Domains should be advised not to make it; as the provision of the Decree, whenever its issue was authorized, would be retrospective, and would necessitate the refunding of the money to the Egyptian Government. Messrs. Rothschild replied (Inclosure E), proposing that Her Majesty's Government should instruct the Domains Commissioners, through them, temporarily to suspend the sinking fund, and undertake to protect them against the consequences.

I am to request you to favour his Lordship with your opinion whether such an instruction or such an indemnity could properly be given, and whether it would require Parliamentary authority, and with any further observations you may have to offer on the subject.

I am, &c.
(Signed) PHILIP W. CURRIE.

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*Report.*

Legally, demand should be paid.

Treating the question submitted to us from a strictly legal point of view, we think that the Commissioners of the Domain Loan ought to demand the sum necessary to meet the sinking fund, and that the Egyptian Government should pay it.

Legal consequences of absence of demand and payment not substantial.

But the legal consequences arising from the absence of such demand and payment cannot be of a substantial character. Until the Decree is issued there will be no person in a position to complain of actual individual loss in consequence of the necessary sum not having been applied to the sinking fund (which creates a substantial distinction between the matter now under consideration and the question submitted to us in relation to the right to deduct a portion of the interest due to the bondholders). As soon as the Decree is issued its retrospective character will render legal the suspension of the operation of the sinking fund.

Matter a question of policy. Considerations for deciding.

The determination of the course to be taken appears, therefore, to us to depend on considerations of policy. If the payment of the sinking fund would be a cause of serious embarrassment to Egyptian finance, it may be worth while to incur some risk. But not only the financial risk, which seems inconsiderable, must be kept in view, but it is also necessary to consider how far the suspension of this particular sinking fund would be likely to give rise to difficulties with the other Powers. On this question of policy the information before us does not enable us to do more than point out to your Lordship the considerations by which it appears to us a decision must be governed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

*Paris, May 29, 1885.*

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*List of Papers.*

(A.) Sir E. Baring, No. 286, May 21, 1885. Confidential No. 5147, p. 45.
(B.) Convention of March 18, 1885. Treaty No. 740.
(C.) Contract of April 14, 1880. Confidential No. 4295, p. 307.
(D.) To Messrs. Rothschild, May 21, 1885.
(E.) Messrs. Rothschild, May 26, 1885.

## No. 48.

*The Law Officers of the Crown to Earl Granville.—(Received May 30.)*

[In reply to the following Reference, the Law Officers report as below:—]

*Mr. Currie to the Law Officers of the Crown.*

*Foreign Office, May 28, 1885.*

Gentlemen,

Tax of 5 per cent. on coupons of Domains Loan.

I HAVE the honour, by Earl Granville's direction, to state that the Commissioners of Domains in Egypt, who had intended to pay to Messrs Rothschild, as agents for the Domains Loan, the amount of the coupon due on the 1st June, less 5 per cent. to be deducted under the Convention inclosed in my letter of to-day, have now paid the whole amount, without deduction, in consequence of the protest of the Representatives of those Powers who hold that the provisions of the Decree attached to that Convention cannot yet be enforced.

Proposed retention by Messrs. Rothschild of money to meet it.

His Lordship accordingly drew the attention of Messrs Rothschild to the fact that, although the money for the coupon had been paid to them in full by the Commissioners, a claim might be set up by the Egyptian Government for the deduction of the 5 per cent., and that they might therefore perhaps consider it advisable to retain the 5 per cent. in their hands for the present in paying their bondholders.

I am to inclose their reply* stating that they cannot withhold the money from the bondholders without the authority of Her Majesty's Government; and I am to request that you will take this matter into your consideration, in connection with the papers inclosed in my other letter of to-day, and favour his Lordship with your opinion as to the course which Her Majesty's Government should pursue.

I am, &c.
(Signed) PHILIP W. CURRIE.

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*Report.*

It cannot be retained, as interest must be paid in full.

We are of opinion that, as each individual bondholder has at present a legal claim for the full amount of the interest due on the bonds held by him, it will be impossible for Messrs. Rothschild to retain any of the money placed in their hands to meet the payment of interest in full without rendering themselves liable to an action at the suit of every bondholder; and we therefore think that Messrs. Rothschild should be allowed to pay over the interest without deduction.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

*Paris, May 29, 1885.*

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## No. 49.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 11.)*

*Royal Courts of Justice, June 10, 1885.*

My Lord,

Antoun Yousef Abdel Messieh. Question as to his nationality with reference to jurisdiction regarding his property.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 30th ultimo, stating that he was to transmit to us the papers† relating to the question of the nationality of the late Antoun Yousef Abdel Messieh, which had been raised by certain relatives of the deceased before Her Majesty's Consular Court at Cairo, and before Her Majesty's Agent and Consul-General, by the Egyptian Government.

That the history of that case would be found fully stated in the despatch from Sir E. Baring No. 25, Consular, of the 18th, and its inclosures; and that Mr. Lister was to draw our particular attention to the letters from Mr. Pini of the 5th and 6th ultimo and to that from Mr. Pears of the 25th April, and also to the despatches from Mr. Borg, Her Majesty's Consul at Cairo, to Sir E. Baring, Nos. 6, 13, and 15, which formed inclosures in Sir E. Baring's despatch No. 27 of the 27th April.

That Yousef was stated to have been born in Bagdad, of British Indian parents,

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* Messrs. Rothschild, May 22, 1885.

† Sir E. Baring, No. 25, Consular, April 18; ditto, No. 27, Consular, April 27; Mr. E. Pears, April 25; Mr. S. Pini, (received) May 5; ditto, May 6, 1885; Levant Orders in Council (Confidential 2354).

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to have resided in India during his youth, and to have been recognized during his whole life as a British Indian subject.

That he was also stated to have been during many years registered in Her Majesty's Consulates, at Jeddah and Cairo, as a British subject, and to have received from the Turkish "Bureau de Nationalité" a certificate recognizing him as a British subject conformably to the Ottoman Laws of 1869.

That he married a British subject before Her Majesty's Consulate in compliance with the Consular Marriage Act, and died in Egypt in February last, leaving his widow his executrix, and his property was, in the usual course, taken possession of by Her Majesty's Consul at Cairo.

*Caveat* lodged by his relatives.

Claim of Egyptian Government to dispose of property.

That a *caveat* had, however, been lodged in Her Majesty's Consular Court by the relatives, who disputed the British nationality of the testator, and the Egyptian Government also, through Her Majesty's Agent and Consul-General, alleged that he was an Ottoman subject, and claimed that his property should be handed over to them, and they had further applied to have the question of nationality decided by diplomatic action, against which course the widow and executrix protested.

That it was urged that the question of the jurisdiction of Her Majesty's Court for Egypt and of Her Majesty's Supreme Consular Court at Constantinople in that case should be decided on the *caveat* which had been lodged by the parties who contested the British nationality of the deceased. That from the decision of the latter Court an appeal lay to the Judicial Committee of the Privy Council, and it was contended that the case was not therefore one for diplomatic interference—at all events, while the Consular Court was seized of it, and that the Secretary of State was not justified in giving any directions to the Supreme Consular Court to stay its hand.

That your Lordship was not aware of any precedent for interfering with the ordinary course of justice in such a case.

That Mr. Lister was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion on the question whether the British Consular Court should proceed with the case on the *caveat* lodged, and decide the question of its jurisdiction, or whether it should decline to proceed with the case until the question of the testator's nationality had been decided diplomatically.

In obedience to your Lordship's commands we have the honour to report—

The Consular Court should decide the question of its jurisdiction.
Its action should not be interfered with.
Egyptian Government can afterwards take diplomatic action.

That, in our opinion, the British Consular Court should proceed with the case on the *caveat* lodged, and decide the question of its jurisdiction. And we do not think the Secretary of State should interfere with its action in this respect.

This course will not deprive the Egyptian Government of the right of taking diplomatic action in case they should conceive that there is ground for it.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 50.

### *The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 20.)*

My Lord, *Royal Courts of Justice, June 19, 1885.*

Giuseppe Tabone. Petition for the remission of sentence of Consular Court at Alexandria.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 13th instant, stating that he was to transmit to us papers relating to the Petition received from Giuseppe Tabone, a prisoner in Malta Gaol, praying for a mitigation of the sentence passed upon him by Her Majesty's Consular Court at Alexandria.

That the Petition, together with the "particulars of the prison history" of the prisoner, were transmitted to the Foreign Office through the Colonial Office, and would be found in the inclosures to the Colonial Office letter of the 28th April.

That the papers had been referred to Mr. Cookson, Her Majesty's Consul and Judge at Alexandria, who tried the case, and that it would be seen, from his despatch No. 25 of the 18th ultimo, that he had been unable to refer to the notes of the evidence, which were burnt in the fire of July 1882.

That he reported, however, that, having made inquiries into the antecedents of the prisoner, he was of opinion that Her Majesty's clemency might be exercised towards him, by a partial remission of his sentence.

That it would also be seen, from the particulars of the prison history, that no previous convictions had been recorded against Tabone. That our opinion was requested as to whether there would be any objection, under the circumstances, in the remission of the remainder of the sentence.

In obedience to your Lordship's commands we have the honour to report—

Sentence may be remitted.

That we think that, in this case, the remainder of the sentence might properly be remitted.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 51.

### *The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received September 21.)*

My Lord, *Royal Courts of Justice, September 21, 1885.*

Anton Yussuf Abdel Messieh. Succession to property of the late.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 7th September instant, stating that, by your Lordship's direction, he had to transmit to us the papers noted in the accompanying list,* relating to the nationality of the late Anton Yussuf Abdel Messieh, together with the Report of the Law Officers of the Crown thereon, dated the 10th June last.

Question as to suspension of legal proceedings during discussion as to his nationality.

That the Turkish Ambassador in London had informed your Lordship that the Porte had telegraphed instructions to request that, as the nationality of Yussuf was under discussion at Constantinople, Her Majesty's Supreme Consular Court might be ordered to suspend proceedings in the case until the question of nationality was decided.

That the case was one involving the succession to personal property of large amount, and the widow and executrix, through her legal advisers, has represented that it is for the British Court to decide whether it has jurisdiction, and that there is no ground at present for interfering with the ordinary course of justice. That that view was supported by the Law Officers in their Report above referred to, and Sir Julian Pauncefote was to inclose the draft of the instructions which were sent to Her Majesty's Agent and Consul-General in Egypt founded on that Report.

That the papers which accompanied the former reference to the Law Officers were sent therewith, and Sir Julian Pauncefote was to request that we would take the same into our consideration, and that we would favour your Lordship with our opinion as to whether the Secretary of State had power to direct a stay of proceedings in the case, and that we would inform your Lordship whether we saw any reason for departing from the decision already arrived at.

In obedience to your Lordship's commands we have the honour to report—

No reason for departure from previous decision.

That this is not a case in which the Secretary of State should direct a stay of proceedings, and we see no reason for departing from the decision already arrived at in accordance with the Report of the late Law Officers of the 10th June, 1885.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 52.

### *The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received September 23.)*

My Lord, *Royal Courts of Justice, September , 1885.*

Defence of Zebehr Pasha.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 8th instant, stating that he was to transmit to us a letter which had been

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* Papers sent to Law Officers, September 7, 1885:—Sir E. Baring, No. 25, April 18; ditto, No. 27, April 27; Mr. E. Pears, April 25; Mr. S. Pini, May 5; ditto, May 6, 1885; Levant Orders in Council, Confidential No. 2354; Law Officers' Report, June 10; to Sir E. Baring, No. 32, June 26, 1885.

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Request of Messrs. Gadesden and Treherne for facilities for communication, and for information.

received from Messrs. Gadesden and Treherne,* stating that they had been instructed to take in hand the defence of Zebehr Pasha, and inquiring whether he was in the custody of the military or civil authorities, and what facilities would be afforded for communicating with him either verbally or by letter.

That we should perceive by the correspondence also inclosed therewith† that Zebehr Pasha was arrested in Egypt by the British military authorities, and placed on board Her Majesty's ship "Iris," in which vessel he was conveyed to Gibraltar. That he was there detained with certain others under a special Ordinance, of which a copy would be found among the papers.

That Mr. Currie was to request that we would favour your Lordship with our opinion whether the applicants were entitled, under the circumstances, to hold communication and to receive any further information beyond what was matter of public knowledge, and generally as to the answer which should be returned to them.

In obedience to your Lordship's commands we have the honour to report—

They are not entitled to communicate with him or receive special information.

That we are of opinion that the applicants, Messrs. Gadesden and Treherne, are not entitled at present to hold communication with Zebehr Pasha, or to receive any further information beyond what is matter of public knowledge.

Suggesting answer to them.

That a reply should be sent to Messrs. Gadesden and Treherne's letter of the 31st August, to the effect that Zebehr Pasha is in custody under a special Ordinance of the 27th March, 1885, and that before deciding whether any facilities can be afforded for communicating with him, Her Majesty's Government will require further information as to the person by whom any communication, if verbal, is to be made, and, if in writing, the nature of the communication proposed to be made.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 53.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received October 17.)*

My Lord, *Royal Courts of Justice, October* 17, 1885.

Tribute paid to Turkey. Question as to non-payment of that for Zeyla.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 28th ultimo, stating that he was to lay before us the following facts relating to the Egyptian tribute now paid to the Sultan of Turkey, and to submit, for our consideration and advice, the question hereinafter stated.

Origin of tribute.

That the Egyptian tribute owed its origin to the Treaty of the 15th July, 1840, between Great Britain, Austria, Russia, Prussia, and the Porte, establishing the political relations between Turkey and Egypt.

That those were recorded in a succession of Firmans issued by the Sultan between 1841 and 1879, most of which dealt with the question of tribute. (Print D.)

That the Firman of the 28th May, 1841, declared that the amount of the tribute should not be fixed at a quarter of the revenue, as provided in a previous Firman, but that it should be fixed at 80,000 purses (363,640*l.*). (Print D, pp. 14 and 5.)

That by a Firman dated the 13th February, 1841, instructions were given respecting the administration of the Provinces of Nubia, Darfour, Kordofan, Sennaar. (Print D, p. 39.)

That by a Firman dated May 1865, Suakin and Massowah were ceded to the Khedive, in consideration of an increase in the tribute of 7,500 purses, or 34,090*l.* (Print D, p. 20.)

That by a Firman dated the 26th May, 1866, the order of succession was changed, and that the tribute was increased from 80,000 to 150,000 purses, or 681,820*l.* That it was again fixed at that sum in the Firman of the 8th June, 1873, and in the Firman dated the 2nd August, 1879. (Print D, pp. 21 and 29.)

For an account of the circumstances attending the issue of the last-mentioned Firman, we were referred to the statement embodied in the Report of the Law Officers of the Crown of the 27th August (? 21st November), 1883, from which it would be seen that the Firman was issued in communication with the British and French Governments, and had the character of an international engagement. (Memorandum: Confidential Print, Part XV, No. 5056, p. 250.)

Additional tribute on account of Zeyla.

That in addition to the amount of tribute fixed by that Firman, the Khedive paid to the Sultan a sum of 14,000*l.*, in consideration of the cession to him, by the Porte in 1875, of Zeyla. That that territory was ceded by an Imperial Hatt dated the 1st July, 1875, of which no copy was in possession of Her Majesty's Government, but that the Turkish Ambassador communicated to them copy of a telegraphic despatch he had received from the Porte, which purported to convey its substance.

It stated that Zeyla was administered by a Sheikh, and brought in £ T. 800 to the Treasury, and that, as its position might facilitate the communications of Egypt with Darfour, the Sultan had deigned to cede it to the Khedive in consideration of an increase of 14,000*l.* in the Egyptian tribute.

That since then great changes had taken place, and the greater portion of the territory which was added to Egypt after 1841 had been alienated from the Khedive.

That the question how far Egypt was now entitled to claim a reduction generally in the amount of the tribute by reason of the great diminution in the extent of her territory, since that amount was fixed, had lately occupied the attention of Her Majesty's Government, and might possibly become the subject of negotiations with the Porte.

Necessity for immediate decision.

But that the case of Zeyla was exceptional, and called for immediate decision, by reason of the following circumstances:—

That in November last the Egyptian Government notified to the Porte their inability to retain possession of the coast of the Red Sea south of Massowah to Zeyla, and, in fact, surrendered that territory to the Porte. That the utility of Zeyla as a means of communication with Darfour had ceased, and the Egyptian Government in its note to the Porte gave most cogent reasons for abandoning that part of the coast.

That the Porte had been repeatedly pressed on the subject, but that no satisfactory reply had been received, and that Her Majesty's Government were, at the present time, holding Zeyla, as caretakers, until such time as the Sultan might reoccupy it.

That the Egyptian Government were about to publish their Budget for 1886, and in it they had made no provision for the payment of the 14,000*l.* to the Porte on account of Zeyla.

That that omission in the Budget had been made advisably and in accordance with the recommendation contained in the Report of the Earl of Northbrook of the 20th November, 1884, which was communicated to the Powers, and laid before Parliament. (Print F.)

That his Lordship (Lord Northbrook) was of opinion that as the Egyptian Government were about to evacuate Zeyla, they could not fairly be called upon to pay the rent specially fixed as the consideration for the original cession of that territory.

But that the retrocession of Zeyla not having been accepted by the Porte, the Law Officers of the Crown advised that the tribute of Egypt could not be reduced except by agreement with the Sultan, or in the case of the territories in question, by being lost to Egypt by conquest.

Exceptional position of Zeyla tribute.

That there was a distinction, however, between the case of Suakin and Massowah, and that of Zeyla, which was not brought to the notice of the Law Officers at the time.

That it was to be observed that the payment of 7,500 purses, or 34,090*l.*, in respect of the former, became merged in the general tribute of 150,000 purses, or 681,820*l.*, payable under the Firmans of 1866, 1873, and 1879, whereas the payment of 14,000*l.* on account of Zeyla was a separate and additional payment not mentioned in any of the Firmans. Moreover, the object of the acquisition of Zeyla, as stated in the Imperial Hatt of the 1st July, 1875, viz., the facilitating of communication with Darfour having now failed, by the loss of the latter province, it might be urged that the Egyptian Government had an equitable right to be relieved of the obligation to retain it.

That the question was somewhat complicated by the fact that Lord Northbrook's estimate had been accepted as the basis of the amount at which the Egyptian

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* August 31, 1885.

† Sir E. Baring, No. 137 (Telegraphic), March 7; ditto, No. 237, March 11; ditto, No. 146 (Telegraphic), March 11; ditto, No. 147 (Telegraphic), March 11; ditto, No. 240, March 12; to Sir E. Baring, No. 74 (Telegraphic), March 12; Sir E. Baring, No. 247, March 12; ditto, No. 157 (Telegraphic), March 14; ditto, No. 158 (Telegraphic), March 14; to Colonial Office, March 25; Colonial Office, April 4; ditto, April 7; to Colonial Office, April 8; Colonial Office, April 11; to Colonial Office, April 13; ditto, April 21; Law Officers, April 10, 1885.

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expenditure was fixed in the Khedivial Decree relative to the new Egyptian Loan, annexed to the Convention of 18th March, 1885.

That the question arose, therefore, whether, under all the circumstances, the Egyptian Government were justified in declining to continue the payment of 14,000*l.* to the Porte on account of Zeyla, in addition to the 681,820*l.* fixed as the amount of tribute by the Firmans, or whether they should make provision in their yearly Budget for such payment until the Porte has formally accepted the retrocession of Zeyla, and relieved the Egyptian Government of the obligations in relation thereto.

That Sir J. Pauncefote was to request our opinion on the question above stated.

In obedience to your Lordship's commands we have the honour to report—

Egypt must pay Zeyla tribute until relieved by Porte from obligation.

That, in our opinion, the Egyptian Government are not justified in declining to continue the payment of 14,000*l.* to the Porte on account of Zeyla, in addition to the 681,820*l.* fixed as the amount of tribute by the Firmans, but should make provision in their yearly Budget for such payment until the Porte has accepted the retrocession of Zeyla, and relieved the Egyptian Government of the obligation in relation thereto.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

*List of Papers.*

(A.) Sir E. Baring, No. 1164, December 22, 1884 (Confidential No. 5056, p. 262).
(B.) Inclosure in above (Confidential No. 5056, p. 264).
(C.) "Egypt No. 4 (1880)" (Foreign Office No. 2322).
(D.) Firmans, &c., 1841–79 (Confidential No. 4747).
(E.) Lord Northbrook, October 5, 1884 (Confidential No. 5061, p. 112).
(F.) Extract from Lord Northbrook's Report of November 20, 1884 (communicated to the Powers and laid before Parliament). "Egypt No. 4 (1885)" (Foreign Office No. 2940, p. 39).
(G.) Law Officers, February 14, 1885.
(H.) Mr. Egerton, No. 627, August 29, 1885 (Confidential No. 5158, p. 114).
(I.) Memorandum (Confidential No. 5056, p. 250).
(J.) Law Officers, November 21, 1883 (Confidential No. 4974, p. 37).
Three volumes of printed correspondence.

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## No. 54.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received October 26.)*

My Lord, *Royal Courts of Justice, October* 24, 1885.

Conviction and punishment of Saïd John, by Acting British Vice-Consul at Zeyla, for assault.

French demand for his surrender, which has been refused.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 16th instant, transmitting to us a despatch from Her Majesty's Acting Consul-General and Agent in Cairo,* relating to a demand by the French Consul at Zeyla, in Egypt, that one Saïd John, who had been tried and convicted before the British Acting Vice-Consul at that port, for assault, causing grievous bodily harm, should be delivered up to him to be tried for the same offence in the French Consular Court, on the ground that the prisoner is a French-protected person, and, as such, not subject to the jurisdiction of the British Consular Court.

That our attention was invited to the Report of the proceedings on the trial, from which it would be seen that the case was one of assault endangering life, that the prisoner did not state at the trial that he was under French protection, and, far from objecting to the jurisdiction, expressly submitted to it.

That the sentence passed was six months' imprisonment in the Aden Gaol, and a public flogging. That the sentence had been carried out as regarded the flogging, when the French Acting Consul addressed to the British Acting Vice-Consul, before whom the prisoner had been tried, the letter, demanding the delivery of the prisoner.

That the demand was refused, and the matter had been referred by Mr. Egerton to Her Majesty's Government.

Illegality of the proceedings.

That the matter was complicated by the circumstance (which appeared to have escaped the British authorities in Egypt), that the Acting British Vice-Consul, apart from the question of French protection, had no jurisdiction over the prisoner, and no legal authority to hold a Court at all, under the Ottoman Order in Council of the 12th December, 1873,* and that the whole proceedings were illegal from beginning to end, for the following reasons:—

1. That neither Captain Mein nor Lieutenant Peyton, for whom he was acting, held any Consular Commission nor any authority in writing under the hand and seal of the Judge of the Supreme Consular Court, and therefore they could not hold a Provincial Court (Order in Council, sections 15 and 4).

2. That if the Court had been lawfully held, yet it had no jurisdiction over the prisoner, as he was an Abyssinian, and not under British protection.

3. That the case was one which could only have been tried with assessors (section 271).

4. That no Provincial Court has power to impose flogging, the limits of punishment being fixed by section 271.

That, in those circumstances, Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether the prisoner should be set at liberty.

In obedience to your Lordship's commands we have the honour to report—

Prisoner should be liberated.

That, in our opinion, the prisoner, Saïd John, should be set at liberty.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## France.

## No. 55.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 5.)*

My Lord, *Royal Courts of Justice, January* 3, 1885.

Steam-cutters being built at Cowes for French Government.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 31st ultimo, stating that with reference to our Report of the 11th December last, he had, by your Lordship's direction, to transmit to us the accompanying note† which he had received from the French Ambassador relative to the steam-cutters which were being built by Messrs. White to the order of the French Government, and Mr. Currie was to request that we would favour your Lordship with our immediate opinion whether, in view of the explanation thus given by the French Government, it will be right and proper to permit those cutters to leave British waters.

In obedience to your Lordship's commands we have the honour to report—

French assurance as to their not being used against China not satisfactory.

That although too weak to carry artillery the boats may, nevertheless, be within the Foreign Enlistment Act; and the assurance given by M. Waddington is not what was asked for. He states that they have not been *ordered*, directly or indirectly, in view of the operations in China, not that they will not be so *used*. Probably this is unintentional. But it would seem desirable to point the matter out to M. Waddington, and to obtain the assurance asked; otherwise difficulty might occur hereafter when similar questions arise.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] Mr. Egerton, No. 677, September 16, 1885.

[*] Confidential No. 2354.

[†] M. Waddington, December 25; to M. Waddington, December 16; Law Officers, December 11, 1884, Confidential No. 5121, p. 52.

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## No. 56.

*The Law Officers of the Crown to Earl Granville.—(Received January 9.)*

My Lord, *Royal Courts of Justice, January* 9, 1885.

Suspected sale of British steamers to French Government.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 5th instant, stating that he had the honour to transmit to us papers* relating to negotiations which were stated to be in progress for the sale, ostensibly to a French Company, but in reality for the use of the French Government, of certain steamers of the "Castle" and "Monarch" Lines.

That Mr. Currie was to request that we would favour your Lordship with our opinion as to the course which it would be proper to pursue in view of the information, of a somewhat vague description, which Her Majesty's Government had, at the date of his letter, been able to procure on the subject.

In obedience to your Lordship's commands we have the honour to report—

Evidence not sufficient to justify seizure of vessels; but delivery of vessels to French Agents should be prevented. Suggest communication with owner son subject.

That we are of opinion that there is not at present sufficient evidence to justify the seizure or detention of the vessels in question.

At the same time, great vigilance should be employed in order to prevent, if possible, any delivery of the vessels to the Agents of the French Government.

We suggest that there is no objection to communicating to the owners that information has reached Her Majesty's Government, which gives rise to the belief that the vessels are intended to pass into the hands of the French Government for the purpose of being employed in warlike operations; that any such sale would be contrary to the provisions of the Foreign Enlistment Act, and would subject the vendors and persons concerned to heavy penalties. The owners may also be requested to say distinctly whether such sale is intended.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

### Annex.

*Dr. Deane to Sir J. Pauncefote.—(Received January 9.)*

My dear Sir Julian, 3, *Paper Buildings, Temple, January* 9, 1885.

Reasons for not signing above Report.

I HAVE signed the Report on the sale of ships of the "Castle" and "Monarch" Lines for the Attorney- and Solicitor- General, who are out of town.

Vessels should be detained.

They are probably right, but the circumstances are to my mind so unequivocal, seeing the need of the French Government for transports to take reinforcements out to the Chinese Seas and the selling owners may so easily ignore the intended real destination and use of the ships, that, in my opinion, the ships should be detained. I have, therefore, not signed the Report myself. I send it to avoid delay.

I remain, &c.
(Signed) J. PARKER DEANE.

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## No 57.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 15.)*

My Lord, *Royal Courts of Justice, January* 15, 1885.

Cutters being built for French Government at Cowes.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 10th instant, stating that, with reference to our Report of the 3rd instant, he had the honour to transmit to us, by direction of your Lordship, a copy of a note which was received on the 2nd instant from the French Ambassador,† relative to the cutters being built by Messrs. White, in which it was stated that his Excellency's previous note on that subject was to the effect that those cutters "n'étaient destinés à servir ni directement ni indirectement, en vue des mesures de rigueur que la France exerce en ce moment contre la Chine."

* Marquis Tsêng, December 23; to Treasury, December 23; Treasury, December 26; to Marquis Tsêng, December 31; to Treasury, December 31, 1884. Treasury, January 3, Confidential No. 5163, p. 1; ditto, January 3, 1885, Confidential No. 5163, p. 2.

† M. Waddington, January 2, 1885.

## No. 55*.

*The Law Officers of the Crown to Colonial Office.*

My Lord, *Royal Courts of Justice, January* 7, 1885.

Extradition of Marcelin from New South Wales to French.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us copies of a letter from the Colonial Office (with its inclosures) to the Foreign Office, and of the reply from the latter Office, respecting the circumstances under which C. M. H. Marcelin, accused of embezzlement, was surrendered in New South Wales to the French authorities.

That our opinion was requested as to whether the doubt expressed in the Foreign Office letter was well founded.

In obedience to your Lordship's commands we have the honour to report—

With consent of the accused, he may be surrendered before expiration of fifteen days.

That we are of opinion that the delay of fifteen days is interposed for the protection of the fugitive criminal, and to give him an opportunity of contesting the propriety of the proposed surrender, and we think, therefore, that if he desires to be sooner surrendered it may lawfully be done.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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That as it was further stated that the period within which the cutters were to be delivered would expire on the 5th January, and that as our Report of the 3rd instant had not then been received, your Lordship was of opinion that the language of the French Ambassador's note of the 2nd instant, read in connection with his Excellency's previous note of the 25th ultimo, conveyed in sufficient terms the assurance contemplated in the second paragraph of our Report of the 11th December last.

Orders for delivery of boats given.

That in view, therefore, of the urgency of the case, your Lordship desired that the Board of Treasury would signify to Messrs. White the permission of Her Majesty's Government for the cutters to be handed over to the French authorities.

That your Lordship trusted that we should be of opinion that that action was justified by the circumstances of the case.

In obedience to your Lordship's commands we have the honour to report—

Under circumstances course adopted was justified.

That we are of opinion that the action taken by your Lordship in the matter was justified by the circumstances of the case.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 58.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 20.)

My Lord, *Royal Courts of Justice, January* 19, 1885.

The "Ingeborg," at Kelung, detained for three days, and not allowed to discharge cargo.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 5th instant, stating that he was to transmit to us the papers[*] relating to the case of the British steamer "Ingeborg," which was prevented from landing her cargo at Kelung by the French naval authorities.

That it appeared from the inclosures in the despatch from Her Majesty's Minister at Peking that the vessel was chartered by a Chinaman (Mr. Plunkett's No. 184), cleared from Shanghae for Kelung with a general cargo on the 30th September, and that on her arrival at her destination on the 3rd October she was boarded and overhauled by an officer from the French flag-ship "Bayard," who informed the master that the port was in the possession of the French, and that the cargo was not to be landed without the permission of Admiral Courbet.

That after a detention of three days, permission was given to the "Ingeborg" to discharge her cargo into junks, but not to land it; that that offer was, however, declined by the supercargo, and the ship thereupon proceeded to Nagasaki. That the agents for the owners of the ship had entered a formal protest before Her Majesty's Consul-General at Shanghae. That Mr. Currie was to request our opinion as to whether the circumstances of the case disclosed any grounds for a claim for compensation on the part of the owners of the "Ingeborg," in view of the military occupation of Kelung by the French forces at the time of the act complained of.

In obedience to your Lordship's commands we have the honour to report—

No grounds for claim on part of owners.

That, in our opinion, the circumstances disclose no grounds for a claim for compensation on the part of the owners of the "Ingeborg."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 59.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 28.)

My Lord, *Royal Courts of Justice, January* 27, 1885.

Convention for the protection of submarine cables.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th ultimo, stating that he was to transmit to us the

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[*] Sir H. Parkes, No. 269, November 12; Mr. Plunkett, No. 184, October 18, 1884.

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papers* relating to the Convention for the protection of submarine telegraph cables, signed at Paris on the 14th March last.

That it would be seen that the French Government had inquired at what date Her Majesty's Government expected to be ready to ratify the Convention; and that the Board of Trade had communicated, for any observations which your Lordship might have to offer on its provisions, copy of a draft Bill for giving effect in this country to the Convention in question.

That Sir J. Pauncefote was to request that we would be so good as to take the papers into consideration, and favour your Lordship with (1) any advice which we might have to give in regard to that draft Bill, for communication to the Board of Trade; and (2) with our opinion whether, in that instance, Her Majesty should be advised to ratify the Convention forthwith, without waiting for the passing of the Act for giving effect to the Convention in this country.

That Article XVII of the Convention provided that the ratification should take place, "at the latest," at the expiration of a year from the date of signature, which would be the 14th March next. That Article VIII provided for the case where the Tribunals might not yet have legal power to deal with offences, and that Article XVI provided that the Convention should not come into force until the Powers, parties to the Convention, agreed to the date when it should be brought into force.

That under those circumstances your Lordship presumed that the Convention might be ratified within the period stipulated.

We have also the honour to acknowledge a further Memorandum from Sir J. Pauncefote, dated the 15th instant, inclosing a note from the French Ambassador,† communicating copies of the Law passed in France for carrying out the Convention of the 14th March, 1884.

In obedience to your Lordship's commands we have the honour to report—

May be ratified within stipulated time, without waiting for passing of Act.

That we think the Convention may be ratified within the period stipulated, and that there is no objection to its being ratified without waiting for the passing of the Act for giving effect to it.

The date when the Convention is to come into force is, by Article XVI, postponed until a date to be fixed by agreement between the Powers. And by Article XII the High Contracting Parties only engage to take, "or to propose to their respective Legislatures," the necessary measures for insuring the execution of the Convention.

Will take steps for drafting Bill.

We will confer with Mr. Jenkyns as to the drafting of the proposed Bill.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 60.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 29.)

My Lord, *Royal Courts of Justice, January* 28, 1885.

Franco-Chinese hostilities. Instructions to Governors of Colonies for carrying out the Foreign Enlistment Act.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd January, stating that, with reference to our Report of the 22nd ultimo, he was to transmit to us the papers‡ relating to the special telegraphic instructions addressed to the Governors of the Colonies of Hong Kong, Ceylon, and the Straits Settlements for their guidance in enforcing the provisions of the Foreign Enlistment Act during the hostilities then existing between France and China.

That those instructions, which had been framed generally on our Reports above referred to, would be found in the Colonial Office letter (inclosure) of the 20th instant. That it was thought desirable to dispatch them without the delay of a further reference to us, and that our opinion was requested as to whether they were proper and sufficient, or whether we considered that they required any modification or addition.

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* Text of Convention, "Commercial No. 15 (1884)," Parliamentary No. 2812; Viscount Lyons, No. 75, Treaty, November 28; Board of Trade, December 3, with draft Bill; Viscount Lyons, No. 398, Commercial, December 21, 1884.

† M. Waddington, January 10, 1885.

‡ Colonial Office, January 12; to ditto, January 15; Colonial Office, January 20, 1885, see Confidential No. 5163, pp. 4, 5, and 7; Law Officers' Report, December 22, 1884, Confidential No. 5121, p. 52; Memorandum (E. H.), November 27, 1884.

In obedience to your Lordship's commands we have the honour to report—

That we think the instructions sent may give rise to some difficulty.

Objections to the use of the words "nearest port."

They direct that coals should only be supplied to belligerent ships in such quantities as would be necessary for moving to "the nearest port where no naval operations are being carried on." And repairs and the supply of provisions are to be limited to such as are strictly necessary to enable belligerent ships to hold the sea on their voyage "to such place as aforesaid."

Now the "nearest port" within the unqualified terms of these instructions might be a Chinese port, where no coal or provisions could be obtained by a French ship of war.

During the American War of Secession the prohibition was against a supply of coals greater than would be sufficient to carry the vessels to "the nearest port of their own country, or some nearer destination."

It may be that the local circumstances require some modification of this, but it does not seem satisfactory to limit the supply in the manner provided for by the instructions. It might in some cases be equivalent to a total prohibition, if "the nearest port" were a port of the other belligerent, where no hostile operations were carried on. And if "the nearest port" were another British port, it would involve a double responsibility and oversight on the part of British authorities.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Instructions to Governors of Eastern Colonies.*

Referring to 10th section of Foreign Enlistment Act, public ships of either belligerent should not be allowed supplies such as would assist naval operations. Therefore, no more coal should be furnished to any belligerent ships than would be necessary for moving to the nearest national port or nearer destination. Also, repairs of belligerent ships and supply of provisions for crew should be restricted to such as are necessary to enable belligerent ship to hold the sea on voyage to such destination as aforesaid. You should allow no repairs to be effected or supplies furnished to belligerent ship except under supervision of local authorities, whose duty it would be immediately to report to the Governor in each case in which the limits imposed were being infringed.

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## No. 61.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 2.)

My Lord, *Royal Courts of Justice, January* 28, 1885.

Franco-Chinese hostilities.

Enforcement of the Foreign Enlistment Act.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 27th instant, stating that, with reference to our Report of the 22nd ultimo, and to his letter of the 23rd instant, relative to the enforcement of the Foreign Enlistment Act in the Colonies of Hong Kong, Ceylon, and the Straits Settlements, he had the honour, by direction of your Lordship, to transmit to us, for our further consideration, the papers* containing the correspondence which had passed between your Lordship and the French Ambassador on that subject in October and November last.

That the existing understanding between the two Governments, as appeared from the above correspondence, was that, in view of the absence of any declaration of war, and in consideration of the assurance by France of her intention not to exercise the belligerent right of search on the high seas, Her Majesty's Government had declared that they would not issue a Proclamation of Neutrality, but confine themselves to the observance of the Foreign Enlistment Act, without enforcing all the strict rights of neutrals.

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* M. Waddington, October 22 and 24; to ditto, October 25 and 31; M. Waddington, November 5; to ditto, November 11; M. Waddington, November 21; to ditto, November 26, 1884; Colonial Office, January 24, 1885, Confidential No. 5163, p. 9.

That our attention was also invited to a letter from the Colonial Office of the 24th instant, from which we should perceive that large exports of arms were stated to be shipped from Hong Kong for the use of the Chinese.

That the special instructions which had recently been issued to the Governors of the Eastern Colonies for their guidance in enforcing the provisions of the Foreign Enlistment Act had been made public in Hong Kong, and had caused much dissatisfaction to the French Government, for that, while the export of munitions of war from Hong Kong was unrestricted, the French had voluntarily debarred themselves from pursuing their remedy by capture on the high seas as contraband of war.

That, under those circumstances, the French Government were placed at some disadvantage, and the question which now arose was whether, in view of the large export of arms from Hong Kong to China, Her Majesty's Government would be justified in relaxing the enforcement of section 10 of the Foreign Enlistment Act as against the vessels of both belligerents, especially with respect to repairs and the supply of provisions and coal which they might require.

That our opinion was requested, at our earliest convenience, on the questions submitted in that letter, together with any general observations we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Difficulty in relaxing provisions of the Act with regard to coals, &c.

That we see great difficulty in making any relaxation of the Foreign Enlistment Act so as to permit coals to be unrestrictedly supplied, even although the French may be willing in return to refrain from exercising their right of seizure and search. Her Majesty's Government have communicated to both belligerents their intention to enforce the provisions of the Foreign Enlistment Act, and it seems impossible, without the assent of the belligerents affected by any departure from the Act, to fail fully to carry out this undertaking.

Export of arms and supply of coal not on same footing.

It may be pointed out to the French Government that the mere export of munitions of war by any one amounts to no infringement of the provisions of the Foreign Enlistment Act or breach of the obligations of neutrals, and such would be the case even if a Proclamation of Neutrality were issued.

On the other hand, the supply of coal direct to a belligerent vessel is regarded as an act of equipment, and, if exceeding the allowed limited restrictions, would be a breach of the Foreign Enlistment Act.

To point out officiously to Chinese Minister that French surrender of right of search depends on supply of coal.

We suggest that it may be well to point out officiously to the Chinese Minister that if the French are to be no longer allowed to be supplied with coal, it cannot be expected that they will continue to give up their right of seizure and search in respect of munitions of war exported from Hong Kong and other places into China, and that, therefore, in order to maintain immunity from such search, it will, in the interests of the Chinese, be advisable to cease to make any representations in respect of supplying coal to French ships.

In the event of the Chinese Minister not accepting this view, it seems to us that whilst on the one hand the provisions of the Foreign Enlistment Act may have to be enforced, we may find difficulty in insisting upon the continuance of the French undertaking not to exercise their right of search and seizure.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 62.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 2.)*

*Royal Courts of Justice, January 29, 1885.*

My Lord,

Franco-Chinese hostilities.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* which related to certain inquiries addressed by the Governor of Hong Kong to the Colonial Office, and to which a telegraphic answer was required.

That his Excellency desired to know whether the steamers of the Messageries Maritimes and the Chinese revenue cruizers touching at Hong Kong were to be

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* Colonial Office, January 23, 1885, Confidential No. 5163, p. 8; Postal Convention, Great Britain and France, September 24, 1856, Treaty No. 412.

considered "public ships," within the meaning of the telegraphic instruction which was sent to the Governors of Hong Kong, Ceylon, and the Straits Settlements, of which a copy was inclosed in the Colonial Office letter of the 20th instant, and which was referred for our opinion as to the sufficiency of its terms in Sir Julian Pauncefote's letter of the 23rd instant.

That the steamers of the Messageries Maritimes were mail-steamers, and that the Company was subsidized by the French Government.

That their steamers enjoyed, by virtue of the Postal Convention of 1856 between Great Britain and France (of which a copy was inclosed), the immunities of foreign vessels of war in British ports. That it was not unlikely that, under the Company's contract of subsidy, those steamers were under some obligation to serve the Government in time of war, if called on to do so.

Proposed answer that Messageries steamers may enjoy their Treaty rights unless they assist French operations.

That your Lordship therefore proposed, with our concurrence, to reply that the steamers of the Messageries Maritimes, while continuing to enjoy their Treaty immunities, must be treated as passenger-ships, provided they took no active part in belligerent operations, as transports or otherwise, but that if they should be employed by the French Government to assist the French military operations in China, the fact should be reported home by telegram, with particulars of the services required of them in connection with the existing hostilities.

Question as to position of Chinese revenue cruizers.

That as regarded the question whether the Chinese revenue cruizers were to be treated as belligerent ships, your Lordship believed that they were in fact vessels of war; but that that was a question which could best be elucidated on the spot, and that your Lordship proposed to reply that the Governor of Hong Kong should be instructed, if he should have any doubt on the subject, to telegraph for information on the point to Her Majesty's Minister at Peking.

That Sir J. Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion as to whether the inquiries of the Governor of Hong Kong might properly be answered in the sense above indicated.

In obedience to your Lordship's commands we have the honour to report—

Approve answer as to Messageries steamers.

That we think the question as to the steamers of the Messageries Maritimes may properly be answered in the sense above indicated.

Revenue cruizers, if only such, may be supplied with coal.

With regard to the revenue cruizers, even assuming them to be vessels with some warlike equipment, if there is every reason to believe that they are merely to be employed for revenue purposes, and not in the military or naval service of China, we do not think that supplying coals would be within section 8 of the Foreign Enlistment Act, or "an equipment for war" whereby "the warlike force of the ship was increased" within section 10.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 63.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 7.)*

*Royal Courts of Justice, February 6, 1885.*

My Lord,

Franco-Chinese hostilities.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 4th instant, stating that, with reference to our previous Reports on the subject of the enforcement of the Foreign Enlistment Act in view of the existing hostilities between France and China, he had the honour, by direction of your Lordship, to transmit to us the correspondence, marked in the margin,* which has passed between your Lordship and the French Ambassador on that question.

Exercise of right search of neutral vessels by France.

That Sir J. Pauncefote was to state that, in consequence of the decision of the French Government to exercise strict belligerent rights, including that of search of neutral vessels on the high seas, the Colonial and India Offices had been requested to cause the necessary notifications to be issued in the Indian and colonial ports, and that instructions on the subject had been sent to Her Majesty's Representatives and Consuls in China and Japan, and to the Commanders-in-chief of Her Majesty's vessels on the East India and China Stations.

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* M. Waddington, January 29; to ditto, January 31, 1885. Confidential No. 5163, pp. 15 and 17.

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That the question on which your Lordship now desired our opinion was whether it would be desirable and proper that some public notification should be made in this country of the intention of the French Government to exercise the right of search of neutral vessels on the high seas for contraband of war.

In obedience to your Lordship's commands we have the honour to report—

Public notification should be made.

That we think it would be desirable and proper that some public notification should be made in this country of the intention of the French Government to exercise the right of search of neutral vessels on the high seas for contraband of war being carried to Chinese ports.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 64.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 7.)

*Royal Courts of Justice, February* 7, 1885.

My Lord,

Franco-Chinese hostilities. Australian coal consigned to foreigners at Chinese port.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 5th instant, stating that he was to transmit a copy of a letter* which your Lordship had caused to be addressed to the Colonial Office on the subject of the export of arms and munitions of war from Hong Kong to China, and that Sir J. Pauncefote was also to inclose a letter† from that Department in which the inquiry was made whether Australian coal in British ships, consigned to other than Chinese merchants, would be jeopardized on a voyage to a Chinese Treaty port, in view of the recent decision of the French Government to exercise the right of search on the high seas.

That our opinion was requested as to the reply to be made to that inquiry.

In obedience to your Lordship's commands we have the honour to report—

That in 1859, and again in 1870, France declared coal not to be contraband of war. England, in 1870, considered that its character was to be determined by its destination, though she refuses to class it, as a general rule, as contraband. Thus vessels were, during the war of 1870, prohibited from sailing from English ports with coal directly conveyed to the French fleet in the North Sea.

Coal is so largely used for innocent purposes that no sufficient presumption that it is intended for warlike use is afforded by the simple fact of its destination to a belligerent port.

Coal not contraband unless to be employed for warlike purposes.

We think, therefore, that where coal is being conveyed in the ordinary course of business, consigned to a merchant at a belligerent port, it ought not to be regarded as contraband of war.

But if its use for warlike purposes is extremely probable, as by its consignment to a naval arsenal or station, it might be regarded as contraband.

It does not seem likely, having regard to the view on this subject which has hitherto been insisted upon by France, that she will take an extreme view upon the subject.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 65.

*The Law Officers of the Crown to Earl Granville.*—(*Received February* 10.)

*Royal Courts of Justice, February* 10, 1885.

My Lord,

Franco-Chinese hostilities.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of yesterday's date, stating that, with reference to our Report of the 6th instant, he was to transmit to us a draft of a Notice which your Lordship proposed to insert in the "London Gazette" with regard to the exercise of strict belligerent rights by France during the continuance of hostilities between France and China, and that Sir J. Pauncefote was to inquire whether we approved of its terms, or whether we were of opinion that the 2nd paragraph should be omitted, so as to avoid any similarity to the issue of a Proclamation of Neutrality.

In obedience to your Lordship's commands we have the honour to report—

That we suggest that some alteration may advantageously be made in the form of the Notification.

Send amended Notification.

We have therefore redrafted it, and submit it in such amended form for the consideration of your Lordship.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

### Annex.

*Draft Notice.*

As to strict exercise of belligerent rights by France, including right of search.

It is hereby notified for public information that it has been announced to Her Majesty's Government by the Government of the French Republic that it is their intention to exercise, during the continuance of the present hostilities between France and China, the rights of belligerents which are recognized by the law of nations, including the right to search neutral vessels on the high seas for contraband of war.

H. J.
F. H.

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## No. 66.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 19.)

*Royal Courts of Justice, February* 18, 1885.

My Lord,

Franco-Chinese hostilities. Export of arms from Hong Kong. French request for prohibition of.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 16th instant, stating that he was to transmit to us a letter from the French Ambassador, and the papers noted in the accompanying list,* relative to a request by the French Government that the export of arms and munitions of war from Hong Kong should be prohibited during the continuance of hostilities between France and China, under the powers conferred on the Governors of the Colony by Ordinance No. 3 of 1862. That that Ordinance was an adaptation of section 150 of the Customs Consolidation Act (16 and 17 Vict., cap. 107), as to which Sir Julian Pauncefote was to refer us to the Law Officers' Report of the 14th October, 1870, in which it was shown that the provision in question applied only where this country was at war, and was intended only for national protection, and not for the purpose of securing neutrality.

That Sir J. Pauncefote was to observe that, as stated by the French Ambassador, the Hong Kong Ordinance had been occasionally put in force when Great Britain had not been at war, namely, where civil commotions had broken out in the mainland of China near Hong Kong; that a similar course had been followed in the Straits Settlements when riots had broken out among the natives in the neighbouring Dutch possessions.

Suggesting grant of request in exchange for renunciation of right of search of neutral ships.

But that those cases afforded no precedent for prohibiting the export of arms to secure neutrality in a war between two foreign nations. That it was pointed out, however, in the Reports of the Law Officers above referred to, that an exceptional course had been taken in consequence of special provisions in Treaties, and that your Lordship would be glad to be favoured with our opinion whether there would be any objection to a proposal being made to the French Government for a special arrangement whereby the export of arms and munitions of war from Hong Kong to China should be prohibited under the Colonial Ordinance in question, on condition of the French Government abstaining from enforcing the belligerents' right of search of neutral vessels on the high seas.

That our opinion was also requested as to the reply which should be returned to M. Waddington's letter conveying the request of his Government that the export of arms from Hong Kong should be prohibited under the Colonial Ordinance above referred to.

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* To Colonial Office, February 5, 1885. Confidential No. 5163, p. 25.
† Colonial Office, February 5, 1885. Confidential No. 5163, p. 25.

* M. Waddington, February 4; Colonial Office, February 10, 1885, with Hong Kong Ordinance No 3, of March 17, 1862, see Confidential No. 5163, pp. 23 and 32; Law Officers' Reports of July 25 and October 14, 1870, Confidential No. 3660, pp. 123, 130.

In obedience to your Lordship's commands we have the honour to report—

French have no right to make such a request.

That we are of opinion that the request of the French Ambassador should not be complied with. That request is simply a demand on the part of the French Government that the exportation, from English territory, of contraband of war should be forbidden in the interests of France.

There can be no right in a belligerent State to call upon a neutral Government to prevent the exportation of goods from its territory, on the ground that they may be used for belligerent purposes. It may be well to remind the French Ambassador that the French nation would have had great ground of complaint if this country had complied with the request of the German Government in 1870 to prohibit the exportation of arms and munitions of war from this country.

No objection to suggested arrangement, which is a matter of policy.

Upon the further question submitted to us, we are of opinion that it is competent for the Governor of Hong Kong to exercise the powers contained in the Ordinance of 1862, and to prohibit the exportation of arms, &c., to all places generally, and we think that Her Majesty's Government might sanction such prohibition, not because it is demanded by France, but in the interests of this country. Such interests may depend upon the necessity to fulfil Treaty obligations, or upon the ground that it is to the advantage of this country and the Colony that such exportation should be prohibited. Whether such an arrangement as that suggested would be, on the whole, for the advantage of the Colony, and in other respects is proper to be carried into effect, resolves itself into a question of expediency and policy upon which we do not offer an opinion; but we must point out that the effect of enforcing the prohibition will necessarily be injurious to Chinese interests, though beneficial to those of France.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 67.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 21.)*

*Royal Courts of Justice, February 20, 1885.*

My Lord,

Franco-Chinese hostilities. Exercise of right of search of neutrals.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 17th instant, stating that he was to transmit to us the letters* which had been addressed to your Lordship by Lloyd's and by various Insurance Companies and shippers with respect to the announcement by the French Government of their intention to exercise the belligerent right of search over neutral vessels on the high seas for contraband of war during the existing hostilities in China. That in letters (A), (B), and (C) inquiry was made by three Insurance Companies whether vessels which sailed with contraband of war prior to the time at which the French Government announced their intention of exercising the right of search were liable to capture. That in letter (D) Mr. A. Holt asked for an authoritative statement as to the position of shippers to China of rifles and other articles contraband of war, and whether presence of contraband of war on board of a vessel rendered the vessel and other cargo liable to confiscation.

Questions as to position of vessels carrying contraband of war.

Liability of gunpowder for Hong Kong to seizure.

That in letter (E) Messrs. John Hall and Son, the gunpowder manufacturers, inquired whether, under the circumstances mentioned, gunpowder shipped from London to Hong Kong was liable to capture.

Supply of coal to French cruizers.

That in letter (F) the Committee of Lloyd's inquired whether Her Majesty's Government intended to close British ports in the Eastern seas to French cruizers in case they should desire to be refitted or supplied with coal.

That as regarded the questions raised in the first three letters, your Lordship desired to be informed whether, in our opinion, any communication should be made to the French Government with a view to some understanding on the subject, and, if not, what answer should be returned to the inquiry.

That as regarded the questions raised in letters (D) and (E) from Mr. Holt and Messrs. Hall and Son, Sir J. Pauncefote invited our attention to the reply of the Law Officers of the Crown of the 23rd August, 1870, in which they advised the Secretary of State, during the Franco-German war, that it was not the duty of Her Majesty's Government to advise private traders as to the legality of contemplated transactions. But that if we should be of opinion those inquiries should be answered, your Lordship would be glad to be informed of the reply which should be returned thereto.

That as regarded letter (F) from Lloyd's, your Lordship would propose, with our concurrence, to reply that Her Majesty's Government had decided to confine their action at present to the strict enforcement of the Foreign Enlistment Act.

That Sir J. Pauncefote was to request that we would take the papers transmitted into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter.

In obedience to your Lordship's commands we have the honour to report—

Should communicate with French as to seizure of vessels sailing before issue of Notification.

That, in our opinion, it would be most unjust for the French Government to direct that the power of search and seizure should be exercised in respect of vessels which sailed before notification of the intention to exercise that power. And we think that representations should be made to that effect to the French Ambassador.

And inform inquirers of fact.

And the inquiries contained in the letters (A), (B), and (C) may be answered by informing the writers that your Lordship is in communication with the French Ambassador on the subject.

Inexpedient to advise private traders.

With regard to the question asked by Mr. Holt—letter (D)—we agree with the view expressed by the Law Officers in their Report of the 23rd August, 1870. We think it neither expedient nor safe for Her Majesty's Government to undertake to answer such questions.

This applies also to the question put by Messrs. Hall—letter (E).

And we think the inquirers should be informed that, in not answering their questions and giving them advice, your Lordship is following the course which has been pursued in the case of former wars.

Concur in answer to third question.

We concur in the reply proposed to be given by your Lordship to letter (F).

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Papers in Confidential No. 5163, pp. 25–38, viz.:—(A) Union Insurance Company, February 12; (B) Society of London Underwriters, February 12; (C) North China Insurance Company, February 13; (D) Mr. A. Holt, February 14; (E) Messrs. J. Hall and Son, February 14; (F) Lloyd's, February 16, 1885; (G) Law Officers' Report, August 23, 1870, p. 39 (No. 62), Confidential No. 3660.

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## No. 68.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 21.)*

*Royal Courts of Justice, February 20, 1885.*

My Lord,

Franco-Chinese hostilities. Supply of coals to vessels chartered by French to carry coals to depôt at Haiphong.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Paris,* inquiring whether a vessel chartered by the French Government to carry coals to their depôt at Haiphong would be permitted to take in fuel at British coaling-stations on the way out.

That Sir J. Pauncefote was to inclose a copy of the Special Instructions† to the Governors of the Eastern Colonies for their guidance in enforcing the provisions of the Foreign Enlistment Act, and that he was to request that we would favour your Lordship with our opinion as to the answer which should be returned to the inquiry of the French Government.

In obedience to your Lordship's commands we have the honour to report—

Inexpedient to deal with special cases by general rule.

That we think it will be very inexpedient to attempt to deal with every particular case which may arise by any general definition of the conduct which should be pursued towards belligerents. For instance, the supply of coal by a neutral to a belligerent must depend upon conditions and circumstances which cannot in all cases be foreseen.

Should not give a categorical reply but forward copy of Instructions to Governors to Mr. Segrave.

We think it therefore unadvisable that a categorical answer should be given to the question put to Mr. Segrave, and that it will be wise to forward to that gentleman a copy of the Instructions on the subject given to the Governors of our Eastern

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* Lord Lyons, No. 84, of February 8, 1885. Confidential No 5163, p. 30.
In letter to Colonial Office of January 29, 1885. Confidential No. 5163, p. 16.

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Colonies, and to inform him that he is at liberty to state that such Instructions will doubtless be acted upon.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 69.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 24.)

*Royal Courts of Justice, February* 24, 1885.

My Lord,

Proposed sale of vessels to French subject. Question as to its legality.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th February instant, stating that he was to transmit to us a letter from the Treasury, dated the 7th instant, inclosing a Report from the Board of Customs on the subject of the proposed sale to a French subject of certain vessels belonging to the "Castle Mail Packets Company," and in which the Treasury requested to be informed of the answer which should, in your Lordship's opinion, be returned to Messrs. Donald Currie and Co., the Managers of the Company, as to the proposed sale.

That it appeared from the letter of Donald Currie and Co. to the Customs* that the purchaser has represented that the vessels in question are intended for employment on the Congo.

That the Foreign Enlistment Act forbade the dispatching, or causing or allowing to be dispatched, any ship with intent or knowledge, or having reasonable cause to believe, that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State, but that there was apparently no prohibition against the sale of any vessel in this country to a belligerent Government.

That your Lordship desired to be informed whether, in our opinion, your Lordship might properly recommend the Commissioners of Customs to decline answering the inquiry, and merely to reply that, "so long as the parties concerned do not violate the provisions of the Foreign Enlistment Act, Her Majesty's Government have no wish to interfere with their transactions."

That if the above reply should not meet with our concurrence, Sir J. Pauncefote was to request that we would favour your Lordship with our opinion on the answer which might properly be returned.

In obedience to your Lordship's commands we have the honour to report—

Concur in answer as to non-interference of Her Majesty's Government.

That the above reply meets with our concurrence, with the exception that for the words, "Her Majesty's Government have no wish to," we think it would be better to substitute, "it is not within the province of Her Majesty's Government to."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 70.

*The Law Officers of the Crown to Earl Granville.*—(*Received February* 24.)

*Royal Courts of Justice, February* 24, 1885.

My Lord,

Franco-Chinese hostilities. Treatment of rice as contraband of war.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to us a note from the French Ambassador at this Court, dated the 20th instant, in which he stated that the French Government had determined to consider rice as a contraband of war, and that the French Naval Commanders had been instructed to treat it as such from the 26th instant.

That a despatch from Her Majesty's Minister at Peking was also inclosed.†

That our opinion was requested as to whether the measure announced by the French Government was warranted, under the circumstances, by the law of nations.

That Sir J. Pauncefote was to refer us to the observations on that point in 4 Calvo, p. 22, § 2452, and in Hall's International Law, p. 583, § 245, and also to Wheaton (by Lawrence), p. 781, citing Valin and Pothier as to French law.

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* In Treasury letter of February 7, 1885. Confidential No. 5163, p. 29.

† Sir H. Parkes, No. 319, December 13, 1884. Confidential No. 5144, p. 115.

In obedience to your Lordship's commands we have the honour to report—

Measures not warranted.

That we are of opinion that the measure announced by the French Government is not warranted by the law of nations.

The French Ambassador, in his letter of the 20th instant, announces the intention of his Government to consider and treat rice generally as contraband of war. There is no qualification of any kind in respect of the destination of the rice or the purposes for which it is intended to be applied. We are of opinion that such a position cannot be maintained.

Conditions under which provisions are contraband of war.

We understand the rule on the subject to be that provisions generally are not contraband, but may become so "under circumstances arising out of the particular situation of the war, or the condition of the parties engaged in it." (Lord Stowell, 1 Christopher Robinson, 193.)

Thus, if provisions were consigned to a port of a belligerent (even if it be one of naval equipment) they are not, therefore, regarded as contraband, but if such supplies were consigned directly to the fleet of a belligerent, or to a port where such fleet was lying, and facts existed raising the presumption that the provisions were about to be employed in victualling the fleet, the enemy of the belligerent would be entitled to seize the provisions as contraband on the ground that they would enable warlike operations to be carried on. This view is concisely expressed by Lord Stowell in the case of the "Jonge Margaretha" (1 C. Robinson, 194), when he says, "But the most important distinction is whether the articles were intended for the ordinary use of life, or even for mercantile ships' use, or whether they were going with a highly probable destination of military use."

We believe that this country, at the end of last century, endeavoured to act upon a different principle, and sought to prevent provisions entering any French port, but such action has been condemned by other nations and by many writers of authority, and such a view certainly cannot now be maintained.

Should not assent to right to declare rice contraband,

We therefore think that the French Ambassador should be informed that Her Majesty's Government cannot assent to the right of the French Government to declare rice generally as contraband of war.

nor acquiesce in suggestion as to date for enforcing notification.

We may also point out that the suggestion that the notification should take effect from the 26th instant is one that could not under any circumstances be acquiesced in, as many vessels laden with rice may have already commenced their voyages.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 71.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 26.)

*Royal Courts of Justice, February* 25, 1885.

My Lord,

Franco-Chinese hostilities. Liability of the "Galley of Lorne" with cargo of merchant powder to seizure.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 24th instant, stating that he was to transmit to us a letter from the Admiralty* relative to the liability to search or seizure by French men-of-war of the steam-ship "Galley of Lorne," bound for the Straits and Hong Kong, with a cargo of merchant powder, in addition to a consignment of Government arms and munitions of war for delivery at Singapore and Hong Kong.

That Sir J. Pauncefote was to observe that the reply of the Admiralty to Messrs. Hogg and Robinson did not appear to be consistent with the law as laid down in section 178 of Lushington's "Naval Prize Law," p. 37, to the effect that the destination of the vessel was conclusive as to the destination of the goods.

That Sir J. Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion as to whether your Lordship could properly express your concurrence in the terms of the reply which had been returned by the Admiralty to Messrs. Hogg and Robinson's inquiry.

In obedience to your Lordship's commands we have the honour to report—

Incorrectness of Admiralty reply.

That we think that so much of the Admiralty reply as suggests that, because it "would not be easy to prove that the merchant powder is not intended for sale to the Chinese," that portion of the cargo, and perhaps the vessel, may be liable to seizure,

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* Admiralty, February 17, 1885. Confidential No. 5163, p. 41.

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should not be approved. Assuming that the destination of the vessel is Hong Kong and Yokohama (both neutral ports), and that she is not intended and cannot be required to call at any Chinese port, we think that, *primâ facie*, the powder must be deemed to have a neutral destination.

There is authority for the view that, even if the contraband article is, in fact, intended by the shippers to be ultimately supplied to a belligerent, yet it is not liable to seizure so long as it is in course of conveyance from a neutral port to a neutral port in a neutral ship. (Hobbs *v.* Heming, 17 C.B., N.S., 791.)

A belligerent has no right to seize a cargo on a neutral vessel consigned to a neutral port.
Circumstances under which a ship with contraband is liable to confiscation.

But, however this may be, we think it clear that, in the absence of simulated papers, or other circumstances of suspicion, ascertained by the exercise of the right of search or otherwise, a belligerent has no right to seize as contraband a cargo on board a neutral vessel, bound to a neutral destination. We may add that the ship which carries a contraband cargo is not liable to confiscation unless either the ship and cargo belong to the same owner, or the ship is sailing under a false destination.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 72.

*The Law Officers of the Crown to Earl Granville.—(Received February 26.)*

*Royal Courts of Justice, February* 26, 1885.

My Lord,

Franco-Chinese hostilities. Treatment of rice as contraband of war only when destined for ports north of Canton.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th instant, stating that, with reference to his letter of the 23rd February, he was directed by your Lordship to transmit to us a further note from the French Ambassador* notifying that the intention of the French Government was to treat as contraband of war those cargoes of rice only which were destined for Chinese ports to the north of Canton.

In obedience to your Lordship's commands we have taken M. Waddington's note into our consideration, and have the honour to report—

Nothing in mention of north ports to modify former opinion.

That we see nothing in the distinction between the north and south ports to cause us to modify the opinion we expressed in our Report of the 24th instant.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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## No. 73.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 5.)*

*Royal Courts of Justice, March* 5, 1885.

My Lord,

Franco-Chinese hostilities. Treatment of rice as contraband of war by France.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 2nd instant, stating that, with reference to our Reports of the 24th and 26th ultimo, relative to the notice given by the French Government of their intention to treat rice as contraband of war, he was directed by your Lordship to request our opinion as to whether it would be proper and desirable to make any public notification of the decision of the French Government on that point.

That Her Majesty's Government contested the right of the French Government to treat rice generally as contraband of war; but that it was presumed that they could not interfere with the seizure of British vessels carrying cargoes of rice destined for the northern ports of China; and that they must await the decision of the French Prize Court on the subject before taking any action to obtain redress.

That in the meanwhile it might be deemed expedient to give notice to British shippers of the risk to which they were exposed.

That Sir J. Pauncefote was to inclose a copy and translation of a Notice† issued on the subject by the German Government, and to request that, if we should be of opinion that a public Notice should be issued by Her Majesty's Government, we would be good enough to draft one for your Lordship's consideration.

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* M. Waddington, February 24, 1885. Confidential No. 5163, p. 55.

† Inclosure 2 in Sir E. Malet's No. 95, February 24, 1885. Confidential No. 5163, p. 65.

In obedience to your Lordship's commands we have the honour to report—

Best form of Notification.

That we think it would be well to notify in the "Gazette" the decision of the French Government, and that this may best be done by stating that "The following despatch has been received from the French Government," and setting out its terms verbatim.

Statement should be made in Parliament against legality of action of France.

To avoid misunderstanding hereafter, we suggest that it would be well that simultaneously with, or immediately after, the announcement in the "Gazette" it should be stated in Parliament (which can be done in answer to a question) that Her Majesty's Government do not admit the legality of the action which the French Government has notified their intention to take.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 74.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 6.)*

*Royal Courts of Justice, March* 5, 1885.

My Lord,

Shooting of deserters from the French transport "Chandernagore" in British waters.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he was to transmit to us the papers* relating to the shooting by their officers of certain French soldiers who deserted from the French hired transport "Chandernagore" while the ship was in British waters at New Harbour, Straits Settlements, on the 28th December last, *en route* for Tonquin. That the Colonial authorities had no power to surrender military deserters, and it was possibly for that reason that the extreme measure was resorted to by the Commander of the battalion on board of the French transport of firing upon deserters in the act of swimming ashore in British waters.

That according to Calvo, vol. i, p. 469, private vessels chartered for the exclusive purpose of transporting troops of a foreign State, and commanded by naval officers of that State, were accorded by the practice of nations the immunities of vessels of war; but that the "Chandernagore" was not commanded by a French naval officer.

That, moreover, the acts complained of, though done on board the transport, took effect externally.

That, on the other hand, the injury was confined to members of the military force conveyed on board the transport, and that it might be urged that the case was not dissimilar to that of troops passing through a friendly territory, which carry with them their own military law and complete immunity from the territorial jurisdiction.

That our opinion was requested as to whether the circumstances of the case called for any representation to the French Government.

In obedience to your Lordship's commands we have the honour to report—

Should make representation to French Government.

That we think the circumstances of the case call for a representation to the French Government.

Question as to violation of neutral territory.

Even if the fusillade had been a source of danger only to the deserters, inasmuch as they were struck in British waters, outside the French vessel, we think a question arises whether a violation of neutral territory has not been committed.

Course adopted by France not legally justifiable.

But as it appears that some of the bullets reached the shore, and there endangered the life of at least one British subject, we think it clear that the course taken cannot be justified by international law.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Colonial Office, February 6; ditto, February 12; Memorandum (E. H.) February 21, 1885.

## No. 75.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 6.)

*Royal Courts of Justice, March* 5, 1885.

My Lord,

Franco-Chinese hostilities.

British pilots on French war-ships in River Min.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 25th ultimo, stating that he was to transmit to us the papers* relating to the question of the two British subjects who had served as pilots on board French ships of war during the operations of the French fleet in the Min. That the instruction to Her Majesty's Minister at Peking of the 6th January was founded on our Report of the 29th December last, but that it had not reached Sir H. Parkes' hands when he wrote his despatch of the 20th December last.

That your Lordship requested to be favoured with our opinion as to whether the proposed reply to the inquiry put by Sir H. Parkes was right and proper under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

Opinion as to prosecution of British subjects.

That we see no objection to the proposed reply so far as it authorizes the prosecution, without waiting for special instructions, of British subjects offending by taking part in belligerent operations against China.

But, having regard to the complications, of a practical character, which may arise, as pointed out in former Reports, if prosecutions are instituted, in the Consular Courts in China, against British subjects in the Chinese military or naval service, we think it would be well still to require, in these cases, special instructions from the Foreign Office before proceedings are commenced.

Notification should be avoided.

And, if this view be adopted, we think that any public notification, such as that suggested, should be avoided.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch to Sir H. Parkes.*

(No. .)

Sir, *Foreign Office,* , 1885.

I HAVE received your further despatch No. 329 of the 20th December last, inclosing copies of a correspondence which has passed between the Tsung-li Yamên and yourself in regard to the question of the prosecution of two British subjects who had served as pilots on board French ships of war during the operations of the French fleet in the Min.

The views of Her Majesty's Government upon this subject have already been conveyed to you in my despatch No. 9 of the 6th January last.

In reply to your inquiry, I authorize you to direct the prosecution of all British subjects offending against the Order in Council or the Foreign Enlistment Act, without waiting for special instructions from me, and you will issue a public notification to that effect.

I am, &c.

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## No. 76.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 11.)

*Royal Courts of Justice, March* 10, 1885.

My Lord,

French transports. Supplies, &c., for, at Singapore.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 3rd instant, stating that he was to transmit to us a letter from the

Colonial Office,* inclosing copies of correspondence which had taken place between the Acting Governor of the Straits Settlements and the French Consul at Singapore respecting the enforcement of the 10th section of the Foreign Enlistment Act.

That our opinion was requested as to whether your Lordship could properly concur in the Earl of Derby's proposal to approve the action taken by the Acting Governor of the Straits Settlements in the matter.

In obedience to your Lordship's commands we have the honour to report—

Can approve action of Governor in refusing to delay execution of his instructions.

That, in our opinion, your Lordship can properly concur in the Earl of Derby's proposal to approve the action taken by the Acting Governor of the Straits Settlements in the matter.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 77.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received March* 11.)

*Royal Courts of Justice, March* 11, 1885.

My Lord,

Franco-Chinese hostilities. Treatment of rice as contraband if shipped to ports north of Canton.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 9th instant, stating that, with reference to our Report of the 5th instant, on the subject of the decision of the French Government to treat rice generally as contraband of war if carried to Chinese ports north of Canton, he was directed to state that your Lordship inclined to the opinion that if the notes from the French Ambassador, announcing that decision of his Government, were published in the "Gazette," it would be desirable to publish simultaneously your Lordship's reply of the 27th ultimo.†

That Sir J. Pauncefote was to inclose a copy of that document, and to request us to favour your Lordship with our opinion whether there was any objection to its publication as suggested.

In obedience to your Lordship's commands we have the honour to report—

Objections to publication of answer to French Government.

That we think the publication, in the "Gazette," of your Lordship's reply of the 27th ultimo to the French Ambassador might give rise to misunderstanding.

It appears to us that it might create the impression that Her Majesty's Government would not permit the seizure of rice cargoes as contraband, and that their shipment might safely be continued. Whilst, in fact, the remedy of the owner of the cargo, if it should be condemned in the Prize Court, would be limited to seeking redress, through an application to the French Government, by Her Majesty's Government. It would be obviously undesirable to create a false security, and thus perhaps increase the number of such claims.

Should make protest public by answer to question in Parliament.

We suggested, in our former Report, the making public, by an answer to a question in Parliament, the protest which your Lordship had made, in order to prevent the French Government drawing the inference, from the publication of their Ambassador's despatch in the "Gazette," that the position taken up by your Lordship had been abandoned, and we adhere to the opinion already expressed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Sir H. Parkes, No. 205, October 8, Confidential No. 5045, p. 666 A; Law Officers, December 29, 1884, Confidential No. 5121, p. 54; (A) to Sir H. Parkes, No. 9, January 6, 1885, Confidential No. 5144, p. 32; (B) Sir H. Parkes, No. 329, December 20, 1884, Confidential No. 5144, p. 125 A; (C) proposed draft to Sir H. Parkes.

* Colonial Office, February 27, 1885, Confidential No. 5163, p. 63, with inclosures, on the subject of the refusal of the Governor of Singapore to comply with the demand of the French Consul for a delay of twenty-five days in carrying out his instructions to enforce, in case of French Government and hired transports, section 10 of the Foreign Enlistment Act, 33 & 34 Vict., cap. 90.

† To M. Waddington, February 27, 1885. Confidential No. 5163, p. 65.

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## No. 78.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 13.)

*Royal Courts of Justice, March* 12, 1885.

My Lord,

Supply of coals to homeward-bound French ships.

WE were honoured by your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that he was to transmit to us papers* relating to the question of supplying coal at the Straits Settlements to homeward-bound French vessels.

That our opinion was requested as to whether the reply which your Lordship proposed to make to the Colonial Office was right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed reply to Colonial Office.

That, in our opinion, the reply which your Lordship proposes to make to the Colonial Office is right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*Annex.*

*Sir J. Pauncefote to Sir R. Herbert.*

*Foreign Office, March* , 1885.

Sir,

I am directed by Earl Granville to acknowledge the receipt of your letter of the 3rd instant, inclosing a copy of a despatch from the Officer administering the Government of the Straits Settlements, asking whether section 10 of the Foreign Enlistment Act is to be enforced against homeward-bound vessels belonging to France in the same way as against vessels proceeding to the East.

Matter should be left to Governor.

Should obtain declaration as to use of coal.

In reply, I am to request you to state to the Earl of Derby that Lord Granville is of opinion that cases of this kind might with propriety be left to the discretion of the Governor, but that if French vessels are supplied with coal under such circumstances a declaration should be obtained from the Commander to the effect that the coal is to be used solely for the purpose of taking his ship home.

I am, &c.

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## No. 79.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 23.)

*Royal Courts of Justice, March* 21, 1885.

My Lord,

Franco-Chinese hostilities. Capture of neutral ships carrying contraband of war.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 16th instant, stating that, with reference to our Report of the 20th ultimo, he was to transmit to us a note† which your Lordship had received from the French Ambassador in reply to the request which was addressed to his Excellency that vessels which had started on a voyage with contraband of war, before the French Government notified their intention to exercise strict belligerent rights, should not be exposed to capture.

That Sir J. Pauncefote was to request our opinion as to whether it would be proper for Her Majesty's Government to make a protest on the subject, in order to reserve their rights of diplomatic remonstrance hereafter, in case the French Prize Courts should uphold the views expressed in M. Waddington's note.

In obedience to your Lordship's commands we have the honour to report—

Under the circumstances should protest against intention to capture ships that sailed before issue of the notification.

That we think it will be proper for Her Majesty's Government to make a protest on the subject, as suggested.

It would, we suggest, be expedient to call the attention of the French Ambassador to the peculiar circumstances of the case. The French Government abstained advisedly from a declaration of war, and the usual Proclamation of Neutrality was accordingly not issued.

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* Colonial Office, March 3, 1885. Confidential No. 5163, p. 69. To ditto, March , 1885.

† M. Waddington, March 9, 1885. Confidential No. 5163, p. 76.

They adopted the course of endeavouring to limit the area of belligerency, and the incidents attaching to it. And they abstained for a considerable time after belligerent operations had commenced, from exercising any right of search for contraband of war. Under these circumstances it does not appear reasonable that they should affect immediately, by the announcement of their intention to exercise the right of search, those who had dispatched cargoes on the faith, reasonably entertained, that this state of things would continue.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 80.

*The Lord Chancellor to Earl Granville.—(Received March* 31.)

*House of Lords, March* 30, 1885.

My dear Granville,

Franco-Chinese hostilities. Claim of France to treat rice as contraband of war.

THE French Yellow Book,* containing the diplomatic correspondence as to the claim of France to treat rice as contraband of war, has just been put into my hands; and I have so, *for the first time,* become acquainted with the text of the despatches which have passed on that subject between our own and the French Government. I cannot say that I am easy at, or satisfied with, the position in which they leave us; and, as it does not seem that any reply has yet been sent to M. Ferry's letter to Waddington of the 13th March (p. 41 of that book), I venture to suggest that such a reply to that document may be sent as will prevent any possible misconstruction of your letter to Waddington (*Ibid.*, p. 48) with which the book closes.

Necessity for resisting French claim.

It is hardly necessary for me to repeat (what I have already more than once said to you) that it is of *most vital* importance to all nations who, like ourselves, depend for the food of our population on imports from abroad, to maintain the right of neutrals to trade with us (or with any other country) in time of war, in provisions and other commodities, which are neither in their own proper nature contraband of war, nor intended for naval or military use, without being liable to capture; and to resist, inflexibly, the proposition, put forward by M. Ferry in his letter to M. Peyron 14th February, 1885, Yellow Book, p. 16), that "no rule of international law prevents the treatment, '*accidentellement,*' as contraband of war, of '*une denrée, dont la privation pourra conduire l'ennemi à demander la paix*' "—which proposition is reinforced in his Circular of the 21st February, 1885, *ibid.*, pp. 18-20); where he says, that the stoppage of the export of rice from Shanghae to Northern China is a measure "*susceptible d'exercer une action efficace sur le Gouvernement de Pékin,*" with which France cannot dispense, without losing "*l'arme la plus puissante* que les circonstances placent dans nos mains;" and that, having an incontestable right to *blockade* all the ports of China, they choose, instead of using that right, to prohibit the importation of rice by *declaring it contraband of war;* which M. Ferry affects to regard as a more moderate measure, and more favourable to neutrals than a blockade.

Consequences of acquiescing in it.

The consequences of these pretensions, if admitted, are manifest. If *rice* may be prohibited, because its exclusion may exercise a pressure upon the State whose people suffer from its prohibition in aid of the belligerent operations of the other State, and as a convenient substitute for blockade (without reference to any proved warlike destination of any particular cargoes), it is manifest, that *all other importations of articles of necessary or common use for the civil population of either belligerent country* might also be interdicted, as contraband of war, at the mere will and pleasure of the other belligerent. Such a doctrine would make a clean sweep of all international law whatever on this subject; and would deprive of all practical value the IInd Article of the Declaration of Paris, that "the neutral flag covers enemy's merchandize, *except contraband of war;* and also the IVth Article, which is directed against *paper blockades.*

The citations of supposed (British and other) authorities in favour of these pretensions are simply puerile, and evidently do not impose upon the French Government themselves.

Arguments brought forward by France in reply to British answer.

Your answer of the 27th February was *very* good. But what makes me now uneasy and anxious is, that the French Government have not acquiesced in it; but (on the contrary) on the 7th March M. Ferry wrote to Waddington, reiterating his

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* Foreign Office Library, Folio No. 827.

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view of the necessity of preventing the importation of rice for the food of the "*populations,*" *as well* as the "armies" of China. It is true that, in his subsequent letter of the 13th March, he alleges that "*the greater number* of cargoes of rice," on which the French interdict would fall, will be consigned in payment of some kind of public impost or tribute to the Chinese Government, and will be partly applied towards allowances, in the nature of pay, to be made by that Government to its armies; from which assumptions he argues that the destination of such cargoes is really warlike, even on the principle recognized by us; to which he adds, that they are *also* "*enemy's property, and on that ground liable to capture;*" an argument directly opposed to the very letter of the IInd Article of the Declaration of Paris. He assumes that the British Government will, under these circumstances, "*admit that there is no objection to treating rice as contraband of war,*" and will have no difficulty in recognizing the exclusive jurisdiction of its "*Conseil* DES PRISES" to determine all questions arising out of any captures which may be made.

They should be answered.

I cannot think it is at all satisfactory that these letters should be left without any other answer than that contained in your letter to Waddington of the 21st March; and I am afraid that this letter, if not further guarded and explained, may be open to the construction that we acquiesce in the views of M. Ferry's letters of the 7th and 13th March, or, at all events, in the conclusions of the last of those letters. I cannot think that we ought to do so. When the "Trent" affair occurred, we were very careful not to let the American Government suppose that we could possibly have acquiesced in what Captain Wilkes had done, even if the ship had been taken into an American Prize Court, and if that Court had upheld the capture. We ought not to hold ourselves bound by any decisions of any belligerent Prize Courts, upholding the present French pretensions, or justifying any capture of a British vessel for carrying rice to the north of China, unless it were proved by reasonably sufficient evidence (and not by any such general presumptions as are put forward in M. Ferry's letter of the 13th March), that such rice had, in fact, a warlike destination.

We ought not to be bound by decisions of Prize Courts unless the rice has a warlike destination.

I hope that the letters of the 7th and 13th March may yet be answered in this sense.

Believe me, &c.
(Signed) SELBORNE.

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*Minute by Sir J. Pauncefote.*

I am not aware that M. Ferry's despatch of the 13th March (Yellow Book, p. 41) was ever communicated to us by M. Waddington. But a draft reply to M. Waddington's note of the 10th March, which reproduces M. Ferry's despatch of the 7th March (Yellow Book, p. 38), has just been returned by the Law Officers, approved.

We might take that opportunity (by adding two paragraphs to that draft) of carrying out the recommendations of the Lord Chancellor. I have annexed to it a proposed addition which might be submitted to his Lordship for his consideration.

The French appear to hold that goods belonging to the *Government* of the enemy (as distinguished from *private* property) are not protected under the neutral flag by the Declaration of Paris; for M. Ferry uses the words "propriété de *l'État* ennemi." But, I presume, this contention cannot prevail, and it is therefore repudiated in the proposed addition to the draft.

J. P.

*Paris, April* 1, 1885.

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## No. 81.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 31.)

My Lord, *Royal Courts of Justice, March* 31, 1885.

Franco-Chinese hostilities. French claim to treat rice as contraband.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 24th instant, stating that with reference to our Report of the 24th ultimo, relative to the announcement of the French Government of their intention to treat rice as contraband of war, he was to transmit to us the further correspondence marked in the margin,* which had since passed between the French Ambassador and your Lordship on that subject.

That our opinion was requested as to whether the reply which your Lordship proposed to make to M. Waddington's note of the 10th instant was right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve reply to French note.

That, in our opinion, the reply which your Lordship proposes to make to M. Waddington's note of the 10th instant is right and proper in the circumstances of the case.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Earl Granville to M. Waddington.*†

M. l'Ambassadeur, *Foreign Office,* , 1885.

I HAVE the honour to acknowledge the receipt of your Excellency's note of the 10th ultimo, containing further observations concerning the claim of the French Government to treat as contraband of war cargoes of rice destined for Chinese ports north of Canton.

I beg leave to state, in reply, that Her Majesty's Government do not contest the general correctness of the view taken by the Government of the Republic, to the effect that it is for the Prize Court to decide in the first instance on the legality of the seizure; but any such decision to be binding on neutral Governments must be in accordance with the rules and principles of international law; but Her Majesty's Government feel themselves bound to reserve their rights by protesting at once against the doctrine that it is for the belligerent to decide what is and what is not contraband of war, regardless of the well-established rights of neutrals.

Since the receipt of your Excellency's note under reply, my attention has been directed to M. Ferry's despatch of the 13th March, published at p. 41 of the Parliamentary Papers on the Affairs of China, recently laid before the French Chambers, in which further arguments are adduced in support of the contention of your Government, and it is suggested that some of the shipments of rice destined for China are in the nature of a tribute or subsidy to the Court of Peking, and that under those circumstances, at least, Her Majesty's Government will admit that such shipments are liable to seizure as contraband of war. I think it right to observe, M. l'Ambassadeur, in order to prevent any misapprehension, that the seizure of such shipments under a neutral flag would be inconsistent with the Declaration of Paris, which provides that the neutral flag covers enemy's goods with the exception of contraband of war, and that Her Majesty's Government adhere in all respects to the views expressed in my note of the 27th February last, protesting against rice being treated generally as contraband of war, and that they will not consider themselves bound by the decision of any Prize Court which should uphold a contrary doctrine.

I have, &c.

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## No. 82.

*The Law Officers of the Crown to Earl Granville.—(Received April* 1.)

My Lord, *Royal Courts of Justice, April* 1, 1885.

Franco-Chinese hostilities. French hired transports.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 30th ultimo, stating that he was to transmit to us the accompanying letter from the India Office,‡ inclosing an inquiry from the Government of Bombay as

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* To M. Waddington, February 27; M. Waddington, March 10, 1885. Confidential No. 5163, pp. 65 and 78. And draft of proposed reply.

† As finally amended in accordance with the recommendations of the Lord Chancellor expressed in his letter of April 3, 1885.

‡ India Office, March 28, 1885. Confidential No. 5163, p. 112.

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to whether merchant-vessels, hired by the French Government for the transport of French troops, were to be treated as ships in the military or naval service of France within the meaning of section 10 of the Foreign Enlistment Act, and subjected to the rules as to neutrality.

That our opinion was requested as to the reply which should be returned to that inquiry.

In obedience to your Lordship's commands we have the honour to report—

Should be treated as in service of France, in accordance with the Foreign Enlistment Act.

That we think that vessels hired by the French Government as transports are to be treated as ships in the military or naval service of France within the meaning of the Foreign Enlistment Act.

Section 8 would appear to be the section to which the question of the Bombay Government applies rather than section 10.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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### No. 83.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 3.)*

My Lord, *Royal Courts of Justice, April 2, 1885.*

Franco-Chinese hostilities.
Export of arms from Hong Kong.
French request for its prohibition.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that, with reference to our Report of the 18th February last, he was to transmit to us the papers* which related to the desire of the French Government that the export of arms and munitions of war from Hong Kong to China should be prohibited.

That Sir Julian Pauncefote was to state that part of our side of the harbour of Hong Kong was Chinese territory, and that war material could be passed into China from Hong Kong through British Kowloon with complete immunity from interference by French cruizers.

That our opinion was requested as to the nature of the reply which should be made to M. Waddington's note of the 18th ultimo, taking into consideration the exceptional circumstances created by the geographical position of Hong Kong.

That Sir Julian Pauncefote inclosed a Map of Hong Kong, showing its proximity to the mainland of China.

In obedience to your Lordship's commands we have the honour to report—

Should refuse to interfere with trade of Hong Kong,

That we are of opinion that your Lordship should, in reply to M. Waddington's letter of the 18th ultimo, inform his Excellency that your Lordship regrets that you feel it impossible to depart from the rules and practice of conduct resulting from well-established principles of international action.

It is fully recognized that the subjects of a neutral State, except so far as they are forbidden by legislation, may trade in all articles with the belligerents, whose only remedy is to stop such trading by seizure, in the manner recognized by international law.

Whilst it is true that the geographical position of Hong Kong gives great facility to English traders to carry on their trade with China under circumstances which render any seizure by the French almost impossible, yet such circumstances are not sufficient to cause the general rule we have above referred to to be departed from. Such facility of trade must be regarded as one of degree.

We presume that, during the French and German war, much trade existed between Belgium and France with which Germany had no power of interference, and such facility of trade would always exist in cases where the neutral and belligerent States were contiguous.

And protest against search of neutral vessels bound for that port.

We think also that the claim of the French Government to seize and search neutral vessels bound for the English port of Hong Kong should be most strongly protested against.

Geographical position of a neutral port does not justify such action.

No valid ground for such a claim exists. The geographical position of a neutral port cannot justify a belligerent Power in interfering with its trade.

For instance, if a war took place between England and Russia, the French would not, we assume, be prepared to permit the right of Russian vessels of war to seize and search French and other neutral vessels bound for Pondicherry, and yet the geographical position of that port would afford great facility for supplying goods to those engaged in belligerent operations.

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[*] To M. Waddington, March 6; M. Waddington, March 18, 1885. Confidential No. 5163, pp. 74 and 96.

At the same time that these views are presented to M. Waddington, we think your Lordship may inform his Excellency that there is no desire on the part of the English Government to act in any other than the most friendly spirit towards the French Government, and there is every desire on the part of your Lordship to prevent, so far as is consistent with the preservation of recognized rights, Hong Kong being utilized in any way for the purpose of affording undue facilities to the Chinese in carrying on the war.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 84.

*The Law Officers of the Crown to Earl Granville.—(Received April 4.)*

My Lord, *Royal Courts of Justice, April 2, 1885.*

Convention for the protection of submarine cables.

REFERRING to the last paragraph of our letter to your Lordship of the 27th January last with reference to the draft Bill for giving effect in this country to the Submarine Telegraph Cables Convention, we have now the honour to report—

Undesirable to enact Convention in French.

That we have had the great advantage of conferring with Mr. Jenkyns upon the draft Bill submitted to us; and we think that it will not be desirable to enact the Convention in French, and that a correct translation ought to be inserted in the Schedule for the purpose of enactment.

Opinion as to limitation and application of Bill.

We consider that the Bill should be limited to giving effect to the Convention, and therefore should apply only to submarine cables to which the Convention applies, and should not extend to territorial waters.

We also think that as offences committed by British subjects by means of, or on board of, foreign vessels are not usually punishable by English law, the Bill should not apply to them.

We think that the Bill should extend to all British subjects and ships wherever they may be, and that the exception of the Colonies mentioned in the additional Article to the Convention should be treated as extending only to except cables landed on the shores of such of those Colonies as do not adhere to the Convention.

The Bill has been amended in other respects in accordance with our directions, and we think that the Bill as so amended may be properly submitted to Parliament.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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### No. 85.

*The Lord Chancellor to Earl Granville.—(Received April 4.)*

My dear Granville, *Blackmoor, Petersfield, April 3, 1885.*

Franco-Chinese hostilities.
French claim to treat rice as contraband.

I AM glad that it is not too late to modify the proposed letter* to the French Ambassador. The addition which Sir Julian Pauncefote proposes to make to it is very good, and quite meets my views. But *I am not satisfied with the preceding part*, though approved by the Law Officers; and I have ventured to suggest (in red ink) certain alterations.

Suggesting amendments in reply to French note of 10th March.

I wish, in the first place, to put in the word "*general*," because I am not prepared to admit that, if *the facts* were in any case (as, *e.g.*, in the case of the "Trent") undisputed, and the seizure avowed to be made *on a principle inconsistent, in our view, with international law*, the injured neutral State would be bound to defer its remonstrance, or its interposition, till the *form of a trial* in the Prize Court has been gone through.

In the second place, I do not think diplomatic courtesy can possibly require, after the French Government have expressly stated, and reiterated, their claim to act on a principle contrary to international law, that we should say, we "*do*

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[*] See Annex to Report from the Law Officers of the 31st March.

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*not doubt* that the French Courts will do justice if any case should arise." I, for my own part, *more than doubt it;* and I think it will be much safer and better to put it as I suggest.

Believe me, &c.
(Signed) SELBORNE.

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## No. 86.

*Note by the Lord Chancellor*—(*Received April* 9.)

Export of arms, &c., from Hong Kong.

I HAVE no objection to the *form* of this despatch, if the *substance* is right. But I doubt as to the substance.

This seems to me to be a question, not of international law, but of policy.

We have power to prohibit it. Is inclined to do so.

In strict international law the Law Officers are undoubtedly right; but by our own statute law we have, I conceive, the power to prohibit the exportation of arms, &c., from Hong Kong, and the strong inclination of my own opinion is that it would be the safer and wiser policy *to exercise that power* under the peculiar circumstances and situation of Hong Kong.

It ought not to be forgotten that the whole "Alabama" difficulty arose out of our standing upon the rigid rule of recognized international obligations, which did not (as I am fully convinced) prohibit these acts, for which we afterwards (under an *ex post facto* rule made by the Treaty of Washington) had to pay 3,000,000*l.*

Results of a refusal.

I do not say that a similar result would follow in the present case if the advice of the Law Officers were followed; but what I do apprehend is that the French would act, as against ourselves, on extreme views of their own belligerent rights, such, *e.g.*, as their extravagant claim to treat rice as contraband, even when not proved to have a destination for the supply of military or naval forces; and such as that at present threatened, viz., the interception of cargoes intended for China *through* Hong Kong.

Claim to intercept cargoes for China through Hong Kong not untenable.

I cannot agree with the Law Officers that this latter claim is so necessarily untenable. Lord Stowell, in more than one case, thought a Prize Court entitled to look *beyond* the immediate and ostensible, to the ultimate and real, destination of consignments of arms, &c., on board neutral vessels, and we acquiesced in captures made under similar circumstances by United States' vessels during the American Civil War.

(Signed) SELBORNE.

30, *Portland Place, April* 8, 1885.

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### Annex.

*Draft of Letter from Earl Granville to M. Waddington.*

M. l'Ambassadeur, *Foreign Office, April* , 1885.

I HAVE the honour to acknowledge the receipt of your Excellency's note of the 18th ultimo, in which, for the reasons stated, you expressed the hope of the French Government that the export of arms and munitions of war from Hong Kong to China might be prohibited.

In reply, I have to express to you the regret of Her Majesty's Government that they feel it impossible to depart from the rule and practice of conduct resulting from well-established principles of international action.

It is fully recognized that the subjects of a neutral State, except so far as they are forbidden by legislation, may trade in all articles with belligerents, whose only remedy is to stop such trading by seizure in the manner recognized by international law.

Whilst Her Majesty's Government admit that the geographical position of Hong Kong gives great facility to English traders to carry on their trade with China under circumstances which render any seizure by the French cruizers almost impossible, yet, in their opinion, such circumstances are not sufficient to cause the general rule above referred to to be departed from.

Such facility of trade must be regarded as one of degree.

Her Majesty's Government assume that during the French and German War much trade existed between France and Belgium with which Germany had no power of interference, and such facility of trade would always exist in cases where the neutral and belligerent States were contiguous.

Her Majesty's Government must also strongly protest against the claim advanced by the French Government to seize and search neutral vessels bound to the British neutral port of Hong Kong.

No valid ground, in the opinion of Her Majesty's Government, for such a claim exists, and they are, moreover, of opinion that the geographical position of a neutral port cannot justify a belligerent Power in interfering with its trade.

While explaining to your Excellency the grounds on which Her Majesty's Government differ from the views of the French Government as expressed in your note of the 18th ultimo, I have the honour to assure your Excellency that there is no desire on the part of Her Majesty's Government to act in any other than the most friendly spirit towards the French Government, and that there is every desire on their part to prevent, so far as is consistent with the preservation of recognized rights, Hong Kong being utilized in any way for the purpose of affording undue facilities to the Chinese in carrying on hostilities.

I have, &c.

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## No. 87.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received April* 17.)

My Lord, *Royal Courts of Justice, April* 16, 1885.

Prohibition of export of arms, &c., from Hong Kong. French request for.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 9th instant, stating that, with reference to our Report of the 2nd instant on the subject of the export of arms from Hong Kong, he had the honour, by direction of your Lordship, to acquaint us that a draft reply[*] to M. Waddington's note of the 18th ultimo was prepared in accordance with the suggestions contained in that Report.

That the draft had been submitted to the Lord Chancellor, and that Mr. Currie was to inclose his Lordship's remarks thereon, and to request that we would again take the subject into our consideration, and favour your Lordship with our opinion as to any alterations which we might think desirable to make in the draft reply, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Matter a question of policy

That we agree with the observation of the Lord Chancellor that the question involved depends upon considerations of policy rather than of law.

In writing our opinion of the 2nd instant we were influenced by the views which we gathered were entertained and expressed by several members of the Cabinet, when we met your Lordship and others in Mr. Gladstone's room in the House of Commons some three weeks ago, and we fortified those views by our own.

which the Cabinet must settle.

But we feel that the question of policy, apart from legal considerations, is one upon which we are scarcely competent to offer an independent opinion which would be of any real value if weighed against that expressed by the Lord Chancellor, and we suggest that the determination of the course which will be most advantageous to the commercial interests of England, consistently with the maintenance of friendly relations with the belligerent Powers, is eminently for the members of the Cabinet.

View taken during Franco-German War.

We, however, think it right to point out that we believe the question of the exercise of the power to prohibit export of arms from this country under the provisions of the Customs Act was considered during the French and German War, and that this country then contended, in answer to the application that such power should be exercised, that the restriction should only be imposed when, in our own interests, we desired to retain the arms in this country, and not because we wished to prevent their reaching the belligerent State.

Disadvantages to trade of prohibition without warning.

It must also be borne in mind that the restrictive order against any exportation, if now given without warning, may impose grave commercial loss upon those who have been engaged in a trade hitherto of a perfectly legitimate character.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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[*] See draft annexed to note by the Lord Chancellor of April 8, 1885.

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Agreeing with above Report.

I had not the opportunity of meeting your Lordship at the interview referred to by the Attorney and Solicitor-General, but I agree with the above Report.

I have, &c.

(Signed) J. PARKER DEANE.

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### No. 88.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 17.)*

*Royal Courts of Justice, April* 16, 1885.

My Lord,

Messageries Maritimes ships at Hong Kong. Question as to their treatment.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 9th instant, stating that he was to transmit to us a letter from the Colonial Office,[*] inclosing a copy of a despatch from the Governor of Hong Kong, in which, with reference to the instructions sent to him as to the position of the Messageries Maritimes steamers, founded on our Report of the 29th January last, he stated that "for some time past these steamers have touched at Kelung, in Formosa, on their voyage between Hong Kong and Japan, and there can be no doubt but that they carry the mails to the French squadron blockading Formosa, and any naval or military officers whom they may bring as passengers from France;" and requested instructions for his guidance on that point.

That our opinion was requested as to the further instructions which should be sent to the Governor of Hong Kong.

In obedience to your Lordship's commands we have the honour to report—

Not necessary to take any steps with regard to them.

That we do not think it is shown, on the facts before us, that the Messageries Maritimes ships are rendering such assistance to military operations as to render it necessary that any steps should be taken in relation to them.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 89.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 17.)*

*Royal Courts of Justice, April* 16, 1885.

My Lord,

Franco-Chinese hostilities. Coaling and refitting of French cruizers in British ports.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 7th instant, stating that he was to transmit to us a letter which had been received from Lloyd's,[†] inquiring whether, since a state of war existed in fact between France and China, Her Majesty's Government had arrived at a decision to close British ports in the Eastern Seas to French cruizers, in case they should desire there to coal or refit, and pointing out that the question was one of most serious import to the commercial community of this country.

Proposed reply to request of Lloyd's for prevention of.

That Mr. Currie was to state that, in reply to a similar inquiry dated the 16th February last, Lloyd's were informed on the 23rd February, in accordance with the opinion expressed in our Report of the 20th February, that Her Majesty's Government had decided to confine their action in that respect at present to the strict enforcement of the Foreign Enlistment Act.

That your Lordship, in reply to the present communication, proposed therefore to refer them to the answer previously given; and to state that the Act was being strictly carried out, and that, as at present advised, Her Majesty's Government did not see any sufficient reason that more stringent measures should be taken.

That our opinion was requested as to whether the answer which your Lordship proposed to return to Lloyd's was right and proper.

In obedience to your Lordship's commands we have the honour to report—

As to restricting use of ports for protection of British vessels. Suggesting answer.

That if it be the fact that French cruizers do obtain supplies, &c., at Hong Kong, and then lie outside for the purpose of exercising their rights of search and capture, it may be necessary to limit the use of British ports by belligerent ships.

We would suggest that the letter from Lloyd's might be answered by saying that the provisions of the Foreign Enlistment Act are being strictly enforced, and that Her Majesty's Government are fully alive to the importance of rendering no assistance to French cruizers in carrying on such operations as those referred to in the letter.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 90.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 17.)*

*Royal Courts of Justice, April* 16, 1885.

My Lord,

Steam-cutters required by the French.

WE were honoured with your Lordship's commands signified in Mr. Currie's letter of the 9th instant, stating that he was to transmit to us a note from the French Ambassador at this Court,[*] stating that the French Minister of Marine was desirous of ordering from Mr. White, of Cowes, five steam-cutters, of exactly the same model, and for the same destination, as those which were allowed to be given up to the French Government in the month of January last; but before giving the order for the building of the cutters, the Minister of Marine desired to receive an assurance that the views of the British authorities remained the same on the question.

That copies of our Reports of the 11th December,[†] 3rd and 11th January last, on the subject, were inclosed for reference.

That our opinion was requested as to the answer which should be returned to M. Waddington's note.

In obedience to your Lordship's commands we have the honour to report—

May give assurance that views as to conditions on which the boats may be built are not changed.

That, in our opinion, M. Waddington may be informed that the views of Her Majesty's Government remain the same, and that, on the understanding that the steam-cutters are not to be used, directly or indirectly, in the present hostilities with China, they will not interpose any obstacle to the execution of the order.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 91.

*Memorandum by the Lord Chancellor.*

Treatment of rice as contraband of war.

THIS[‡] is a somewhat alarming indication of the way in which the great Continental Powers may be expected to deal with us, if we should be at war. All the concessions made, to the disadvantage of a Maritime Power, by the Treaty of Paris, will be expected to be observed by us; and they will, at the same time, submit, as neutrals, to whatever law of contraband the other belligerent may choose to lay down, as having a tendency to shorten the war by crippling our trade and stopping our supplies of food through neutrals.

System dangerous to Great Britain in event of war.

Would necessitate denunciation of Declaration of Paris.

I do not hesitate to say, that, if this should ever happen, we should have to denounce, and shake ourselves free from, the Declaration of Paris; to resume the old rights, of taking enemy's goods in neutral bottoms, and of employing privateers against the enemy.

(Signed) SELBORNE.

30, *Portland Place, April* 24, 1885.

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[*] Colonial Office, March 31, 1885. Confidential No. 5163, p. 116.
[†] Lloyd's, March 28, 1885. Confidential No. 5163, p. 112*.

[*] M. Waddington, April 2, 1885. Confidential No. 5163, p. 120.
[†] Confidential No. 5121, p. 52.
[‡] See Inclosure in Mr. Scott's No. 13, Treaty, of April 11, 1885, printed above as Annex

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### Annex.

*Extract from the "Norddeutsche Allgemeine Zeitung" of April* 8, 1885.

(Translation.)

THE Kiel Chamber of Commerce has received the following answer from the Imperial Chancellor with reference to its application regarding the treatment of rice as contraband of war on the Chinese coast:—

"In answer to their representation of the 1st instant, I reply to the Chamber of Commerce that any disadvantage our commercial and carrying interests may suffer by the treatment of rice as contraband of war does not justify our opposing a measure which it has been thought fit to take in carrying on a foreign war. Every war is a calamity which entails evil consequences, not only on the combatants, but also on neutrals. These evils may easily be increased by the interference of a neutral Power with the way in which a third carries on the war to the disadvantage of the subjects of the interfering Power, and by this means German commerce might be weighed with far heavier losses than a transitory prohibition of the rice trade in Chinese waters. The measure in question has for its object the shortening of the war by increasing the difficulties of the enemy, and is a justifiable step in war if impartially enforced against *all* neutral ships."

The Imperial Chancellor,
(Signed) v. BISMARCK.

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### No. 92.

*Memorandum by the Lord Chancellor.*

Export of arms from Hong Kong.

French request for prohibition of.

Approves reply.

Object of such prohibition.

I AGREE with the proposed despatch.

With respect to the Law Officers' Report,* it is perfectly true that we have always regarded the primary object of the power to prohibit the exportation of arms, &c., contained in the Customs Act, as being our own defence, in case of our being, or expecting to be, ourselves at war; and I am not aware that it has hitherto been used for any other purpose. But it would, in my opinion, be a mistake to hold ourselves, therefore, bound never to use it for any other purpose. To prevent occasions of offence and irritation, which might involve us in war, may be as good a reason for using it, under particular circumstances, as any other.

Distinctions with regard to trade in arms.

There is, I think, a great difference between the continuance of the ordinary export trade in arms, &c., from this country, during such a war as that between France and Germany, and the establishment of a new trade of that kind, in such a place as Hong Kong, during a war between China and one of the European Powers. But on this distinction it has now, happily, become unnecessary to dwell.

(Signed) SELBORNE.

30, *Portland Place, May* 1, 1885.

### Annex.

*Earl Granville to M. Waddington.*

M. l'Ambassadeur, *Foreign Office, May* , 1885.

I HAVE the honour to acknowledge the receipt of your Excellency's note of the 18th March last, relative to the export of arms and munitions of war from Hong Kong to China, and I beg leave to state, in reply, that the subject of your Excellency's communication has been under the most careful examination on the part of Her Majesty's Government.

The intelligence of the cessation of hostilities between France and China, which has lately been received by Her Majesty's Government with the most lively satisfaction, will, however, now render it unnecessary to pursue the discussion of the points raised in your Excellency's note; and it only, therefore, remains for me, M. l'Ambassadeur, upon the present occasion, to add the assurance that there has been no desire on the part of Her Majesty's Government to act in any other than the most friendly spirit towards the French Government during the struggle which is now happily closed.

I have, &c.

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* Law Officers, April 16, 1885.

### No. 93.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May* 4.)

My Lord, *Royal Courts of Justice, May* 2, 1885.

Export of coals and provisions from Hong Kong.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 30th ultimo, stating that he was to transmit to us a letter from the Colonial Office,* inclosing copy of a despatch from the Governor of Hong Kong, raising further questions regarding the export from Hong Kong, in present circumstances, of coals and provisions.

Proposed answer to Governor. No ground for interference.

That your Lordship proposed to reply to the effect that the instructions to the Governor were limited to requiring him to enforce strictly the provisions of the Foreign Enlistment Act, and that the case did not, under the circumstances stated, appear to come within the provisions of that Act, and that there was no ground for interference.

That our opinion was requested as to whether the answer which your Lordship proposed to make to the letter from the Colonial Office was right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed answer.

That, in our opinion, the answer which your Lordship proposes to make to the letter from the Colonial Office is right and proper.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Draft of Letter to Sir R. Herbert.*

Sir, *Foreign Office, May* , 1885.

I AM directed by Earl Granville to acknowledge the receipt of your letter of the 23rd ultimo, relative to the export of coals and provisions from Hong Kong; and I am, in reply, to state to you that the instructions to the Governor were limited to requiring the strict enforcement of the Foreign Enlistment Act; that the case does not, under the circumstances stated, appear to come within the provisions of that Act; and that there does not, therefore, seem to have been any ground for interference in the matter.

I am, &c.

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### No. 94.

*Sir F. Herschell to Mr. Currie.—(Received May* 8.)

My dear Mr. Currie, , *May* 6, 1885.

Restrictions on coaling by French war-vessels.

THE Attorney-General and I have been talking over the question of the removal of restrictions on coaling by French vessels of war in relation to the letter received from Lloyd's,* and the answer to be given to it. We have no information upon the point whether the French have suspended the exercise of their right of seizure and search during the cessation of hostilities, though we presume they have. If they have not, it would probably not be proper for us to allow their cruizers to coal in our ports for the purpose of seizing our vessels. We would suggest that it might be well to ascertain the intended action of the French Government in this respect, if it be not known at the Foreign Office. And, in that case, we would suggest, for Lord Granville's consideration, that it might be pointed out to the French Ambassador that the

May be removed if French no longer exercise right of search.

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* Colonial Office, April 23, 1885. Confidential No. 5163, p. 146.

* Lloyd's, March 28, 1885. Confidential No. 5163, p. 112*.

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restrictions on coaling had then or are about to be removed, but that we should be obliged to reimpose them if the French intended continuing to exercise the belligerent right of seizure and search. It would be well not to admit that the French would be justified in doing so in the existing circumstances, inasmuch as there having been no declaration of war it would seem that belligerent rights cease as soon as an actual state of belligerency ceases.

Yours, &c.
(Signed) FARRER HERSCHELL.

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### No. 95.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 23.)*

(A.)
My Lord, *Royal Courts of Justice, May* 22, 1885.

Restrictions on coaling of French and Chinese war-ships in British ports.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 18th instant, stating that, with reference to Sir Farrer Herschell's letter of the 6th instant, he was to acquaint us that instructions were sent to the Colonial and Indian authorities concerned to the effect that, in view of the cessation of hostilities between France and China, the restrictions with regard to the coaling of French and Chinese ships of war at British ports might be removed, and that at the same time your Lordship addressed a note to the French Ambassador,* stating that that action had been taken by Her Majesty's Government on the presumption that the French Government had abandoned the belligerent right of search and capture on the high seas.

Refusal of French to abandon right of search, &c.

That Mr. Currie was to inclose the reply† to that communication, in which the French Ambassador stated that his Government had not renounced these belligerent rights.

That your Lordship inclined to the opinion that it might be desirable to address a reply to the French Ambassador's note, explaining how, on the cessation of active hostilities, and in advance of the conclusion of a Definitive Treaty of Peace, Her Majesty's Government had judged it proper to remove the restrictions which, in the absence of any declaration of war, had been imposed only when such active hostilities commenced. But that that action had been taken on the presumption that the cessation of hostilities implied a discontinuance of belligerent rights in regard to neutral trade, and expressing a hope that instructions might be sent to the French Commanders to avoid any action which would render it incumbent on Her Majesty's Government to reimpose the restrictions against coaling until the final conclusion of a Treaty of Peace.

That our opinion was requested as to whether a reply in that sense would be right and proper, and generally that we would favour your Lordship with any observations we might have to offer on the subject.

In obedience to your Lordship's commands we have the honour to report—

Proposed reply to French.

That we think it would be desirable to address a reply to the French Ambassador in the following sense:—

Grounds for British policy as to neutrality and French right of search.

That in the present case there has been no declaration of war, either by France or China. The action taken by Her Majesty's Government in enforcing the provisions of the Foreign Enlistment Act was founded upon the state of war which actually existed, belligerent operations being actively carried on. Upon the same ground, Her Majesty's Government recognized the right of search for and seizure of contraband asserted by the French Government.

Change of policy on cessation of war.

The *de facto* state of war now no longer exists, and there never having been any declaration of war, the two Powers cannot, in the view of Her Majesty's Government, be any longer regarded as at war. It was in pursuance of this view that Her Majesty's Government gave directions for the removal of restrictions upon the supply of coal to belligerent ships in British ports.

Should protest against action of France.

Her Majesty's Government cannot, therefore, assent to the contention that the French Government are entitled to exercise belligerent rights against neutral vessels unless hostilities should be renewed. They feel bound to enter a protest against such a course being pursued, and they trust that the French Government will give such orders to their Naval Commanders as may avoid the raising of any such question.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* To M. Waddington, May 8, 1885. Confidential No. 5163, p. 173.
† M. Waddington, May 15, 1885. Confidential No. 5163, p. 176.

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Before it is decided to reply to M. Waddington's note in the sense suggested by the Law Officers, I venture to submit the following considerations:—

It is proposed to deny the right of the French to exercise belligerent rights on the ground that, there having been no declaration of war, belligerency ceases with the discontinuance of active hostilities. I cannot, however, but think that if we advance such a contention, the French may reply that we have no right to insist on their abandoning the exercise of precautions the cessation of which might enable the Chinese, by augmenting their warlike force, either to extort better terms before signing the Definitive Treaty of Peace, or, failing its conclusion, to continue the war with effect.

If the French take this line, are we prepared to insist on our contention?

If not, I still think that a reply of a more temporizing nature, such as that proposed in the draft to the Law Officers, would be more politic, since, if instructions were sent to the Colonial Governors to report any case of detention of a British vessel, as recommended by Law Officers' Report of the 22nd May (B), we could still, the case arising, take up a strong position by reviving the operation of the Foreign Enlistment Act.

Perhaps the papers might be submitted to the Lord Chancellor for his opinion on this point.

(Signed) J. H. G. BERGNE.

*May* 23, 1885.

(Initialled) G.

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I concur with Bergne. His proposed draft seems to me sufficient to reserve our rights in the event of the French exercising belligerent rights in a manner detrimental to British interests. There does not seem to be any use in pledging ourselves beforehand by a protest.

*Qy.* Refer alternative drafts to the Lord Chancellor.

(Signed) P. CURRIE.

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### No. 96.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 23.)*

(B.)
My Lord, *Royal Courts of Justice, May* 22, 1885.

Restrictions on coaling as well as equipment of French cruizers.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of yesterday's date, stating that he was to transmit to us a letter from the Colonial Office,* with regard to the discontinuance of the restrictions as to coaling, equipment, &c., of French cruizers in the ports of Her Majesty's Eastern Colonies, and especially whether the removal of those restrictions should be held to apply to other matters of equipment as well as to coaling.

That Mr. Lister was to request that we would favour your Lordship with our opinion as to the answer which should be made to that inquiry, bearing in mind the terms of the note from the French Ambassador of the 15th instant, to the effect that the French Government still claimed to exercise belligerent rights.

In obedience to your Lordship's commands we have the honour to report—

They may be removed.

That we think an affirmative answer should be sent to the inquiry of the Governor of Hong Kong.

Cannot distinguish between different kinds of equipment.

We do not think it is possible to draw a distinction between one kind of equipment and another.

Our reasons for taking this view will appear from our Report of this day in answer to Mr. Lister's letter of the 18th May. In view of the letter of the French

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* Colonial Office, May 16, 1885. Confidential No. 5163, p. 176.

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Ambassador, we suggest that it might be well to instruct the Governors of Hong Kong and the Straits Settlements to communicate the facts at once if there is any attempt on the part of the French Naval Commanders to exercise belligerent rights against British vessels.

Exercise of belligerent rights against British vessels should be reported.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 97.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 23.)*

(C.)

*Royal Courts of Justice, May 22, 1885.*

My Lord,

Supply of coal to French cruizers at British ports.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 2nd instant, stating that, with reference to his letter of the 29th ultimo, he was to transmit to us a letter from the Colonial Office,* relative to the supply of coals to French vessels of war at Hong Kong and the Straits Settlements. That if we should be of opinion that the provisions of the Foreign Enlistment Act must be held to be in force until the conclusion of a Definitive Treaty of Peace between France and China, Mr. Currie was to inquire whether we considered that, as there did not at present appear to be any question of active hostilities being carried on against the Chinese, the granting of supplies of coal to French vessels of war would come within the terms of section 8 (3) or section 10 of the Foreign Enlistment Act, or would be otherwise contrary to its provisions.

In obedience to your Lordship's commands we have the honour to report—

Such supply not now contrary to Foreign Enlistment Act.

That there having been no declaration of war by either Power, and no *de facto* state of war now existing, we think that the granting of supplies of coal to French vessels of war would not now be contrary to the provisions of the Foreign Enlistment Act.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 98.

*The Law Officers of the Crown to Earl Granville.—(Received May 28.)*

[In reply to the following Reference, the Law Officers report as on p. 97:—]

*Mr. Currie to the Law Officers of the Crown and Dr. Deane.*

Gentlemen,

*Foreign Office, May 26, 1885.*

Seizure and detention of the "Waverley" by the French in China.

WITH reference to your Reports of the 22nd instant, I am directed by Earl Granville to transmit to you copies of telegrams received yesterday and to-day from Her Majesty's Chargé d'Affaires at Peking, and from Her Majesty's Consul-General at Shanghae, reporting the seizure and detention of the British steamer "Waverley."†

As it appears from the act of seizure thus reported that the French are actually exercising belligerent rights in regard to neutral vessels at the present moment, I am to request your opinion as soon as possible on the following points:—

Has a state of war ceased?

(*a*.) Whether, in view of the statement contained in M. Waddington's note of the 15th instant (sent to you in my letter of the 18th instant), and of the actual exercise of belligerent rights in the present case, the *de facto* state of war previously existing between France and China can be held to have ceased, notwithstanding the signature of Preliminaries of Peace and the apparent termination of active hostilities.

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* Colonial Office, April 29, 1885. Confidential No. 5163, p. 160.

† Consul-General Hughes, Telegraphic, May 24; Mr. O'Conor, No. 42, Telegraphic, May 25; Consul-General Hughes, Telegraphic, May 26, 1885. Confidential No. 5163, pp. 181, 182.

Ought restrictions under Foreign Enlistment Act to be re-imposed?

(*b*.) Whether, under these circumstances, you are of opinion that the restrictions imposed by the Foreign Enlistment Act should again be enforced in Her Majesty's Eastern Colonies until the conclusion of the Definitive Treaty of Peace.

Should we protest against seizure of the "Waverley"?

(*c*.) Whether, in view of the explanations contained in Mr. O'Conor's telegram, you are of opinion that any protest should be addressed to the French Government with regard to the seizure of the "Waverley."

For convenience of reference, I am to return herewith your three Reports of the 22nd instant, and I am to state that any action thereon has been suspended until the receipt of your reply to the present letter.

I am, &c.
(Signed) P. CURRIE.

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*The Attorney-General's Chambers, New Court,*
*Temple, May 27, 1885.*

My Lord,

Adhere to views in Report (A) of May 22.

In reply to Mr. Currie's letter of the 26th May, we have to inform your Lordship that we adhere to the views expressed by us in our Report of the 22nd May (marked A) written in reply to Mr. Currie's letter of the 18th instant.

Should protest against exercise of belligerent rights by French

Under present circumstances, we think a strong representation should be made to the French Government in the sense of that Report, and urging that inasmuch as no declaration of war has been made, that no *de facto* belligerent operations are being carried on, and that Her Majesty's Government have ceased exercising the provisions of the Foreign Enlistment Act, and have permitted French ships to receive coal supplies, the enforcing by the French Government of belligerent rights against neutral vessels ought not, in the opinion of Her Majesty's Government, to be persisted in, and it is hoped that the French Government will think it right, under the circumstances, of their own motion to order the release of the British vessel now seized. But that if the French Government should not think it right to acquiesce in these views, Her Majesty's Government will be compelled to reimpose the restrictions existing under the powers of the Foreign Enlistment Act, for if they were to refrain from so doing supplies from English sources might be furnished to French ships, which would thus be enabled to harass English and other neutral vessels.

and reimpose restrictions in case of their continuance.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

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### No. 99.

*Memorandum by the Lord Chancellor.*

Restrictions on coaling of French and Chinese war-ships in British ports, and refusal of French to abandon right of search, &c.

I AM sorry to differ from the Law Officers about this matter, but I do, decidedly; and I agree with the view taken by Mr. Bergne.

I cannot attribute (I never have attributed) any importance (when there has actually been a state of belligerency) to the omission, on both sides, or on either side, to make a formal declaration of war.

Differs from Law Officers and agrees with Mr. Bergne.

We have had notice of, and have recognized, the existence of a war *de facto*; and, in my opinion, the existence of a war, known to neutrals (though without a declaration by the belligerents) is *not* terminated by an armistice, or by a suspense of active hostilities, or by the signature of mere Preliminaries of Peace. In this case we have had express notice that this is the view taken by one, at least, of the belligerents, and I think it is correct.

Opinion as to representations which should be made to French Government.

I cannot but doubt whether we were not too precipitate in removing the restrictions which we had imposed on the belligerents in our own ports; and I think we may now properly represent to the French Government that the course they appear to think it necessary to take may oblige us again to impose them; and I think we may also properly urge these considerations as a ground for the voluntary release of the ship which has been captured, and which may have been misled by the supposition that all warlike operations were practically at an end. But I am unable to agree with the proposed draft despatch.*

(Signed) SELBORNE.

*June 1, 1885.*

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* See Annex No. 1 to Law Officers' Report of June 8.

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## No. 100.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 8.)*

My Lord, *Royal Courts of Justice, June 6, 1885.*

Detention of the "Surat" while conveying Her Majesty's mail, by a French cruizer.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 12th ultimo, stating that he was to transmit to us a letter from the Peninsular and Oriental Company,* reporting the circumstances under which the steam-ship "Surat" was detained by the French cruizer "Champlain" while proceeding from Shanghae to Hong Kong with Her Majesty's mail. That Mr. Lister was to state that your Lordship would propose to reply that the French officer appears to have acted with great courtesy, and that your Lordship was not of opinion that under the circumstances there was any ground for complaint, and that Mr. Lister was to request our opinion whether a reply in those terms would be right and proper.

In obedience to your Lordship's commands we have the honour to report—

Opinion as to reply to be sent to the Peninsular and Oriental Company.

That, in the absence of any complaint from the owners of the "Surat," we think it will be sufficient to acknowledge the receipt of the letter of the 24th April, and to thank the Secretary of the Peninsular and Oriental Company for the information contained in it.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 101.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 9.)*

My Lord, *Royal Courts of Justice, June 8, 1885.*

Restrictions on coaling of French and Chinese war-ships in British ports.

Refusal of French to abandon right of search, &c.

WE were favoured with your Lordship's commands signified in Mr. Currie's letter of the 3rd instant, stating that he was directed by your Lordship to inform us that before sending a reply to M. Waddington's note of the 15th ultimo your Lordship thought it desirable to consult the Lord Chancellor as to its terms, and that Mr. Currie was to transmit to us a copy of a Memorandum† by his Lordship on the subject of the claim of the French Government to continue the exercise of belligerent rights after the signature of Preliminaries of Peace between France and China.

That Mr. Currie was also to inclose drafts of letters which your Lordship proposed to send to the French Ambassador, the Colonial and India Offices; and that our opinion was requested whether, in view of the Lord Chancellor's observations, the terms of those letters were right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approves draft letters to French Ambassador and Colonial and India Offices.

That, in view of the Lord Chancellor's observations, we are of opinion that the terms of these letters are right and proper.

But we would suggest that on p. 7 of the draft to M. Waddington it might be well to substitute for the word "may" the words "will probably."

Reasons for opinion given in their Report of the 22nd May.

With reference to those observations, we desire to point out that the view we expressed was not so much founded upon general principles as upon the circumstances of this particular case, which are very peculiar.

The declaration of war was not accidentally but designedly withheld. The French Government, long after hostilities commenced, insisted that they were not at war with China, but were only resorting to limited warlike operations for the purpose of compelling the Chinese to perform a Treaty.

And it was not until a late period that the French Government asserted the right of search and seizure. Even then they appear to have still maintained that the two nations were not at war.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Peninsular and Oriental Steam Navigation Company, April 24, 1885. Confidential No. 5163, p. 149.

† June 1, 1885.

### Annex No. 1.

*Earl Granville to M. Waddington.*

M. l'Ambassadeur, *Foreign Office, June 8, 1885.*

I HAVE the honour to acknowledge the receipt of your Excellency's note of the 15th ultimo, in which you acquaint me that the French Government still claim to exercise belligerent rights in regard to neutral vessels on the high seas; and I beg leave, in reply, to make the following observations for the consideration of your Government.

In the present case no declaration of war was made either by France or China, and the action taken by Her Majesty's Government in enforcing the provisions of the Foreign Enlistment Act was founded upon the state of war which actually existed at the time, belligerent operations being actively carried on. Upon the same ground Her Majesty's Government recognized the belligerent right of search and capture of neutral vessels on the high seas which was asserted by the French Government.

Since the signature of the Preliminaries of Peace between France and China, the active hostilities on either side having apparently ceased, Her Majesty's Government gave directions for the removal of restrictions upon the supply of coal to cruizers of either Power in British ports. This action was taken by Her Majesty's Government on the presumption that, simultaneously with the cessation of active hostilities, the French Government would abandon the exercise of belligerent right of search and capture of neutral vessels on the high seas, and Her Majesty's Government regret to learn from your Excellency's note now under reply that such is not the case.

Having once removed the restrictions in question, Her Majesty's Government would be extremely reluctant to find themselves under the necessity of reimposing them, and they trust that on a reconsideration of the matter the French Government may be in a position to give instructions to the French Commanders to avoid any action which would render such a step necessary.

If, however, the French Government should not think it right to give such directions, and should deem it incumbent on them, under existing circumstances, to persevere in the exercise of belligerent rights, Her Majesty's Government will probably feel themselves compelled to revive the operation of the provisions of the Foreign Enlistment Act; for if they were to refrain from so doing, supplies from English sources might be furnished to French cruizers, which would enable them to harass English and other neutral vessels.

I should feel obliged, M. l'Ambassadeur, if your Excellency would have the goodness to communicate to me an early expression of the views of your Government on this subject.

I have, &c.
(Signed) GRANVILLE.

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### Annex No. 2.

*Mr. Currie to Sir R. Herbert.*

(Confidential.)

Sir, *Foreign Office, June 8, 1885.*

WITH reference to my letter of the 21st ultimo, I am directed by Earl Granville to transmit to you, to be laid before the Earl of Derby, copies of correspondence, as marked in the margin,* which has passed between his Lordship and the French Ambassador on the subject of the exercise of belligerent rights on the high seas.

I am to state that, under existing circumstances, and until the receipt of the reply of the French Government to Lord Granville's note of the 8th instant, Her Majesty's Government are reluctant to countermand the directions which have been given for the removal of the restrictions on coaling in British ports, but I am to suggest that, in view of the attitude now assumed by the French Government, the Colonial Governors should be instructed to communicate at once by telegraph to Her Majesty's Government if there is any attempt on the part of the French Commanders to exercise belligerent rights against British vessels, in order that Her Majesty's Government may, if necessary, consider the propriety of re-enforcing the provisions of the Foreign Enlistment Act.

I am, &c.
(Signed) P. CURRIE.

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* To M. Waddington, May 8; M. Waddington, May 15, 1885; and Annex No. 1.

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## No. 102.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 11.)*

My Lord, *Royal Courts of Justice, June* 10, 1885.

Protection of submarine telegraph cables in time of war.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 23rd ultimo, stating that he was to transmit to us a letter from the Admiralty, dated the 9th instant, relating to the Convention for the protection of submarine cables, signed at Paris the 14th March, 1884.*

Powers of naval officers.

That the Lords Commissioners desired to know whether, in time of war, they would be authorized in instructing officers of Her Majesty's ships to search neutral vessels met with under suspicious circumstances in the neighbourhood of the telegraphic lines of communication, whether materials used for dragging up and cutting submarine cables found on board such vessels might be treated as contraband of war, and what rights officers commanding ships of war would have against a neutral vessel found in the act of interrupting the communication by a submarine cable. That it was conceived that the Convention gave no new powers to Commanders of vessels of war, except those contained in Article X, in relation to the verification of the nationality of an offending vessel and the taking of depositions; that, on the other hand, it did not restrict their powers, and that in time of war materials used for dragging up and cutting submarine cables could not in all cases be treated as contraband of war; but that, coupled with other circumstances, would be evidence of the intention of the neutral vessel to commit the offence in question, and that if such offence were injurious to the naval or military operations of this country it might be treated as an act of hostility, rendering the neutral vessel liable to capture.

That your Lordship desired to be favoured with our opinion as to whether the above views were correct, and also with any suggestions we might have to offer as to the reply which should be returned to the inquiries of the Lords of the Admiralty.

In obedience to your Lordship's commands we have the honour to report—

Not affected by Convention.

That the questions raised in the Admiralty letter are not affected by the International Convention for the protection of submarine telegraph cables, which neither adds to nor limits the rights of belligerents.

It appears from the *procès-verbal* (p. 11) that on signing the Convention Lord Lyons declared that Article XV was understood by Her Majesty's Government to mean that a belligerent will be free to act as regards submarine cables as if the Convention did not exist.

Punishment of neutral vessels for injuring cables.

Any attempt by a neutral vessel, in time of war, to injure a submarine cable, with a view thereby to hinder or defeat the naval or military operations of Her Majesty's forces, might, in our opinion, be regarded as a hostile act, and resisted and punished as such.

Search and capture of vessels and seizure of materials for injuring cables.

We think, further, that if a neutral vessel were, in time of war, detected by Her Majesty's ships, under circumstances from which her intention to make such an attempt, with such an object, might be reasonably suspected, Her Majesty's officers would be justified in searching her, and in frustrating her design by seizure of the materials intended for the purpose, or by capture of the vessel itself.

Such materials, when contraband of war.

Such materials, however, cannot be regarded as contraband of war, unless, from all the circumstances of the case, it is reasonably clear that they are intended to be used in assisting the belligerent operations of the enemy, or hampering those of Her Majesty's forces.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Parliamentary No. 2812.

## No. 103.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 13.)*

My Lord, *Royal Courts of Justice, June* 13, 1885.

Shipment of treasure in neutral vessels, and detention of the "Kow-shing" by French cruizers.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us a letter* from the Indo-Chinese Steam Navigation Company, reporting the stoppage and detention of their steamer "Kow-shing" by French cruizers, on the ground that there was treasure on board consigned to the Chinese.

That the Company asked for information on various points connected with the shipment of treasure in neutral vessels, and that our opinion was requested as to the answer which should be made to their letter, and also as to whether the circumstances of the case in point call for any, and, if so, what, representation to the French Government.

In obedience to your Lordship's commands we have the honour to report—

Conditions under which money and treasure may become contraband.

That money (and treasure) are of like character with provisions and may become contraband under like conditions.

The test is not the person to whom the money is consigned, but the purpose for which, according to obvious and natural inference, it is to be employed.

So far as the person and place to whom it is consigned afford evidence of the purpose for which it is to be employed they are of importance, but not otherwise, as the ground of seizure is based, not upon the fact that the money is consigned to the subject of a belligerent State, but that it is intended to be employed in furtherance of belligerent objects.

Unnecessary to make a representation to the French Government.

The action of the French in the case of the "Kow-shing" appears to have been not contrary to the rules and practice of international law, and it seems unnecessary, under all the circumstances of the case, to make the matter the subject of representation to the French Government.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*Memorandum by the Lord Chancellor.*

Agreeing with above Report.

I think the answer should be in accordance with the opinion of the Law Officers. A consignment of treasure to merchants for mercantile purposes would be innocent; but a consignment (directly or indirectly) to a belligerent Government might be otherwise according to circumstances.

*June* 19, 1885. (Signed) SELBORNE.

## No. 104.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received September 22.)*

My Lord, *Royal Courts of Justice, September* 21, 1885.

C. Borg. Petition for remission of sentence.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st September instant, stating that, by your Lordship's direction, he had to transmit to us the papers† noted in the margin of his letter, which related to the Petition of C. Borg, a prisoner in the Corradino Civil Prison in Malta, praying for a mitigation of his sentence of five years' penal servitude.

That the case was tried before Dr. Arpa, late Judge of Her Majesty's Consular Court at Tunis, and the Consular Court having now been abolished, and the Consulate placed under the jurisdiction of Her Majesty's Consul-General at Algiers, the Acting Consul-General was instructed to furnish particulars of the case, and had then sent home copy of the notes of evidence made by Dr. Arpa.

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* May 15, 1885. Confidential No. 5163, p. 175*.

† Colonial Office, July 15; Acting Consul-General Crawford, No. 58, 1885.

That the Petition of the prisoner and the "particulars of his prison history" would be found in the Colonial Office letter of the 15th July.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether any mitigation of the sentence should be granted, and, if so, to what extent.

In obedience to your Lordship's commands we have the honour to report—

That we think some mitigation of the sentence may properly be granted.

Sentence should be mitigated.

We see no reason for distinction between Borg and the prisoner Framalauza, convicted with him; and if it is true, as stated in Borg's Petition, that Framalauza has obtained two years of grace, we think Borg's sentence should be mitigated to the same extent.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 105.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received October* 14.)

My Lord,
*Royal Courts of Justice, October* 13, 1885.

Murder and mutiny by British subjects on the "Don Juan," on the high seas, now in prison at Brest.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo, stating that he was to transmit to us the papers* relating to two British subjects, R. Martin and A. Trimingham, lately seamen on board the Uruguayan vessel "Don Juan," then in prison at Brest, charged with mutiny and murder on board that vessel on the high seas.

That the French Tribunals had no jurisdiction over the crime, it having been committed by foreigners on a foreigner, on board a foreign ship on the high seas.

Nor would it seem that any British Tribunal had jurisdiction, inasmuch as the accused, though British subjects, belonged to the "Don Juan," and therefore the case was not within section 11 of "The Merchant Shipping Act, 1867."

That if the accused were sent to this country, they could not be surrendered to the Uruguayan Government, as the Extradition Treaty between Great Britain and that country did not admit of the surrender of British subjects.

That it appeared from Consul Rainals' No. 21 of the 10th September that the French Government would probably surrender the prisoners to the Uruguayan Government.

That our opinion was requested as to whether the two British subjects in question might properly be left in the custody of the French Government to await their extradition to Uruguay, or whether the case called for any action on the part of Her Majesty's Government, with a view to their release from custody, or otherwise. That your Lordship would await our Report before sending any instructions to Consul Rainals.

In obedience to your Lordship's commands we have the honour to report—

May be left in French custody.
No action necessary unless illegally tried.

That the two British subjects in question may properly be left in the custody of the French Government. The case does not call for any action on the part of Her Majesty's Government, unless an attempt should be made to bring them to trial before a French, or any other Tribunal, having no jurisdiction to try them.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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* Consul Rainals, No. 20, August 31; ditto, No. 21, September 10, 1885; Merchant Shipping Act, 1867, 30 and 31 Vict., cap. 124; Board of Trade, September 4, 1885; Treaty: Great Britain and Uruguay, March 26, 1884, No. 738.

# General.

## No. 106.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 6.)

My Lord,
*Royal Courts of Justice, January* 5, 1885.

Liability of Resident Clerks to income-tax in respect of their rooms at the Foreign Office.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 24th October last, stating that in reply to the inquiries contained in our letter of the 11th September* with reference to the liability of the Resident Clerks in the Foreign Office to pay assessments under Schedule A of the income-tax in respect of their occupation of rooms in the Foreign Office, he was to state to us that the occupation of such rooms was not allowed as any equivalent for salary.

That the rooms were assigned to them not merely as their residence, but as necessary for the discharge of their official duties.

That if no volunteers could be found to occupy them, arrangements would have to be made to insure their occupation.

That as regarded the second point raised in our letter, as to whether any clerk had any particular room appropriated for his personal use (as, for instance, a bedroom) over which he had the sole control, and into which no one could enter without his permission, Mr. Lister was to state that each Resident Clerk had a bedroom and sitting-room which were accessible at any hour by the officials at the Foreign Office on public business, though the occupant had the sole control over them, and permission to enter would naturally be requested by persons desirous of seeing him.

In obedience to your Lordship's commands we have the honour to report—

That we think it is open to much doubt whether the clerks have such an occupation as renders them liable to be assessed under the 5th & 6th Vict.

No liability for occupation of their sitting-rooms;

It appears clear that their residence at the Foreign Office results from the necessities of the public service, and is not a favour accorded them as part of their emoluments.

If Kelly, C.B., was well founded in saying, as he did in "Bent *v.* Roberts," that the mere fact that the occupation by an official was compulsory was sufficient to show that he was not liable to be assessed, that would no doubt cover the present case. But we hardly think such a proposition could be supported, though the fact that the residence is compulsory and necessary is certainly an important element in determining whether there is such an occupation as the Statute contemplates.

We think, on the whole, that there is not such an occupation of the sitting-rooms allotted to the Resident Clerks. Seeing that public work has to be done by them there out of the ordinary office hours, and may have to be performed at any time, we do not think the nature of their occupation is, in substance, different from that of the Under-Secretary or any other official who has allotted to him his own room at the Foreign Office.

but there may be for occupation of bedrooms.

With regard to the bedrooms the case is somewhat different, and it may be that the clerks are liable to be assessed in respect of them; but the point is open to doubt, and it deserves consideration whether it is worth while for the Revenue Department to raise the question if the liability be thus limited.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Confidential No. 5121, p. 56.

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### No. 107.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 24.)*

My Lord, *Royal Courts of Justice, March* 23, 1885.

New Tables of Consular Fees. Proposed Orders in Council.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th instant, stating that he was to transmit to us the papers noted in the accompanying list* relative to two proposed Orders in Council establishing new Tables of Consular Fees, that marked (A) being for the General Consular service, and in substitution of the two Orders in Council dated respectively the 1st May, 1855, and 27th July, 1863, and marked (B) and (C), and the draft Order (D), being for China, Japan, and Corea, and in substitution of the three Orders in Council of the 19th June, 1868, 21st July, 1876, and 14th February, 1883, and marked respectively (E), (F), and (G).

That a copy of the Act 6 Geo. IV, cap. 87, marked (H), under the authority of which, and of the other Acts referred to in the preamble, the Orders were proposed to be issued, was inclosed for reference.

That the draft Orders had been already submitted to, and approved by, the Treasury, and that our opinion was requested as to whether they were right and proper to be submitted for ratification to the Queen in Council.

That, as it was desired that the Orders should be passed at the Council to be held on the 26th instant, Sir Julian Pauncefote was to request that our Report might be transmitted to your Lordship at our earliest possible convenience.

In obedience to your Lordship's commands we have the honour to report—

Approve draft Orders in Council.

That, in our opinion, the draft Orders are right and proper to be submitted to Her Majesty in Council for ratification.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Germany.

### No. 108.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 5.)*

My Lord, *Royal Courts of Justice, January* 5, 1885.

Divorce of W. Rose.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 3rd ultimo, inclosing a further despatch from Her Majesty's Ambassador at Berlin,* giving further information in relation to the question of William Rose, which we desired to have before advising on the Decree of the Civil Court at Berlin, dissolving his marriage at the British Embassy at Vienna.

In obedience to your Lordship's commands we have the honour to report—

He is still a British subject.

That the facts stated do not show that William Rose had lost his domicile of origin, and become domiciled in Germany. Indeed, it would rather appear that the contrary was the case.

His German divorce not valid in England.

If this be so, and he remained a domiciled Englishman, it cannot be said that the

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* (A.) Draft Order in Council.
(B.) Order in Council, May 1, 1855 (see Consular Instructions, p. 69).
(C.) " " July 27, 1863 (see Consular Instructions, p. 73).
(D.) Draft Order in Council.
(E.) Order in Council, June 19, 1868 (Confidential No. 1790).
(F.) " " July 21, 1876 (Confidential No. 2912).
(G.) " " February 14, 1883 (Confidential No. 4760*).

† Sir E. Malet, No. 363, November 24, 1884.

[Colonial Office.

### No. 106*.

*The Law Officers of the Crown to the Earl of Derby.*

My Lord, *Royal Courts of Justice, March* 7, 1885.

Straits Settlements Ordinance. Sentences of imprisonment awarded in Native Malay States under British protection.

WE are honoured with your Lordship's commands signified in Mr. Wingfield's letter of the 10th ultimo, stating that he was directed by your Lordship to transmit to us a copy of a despatch from the Officer administering the Government of the Straits Settlements, submitting for the approval of Her Majesty's Government the draft of an Ordinance providing for the detention in the gaols of the Colony of certain prisoners convicted in the Courts of the Native States of the Malay Peninsula, which are under the protection of Great Britain.

That the Protectorate conferred no sovereignty or jurisdiction upon Her Majesty in those States. That a copy of the Ordinance referred to in Mr. Smith's despatch, providing for the detention of political prisoners, was inclosed.

That our opinion was requested as to whether the Legislature of the Straits Settlements was competent to enact such an Ordinance as was proposed by the Officer administering the Government.

In obedience to your Lordship's commands, we have the honour to

*Report*—

Ordinance may be enacted if confined to reception and detention of prisoners in Colony.

That in our opinion the Legislature of the Straits Settlements is competent to enact such an Ordinance as is proposed, so far as it deals with the reception and detention, in the Straits Settlements, of the prisoners whom it is expedient to keep confined there.

It is not clear that the clause relating to the reception of prisoners is limited to their reception when they arrive within the colonial territory, and the power conferred upon the Governor of remitting the whole or any part of the sentence appears to us open to much question, though probably the same result might be arrived at by enabling the Governor at any time to discharge the prisoner from custody.

The clause, too, relating to the return of a prisoner appears to contemplate his being conveyed from the Straits Settlements to the Native State under a warrant by the Governor. Such a warrant could have no force outside the colonial territory.

The above opinion is written upon the assumption that Her Majesty has no jurisdiction to try prisoners in the Native States, and that, therefore, the provisions of the Foreign Jurisdiction Acts are not applicable to the case.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

NOTE.—The draft Ordinance appears to have been modified in certain respects to meet the observations of the Law Officers, and was eventually enacted as Ordinance No. VII of 1885, Straits Settlements [May 20, 1885].—W. E. D.

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## No. 107*.

*The Law Officers of the Crown to Colonel Stanley.—(Communicated in Colonial Office letter of June* 23, 1886; *received June* 24.)

Sir,

*Royal Courts of Justice, July* 20, 1885.

British annexation of part of New Guinea.

WE were honoured with Mr. Bramston's letter of the 9th instant, stating that he was directed to invite our attention to a Report made by the late Law Officers on the 11th December, 1884,* upon the subject of New Guinea, and that, for convenience of reference, he was to inclose a copy of that Report.

That Mr. Bramston was to explain that, in October last, when the reference was made to the Law Officers, it was expected that the Special Commissioner appointed to act for Her Majesty in the Protectorate would very shortly take up his residence in New Guinea; that British subjects and the subjects of other civilized nations would, in greater or less numbers, follow the Special Commissioner, and that some beginnings at least of settlement would have been made before the Protectorate became part of Her Majesty's dominions.

That the annexation by Germany of a portion of the island and other subsequent events had modified that anticipation, and that it was probable that the Proclamation of British sovereignty might be made before any commencement of settlement had taken place.

That the native Chiefs attended the ceremony of proclaiming the Protectorate, and that the principal men among them accepted from the Commodore a staff of office bearing the Queen's head; but that although they were willing to recognize the Protectorate, they did not do any act equivalent to surrendering their country to Her Majesty.

Is annexation without consent equivalent to conquest?

That, in the absence of any settlement by British subjects, or of any act of cession, it became a question whether territory which was added to the Queen's dominions by Proclamation without the consent of the inhabitants might not be considered as being acquired by conquest.

That the question was important, for if the territory was to be regarded as a Colony by settlement, it would be an inconvenient and very dilatory process to legislate by Orders in Council under the Act 23 & 24 Vict., cap. 121, framed in England, and dealing with a state of affairs which were and could be only imperfectly known to the Secretary of State; and that no other course appeared feasible at any rate until there were at the principal settlement persons to whom Her Majesty's power of legislation might be delegated under that Act.

That, on the other hand, if the territory could be regarded as acquired by conquest or cession, Her Majesty might, it was understood, appoint by Commission under her sign manual and signet an officer to administer the Government of the territory and to make laws by Proclamation.

That we were accordingly requested to advise—

1. Whether we concurred with the late Law Officers in the answers given by them in the 3rd and 4th paragraphs of their Report of the 11th December, 1884.
2. Whether under the circumstances stated in Mr. Bramston's letter the territory could be regarded as acquired by conquest or cession; and
3. Generally upon the subject.

In compliance with the request contained in Mr. Bramston's letter we have the honour to report—

Approve opinion as to acquisition and Government.
Territory not acquired by cession or conquest.
Suggestion as to legislation.

1. That we concur with the late Law Officers in the answers given by them in the 3rd and 4th paragraphs of their Report of the 11th December, 1884.
2. That we do not think that under the circumstances stated in the letter the territory of New Guinea can be regarded properly as acquired by conquest or cession.
3. That the 2nd section of 6 & 7 Vict., cap. 13, which is extended to territories like New Guinea by 23 & 24 Vict., cap. 121, sect. 1, enables Her Majesty to delegate her powers and authorities to three or more resident officers. If two suitable persons can be found in the Western Pacific, or the neighbouring Colony of Queensland and associated, for legislative purposes, with the Officer administering the Government of New Guinea, the inconvenience of making laws for New Guinea by Order in Council framed in England can be obviated.

We are, &c.
(Signed) R. E. WEBSTER.
J. E. GORST.

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* Confidential No. 5121, p. 56*.

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German divorce, founded on a ground which would not justify a divorce according to English law, would be regarded as valid here.

Under these circumstances, we cannot advise that any statement should be made that the divorce would be so regarded; but it appears neither necessary nor desirable to make any statement to the contrary.

No statement as to its validity should be made.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 109.

*Dr. Deane to Sir J. Pauncefote.—(Received January 16.)*

Sir,

*Royal Courts of Justice, January* 15, 1885.

I HAVE the honour to acknowledge the receipt of your letter of the 13th instant, stating that, with reference to the Law Officers' Report of the 5th instant, you were directed by Earl Granville to state that, although it was not so stated in the Report, Earl Granville presumed that the refusal by Her Majesty's Embassy to grant a certificate to William Rose, to the effect that by English law there existed no impediment to his remarriage, might be approved.

Divorce of W. Rose.

In reply to the question contained in your letter, I have the honour to state that the view taken by Earl Granville of the Report of the Law Officers is correct, and that the refusal of Her Majesty's Embassy to grant the certificate required may be approved.

Approval of refusal to grant certificate is correct.

I have, &c.
(Signed) J. PARKER DEANE.

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# Haïti.

## No. 110.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received August 12.)*

[After referring to the following letter they report as on page 108.]

*Sir J. Pauncefote to the Law Officers of the Crown and Dr. Deane.*

Gentlemen,

*Foreign Office, July* 24, 1885.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the papers noted in the accompanying list,* relating to the claim of the late

Claim of late Mrs. Maunder.

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* *List of Papers.*

1. Memorandum by Sir J. Pauncefote, January 28, 1878 (Confidential No. 3581, p. 88).
2. Ditto, May 20, 1878 (Confidential No. 3813, p. 3).
3. Ditto, July 22, 1879 (Confidential No. 3936).
4. Law Officers, July 14, 1875 (Confidential No. 4370, p. 40)
5. Ditto, October 30, 1875 (Confidential No. 4370, p. 42).
6. Ditto, May 16, 1876 (Confidential No. 4028, p. 42).
7. Ditto, July 25, 1877 (Confidential No. 4216, p. 23.)
8. Ditto, September 22, 1879 (Confidential No. 4328, p. 35).
9. Printed Correspondence respecting Mrs. Maunder's claims on the Government of Haïti. 1874–78, Part I (Confidential No. 3581).
10. Ditto, 1878, Part II (Confidential No. 3813).
11. Ditto, 1878–83, Part III (Confidential No. 4713).
12. MSS. ditto, 1880–83, Vol. iii of Case.
13. Printed ditto, 1883-85, Part IV (Confidential No. ).
14. Report of the Naturalization Commission (Parliamentary No. 1188).

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Mrs. Maunder against the Haïtian Government, which has been frequently referred, during its various stages, to the Law Officers of the Crown. The printed Foreign Office Memoranda (numbered 1 to 3) and the Reports from the Law Officers (numbered 4 to 8) will place you in possession of the facts of the case up to July 1879.

Her nationality disputed.

At that period a revolution broke out in Haïti (Correspondence, Part III, No. 38, p. 56), which suspended for a time the further prosecution of the claim. It was resumed in February 1880 by Her Majesty's Representative at Port-au-Prince, as reported in his despatch No. 17 of the 17th June of that year. (Correspondence, Part III, No. 34, p. 35.)

There can be no doubt as to the merits of the claim and as to the hardship of the case. But the Haïtian Government deny the right of Her Majesty's Government to intervene in support of it, as they contend that Mrs. Maunder, who died on the 18th March, 1882, had no claim to British nationality.

She was a Haïtian by birth, her maiden name being Célie de Faubert, and she married in 1852 Mr. Joseph Maunder, one of four sons of Mr. Frédéric Maunder by Joséphine Busse, his alleged wife. (See certificate of marriage, Correspondence, Part III, p. 70.)

The contention of the Haïtian Government is that there never was a legal marriage between Frédéric Maunder and Joséphine Busse, and, therefore, that their four sons, of whom Mr. Joseph Maunder was one, were illegitimate; consequently, that Joseph Maunder, who was born in Haïti, was a Haïtian and not a British subject, and could not by his marriage with Mlle. de Faubert, impart British nationality to her or to his children. On the other hand, the Maunder family insist that Frédéric Maunder and Joséphine Busse were legally married according to the laws of Haïti, and they produce a document under the hand and seal of the "Grand Juge de la République," named Voltaire, certifying to that effect. (Foreign Office Memorandum No. 3, p. 2.) They also produce the legal opinion of their advocate, M. Antoine, in support of the validity of the marriage (Correspondence, Part III, p. 23), and also in support of the position that, even if the marriage were invalid, Mr. Joseph Maunder, the issue of that marriage, though born in Haïti, could not be a Haïtian subject, not having accepted that nationality by any of the acts specified in the first paragraph of that opinion.

But, on the other hand, if the marriage were invalid, Mr. Joseph Maunder was, in contemplation of British law, *filius nullius*, and not entitled to British protection. As regards the validity of the marriage, the Law Officers of the Crown, in 1879, considered it sufficiently established, and, in their Report of the 22nd September, 1879, they advised that Her Majesty's Government would be justified in insisting on the immediate payment of 22,000*l.* into the Bank of England to await the result of an award as a preliminary to arbitration.

The Haïtian Government declined to make the required deposit "on account" before arbitration, but offered to submit the claim to the arbitration of the French Cour de Cassation. They were informed, in reply, that this proposal was altogether without precedent, and that Her Majesty's Government were unable to concur in the suggestion (to M. Villevaleix, 27th May, 1880).

It may be here noted that the Law Officers had already advised that, as French interests were so much involved in the case, it was not desirable that any Frenchman should arbitrate in the question. (Law Officers, 25th July, 1877: Correspondence, Part I, p. 72.)

On the 7th June, 1880, the Haïtian Minister in London proposed that the matter should be referred to the arbitration of M. Grévy, the President of the French Republic.

This proposal was submitted to Mrs. Maunder, but declined by her except on the condition that the arbitration should be as between the two Governments, as she had not means sufficient to undertake personally the prosecution of her case before the proposed Arbitrator.

Her Majesty's Government did not feel justified in adopting this course, the case being one of the adjustment of a private claim which they were not prepared to prosecute themselves at the public expense.

Shortly after this a despatch was received from Major Stuart reporting the discovery of certain registers, which seemed to him to prove beyond a doubt the illegitimacy of Mr. Joseph Maunder and the Haïtian nationality of his widow. (Correspondence, Part III, pp. 56, 67, 73, and 88.)

In February 1881 Major Stuart sent over a Memorandum on the family registers "de l'État Civil," and entries in the same, relating to the Maunder family. This Memorandum was the result of a joint examination of those documents by himself and Mrs. Maunder and her brother-in-law, and the Haïtian authorities; and at the close of this Report Major Stuart expresses the conviction "that the family of Maunders have no just claims to British nationality, but that they are Haïtians in law and fact." (Correspondence, Part III, No. 44, p. 67.)

Photographs of the acts of registration referred to in the above-mentioned Memorandum were subsequently sent home by Major Stuart. (Correspondence, Part III, No. 46, p. 73.)

Further documents on the subject of Mrs. Maunder's nationality were received from Major Stuart in the month of July 1881. (Correspondence, Part III, No. 56, p. 88.)

In the month of March 1882 Mr. J. W. B. Maunder announced the death of his mother, and requested, on his own behalf and that of his two brothers, the support of Her Majesty's Government, alleging that he possessed proof of the fraudulent character of the documents discovered by the Haïtian Government. (Correspondence, Part III, Nos. 59, 60, 61, 66, 67, pp. 91, 92, 94, and 95.)

All the arguments and documents which have been brought forward by Mrs. Maunder's heirs were submitted to Major Stuart, but they failed to alter the unfavourable judgment which he had formed upon the subject.

I am to refer you particularly to his letters of the 9th October, 1882 (Correspondence, Part III, No. 69, p. 105), and 19th October, 1882 (Correspondence, No. 70, p. 106), in which he points out that the *onus probandi* rests with the claimants, who dispute the genuineness of the public registers, that the case is one which can only be solved by judicial proceedings, and that there are competent Tribunals for that purpose in Haïti.

An effort was made in unofficial communications with the Haïtian Minister to obtain a friendly settlement of the question without reference to the controversy as to the legitimacy of the late Mr. J. Maunder; and I am to invite your attention to the private correspondence (Part III, No. 71, p. 107; No. 72, *ibid.*; No. 74, p. 111; No. 77, p. 113; No. 80, p. 115; and No. 81, *ibid.*; from which you will perceive that those efforts were unavailing.

In consequence, Mr. J. W. B. Maunder was informed that, until the question as to the legitimacy of his father had been established judicially by legal proceedings instituted by his family with a view to rebutting the testimony of the archives recently produced, Her Majesty's Government regretted that his claim could not receive their official support. (Correspondence, Part III, Nos. 78 and 79, p. 114.)

In reply, Mr. Maunder pleaded the futility of carrying the claim before the Haïtian Courts, owing to their corruption and subserviency to the Haïtian Government, and in this view he is supported by Mr. Hunt, Her Majesty's present Representative at Port-au-Prince. (Correspondence, Part IV, Nos. 1 and 2, p. 1.)

In September 1883 Mr. Hunt was directed to inform Mr. J. B. W. Maunder that Her Majesty's Government would be disposed to renew their efforts on behalf of his family, whenever a favourable opportunity should occur, by urging on the Haïtian Government the settlement of the claim by arbitration, as proposed once before, without reference to the question of the legitimacy of the late Mr. Joseph Maunder, which could only be settled judicially. (Correspondence, Part IV, No. 5, p. 3.)

Recently, however, Mr. J. B. W. Maunder, in a letter dated the 9th January, 1885, forwarded three copies of birth certificates to prove the British nationality of himself and his two brothers. (Correspondence, Part IV, No, 15, p. 8.) These certificates show that Mr. J. B. W. Maunder was born in Liverpool, and that his two younger brothers were registered as British subjects respectively at the British Consulates at Nice and Paris.

Question as to protection of her son Mr. J. B. W. Maunder in Haïti.

Assuming that their father, the late Mr. Joseph Maunder, was illegitimate, and was a Haïtian subject (as contended by the Haïtian Government), his three sons would also be Haïtian subjects, and the fact of the registration of the two younger sons as British subjects at the British Consulates in Paris and Nice respectively would not make them British subjects if not otherwise entitled to that status. But Mr. J. B. W. Maunder, the eldest son, was born at Liverpool, and his case is therefore one of double nationality. His Haïtian nationality is in dispute, but he is certainly a natural-born British subject.

The question then arises how far Her Majesty's Government are entitled to give him British protection in Haïti as against the Haïtian authorities.

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The rule of international law which is followed by this Department in cases of double allegiance will be found stated in Lord Palmerston's despatch to Mr. Sheil of the 4th September, 1850. (Report of the Naturalization Commission, Appendix, p. 71.) It is as follows:—

"Children born in England of parents subjects of a foreign State would be entitled to be considered as British subjects everywhere but in the country to which their parents belong, always assuming that the law of that country considers children born to native subjects, while out of the country, to be as much native subjects as if they had been born in the country."

But in the present case the following considerations arise:—

1. Mr. J. B. W. Maunder is a natural-born British subject, and according to the opinion of M. Antoine (Part III. p. 23), his father, Mr. Joseph Maunder, even if illegitimate, *was not a Haïtian subject*, and therefore could not transmit Haïtian nationality to his son.

2. According to M. Antoine's opinion, the onus of proving that Mr. Joseph Maunder (the father of Mr. J. B. W. Maunder) had adopted Haïtian nationality rests with the Haïtian Government. (See first paragraph of opinion.)

3. So far as the question of British or Haïtian nationality rests on the validity of the marriage of Frédéric Maunder with Joséphine Busse, that question has never been settled judicially; it depends on a disputed point of the Marriage Law of Haïti, and on mutilated public records, which have been lost and recovered at various times, which have passed through numerous private hands during the frequent civil commotions in Haïti, and the authenticity of which is challenged. Moreover, until this claim arose, the Maunder family were always treated in Haïti, officially and privately, as British subjects.

Having regard to the above considerations, and especially to the first, the question now arises whether Her Majesty's Government are entitled to insist on Mr. J. B. W. Maunder's status as a natural-born British subject, and entitled to give him British protection in Haïti in relation to his claim against the Haïtian Government with respect to Tortuga Island, and to any other matter as to which British protection could properly be extended to a British subject in Haïti.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour the Marquis of Salisbury with your opinion on the question submitted in this letter, and with any general observations which you may have to offer on the case.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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### *Report.*

In obedience to your Lordship's commands we have the honour to report—

May insist on Mr. J. B. W. Maunder's British nationality and grant him protection.

That Her Majesty's Government are, in our judgment, entitled to insist on Mr. J. B. W. Maunder's status as a natural-born British subject, and to give him British protection in Haïti in relation to his claim against the Haïtian Government with respect to Tortuga Island, and to any other matter as to which British protection could properly be extended to a British subject in Haïti.

It rests with Haïtian Government to prove Mrs. Maunder's Haïtian nationality.

We think that after Mrs. Maunder had been treated by the Haïtian Government as a British subject up to the date of her claim, and her right to British protection had been recognized by Her Majesty's Government, such protection might be properly continued until Mrs. Maunder's Haïtian nationality was conclusively established, and that the onus of proving such nationality by evidence satisfactory to Her Majesty's Government was on the Haïtian Government.

Evidence of her Haïtian nationality so far insufficient.

We do not regard the evidence hitherto adduced by the Haïtian Government as sufficient to prove affirmatively that Mrs. Maunder was a Haïtian subject.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

*August* 11, 1885.

## No. 111.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received October 5.)*

My Lord,
*Royal Courts of Justice, October* 5, 1885.

Maunder claim.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th ultimo, stating that, with reference to our Report of the 11th August on the subject of the Maunder Claim, he was to transmit to us the draft of a despatch which your Lordship proposed, with our concurrence, to address to Her Majesty's Consul at Port-au-Prince on the subject.

That as bearing on the question of the right of Her Majesty's Government to extend British protection to Mr. J. B. Maunder, Sir J. Pauncefote was to lay before us further papers relating to his complaint against the Haïtian Government in connection with the Momance Estate.

That the particulars of that complaint were set out in Mr. McGuffie's despatch* No. 28 of the 23rd December, 1884, and the instructions sent in reply to Acting Consul Wyndham in the Foreign Office despatch No. 13 of the 15th July last.†

That our attention was invited to Mr. Wyndham's despatch No. 32 of the 18th August, reporting the steps taken by him in pursuance of those instructions, and inclosing a copy of the reply of the Haïtian Government to his representations on behalf of Mr. J. B. Maunder's complaint, in which they persisted in denying the right of Her Majesty's Government to intervene diplomatically.

That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion as to whether the proposed draft was right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve draft to Mr. Hunt as altered.

Demand for settlement of itself not sufficient.

That in our opinion the proposed draft to Mr. Consul Hunt, as altered, is in itself right and proper; but the further papers transmitted to us relating to the Momance Estate lead us to the conclusion that a demand that the claim of the Maunder family be settled without further delay, by arbitration or otherwise, will not by itself obtain redress from the Government of Haïti.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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### Annex.

*Draft of a Despatch from the Marquis of Salisbury to Consul Hunt.*

(No. .)
Sir,
*Foreign Office, October* , 1885.

HER Majesty's Government have had under their consideration the claims and complaints of the Maunder family against the Haïtian Government in relation to the Tortuga Island case, which has been the subject of a voluminous correspondence, interrupted at various times by the outbreak of revolutions in Haïti, and more recently in relation to their sugar estate of Momance, in regard to which instructions were sent to Acting Consul Wyndham in the Foreign Office despatch No. 13 of the 15th July last, and he was informed that further instructions would follow respecting the case of Tortuga Island. The late Mrs. Maunder unfortunately died in 1882, having exhausted her means and her energy in fruitless efforts to obtain justice at the hands of the Haïtian Government.

Her son, Mr. J. B. Maunder, has now appealed to Her Majesty's Government for protection and support, and he has adduced further grounds for their intervention in his letter of the 9th January last, a copy of which was inclosed in the Foreign Office despatch to Acting Consul Wyndham above referred to.

The late Mr. Joseph Maunder, and all his family, were treated by the Haïtian Government as British subjects up to the time when their claim was pressed by the British Government.

The Haïtian Government then sought to impugn the right of Her Majesty's Government to intervene on the ground that Mr. Joseph Maunder was illegitimate,

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* Print, Part IV, p. 6, No. 13 (Confidential No. )

† Confidential No. , p. .

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and that, having been borne in Haïti, he was a Haïtian subject, and could impart no other nationality to his wife and children. His father, Mr. Frederick Maunder, was undoubtedly a natural-born British subject, and, so far as the legitimacy, and therefore the British nationality, of his son Mr. Joseph Maunder rests on the validity of the marriage of his parents, that question has never been decided judicially.

Her Majesty's Government consider that the Maunder family having been treated by the Haïtian Government as British up to the time of their claim, they are entitled to British protection until their Haïtian nationality is established, and that the onus of proving such nationality by evidence satisfactory to Her Majesty's Government lies on the Haïtian Government.

They do not regard the evidence hitherto adduced by the Haïtian Government as sufficient to prove that the Maunder family are Haïtian subjects, and they must insist, therefore, on extending to them British protection.

But there is another ground on which Mr. J. B. W. Maunder is entitled to British protection.

It appears from the certificate of his birth, transmitted in his letter of the 9th January last, that he was born in Liverpool. He is therefore a natural-born British subject, and, as such, he is entitled to the support of Her Majesty's Government in relation to the Tortuga Island claim, and to any other matter as to which the protection of Her Majesty's Government can properly be extended to British subjects in Haïti. Her Majesty's Government entertain no doubt as to the merits of the Tortuga Island claim, and they feel bound to demand of the Haïtian Government that justice may be done to it.

They must insist also on the Maunder family being treated in all other matters with due regard for their legal rights. As respects the Tortuga Island claim, the Haïtian Government have never pretended to deny that gross acts of spoliation were committed against the late Mrs. Maunder by officials of the Haïtian Government, under the Presidency of General Salnave, in 1868, and of General Dominique in 1870. From that time to this the Maunder family have not succeeded in obtaining any compensation whatever, notwithstanding the continuous appeals of the late Mrs. Maunder for the means of subsistence for herself and her seven children. Since her death her son, who is a natural-born British subject, has renewed her appeals to Her Majesty's Government, and it is indeed time that this case should be brought to a close. You will, therefore, address a note to the Foreign Minister of Haïti in the sense of this despatch, and demand that the claim be settled without further delay.

I am, &c.

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# Italy.

## No. 112.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 18.)

*Royal Courts of Justice, February* 17, 1885.

My Lord,

Detention of the "North Durham" in quarantine at Girgenti.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 9th instant, stating that he was to transmit to us the papers relating to the claim of the owners of the British steamer "North Durham" to compensation from the Italian Government, under the circumstances set forth in his letter of the 17th November last.

Italian Government do not consider claim well grounded.

That a despatch was addressed to Her Majesty's Ambassador at Rome in the sense indicated in our Report of the 28th November last, and that Sir J. Pauncefote was to refer us to his Excellency's despatch No. 7, Commercial, of the 29th ultimo, reporting that the Italian Government did not consider the claim well founded, alleging that the ship was not admitted to pratique in Sicily, because although she had performed the regular quarantine of twenty-one days in the Gulf of Naples, yet, during that time the cholera had broken out at Naples, and there was no guarantee that she had not been in communication with the infected city after the completion of the quarantine, and the captain was not able to give satisfactory explanations to the sanitary officials at Girgenti.

That our opinion was requested as to whether the reply of the Italian Government should be accepted as disposing of the claim.

In obedience to your Lordship's commands we have the honour to report—

Italian reply not satisfactory.

That the answer of the Italian Government does not appear to us to be altogether satisfactory.

It is stated in the letter of the Steam Ship-owners' Association, that the "North Durham" went to the quarantine ground at Naples under the charge of two health officers for the very purpose of serving a quarantine there, which should entitle her to free pratique in Sicily. It is true that whilst she was at Naples serving quarantine cholera broke out in or near that city, but in consequence of this, a further quarantine was imposed which the Italian authorities presumably considered sufficient, and to this the "North Durham" was made subject.

If the service of this quarantine was to be effectual for the purpose of obtaining free pratique at Girgenti, and it is asserted that the Italian authorities stated that it would be, it was surely for them to see that those on board the vessel did not, after the quarantine was over, and before she left Naples, communicate with the shore. We presume that some document was given to the captain by the Italian authorities at Naples, evidencing that the required quarantine had been submitted to.

Under these circumstances, the mere suggestion that those on board the vessel might have communicated with the shore, after the quarantine, does not appear sufficient to justify the action of the authorities at Girgenti.

If the quarantine may be served at Naples for Girgenti, it would seem to have been the duty of the Italian authorities at the former port to see that it was effectual.

The statement that the captain of the "North Durham" was not able to give satisfactory explanations to the Sanitary Officer at Grigenti is very vague.

In addition to this, as we understand the facts, the "North Durham" returned from Malta to Girgenti on the 8th, and was not admitted to pratique until the 11th September. Now, Sir J. Lumley states in his despatch of the 29th January (as amongst the facts on which M. Mancini relies) that on the return of the vessel from Malta the Government gave orders for her admission to free pratique, which was at once accorded, because by that time the Government had been able to receive an assurance from the Captain of the Port at Naples that the "North Durham" had had no communication with the city after the completion of the quarantine. It does not appear clear why this information was not obtained and the free pratique accorded before the 11th. For Sir J. Lumley states in his despatch of the 19th September, 1884, that he saw M. Depretis on the 7th of that month, who stated that in consequence of the representations Sir J. Lumley had made to him, he had already sent the necessary orders to Girgenti.

Should call attention of Italian Government to points above mentioned.

We suggest that the matters to which we have drawn attention should be brought to the notice of the Italian Government, in relation to the grounds upon which M. Mancini contends that there is no ground for any claim against his Government.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

*List of Papers.*

North of England Steam Ship-owners' Association, September 11, 1884
To Sir. J. Lumley, No. 49, Commercial, September 15, 1884.
Sir J. Lumley, No. 125, Commercial, September 19, 1884.
To Sir J. Lumley, No. 61, Commercial, October 18, 1884.
To North of England Steam Ship-owners' Association, October 18, 1884
North of England Steam Ship-owners' Association, November 1, 1884.
To Law Officers, November 17, 1884.
Law Officers, November 28, 1884.
To Mr. Rothery, December 3, 1884.
Mr. Rothery, December 5, 1884.
To Sir J. Lumley, No. 70, Commercial, December 11, 1884.
Sir J. Lumley, No. 7, Commercial, January 29, 1885.

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and that, having been borne in Haïti, he was a Haïtian subject, and could impart no other nationality to his wife and children. His father, Mr. Frederick Maunder, was undoubtedly a natural-born British subject, and, so far as the legitimacy, and therefore the British nationality, of his son Mr. Joseph Maunder rests on the validity of the marriage of his parents, that question has never been decided judicially.

Her Majesty's Government consider that the Maunder family having been treated by the Haïtian Government as British up to the time of their claim, they are entitled to British protection until their Haïtian nationality is established, and that the onus of proving such nationality by evidence satisfactory to Her Majesty's Government lies on the Haïtian Government.

They do not regard the evidence hitherto adduced by the Haïtian Government as sufficient to prove that the Maunder family are Haïtian subjects, and they must insist, therefore, on extending to them British protection.

But there is another ground on which Mr. J. B. W. Maunder is entitled to British protection.

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They must insist also on the Maunder family being treated in all other matters with due regard for their legal rights. As respects the Tortuga Island claim, the Haïtian Government have never pretended to deny that gross acts of spoliation were committed against the late Mrs. Maunder by officials of the Haïtian Government, under the Presidency of General Salnave, in 1868, and of General Dominique in 1870. From that time to this the Maunder family have not succeeded in obtaining any compensation whatever, notwithstanding the continuous appeals of the late Mrs. Maunder for the means of subsistence for herself and her seven children. Since her death her son, who is a natural-born British subject, has renewed her appeals to Her Majesty's Government, and it is indeed time that this case should be brought to a close. You will, therefore, address a note to the Foreign Minister of Haïti in the sense of this despatch, and demand that the claim be settled without further delay.

I am, &c.

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## Italy.

### No. 112.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 18.)

*Royal Courts of Justice, February* 17, 1885.

My Lord,

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Italian Government do not consider claim well grounded.

That a despatch was addressed to Her Majesty's Ambassador at Rome in the sense indicated in our Report of the 28th November last, and that Sir J. Pauncefote was to refer us to his Excellency's despatch No. 7, Commercial, of the 29th ultimo, reporting that the Italian Government did not consider the claim well founded, alleging that the ship was not admitted to pratique in Sicily, because although she had performed the regular quarantine of twenty-one days in the Gulf of Naples, yet, during that time the cholera had broken out at Naples, and there was no guarantee that she had not been in communication with the infected city after the completion of the quarantine, and the captain was not able to give satisfactory explanations to the sanitary officials at Girgenti.

That our opinion was requested as to whether the reply of the Italian Government should be accepted as disposing of the claim.

In obedience to your Lordship's commands we have the honour to report—

Italian reply not satisfactory.

That the answer of the Italian Government does not appear to us to be altogether satisfactory.

It is stated in the letter of the Steam Ship-owners' Association, that the "North Durham" went to the quarantine ground at Naples under the charge of two health officers for the very purpose of serving a quarantine there, which should entitle her to free pratique in Sicily. It is true that whilst she was at Naples serving quarantine cholera broke out in or near that city, but in consequence of this, a further quarantine was imposed which the Italian authorities presumably considered sufficient, and to this the "North Durham" was made subject.

If the service of this quarantine was to be effectual for the purpose of obtaining free pratique at Girgenti, and it is asserted that the Italian authorities stated that it would be, it was surely for them to see that those on board the vessel did not, after the quarantine was over, and before she left Naples, communicate with the shore. We presume that some document was given to the captain by the Italian authorities at Naples, evidencing that the required quarantine had been submitted to.

Under these circumstances, the mere suggestion that those on board the vessel might have communicated with the shore, after the quarantine, does not appear sufficient to justify the action of the authorities at Girgenti.

If the quarantine may be served at Naples for Girgenti, it would seem to have been the duty of the Italian authorities at the former port to see that it was effectual.

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In addition to this, as we understand the facts, the "North Durham" returned from Malta to Girgenti on the 8th, and was not admitted to pratique until the 11th September. Now, Sir J. Lumley states in his despatch of the 29th January (as amongst the facts on which M. Mancini relies) that on the return of the vessel from Malta the Government gave orders for her admission to free pratique, which was at once accorded, because by that time the Government had been able to receive an assurance from the Captain of the Port at Naples that the "North Durham" had had no communication with the city after the completion of the quarantine. It does not appear clear why this information was not obtained and the free pratique accorded before the 11th. For Sir J. Lumley states in his despatch of the 19th September, 1884, that he saw M. Depretis on the 7th of that month, who stated that in consequence of the representations Sir J. Lumley had made to him, he had already sent the necessary orders to Girgenti.

Should call attention of Italian Government to points above mentioned.

We suggest that the matters to which we have drawn attention should be brought to the notice of the Italian Government, in relation to the grounds upon which M. Mancini contends that there is no ground for any claim against his Government.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

North of England Steam Ship-owners' Association, September 11, 1884
To Sir. J. Lumley, No. 49, Commercial, September 15, 1884.
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To Mr. Rothery, December 3, 1884.
Mr. Rothery, December 5, 1884.
To Sir J. Lumley, No. 70, Commercial, December 11, 1884.
Sir J. Lumley, No. 7, Commercial, January 29, 1885.

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## No. 113.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received November* 13.)

*Royal Courts of Justice, November* 12, 1885.

My Lord,

Signor L. Ferrato. Certificate as to transfer of contract from, required for legal proceedings.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 30th ultimo, stating that he was directed to transmit the papers* relative to an application which had been made by the Italian Chargé d'Affaires at this Court for a certificate showing that the failure of Signor L. Ferrato to perform a contract for the supply of "butts" and "fore-ends" of guns, which had been concluded between Her Majesty's Government and himself on the 28th February, 1877, caused Her Majesty's Government to withdraw the said contract and transfer it to other persons.

That the certificate was required in a law-suit instituted by Ferrato against certain of his sub-contractors, and that Sir J. Pauncefote was to request our opinion as to whether the form of certificate inclosed was such as might properly be communicated to the Italian Ambassador, and, if not, what alterations should be introduced into the wording of it.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed certificate.

That, in our opinion, the certificate is such as may be properly communicated to the Italian Ambassador for the purpose above stated.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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# Japan.

## No. 114.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 9.)

*Royal Courts of Justice, January* 9, 1885.

My Lord,

Land in Japan. Is it real or personal property?

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 17th ultimo, stating that he was to transmit to us a despatch† from Mr. Hannen, Judge of Her Majesty's Court for Japan, in which the question was raised whether, having regard to the particular tenure under which land was held by British subjects in Japan, it was to be considered realty or personalty.

That the suit had arisen in Her Majesty's Court for Japan with reference to the payment of probate duties on the estate of a deceased British subject.

That it was contended by the counsel for the executrix of the estate in question that upon such portion of the deceased's property as consisted of lands and houses no probate duty should be paid, though it had hitherto been the practice to do so, both in China and Japan, since the establishment of the Supreme Court at Shanghae, under the China and Japan Order in Council of the 9th March, 1865.

That Mr. Hannen transmitted a statement of the case, and suggested that the opinion of the Law Officers of the Crown should be obtained thereon for the guidance of Her Majesty's Consular Courts in Japan, where a similar tenure of land prevailed, and that he made certain suggestions for meeting the difficulty.

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* M. Catalani, October 5; to War Office, October 14; War Office, October 24, 1885.

† Mr. Hannen, No. 12, October 21, 1884.

That a copy of the Order in Council above referred to, and of the Treaty of 1858 between Great Britain and Japan, were transmitted therewith.*

That Sir J. Pauncefote was to request that we would take Mr. Hannen's despatch, and inclosures, into our consideration, and favour your Lordship with our opinion on the questions submitted therein, together with any general observations which we might have to offer on the question.

In obedience to your Lordship's commands we have the honour to report—

That the property being situate in Japan is only liable to probate or administration by virtue of the China and Japan Order in Council, which requires that probate or administration of personal property shall be taken out, and which imposes the payment of certain fees in respect of such probate and administration.

We think that the Order in Council must be interpreted, in the distinction which it makes between "personal" and "real" property, by the principles of the English law.

The distinctions in our law between real and personal property is a purely artificial one, and all the provisions requiring and relating to probate and administration obviously have reference to that law.

We think, therefore, that where the words "personal property" occur in the Order they must be understood as including only that which would, according to English law, be considered personalty.

The question, therefore, is whether land held on the tenure upon which the land was held by Mr. McDonald would be regarded as personalty according to our law.

We think it would not.

Land not personalty, and therefore not liable to probate duty.

The scale of fees made under the Order is not before us, but if, as we gather, the fee is made payable only upon the personal property of the deceased, we think that the value of the land cannot properly be taken into account in estimating the probate or administration duty.

Charge of duty for probate, &c., of property to which probate is not applicable, anomalous.

With reference to the change in the wording of the scale of fees suggested by Mr. Hannen, we would observe that, as long as probate or administration is required to be taken out only for personal property, it would seem anomalous to charge a fee or duty on obtaining probate or administration in respect of property to which the probate or administration were in no way applicable.

Abolition of distinction between personalty and realty requires a new Order in Council.

Whether the distinction between realty and personalty should be done away with, and probate required, and duty charged for both alike, is a serious question, which obviously requires great consideration.

And it could only be effected, we think, by a new Order in Council.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 115.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March* 4.)

*Royal Courts of Justice, March* 3, 1885.

My Lord,

Breaking of Custom-house seals on the "Emily."

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 19th ultimo, stating that he was directed to transmit to us the papers† relating to a case which had been brought to the notice of Her Majesty's Minister at Tokio by the Japanese Government.

That the boatswain of the British vessel "Emily" was tried before Her Majesty's Consul at Kobe for breaking the seals placed by Custom-house officers on the hatches of that vessel, but was acquitted by the Consul on the ground that there had evidently been no intentional breaking of the seals, Mr. Troup justifying his decision by quoting from the Japanese text of the trade Regulations.

Protest by Japanese against acquittal of boatswain.

That the Japanese Government protested against that decision as being contrary to Article XXI of the Anglo-Japanese Treaty of 1858, which said that the Dutch version should be considered the authoritative one.

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* Order in Council, March 9, 1865, Confidential No. 1354; Treaty, Great Britain and Japan, August 26, 1858, No. 433.

† (A) Mr. Plunkett, No. 222, November 28, 1884; (B) Mr. Plunkett, No. 223, November 28, 1884; (C) Treaty, Great Britain and Japan of August 26, 1858 (Treaty No. 433); (D) draft reply to Mr. Plunkett.

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That our opinion was requested as to whether the terms of the draft instruction to Mr. Plunkett in reply were right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve draft instructions to Mr. Plunkett as altered.

That we concur in substance with the proposed draft. But we would suggest that it should be altered as altered by us in red ink.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of despatch to Mr. Plunkett.*

(No. .)

Sir,
*Foreign Office, March* , 1885.

I have received your despatches Nos. 222 and 223 of the 28th November last in regard to the case of the boatswain of the British vessel "Emily," which has been brought to your notice by the Japanese Government, who was tried before Her Majesty's Consul at Kobe for breaking the seals placed by Custom-house officers on the hatches of that vessel, but was acquitted by Mr. Troup on the ground that there had evidently been no intentional breaking of the seals, Mr. Troup justifying his decision by quoting from the Japanese text of the trade Regulations.

I have to state to you that Her Majesty's Government concur with the Japanese Government in the view that the Dutch version is in case of difference to be deemed the original, and that any wilful breaking of the seals, even though no fraud may have been contemplated, renders the person committing the act liable under the Regulations.

But if it were clearly proved that the act was purely accidental and unintentional, it would be contrary to the first principles of justice to hold that a criminal offence had been committed.

If a similar case should occur again and the Japanese Government should be dissatisfied with the decision of the Consul, it will be open to them to appeal.

I have to request you to inform the Japanese Government in the above sense.

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## Madagascar.

### No. 116.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 6.)*

My Lord,
*Royal Courts of Justice, March* 5, 1885.

Engagement of Colonel Willoughby in Malagasy military service.

WE are honoured with your Lordship's commands signified in Sir. J. Pauncefote's letter of the 21st ultimo, stating that he was to transmit to us a despatch* which had been received from Mr. Graves, Her Majesty's Consul at Madagascar, relative to Colonel Willoughby's engagement in the Malagasy military service.

That it would be in our recollection that on the 30th August last a draft instruction, which it was proposed to send to Mr. Graves, desiring him to caution Colonel Willoughby against committing a violation of section 4 of the Foreign Enlistment Act, to call upon him to retire from the Malagasy service during the continuance of the war with France, and to arrest and send him to Mauritius for trial, should he disregard the injunction, was submitted to us for our approval, and that on the 27th September† we expressed our approval, with some slight modifications, of the proposed instruction.

* Consul Graves, No. 5, Africa, January 12, 1885.

† See Confidential No. 5121, p. 70.

That those papers were again inclosed for convenience of reference.

Consul Graves' abstention from forcibly arresting him.

That Mr. Graves in the despatch now submitted to us stated that for various reasons, which are set forth in his despatch, he had for the present deemed it inexpedient to act upon the instruction, and that Sir J. Pauncefote was consequently to request that we would favour your Lordship with our opinion as to whether [the view taken by] Mr. Graves might be approved, or whether any additional instructions were required.

In obedience to your Lordship's commands we have the honour to report—

Do not disapprove Consul Graves. Continuance of such service an offence against Foreign Enlistment Act.

That we are of opinion that Mr. Graves should be informed that whilst your Lordship does not disapprove of the suggestions that he should, in the face of the probability of a collision, abstain from arresting Colonel Willoughby by means of an armed force, yet that your Lordship desires him to communicate in forcible terms to Colonel Willoughby the view entertained by your Lordship, that his continuance in the service of the Malagasy Government constitutes an offence against the Foreign Enlistment Act, and will be regarded as such.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Morocco.

### No. 117.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 20.)*

My Lord,
*Royal Courts of Justice, January* 19, 1885.

Attacks on Moorish Government by newspapers at Tangier.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 20th ultimo, stating that he was to transmit to us a despatch from Sir J. D. Hay of the 16th November, 1884, relating to a complaint made by the Government of Morocco to Her Majesty's Minister at Tangier, respecting the publication of certain newspapers issued at Tangier, of which the editors are British subjects, of articles containing offensive reflections upon the Moorish Government, and upon the foreign Representatives accredited to the Sultan's Court.

That it would be seen that Her Majesty's Minister requests instructions for his guidance in the event of the continuance of the practice of which the Moorish Government complain, and that he asked, specifically, to be informed whether the Moorish Government was at liberty to forbid the publication of a newspaper which had given just grounds for offence.

That Sir J. Pauncefote was further to annex a draft of the reply which your Lordship proposed, with our concurrence, to return to the inquiries made by Sir J. D. Hay.

That a copy of the Treaty between Great Britain and Morocco of the 9th December, 1856, was inclosed, but that it did not appear to contain any clause which touches upon the present question. That copies of previous Law Officers' Reports relating to cases of a similar character were also inclosed, together with a short Memorandum drawn up by the Librarian of the Foreign Office, bearing upon the subject.

That Sir J. Pauncefote was to request that we would inform your Lordship whether we concurred in the terms of the proposed instruction to Sir J. D. Hay.

In obedience to your Lordship's commands we have the honour to report—

Approve instructions to Sir J. D. Hay as to suppression or warning of.

That we concur generally in the terms of the proposed draft instructions to Sir J. D. Hay, but we suggest that for the paragraph (A) commencing on p. 4, the following may be substituted:—

"The question you have raised as to suppressing or interfering with the publica-

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tion of the journals in question depends on the law of Morocco, which, in such respects, the Moorish Government are entitled to enforce."

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch to Sir J. Drummond Hay.*

(No. .)

Sir, *Foreign Office, January* , 1885.

I have had under my consideration your despatch No. 104 of the 16th November, in which you request instructions as to the course you should pursue in the matter of a complaint which has been made to you by the Moorish Government with regard to a practice adopted by certain British subjects, who are editors of newspapers issued at Tangier, of publishing articles containing offensive reflections upon the Sultan's Government, as well as attacks upon foreign Representatives in that capital.

I have, in reply, to acquaint you that the matter does not appear to his Lordship to be one in which you should take any direct action.

It is competent to the Moorish Government either to prohibit absolutely the publication of any newspaper in Morocco by a British subject, or to authorize it on any conditions it pleases which are not contrary to the Treaty engagements of Morocco with this country.

The question you have raised depends, therefore, on the law of Morocco, and in the event of the suppression by the Moorish Government of the newspapers in question, Her Majesty's Government would raise no objection, provided their publication has given just cause of offence to the authorities of the country, and that the measure is warranted by Moorish law.

There is no objection to your conveying, at the request of the Moorish Government, a warning to the editors of the consequences to which they will render themselves liable if they disregard the complaint which has been made to you.

I am, &c.

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*List of Papers.*

Sir J. Drummond Hay, No. 104, November 16, 1884.
Treaty, Great Britain and Morocco, December 9, 1856. Treaty No. 416.
Memorandum, Sir E. Hertslet, December 20, 1884.
Turkey—
  Law Officers, February 14, 1865. Confidential No. 1489, p. 150.
  Queen's Advocate, February 14, 1867. Confidential No. 1745, p. 112.
  Ditto, March 23, 1867. Confidential No. 1745, p. 114.
  Ditto, May 7, 1867. Confidential No. 1745, p. 115.
  Law Officers, July 25, 1872. Confidential No. 4098, p. 170.
  Ditto, August 9, 1872. Confidential No. 4098, p. 171.
  Ditto, October 12, 1874. Confidential No. 4331, p. 167.
  Ditto, March 8, 1875. Confidential No. 4370, p. 87.
Egypt—
  Law Officers, February 1, 1882. Confidential No. 4783, p. 20.

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## No. 118.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received September 12.)*

My Lord, *Royal Courts of Justice, September 11, 1885.*

Sanitary Regulations. Enforcement of observance by fine or otherwise.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 27th ultimo, in which he stated that, by direction of your Lordship, he transmitted to us the papers noted in the accompanying list,* which related to the question whether Her Majesty's Consular Court at Tangier had power, under the Morocco Order in Council of 1857 (section 1) to enforce upon British subjects, by the imposition of a fine or otherwise, the observance of Sanitary Regulations drawn up by the Morocco Board of Health with a view of preventing the introduction of cholera within the Moorish territory.

That the Morocco Board of Health was composed of the foreign Representatives, and, in concert with the Moorish authorities, they had framed the Regulation of which the substance was given in Sir J. D. Hay's despatch, and to which he had agreed on behalf of Her Majesty's Government.

That unless Her Majesty's Minister at Tangier could treat the agreement to accept the Regulations in question as a "Treaty or Convention" which he could enforce by a British Regulation made by him under Article 1 of the above-mentioned Order in Council, it would seem that there was no legal power to impose a fine for the violation of its provisions.

That a new Order in Council for Morocco was now in course of preparation which would obviate the difficulty; but, in the meanwhile, Mr. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the question submitted by Sir J. D. Hay.

In obedience to your Lordship's commands we have the honour to report—

The British Consul may under Order in Council make proposed Regulation.

That we think the British Consul may, under Article 1 of the Morocco Order in Council, make a British Regulation, "for the peace, order, and good government of Her Majesty's subjects being within the dominions of the Sultan of Morocco," in the terms of the proposed Regulation of the Morocco Board of Health.

All the provisions of the Order in Council with regard to such Regulations, their publication, &c., must be observed.

And enforce it by fines.

A Regulation so made could be enforced by such fines as are proposed.

Fines must be paid to public account, not to local funds.

The amounts of the fines so levied would, however, under Article 33 of the Morocco Order in Council, have to be paid to the public account, and could not be paid into the local funds on account of cleansing the town without an amendment of the Order in Council.

We have, &c.
(Signed) R. E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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[*] Sir J. D. Hay, No. 25, Consular, August 3, 1885; Convention of Commerce and Navigation between Her Majesty and the Sultan of Morocco, December 9, 1856 (Treaty No. 416); Order in Council, December 27, 1857 (Confidential No. 1516).

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## No. 119.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received November 21.)*

My Lord, *Royal Courts of Justice, November 20, 1885.*

Intervention of unqualified persons in Consular Court.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 2nd instant, stating that he was to transmit to us a despatch from Her Majesty's Minister in Morocco,* reporting the circumstances under which he had informed the editors of certain newspapers that he would not permit their intervention on behalf of suitors in the British Consular Court, or in applications made to Her Majesty's Consular officers by British subjects, in matters which did not concern those journalists personally; that neither of them was qualified by law to practise the legal profession; and that your Lordship proposed to approve the action of Sir J. D. Hay, but that, before doing so, your Lordship desired to be informed whether there was, in our opinion, any objection to that course.

That a copy of the Order in Council of the 27th August, 1857,† regulating Her Majesty's jurisdiction in Morocco, was inclosed.‡

In obedience to your Lordship's commands we have the honour to report—

May refuse to admit such intervention.

That Sir J. D. Hay may lawfully decline to admit the intervention of Messrs. Cohen and Meakin on behalf of suitors in the British Consular Court.

If we are right in assuming that this is all which he has done, his conduct may be approved.

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[*] Sir J. Drummond Hay, No. 30, Consular, October 20, 1885.

[†] Confidential No. 1516.

[‡] The Order in Council of February 4, 1875, Confidential No. 2573, was also sent.

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Status of legally appointed agent cannot be ignored.

He could not, however, in other matters, safely ignore the status of any agent who was legally appointed to act in that capacity.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## Netherlands.

### No. 120.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 14.)

*Royal Courts of Justice, January* 6, 1885.

My Lord,

Detention of the crew of the "Nisero" by the Rajah of Tenom. Claim of Her Majesty's Government on Dutch for cost of operations.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 1st instant, stating that our Report of the 6th ultimo on the case of the "Nisero" had been under the consideration of your Lordship, and that by your Lordship's directions he was to submit the following further observations on the question of the claim of Her Majesty's Government to reimbursement of the expenses incurred by them in the joint operations undertaken by them with Holland for effecting the release of the captives.

That your Lordship concluded from our Report that the claim against the Netherlands Government in respect of those expenses was of a moral and equitable character, and not one which could be pressed as a matter of legal right. That if that conclusion be correct, Sir J. Pauncefote was to observe that, in the opinion of your Lordship, there was no prospect of the proposed application to the Netherlands Government being successful.

That when the latter acceded to the proposal of Her Majesty's Government for joint action, they only consented to pay the ransom previously offered by them for the release of the captives, but that no stipulation was made as to the payment by them of the share of expenses which might be incurred by Her Majesty's Government in the matter. That any suggestion of the kind would have caused a rejection of the proposal, for they had been strongly assailed in the Chamber for having accepted British co-operation at all.

That in view of the above facts, and of any other considerations which might occur to us, your Lordship desired our further opinion as to the advisability of making a claim on the Netherlands Government for the expenses in question.

In obedience to your Lordship's commands we have the honour to report—

Not wise to make claim in question, as refusal is inevitable.

That, with the full information which is now before us, we do not think it would be wise to make a claim on the Netherlands Government for the expenses in question.

Reasons for above opinion.

The considerations which strongly incline us to this view are:—

1. That the Dutch rather yielded to than invited our co-operation, and that they would probably insist that they would as effectually have secured the release of the captives without our aid, and would not improbably revert to the old story of the visit of the Pegasus having been in fact the cause of the mischief.

2. That we stipulated, in the first instance, for the payment of the ransom, and did not ask for the expenses of our part of the expedition, although it was certain that such expenditure would be incurred.

3. That, by making this claim, which we should have no chance of getting their assent to, we should probably weaken our prospect of obtaining the 10,000 dollars.

Regarding the aspect of the case as a matter of policy here we think it would,

under the circumstances, be better not to make the claim only to receive the refusal, which seems almost inevitable.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Pacific Islands.

### No. 121.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May* 22.)

*Royal Courts of Justice, May* 21, 1885.

My Lord,

Case of the "Madras."

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 2nd ultimo, stating that he was to transmit to us the papers relating to the case of the "Madras" at Honolulu.*

That in the despatch to Major Wodehouse of the 29th October, 1884, would be found the instructions which were addressed to him regarding that case on the receipt of our Report dated the 11th September last. That Major Wodehouse now inclosed, in his despatch No. 2, Commercial, dated the 28th February, a copy of an "exhaustive statement" of the case as prepared by the Hawaiian Attorney-General, the correctness of which statement was contested by Mr. F. H. Davies, representing the agents of the "Madras."

That Major Wodehouse, it would be seen, also impugned the accuracy of Neumann's statement as regarded points of fact; but that he desired more especially to draw the attention of Her Majesty's Government to what he described as the "discourteous remark" of the Hawaiian Foreign Minister, "that in all the points just recited Her Majesty's Government had been misinformed." That Major Wodehouse proceeded to solicit instructions as to the further communication which he should address to the Hawaiian Government on the matter.

That having respect to the opinion expressed in our above-mentioned Report, that strong diplomatic representations might properly be addressed to the Hawaiian Government in support of the claim of the owners of the vessel, Mr. Currie was to request that we would take the papers transmitted into our consideration, and that we would favour your Lordship with our opinion as to the further instructions which it might be expedient to address to Her Majesty's Consul-General at Honolulu concerning the case in question.

In obedience to your Lordship's commands we have the honour to report—

Further facts have caused them to modify opinion of the 11th September, 1884.

That we have found considerable difficulty in forming an opinion as to the advice proper to be submitted to your Lordship in this case.

The further facts now placed before us have caused us to modify the opinion expressed in our Report of the 11th September, 1884.

Mutinous condition, &c., of the passengers formed ground for vigilance of action on part of Hawaiian Government.

Whilst we refrain from expressing an opinion that the conduct of the Hawaiian Government was justified, we think that the further facts submitted to us (and of which we were ignorant when we made our Report of the 11th September) establish that the mutinous condition of the passengers on board the "Madras," their attempts, contrary to all regulations, to reach the shore, and the injuries which the inhabitants of Honolulu had recently sustained from small-pox, formed ground for extreme vigilance of action on the part of the Hawaiian Government.

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* Mr. Chapman, August 23; Major Wodehouse, No. 17, Commercial, November 1, 1883; ditto, No. 1, Commercial, February 1; ditto, No 2A, Commercial, April 15; Board of Trade, May 23; to Major Wodehouse, No. 4, Commercial, May 31; Major Wodehouse, No. 4, Commercial, July 15; Law Officers, September 11; to Major Wodehouse, No. 6, Commercial, October 29; Major Wodehouse, No. 5, December 1; ditto, No. 6, December 31, 1884; ditto, No. 2, Commercial, February 28, 1885.

Her Majesty's Government cannot determine whether such action is justifiable.

Whether such action is or is not legally justifiable we think ought not to be positively determined (so as to insist upon compensation) by Her Majesty's Government.

No reason to suppose that justice will be denied to owners.

And in view of the fact that the owners of the "Madras" have already obtained a judicial decision in their favour in the Hawaiian Courts, we see no reason for supposing that justice will be denied if they again should institute legal proceedings.

Previous decision does not determine question involved in the claim for compensation.

We do not regard the previous decision we have above referred to as determining the question involved in the claim for compensation.

Attendance of witnesses.

We would hope that the difficulty of procuring the attendance of witnesses may be overcome. Captain Bradley's testimony, added to that of the agents and other residents at Honolulu, would probably suffice.

Hawaiian Government should be informed that Major Wodehouse has not misrepresented the case.

We think that the Hawaiian Government should be informed that Major Wodehouse has not in any way concealed or misrepresented the facts of the case so far as they were before him.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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# Persia.

## No. 122.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 24.)*

My Lord, *Royal Courts of Justice, February* 24, 1885.

Mr. Arsenian, a Persian, naturalized as British subject.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us the papers relating to the case of Mr. Arsenian, a naturalized British subject of Persian origin, carrying on business at Manchester and Constantinople, whose property, as alleged by him, was seized at Constantinople by the Persian authorities, and who, for some time past, had received the unofficial support of Her Majesty's Ambassador at Constantinople and Her Majesty's Minister at Tehran, as the goods the title to which was in question were the produce of his trading in this country, and he was liable in respect of them to English creditors, who had constantly pressed their claims upon the attention of Her Majesty's Government.

Seizure of his goods at Constantinople by Persian authorities.

Proceedings in Persian Consular Courts.

That Sir J. Pauncefote was to explain that the intervention of Her Majesty's Government was requested in March 1880, by the Manchester Chamber of Commerce, to protect Mr. Arsenian against the action of the Persian Consul-General at Constantinople, by whose orders his warehouses there had been taken possession of, and sealed, in view of a litigation between Mr. Arsenian, on the one side, claiming to have been in partnership with his late father, and his relatives, co-heirs to his father, on the other.

That it was decided, after reference to our predecessors and to ourselves, that Mr. Arsenian, notwithstanding his British naturalization, was not exempt from the jurisdiction of the Persian Consular Court at Constantinople in a civil suit; but that an officer from the British Embassy should attend at the Court of the Persian Ambassador when the case came before him on appeal against the decision that Mr. Arsenian had no rights over the goods in question, which were the sole property of his father. That a Dragoman from the Embassy was accordingly present during the whole trial, and reported that the proceedings were perfectly regular, and that every opportunity was given to Mr. Arsenian's counsel to exhibit his case.

That the Court of Appeal upheld the decision of the Consular Court, and Judgment was given against him (B), whereupon he went to Tehran to press his case with the Persian Government, and that Her Majesty's Minister at Tehran was instructed to afford him such advice and assistance unofficially as he might think proper, inasmuch as he was a naturalized British subject, although amenable to the laws and jurisdiction of Persia, the country of his birth.

British protection granted to him at Tehran.

That it subsequently transpired, from a Report of Her Majesty's Minister at Tehran, that Her Majesty's Government would be justified in claiming the right to grant protection, as against the Persian authorities both in Persia and Turkey, to Mr. Arsenian as a naturalized British subject under Articles IX and XII of the Treaty between Great Britain and Persia, but that there were obvious difficulties in the way of pressing such a claim after the course taken by Her Majesty's Government, in ignorance of the circumstances established by the Report, of allowing the Persian authorities at Constantinople to assume jurisdiction over Mr. Arsenian's property (Law Officers' Reports C and D).

That the effect of Mr. Thomson's unofficial representation to the Persian Government was that the Persian Ambassador at Constantinople entered into communication with Her Majesty's Ambassador, with a view to settling the case to the satisfaction of Mr. Arsenian's British creditors, who demanded to have their claims liquidated out of the proceeds of the sale of the goods confiscated at Constantinople, irrespective of any contested action as to the ownership of the property.

Further explanations.

That our attention was called. first, to the Memorandum of the 24th June, 1884, by the Persian Ambassador, and to the observations upon it by Mr. Consul-General and Judge Fawcett, after communication with Mr. Arsenian's counsel in the Court of Appeal (E); and, secondly to the Memorandum by Mr. Fawcett of the 1st August, 1884, in which he stated that facts had come to his knowledge which gave the case a different aspect, unfavourable to Mr. Arsenian, and recommended that his creditors should distinctly formulate their claims with the dates, as they might be creditors for recent consignments made subsequent to the action of the Persian authorities at Constantinople (F). That the English creditors, however, refused to furnish the particulars of their claims (G). That, in the meanwhile, owing to the pressure brought to bear by Her Majesty's Minister at Tehran, the Persian Government proposed three courses:—

Persian proposals.

1. Compromise by direct arrangement with Mr. Arsenian at Constantinople.
2. Reference of case to the Persian Minister in London with a view to a compromise.
3. Re-investigation of case at Tehran (Sir R. Thomson's No. 113 of the 16th July, 1884, Inclosure H).

That after communication with Mr. Arsenian, it was proposed to the Persian Ambassador at Constantinople to name some impartial person there to discuss the matter with his Excellency with a view to effecting a compromise, and that Sir J. Pauncefote was to invite our attention to Mr. Wyndham's despatch No. 497 (Inclosure I), reporting his action in the matter, and inclosing a Memorandum by the Persian Ambassador of the 23rd December, in which he urges the futility of any attempt to compromise the case. That his Excellency represented the impossibility of disturbing the final Judgment of the Persian Court of Appeal at Constantinople, and pointed out that the English creditors did not put in their claims in the suit. That he added that they were at liberty to do so now, although the assets had been distributed.

That your Lordship had ascertained from Messrs. Fox, solicitors to Mr. Arsenian at Manchester, that the latter had effected a settlement with his English creditors (K).

That the question therefore arose, whether, in view of Mr. Fawcett's last Report, and of the explanations given by the Persian Minister, Her Majesty's Government were justified in pressing the case any further, and whether Mr. Arsenian might properly be left to prosecute an appeal to Tehran under British protection.

That our opinion was requested as to the course which should now be followed, and that your Lordship desired also to be favoured with any general observations we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Let him appeal under British protection.

That, in our opinion, Mr. Arsenian may, under the circumstances, properly be left to prosecute an appeal to Tehran under British protection.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

(A.) Law Officers, April 8, 1880. Confidential No. 4539, p. 80.
Ditto, June 9, 1880. Confidential No. 4539, p. 81.
Ditto, November 22, 1881. Confidential No. 4637, p. 100
(B.) The Earl of Dufferin, No. 70, February 1, 1882.
(C.) Law Officers, November 30, 1882. Confidential No. 4783, p. 56.
(D.) Ditto, April 10, 1883, Confidential No. 4974, p. 87.
(E.) The Earl of Dufferin, No. 210, June 27, 1884.
(F.) Ditto, No. 259, August 4, 1884.
(G.) Messrs. Fox, September 17, 1884.
(H.) Sir R. Thomson, No. 113, July 16, 1884.
(I.) Mr. Wyndham, No. 497, December 27, 1884.
(K.) Messrs. Fox, January 16, 1885.

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## No. 123.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 29.)*

My Lord, *Royal Courts of Justice, April* 28, 1885.

Case of Mr. Arsenian, a naturalized British subject, whose goods were seized at Constantinople by Persian authorities.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 18th instant, stating that he had the honour to transmit to us, by direction of your Lordship, the papers* which related to the case of Mr. Arsenian, together with a letter from his solicitors, Messrs. Fox, who had requested that those papers might be referred to us.

That Mr. Currie was to request that we would favour your Lordship with our opinion whether those documents, most of which had already been before us or our predecessors, at different times, contained anything to modify the views already expressed in our Report of the 24th February.

That Mr. Currie was to state that the paper referred to by Messrs. Fox, as Mr. Ede's reply to the Persian Memorandum of May 1884, did not appear to have been lodged at Her Majesty's Embassy at Constantinople, and was not in the possession of Her Majesty's Government.

That Mr. Currie was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Nothing in the further papers to modify previous opinion.

That there is nothing in the documents now before us to cause us to modify the views we have already expressed.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* *List of Papers.*

Messrs. Fox, February 24, 1885.
Manchester Chamber of Commerce, March 19, 1880.
Mr. Arsenian, April 28, 1880.
Mr. Slagg's question and reply, June 14, 1880.
Mr. Ede to Sir H. Layard, April 23, 1880.
" " " April 27, 1880.
" " " May 8, 1880.
Persian Ambassador at Constantinople to Sir H. Layard, April 22, 1880.
" " " " April 25, 1880.
" " " " May, 24, 1880.
Lord Granville to Manchester Chamber of Commerce, April 15, 1880.
" " Messrs. Fox, April 19, 1883.
" " " August 23, 1883.
Messrs. Fox, August 6, 1884.

## No. 124.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 23.)*

My Lord, *Royal Courts of Justice, June* 23, 1885.

Bankruptcy of Herapit and Aratoon.

Lien on tobacco consigned on their behalf to D. Sassoon and Co.

WE are honoured with your Lordship's commands signified in Lord Edmond Fitzmaurice's letter of the 4th instant, stating that he was to transmit papers* relating to the bankruptcy of the Persian firm of Herapit and Aratoon at Bushire, and to the question of a lien on the tobacco consigned on behalf of that firm by Messrs. Malcolm and Co. to Messrs. D. Sassoon and Co.

That your Lordship had thought it desirable, in that particular case, to forward, very confidentially, to Her Majesty's Minister at Tehran, copies of our Reports on that case, dated respectively the 12th and 30th December last, with a view to further inquiry in the matter.

Further Reports on the case.

That the inclosures in Sir R. Thomson's No. 4, Commercial, of the 17th April contained the results of his reference of our above-mentioned Reports to Her Majesty's Consul-General at Bushire, who forwarded, among other documents, a Memorandum summarizing the leading features of the correspondence. That it would be seen from Lieut.-Colonel Ross' Report, dated the 28th March, that the whole or main consignment of the tobacco was shipped on the 13th October, 1882, or five days after the declaration of bankruptcy, and that he only undertook to guarantee Messrs. Malcolm against incurring responsibility to any one by obeying his order to pay the proceeds of the 100 bags of tobacco into the Residency, in reliance on their assurances that they had retained complete control of the transaction.

That Lieut.-Colonel Ross further pointed out that when Messrs. Malcolm placed the proceeds of sale in the hands of Messrs. D. Sassoon and Co., and gave the latter to understand that they had every right to retain the amount, the conditions were wholly altered, and that his (Colonel Ross') guarantee had no application to such circumstances.

That Lord Edmond Fitzmaurice was to request that we would inform your Lordship whether the further information then transmitted enabled us to advise your Lordship on the points of law raised by Sir R. Thomson on behalf of the liquidators, and submitted to us in the reference from the Foreign Office of the 12th December last.

In obedience to your Lordship's commands we have the honour to report—

Conclude that Sassoon and Co.'s claim is not well founded.

That the letters of Messrs. Malcolm and Co. of the 24th October, the 7th November, and the 20th December, 1882, and those of Messrs. Sassoon and Co. of the 8th and 26th February, 1884, certainly appear inconsistent with the case now set up by Messrs. Sassoon, and the declaration of Mr. Malcolm in support of it.

And, in the absence of satisfactory explanations, we should come to the conclusion that the claim of Messrs. Sassoon, was not well founded.

Want further explanations before giving opinion.

But we do not think it right in us to express such an opinion without their having some opportunity of affording an explanation on these points, and also as to the date of shipment and the time when the documents of title were forwarded to them or their agents, and also of adducing any further documentary evidence bearing upon the case.

In what manner this opportunity would best be given them we are not in a position to say.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Messrs. D. Sassoon and Co., November 3; Sir E. Hertslet, Memorandum, October 15, 1884; Law Officers, December 12, 1884 (Confidential No. 5121, pp. 83-85); ditto, December 30, 1884 (Confidential No. 5121, p. 85); to Sir R. Thomson, No. 1, Commercial, Confidential, January 5; Sir R. Thomson, No. 4, Commercial, April 17, 1885.

## Peru.

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### No. 125.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 7.)

My Lord, *Royal Courts of Justice, January* 6, 1885.

**Seizure of British vessel "Overdale" by Peruvians off Mollendo.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st ultimo, stating that he was to transmit to us the papers noted in the accompanying list, which related to the seizure of a British vessel, by a Peruvian guardacosta, off the port of Mollendo.

That on the 22nd July last Her Majesty's Chargé d'Affaires at Lima reported the closing of certain ports by the Peruvian Government "in furtherance of fiscal interests," and that in a later despatch he announced that the port of Mollendo had also been closed by order of the Government. That Mr. Barrington did not, however, state whether that port was in the occupation of the rebels. That if that were so, your Lordship apprehended that the Government of Peru had a right to establish a blockade, but only a blockade *jure gentium*, and therefore an effective one, and with due notice.

That no official notification of the closing of that port had been received by Her Majesty's Government, and that with regard to the blockade being effective, in a subsequent despatch, dated the 10th September, Mr. Barrington reported that the port of Mollendo was still closed by order, and that "the Government was fitting out a small vessel destined as a guard-ship there."

That on the 5th September the British barque "Overdale" left London bound for Mollendo; that on her arrival there she was seized by the guard-ship for attempting to break the so-called blockade, and sent to Callao, where she then was under arrest, although it did not appear that her master had received notice of the closing of the port.

That, as far as could be judged from the facts before your Lordship, the seizure was illegal, and that the blockade, even if originally valid, appeared, according to a private note of the 22nd October from Mr. Barrington, to have been vitiated by the entry of Chilean vessels into the port. That Her Majesty's Chargé d'Affaires had accordingly been instructed by telegraph to protest, and endeavour to obtain the release of the vessel.

That the Reports of the Law Officers on the cases of the Dominican blockade of Puerto Plata in 1878, the blockade of Jacmel by Decree in 1876, and the closing of the port of Jérémie in 1883, and on the Haïtian Circular as to the closing of ports by Decrees in 1883, were inclosed for reference.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the case, and as to what further steps, if any, could properly be taken at the present time.

In obedience to your Lordship's commands we have the honour to report—

**Blockade invalid.**

That we do not understand what is meant by a closing of the ports "in furtherance of fiscal interests," and when the ports were in the hands of rebels, and the "closing" of them was an act of hostility, we think it could only be valid as against other Powers if the blockade were effectively maintained and duly notified.

**Seizure of vessel illegal. Her release should be demanded.**

It certainly appears that the seizure of the barque "Overdale" was, under the circumstances, wholly illegal, and we think that instructions should be given to demand her release. In reply to this demand, it will be open to the Peruvian Government to state any facts which may tend to alter the present aspect of the case.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers.*

1. Mr. Barrington, No. 74, July 22, 1884.
2. Ditto, No. 87, August 28, 1884.
3. Ditto, No. 95, September 10, 1884.
4. Ditto, Private, October 22, 1884.
5. Messrs. Doward, Dickson, and Co., Telegraphic, December 27, 1884.
6. Mr. Barrington, Telegraphic, December 27, 1884.
7. Messrs. Doward, Dickson, and Co., Telegraphic, December 30, 1884.
8. Ditto, Telegraphic, December 31, 1884.
9. To Mr. Barrington, Telegraphic, December 31, 1884.
10. To Messrs. Doward, Dickson, and Co., Telegraphic, December 31, 1884.
11. Law Officers' Report, May 6, 1876: Confidential No. 4028, p. 41.
12. Ditto, May 31, 1878: Confidential No. 4280, p. 44.
13. Ditto, July 16, 1883: Confidential No. 4974, p. 66.
14. Ditto, December 15, 1883: Confidential No. 4974, p. 75.

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### No. 126.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 12.)

My Lord, *Royal Courts of Justice, January* 12, 1885.

**Seizure of the "Overdale" for breach of blockade of Mollendo.**

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 6th instant, stating that, with reference to his letter of the 31st ultimo in regard to the seizure of the British ship "Overdale" by Peruvian guardacosta off the port of Mollendo, he was to transmit to us a telegram* received that day from Her Majesty's Chargé d'Affaires in Peru, asking for authority to recommend the payment by the vessel of the fine demanded by the Peruvian authorities, under protest, reserving question of principle.

That on receipt of that telegram your Lordship caused that suggestion to be submitted to the owners, and that Mr. Currie was to forward their reply, in which they state that they hesitated to give their assent, in view of the difficulty of recovering the amount and the prejudice the payment of the fine might cause to their claim.

That our opinion was desired as to the reply which should be returned to Mr. Barrington's inquiry.

In obedience to your Lordship's commands we have the honour to report—

**Should pay fine under protest if not large and cannot otherwise obtain release of ship.**

That we think it would be advisable to telegraph to Mr. Barrington to inquire the amount of the fine, and whether there is any prospect of a speedy release being obtained by him in any other way. If there is not, and the fine is not a large one, the better course would seem to be to pay it under protest, and insist on its return.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 127.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received February* 3.)

My Lord, *Royal Courts of Justice, February* 3, 1885.

**Seizure of the British vessels "Overdale" and "Kirkloch" for breach of blockade of Mollendo.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 23rd ultimo, stating that with reference to our Reports of the 6th and 12th ultimo, he was to transmit to us the papers† relating to the seizure and detention

* Mr Barrington, Telegraphic, January 5, 1885.

† List of papers sent to the Law Officers, January 23, 1885:—(A) Doward Dickson and Co., January 21; (B) to Doward Dickson and Co., January 22; (C) to Mr. Barrington (Telegraphic), January 22, 1885. Mr. Barrington, No. 74, July 22; ditto, No. 87, August 28; ditto, No. 95, September 10; ditto (Private), October 22; Doward Dickson and Co. (Telegraphic), December 27; Mr. Barrington (Telegraphic), December 27; Doward Dickson and Co. (Telegraphic), December 30; ditto, December 31; to Mr. Barrington (Telegraphic), December 31; to Doward Dickson and Co. (Telegraphic). December 31, 1884; Law Officers' Report, May 6, 1876 (Confidential No. 4028), p. 41; ditto, May 31, 1878 (Confidential No. 4280), p. 24. Ditto, July 16, 1883 (Confidential No. 4974), p. 15; ditto, December 15, 1883 (Confidential No. 4974), p. 75. To Law Officers, December 31, 1884 (Confidential No. , p. ); Mr. Barrington (Telegraphic), January 5; Doward Dickson and Co. (Telegraphic), January 6; to Law Officers, January 6; to Doward Dickson and Co., January 6: Law Officers, January 6; to Mr. Barrington (Telegraphic), No. 1, January 7; Sir Farrer Herschell, January 8; to Mr. Barrington (Telegraphic), No. 2, January 12; Law Officers, January 12; Doward Dickson and Co. (Telegraphic), January 16; to Mr. Barrington (Telegraphic) No. 3, January 16; to Doward Dickson and Co. (Telegraphic), January 16; Mr. Barrington (Telegraphic), January 17; to Doward Dickson and Co., January 19; Doward Dickson and Co. (Telegraphic), January 22; J. Steel and Son (Telegraphic), January 22; to J. Steel and Son (Telegraphic), January 22, 1885

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of the British vessels "Overdale" and "Kirkloch" by the Peruvian authorities at Mollendo.

That our attention was directed to Messrs. Dickson and Co.'s letter and to the reply thereto, as well as to the instruction sent to Her Majesty's Chargé d'Affaires at Lima, and that your Lordship desired our opinion as to whether the action taken was right and proper under the circumstances, and that we would favour your Lordship with any further advice we might have to offer in the matter.

In obedience to your Lordship's commands we have the honour to report—

**Approve instructions.**

That, in our opinion, the proposed instructions to Her Majesty's Chargé d'Affaires at Lima are such as are right and proper under the circumstances.

**Should point out to owners objections to refusal to pay fine under protest.**

We also suggest for consideration whether it may not be well to point out to the owners that the larger the loss they sustain the greater will be the difficulty of recovering compensation from the Peruvian Government, and that it appears, therefore, to Her Majesty's Government, that if the actual loss to the owners from further delay would exceed the sum claimed, and which might be paid under protest, it is to be regretted that the owners decline to take a course which would diminish the difficulty of obtaining an indemnity.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Earl Granville to Mr. Barrington.*

(No. .)
(Telegraphic.) *Foreign Office, January* , 1885.

"Overdale" owners refuse deposit. "Kirkloch" also seized.

If seizure on same grounds, demand immediate release of both ships. Her Majesty's Government will hold Peruvian Government responsible for detention.

Reply immediately, and report amount of fines and duty in sterling.

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## No. 128.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 9.)*

**Seizure of the British vessels "Overdale" and "Kirkloch" for breach of blockade of Mollendo.**

My Lord, *Royal Courts of Justice, February* 7, 1885.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 4th instant, stating that with reference to our Report of the 3rd February relative to the seizure of the British vessels "Overdale" and "Kirkloch" by the Peruvian authorities at Mollendo, he was to transmit to us, by your Lordship's direction, the further papers noted in the accompanying list.*

That Sir J. Pauncefote was to request that we would take those papers into our consideration with the correspondence previously forwarded to us, which was returned therewith, and favour your Lordship with any additional suggestions we might have to offer as to the course to be taken by Her Majesty's Government, under the circumstances explained by Mr. Barrington and the Admiral commanding Her Majesty's naval forces on the station.

We were also honoured with a further letter from Sir J. Pauncefote, dated the 5th instant, inclosing a despatch† from Her Majesty's Chargé d'Affaires at Lima, giving further particulars as to the circumstances under which the British ship "Overdale" was seized by the Peruvian authorities at Mollendo.

That Sir J. Pauncefote was also to forward two letters from the Admiralty‡ inclosing telegrams from the British Admiral on the station relative to the seizures of the "Overdale" and the "Kirkloch," and to request that we would take those papers into our consideration together with the correspondence already forwarded to us, and favour your Lordship, at our earliest convenience, with our opinion as to the course which should be taken by Her Majesty's Government in regard to the seizures of the two vessels.

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* List of papers sent to the Law Officers, February 4, 1885 ("Overdale" and "Kirkloch"):—

(A) Mr. Barrington (Telegraphic), January 24; (B) Field and Weightman, January 24; (C) To Admiralty, January 26; (D) Steel and Son, January 27; (E) Admiralty, February 1; (F) Mr. Barrington (Telegraphic), February 3; (G) Law Officers, February 3, 1885.

† Mr. Barrington, No. 123, December 31, 1884.

‡ Admiralty (A), January 28 ditto, February 4, 1885.

In obedience to your Lordship's commands we have the honour to report—

**Aspect of case altered.**

That the contents of Mr. Barrington's telegram of the 3rd (4th) February, entirely alter the aspect of the case.

It appears from that telegram that the Admiral is now of opinion that the seizure of the "Overdale" was justifiable, and that the fine ought to be paid.

**Admiral should explain grounds for opinion as to legality of seizure and fine.**

The view hitherto presented to us, and with which we have agreed, has been that the seizure of the vessel was illegal.

We can only suggest that further information should be obtained from the Admiral as to the grounds upon which he has expressed the opinion that the "Overdale" has been rightly seized.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 129.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 11.)*

**Seizure of the "Overdale" and "Kirkloch" for breach of blockade at Mollendo.**

My Lord, *Royal Courts of Justice, February* 11, 1885.

WE have the honour to acknowledge the receipt of a Memorandum from Sir J. Pauncefote, dated the 9th instant, stating that, with reference to his letter of the 6th instant respecting the cases of the "Overdale" and "Kirkloch," he was to transmit a further letter from Messrs. Doward, Dickson, and Co.,* from which it appeared that the Peruvian Consul at Liverpool did not know, at the time the "Overdale" sailed, nor did he know officially on the 30th December, that the port of Mollendo was blockaded.

That Sir J. Pauncefote had the honour to request that that letter might be taken into consideration with the correspondence already forwarded from the Foreign Office.

We are also honoured with a further letter from Sir Julian Pauncefote, dated the 9th instant, transmitting to us a letter from the Admiralty,† inclosing a copy of a telegram from the British Admiral, dated from Mollendo, 6th February, in which he explained his reasons for considering the seizure of the "Overdale" by the Peruvian authorities to have been legal.

That, at the same time, Sir J. Pauncefote was to transmit copies of the Reports of the Law Officers‡ bearing upon the question whether a Government was legally justified in closing one or more of its ports, in times of civil commotion, to the commerce of all nations, by a Municipal Order issued for fiscal reasons, and to prevent the customs dues falling into the hands of the revolutionary party, and in seizing foreign vessels which might violate such Order.§

That if such closing of a port was permissible, the case of the "Overdale" appeared to turn upon nice questions of fact which were not before your Lordship.

That in those circumstances Sir J. Pauncefote was to request that we would favour your Lordship with our opinion as to the course which should be pursued by Her Majesty's Government in the cases of the "Overdale" and of the "Kirkloch."

That the papers‖ which accompanied the former references to us on the case were returned therewith, together with our Reports of the 3rd and 7th instant.

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* Messrs. Doward, Dickson, and Co., February 7, 1885.

† Admiralty, February 7, 1885.

‡ Law Officers, July 15, 1869 (Confidential No. 2545, p. 107); Queen's Advocate, July 1, ditto, August 13, 1870 (Confidential No. 3660, pp. 177, 179); Law Officers, April 18, ditto, April 18, 1879 (Confidential No. 4328, pp. 5, 90).

§ See the "Galvanic." Law Officers' Report, July 15, 1869 (Confidential No. 2545, p. 107).

‖ "Overdale" and "Kirkloch." List of papers sent to the Law Officers on February 9, 1885:—Mr. Barrington, No. 74, July 22; ditto, No. 87, August 28; ditto, No. 95, September 10; ditto (Private), October 22; Doward, Dickson, and Co. (Telegraphic), December 27; Mr. Barrington (Telegraphic), December 27; Doward, Dickson, and Co. (Telegraphic), December 30; ditto (Telegraphic), December 31; to Mr. Barrington (Telegraphic), December 31; to Doward, Dickson, and Co. (Telegraphic), December 31, 1884; Law Officers, May 6, 1876 (Confidential No. 4028, p. 41); ditto, May 31, 1878 (Confidential No. 4280, p. 44); ditto, July 16, 1883 (Confidential No. 4974, p. 66); ditto, December 15, 1883 (Confidential No. 4974, p. 75); Mr. Barrington (Telegraphic), January 5; to Doward, Dickson, and Co. (Telegraphic), January 6; Doward, Dickson, and Co.

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In obedience to your Lordship's commands we have the honour to report—

Information not sufficient.

That the further information now before us still leaves us in doubt as to the circumstances attending the seizure of the vessel. We are not informed whether the port was closed for fiscal purposes only, or whether the closing was in furtherance of belligerent action. If the former were the case, we think that those who were in charge of the vessel might be in the wrong in continuing to unload after notice of the closing Decree was conveyed to them.

Closing of port for fiscal purposes might be justifiable.

A mere notification of blockade does not justify seizure.

On the other hand, we adhere to the opinion we have already expressed, that a mere notification of the closing of a port for belligerent purposes would not justify the seizure of a vessel disregarding such notice.

Mr. Barrington should be at once communicated with, and requested to obtain from the Peruvian Government, and otherwise, full information concerning the closing of the port and the seizure of the vessel.

More prudent for owners to pay fine under protest.

Although the information before us leaves the rights of the owners in doubt, we think that it certainly will be well to point out to them that, in consequence of the information which has now been received (and which should be communicated to them), it may be that they will not be entitled, for the reasons we have above given, to claim compensation from the Peruvian Government, and it should be suggested, for their consideration, whether it will not be more prudent, in their own interest, to obtain the release of the vessel by paying the fine inflicted, reserving their claim for compensation if it shall be found they are entitled to make it.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 130.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 12.)*

My Lord,
*Royal Courts of Justice, February* 12, 1885.

Seizure of the "Overdale" and "Kirkloch" at Mollendo.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 11th instant, stating that, with reference to our letter of that day's date, he was to transmit to us a draft telegram, which your Lordship proposed to address to Her Majesty's Chargé d'Affaires at Lima, in regard to the cases of the "Overdale" and "Kirkloch."

That we were requested to inform your Lordship whether the terms of the draft telegram met with our concurrence, or whether we would suggest any addition to it.

In obedience to your Lordship's commands we have the honour to report—

Approve telegram as altered respecting object of closing port.

That we suggest that the telegram should be altered as in the accompanying draft.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Draft of telegram to Mr. Barrington.*

(Telegraphic.)
*Foreign Office, February* , 1885.

Telegraph further particulars respecting both seizures.

Was port closed for fiscal purposes only, or in aid of military operations?

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(Telegraphic), January 6; Law Officers, January 6; to Mr. Barrington (Telegraphic), January 7; Sir F. Herschell, January 8; to Mr. Barrington (Telegraphic), January 12; Law Officers, January 12; Doward, Dickson, and Co. (Telegraphic), January 16; to Mr. Barrington (Telegraphic), January 16; to Doward, Dickson, and Co. (Telegraphic), January 16; Mr. Barrington (Telegraphic), January 17; to Doward, Dickson, and Co., January 19; Doward Dickson, and Co. (Telegraphic), January 22; Steel and Son (Telegraphic), January 22; to Steel and Son (Telegraphic) January 22; Doward, Dickson, and Co., January 21; to Doward, Dickson, and Co., January 22; to Mr. Barrington (Telegraphic), January 22; Mr. Barrington (Telegraphic), January 24; Field and Weightman, January 24; to Admiralty, January 26; Steel and Son, January 27; Admiralty (Confidential), February 1; Mr. Barrington (Telegraphic), February 3, 1885; ditto, No. 123, December 31, 1884; Admiralty, January 28; ditto, February 4; Doward, Dickson, and Co., February 5, 1885.

## No. 131.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 17.)*

My Lord,
*Royal Courts of Justice, February* 17, 1885.

Detention of the "Overdale" and "Kirkloch" at Mollendo.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 14th instant, transmitting to us further correspondence* relating to the seizure by the Peruvian authorities of the British vessels "Overdale" and "Kirkloch," and requesting our opinion as to the course which should be pursued in regard to the continued detention of the "Overdale," and also as to the claim for compensation prepared by the owners of the "Kirkloch."

We were also honoured with Sir Julian Pauncefote's letter of the 16th instant, inclosing a further communication from Messrs. Doward and Dickson (14th February, 1885) with reference to the "Overdale."

In obedience to your Lordship's commands we have the honour to report—

Aspect of case changed by further information.

That the further information now received raises different considerations to those presented to us in the first instance.

There seems to have been no blockade of the Port of Mollendo, but the Peruvian Government, by the Decree of the 22nd August, notified that that port was closed to commerce.

We have great difficulty in gathering from the imperfect information before us whether there was, or was not, such a state of civil war as to create a *status belli*; but it may be that an insurrection having broken out, such inability to collect custom duties would exist as would justify the Peruvian Government in closing the port. It seems that the notification of such closing would, for some purposes, be deemed to be sufficient. The publication of the Decree was known to Mr. Barrington on the 28th August, and would also probably be known to the firm in Lima whose house in Liverpool chartered the "Overdale."

Under these circumstances, the "Overdale" sailed on the 5th September; and, inasmuch as the Peruvian Consul countersigned the clearance papers of the vessel, we think that the owners are entitled to urge that they entered upon the voyage with an absence of any actual knowledge of the port being closed. It seems, therefore, that much depends upon what occurred when the vessel arrived at Mollendo.

So far as we can gather, it appears that the Captain of the "Overdale" delivered his clearance papers to the Captain of the Port, and if this officer was in the employ of the Peruvian Government and raised no objection to the vessel unloading, a strong argument can be raised against the continuation of such unloading being regarded as illegal.

But it appears from the letter of Captain Strick, dated the 5th January, that he was informed by an English naval officer that the port was closed; that he (Captain Strick) then applied for advice to the English Consul, who told him to proceed with the unloading. It is true that Mr. Barrington, in his despatch of the 6th January, says that he did not communicate the Decree closing the port to the British Consul at Mollendo; but Admiral Baird, in his telegram of the 1st February, says: "Peruvian man-of-war arrived the 15th September with official notification to Consular Body,

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* List of Papers sent to the Law Officers, February 14, 1885:—To Mr Barrington, No. 11 (Telegraphic), February 12; Mr. Barrington, No. 2, January 6; ditto (Telegraphic), February 13; to Messrs. Steel, February 14, 1885; Mr. Barrington, No. 74, July 22; ditto, No. 87, August 28; ditto, No. 95, September 10; ditto (Private), October 22; Doward, Dickson, and Co. (Telegraphic), December 27; Mr. Barrington (Telegraphic), December 27; Doward, Dickson, and Co. (Telegraphic), December 30; ditto, December 31; to Mr. Barrington (Telegraphic), December 31; to Doward, Dickson, and Co. (Telegraphic), December 31, 1884; Law Officers, May 6, 1876, Confidential No. 4028, p. 41; ditto, May 31, 1878, Confidential No. 4280, p. 24; ditto, July 16, 1883, Confidential No. 4974, p. 15; ditto, December 15, 1883, Confidential No. 4974, p. 75; Mr. Barrington (Telegraphic), January 5; to Doward, Dickson, and Co. (Telegraphic), January 6; Doward, Dickson, and Co. (Telegraphic), January 6; Law Officers, January 6; to Mr. Barrington (Telegraphic), January 7; Sir F. Herschell, January 8; to Mr. Barrington (Telegraphic), January 12; Law Officers, January 12; Doward, Dickson, and Co. (Telegraphic), January 16; to Mr. Barrington (Telegraphic), January 16; to Doward, Dickson, and Co. (Telegraphic), January 16; Mr. Barrington (Telegraphic), January 17; to Doward, Dickson, and Co., January 19; Doward, Dickson, and Co. (Telegraphic), January 22; Steel and Son (Telegraphic), January 22; to Steel and Son (Telegraphic), January 22; Doward, Dickson, and Co., January 21; to Doward, Dickson, and Co., January 22; to Mr. Barrington (Telegraphic), January 22; Mr. Barrington (Telegraphic), January 24; Field and Weightman, January 24; to Admiralty, January 26; Steel and Son, January 27; Admiralty, Confidential, February 1; Mr. Barrington (Telegraphic), February 3, 1885; ditto, No. 123, December 31, 1884; Admiralty, January 28; ditto, February 4; Doward, Dickson, and Co., February 5; Law Officers, February 3; ditto, February 7; Admiralty, February 7; Doward, Dickson, and Co., February 7; Law Officers, February 11; ditto, February 12, 1885; ditto, July 15, 1869, Confidential No. 2545, p. 107; Queen's Advocate, July 1, 1870, Confidential No. 3660, p. 177; ditto, August 12, 1870, Confidential No. 3660, p. 179; Law Officers (2), April 18, 1879, Confidential No. 4328, pp. 90–91.

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'port closed, blockade established;'" and if this be so, notice seems to have reached the Consul of a blockade of the port rather than of a closing for fiscal or municipal purposes.

Further information on certain points required.

With such imperfect information before us we think several points must be cleared up before we can give any confident opinion. We suggest that the Consul at Mollendo should be requested to inform your Lordship—

(i.) Whether he received notice of the Decree closing the port.
(ii.) What advice he gave to Captain Strick.
(iii.) Whether any other vessels unloaded after the 22nd August.
(iv.) Was the town of Mollendo in possession of the rebels?
(v.) Whether any military operations were being carried on.
(vi.) What was the position occupied by the Captain of the Port?

Should inform the owners of the advisability of paying fine.

We also think that a letter should be written forthwith to the owners of the "Overdale," giving them explicit notice that, whilst further information is being sought, grave doubts exist whether their claim can properly be supported in consequence of their captain having proceeded to unload after having received notice of the Decree closing the port—a Decree which it is contended by the Peruvian Government was issued for municipal purposes. The owners may also be informed that Admiral Baird takes an unfavourable view of their claim; and that, such being the case, their refusal to pay the fine, and so release their vessel, involves a responsibility which rests with them alone.

For it may well be that Her Majesty's Government may find it impossible to insist upon any claim for compensation.

And protest against claim to regard "Overdale" as a prize.

We must observe that the claim by the Peruvian Government (mentioned by Mr. Barrington in his despatch of the 6th January) to regard the "Overdale" as a prize cannot be submitted to, and if it be persisted in a strong protest should be raised against it.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 132.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April* 10.)

My Lord,
*Royal Courts of Justice, April* 10, 1885.

Seizure of the "Overdale" and "Kirkloch" at Mollendo.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 28th ultimo, transmitting papers relating to the seizure of the "Overdale" and "Kirkloch" by the Peruvian authorities at Mollendo.

That, in accordance with our Report of the 17th ultimo (February), a communication had been addressed to the owners of the "Overdale," recommending them to pay the fine levied on her under protest. That that had been done, and the vessel had been released.

That instructions were sent to Mr. Barrington on the 12th ultimo, directing him to call upon the British Vice-Consul at Mollendo for a Report on the points raised in our Report of the 17th February, and that he was also instructed that the claim of the Peruvian Government to regard the "Overdale" as a prize could not be admitted, and, if persisted in, should be strongly protested against.

But that a reply to that despatch could not be expected for some weeks to come.

That our attention was invited to the further despatches received from Mr. Barrington (Nos. 5, 8, and 12), reporting the action he had taken in regard to the matter, and the views of the Peruvian Government as to protests addressed to them against their proceedings in the matter; also to a letter dated the 27th February from the owners of the "Overdale" (D), forwarding a communication from the master of that vessel.

That our attention was directed also to the Report (E) which had been received from Rear-Admiral Baird, who was sent to Mollendo to inquire into the circumstances under which the vessels were seized.

Circumstances in case of the "Overdale"

That in the case of the "Overdale" Admiral Baird expressed the opinion that her master became aware of the port being closed on his arrival, and that he made all haste to discharge his cargo before the arrival of a Peruvian man-of-war.

and of the "Kirkloch."

That the case of the "Kirkloch" differed from that of the "Overdale" in the essential point, viz., that on learning, after arrival at the port, that Mollendo was closed to commerce, she did not disturb her cargo, and, in obedience to the orders of the Captain of the "Santa Rosa," she prepared at once to go to sea, and was seized by the latter vessel when about 20 miles on her course to Callao, and sent with a guard on board under arrest to Callao (I).

That we were referred to Mr. Barrington's Reports in his despatches Nos. 10, 12, and 19, from which we should observe that the "Kirkloch" had been liberated from further supervision on condition of the cargo being discharged in Callao or any other port under the authority of the National Government of Peru.

That it appeared from Mr. Barrington's letter to the Peruvian Minister for Foreign Affairs (F) that the Captain of the Port of Mollendo went on board the "Kirkloch" and offered all facilities for unloading without mentioning the orders issued for closing the port, and that there was no doubt that the vessel had been seized on the high seas.

That a claim for damages was being prepared by the owners of the "Kirkloch."

That Mr. Currie was to request our opinion as to the instructions which should be sent to Mr. Barrington in regard to the proceedings of the Peruvian authorities in regard to those two vessels, or either of them.

We have also the honour to acknowledge the receipt of a further letter from Mr. Currie, dated the 1st instant, transmitting to us a further despatch from Her Majesty's Chargé d'Affaires at Lima on the above subject.

In obedience to your Lordship's commands we have the honour to report—

Seizure of the "Kirkloch" wholly illegal.

That the seizure of the "Kirkloch" appears to have been wholly illegal, and without any kind of justification. We think, therefore, that Mr. Barrington should be instructed to demand reparation from the Peruvian Government, and also to protest against the imposition of any condition as to the discharge of the cargo on board the vessel.

Unable to give opinion as to "Overdale."

As regards the case of the "Overdale," we are unable to express any decided opinion pending the receipt of the answer of the Vice-Consul at Mollendo to the inquiries which have been addressed to him.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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*List of Papers sent to the Law Officers, March* 28, 1885.

"Overdale" and "Kirkloch."

(A.) Mr. Barrington, No. 5, January 14, 1885.
(B.) „ No. 8, January 17, 1885.
(C, G.) „ No. 12, January 24, 1885.
(D.) Doward, Dickson, and Co., February 27, 1885.
(E, I.) Admiralty, March 18, 1885.
(F.) Mr. Barrington, No. 10, January 20, 1885.
(H.) „ No. 19, February 11, 1885.

Mr. Barrington, No. 74, July 22, 1884.
„ „ No. 87, August 28, 1884.
„ „ No. 95, September 10, 1884.
„ „ (Private), October 22, 1884.
Doward, Dickson, and Co., Telegraphic, December 27, 1884.
Mr. Barrington, Telegraphic, December 27, 1884.
Doward, Dickson, and Co., Telegraphic, December 30, 1884.
„ „ „ Telegraphic, December 31, 1884.
To Mr. Barrington, Telegraphic, December 31, 1884.
To Doward, Dickson, and Co., Telegraphic, December 31, 1884.
Law Officers, May 6, 1876. Confidential No. 4028, p. 41.
„ „ May 31, 1878. Confidential No. 4280, p. 24.
„ „ July 16, 1883. Confidential No. 4974, p. 66.
„ „ December 15, 1883. Confidential No. 4974, p. 75.
Mr. Barrington, Telegraphic, January 5, 1885.
To Doward, Dickson, and Co., Telegraphic, January 6, 1885.
Doward, Dickson, and Co., Telegraphic, January 6, 1885.
Law Officers, January 6, 1885.
To Mr. Barrington, Telegraphic, January 7, 1885.
Sir F. Herschell, January 8, 1885.
To Mr. Barrington, Telegraphic, January 12, 1885.
To Law Officers, January 12, 1885.

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Doward, Dickson, and Co., Telegraphic, January 16, 1885.
To Mr. Barrington, Telegraphic, January 16, 1885.
To Doward, Dickson, and Co., Telegraphic, January 16, 1885.
Mr. Barrington, Telegraphic, January 17, 1885.
To Doward, Dickson, and Co., January 19, 1885.
Doward, Dickson, and Co., Telegraphic, January 22, 1885.
Steel and Son, Telegraphic, January 22, 1885.
To Steel and Son, Telegraphic, January 22, 1885.
Doward, Dickson, and Co., January 21, 1885.
To Doward, Dickson, and Co., January 22, 1885.
To Mr. Barrington, Telegraphic, January 22, 1885.
Mr. Barrington, Telegraphic, January 24, 1885.
Field and Weightman, January 24, 1885.
To Admiralty, January 26, 1885.
Steel and Son, January 27, 1885.
Admiralty (Confidential), February 1, 1885.
Mr. Barrington, Telegraphic, February 3, 1885.
" " No. 123, December 31, 1884.
Admiralty, January 28, 1885.
" February 4, 1885.
Doward, Dickson, and Co., February 5, 1885.
Law Officers, February 3, 1885.
" " February 7, 1885.
" " July 15, 1869. Confidential No. 2545, p. 107.
Queen's Advocate, July 1, 1870. Confidential No. 3660, p. 177.
" " August 13, 1870. Confidential No 3660, p. 179.
Law Officers, April 18, 1879. Confidential No. 4328, p. 90.
" " April 18, 1879. Confidential No. 4328, p. 91.
Admiralty, February 7, 1885.
Doward, Dickson, and Co., February 7, 1885.
" " " February 10, 1885.
Law Officers, February 11, 1885.
" " February 12, 1885.
To Mr. Barrington, No. 11, Telegraphic, February 12, 1885.
Mr. Barrington, No. 2, January 6, 1885.
" " Telegraphic, February 13, 1885.
To Messrs. Steel, February 14, 1885.
Doward, Dickson, and Co., February 14, 1885.
Steel and Son, February 14, 1885.
Sir H. James, February 16, 1885.
Law Officers, February 17, 1885.
To Mr. Barrington, Telegraphic, February 17, 1885.
To Doward, Dickson, and Co., February 17, 1885.
Doward, Dickson, and Co., Telegraphic, February 18, 1885.
" " " Letter, February 18, 1885.
Mr. Barrington, Telegraphic, February 19, 1885.
Admiralty, February 19, 1885.
To Doward, Dickson, and Co., February 19, 1885.
Doward, Dickson, and Co., February 21, 1885.
" " " February 23, 1885.
" " " Telegraphic, February 25, 1885.
Field and Weightman, February 25, 1885.
To Mr. Barrington, Telegraphic, February 26, 1885.
Mr. Barrington, Telegraphic, February 26, 1885.
To Doward, Dickson, and Co., Telegraphic, February 26, 1885.
Doward, Dickson, and Co., Letter, February 26, 1885.
To Field and Weightman, February 27, 1885.
To Mr. Barrington, No. 16, February 28, 1885.
Mr. McIver, M.P., February 27, 1885.
Mr. J. D. Adams, February 24, 1885.
To Doward, Dickson, and Co., March 2, 1885.
To Mr. McIver, M.P., March 2, 1885.
To Mr. Barrington, Telegraphic, March 2, 1885.
To Steel and Son, March 11, 1885.
Steel and Son, March 12, 1885.
To Mr. Barrington, No. 20, March 12, 1885.
" " No. 21, March 12, 1885.
" " No. 22, March 12, 1885.
" " No. 23, March 14, 1885.
Mr. Barrington, No. 14, February 3, 1885.
To Mr. Barrington, Telegraphic, March 21, 1885.
Mr. Barrington, Telegraphic, March 22, 1885.
To Mr. J. D. Adams, March 24, 1885.
To Doward, Dickson, and Co., March 24, 1885.
Doward, Dickson, and Co., March 25, 1885.

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## No. 133.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 16.)*

My Lord, *Royal Courts of Justice, April* 15, 1885.

Reimposition by Peruvian Government of taxes already paid to revolutionists.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 4th instant, stating that he was to inclose, for our concurrence, the draft of a despatch which your Lordship proposed to address to Her Majesty's Chargé d'Affaires at Lima in regard to the right asserted by the Peruvian Government to reimpose taxes and duties which may have been previously paid by British subjects to the revolutionary authorities when in full possession of the districts where they were levied.

That Mr. Currie also inclosed two despatches[*] from Mr. Barrington on that subject, together with a copy of the Law Officers' Report of the 1st June, 1874,[†] upon a somewhat similar case which arose in Spain in the year 1874.

That our opinion was requested as to whether the instruction which it was proposed to address to Mr. Barrington was right and proper.

That, for convenience of reference, Mr. Currie was also to inclose copies of other Reports[‡] which had been drawn up by the Law Officers of the Crown on the subject of the liability of British subjects to the payment of foreign customs duties a second time.

In obedience to your Lordship's commands we have the honour to report—

That we are of opinion that the instruction which it is proposed to address to Mr. Barrington is right and proper.

Approve instructions to Mr. Barrington.

We assume it is intended that Mr. Barrington should be guided by the instructions given in 1874 to Her Majesty's Minister at Madrid, but this is not so stated, in terms, in the instruction submitted to us.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Draft of Despatch from Earl Granville to Mr. Barrington.*

(No. .)
Sir, *Foreign Office, April* , 1885.

I HAVE received your despatch No. 18 of the 11th February, requesting to be informed of the view taken by Her Majesty's Government of the right asserted by the Peruvian Government to reimpose taxes and duties which may have been previously paid by British subjects to the revolutionary authorities when in full possession of the districts where they were levied.

In reply, I have to state to you that a case somewhat similar to the one reported by you arose in Spain in the year 1874.

During the civil war in that country the Carlists exacted the payment of taxes, &c., from British subjects resident in certain towns; and when the Republican Government regained possession of those towns, they were called upon to pay the taxes over again.

Her Majesty's Minister at Madrid was instructed to protest against this proceeding; he was, however, warned to be careful not to interfere in cases in which the taxes and contributions levied by the Carlists had been paid voluntarily, or without protest, or under circumstances from which it might fairly be inferred that they were aiding the Carlist movement; for that in such cases the principle that payment to a *de facto* Government was a discharge of an obligation to the Government of the country could not with propriety be applied.

Acting, therefore, under the advice of the Law Officers, I have now to instruct you to be guided by the instructions given in 1874 to Her Majesty's Minister at Madrid with regard to any representations you may have to make to the Peruvian Government on behalf of British subjects.

I am, &c.

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[*] Mr. Barrington, No. 100, September 16, 1884; ditto, No. 18, February 11, 1885.

[†] Law Officers, June 1, 1874, Confidential No. , p. .

[‡] Law Officers, May 6 and June 8, 1861, Confidential No. 1123, pp. 87, 113; Law Officers, May 11, 1865, Confidential No. 1489, p. 96; Law Officers, April 29, 1874, Confidential No. 4331, p. 123.

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## No. 134.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received August* 8.)

My Lord, *Royal Courts of Justice, August* 8, 1885.

Seizure of the "Overdale" for breach of order closing port of Mollendo.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 28th ultimo, stating that he had the honour to transmit to us the papers* relating to the cases of the British vessels "Overdale" and "Kirkloch," which were seized by the Peruvian authorities for an alleged breach of an order issued by them, declaring the port of Mollendo closed to foreign commerce.

Action taken in case of the "Kirkloch."

That, in accordance with the opinion expressed by the Law Officers of the Crown in their Report dated the 10th April last, instructions had been sent to Colonel Mansfield, Her Majesty's Minister in Peru, to demand reparation for the seizure and detention of the "Kirkloch."

That as regarded the case of the "Overdale," we should observe that in the same Report the Law Officers expressed their inability to form a decided opinion pending the receipt of a reply to certain inquiries which, in their previous Report of the 17th February, they had suggested should be referred to the British Vice-Consul at Mollendo. That a reply to those inquiries had been received.

Further information as to case of the "Overdale."

That it appeared from those documents that on the 23rd August, 1884, the date on which the order was issued forbidding vessels to call at Mollendo, that port was in possession of the rebels, and that no blockade of the port was ever established or attempted.

That in a despatch dated the 5th June last, No. 49, Mr. Barrington reported that a Ministerial order had been published on the 23rd of that month reopening the port of Mollendo.

That in connection with the question, whether it was competent to a Sovereign Power to close to neutral commerce national ports in the possession of its foreign enemies or rebel subjects by a Municipal Decree, without a blockade *jure gentiun*, Sir J. Pauncefote was to inclose a collection of Law Officers' Reports between 1869 and 1873, and that he was also to draw our attention to Consul Stacey's despatch No. 17 of the 26th May, 1885, transmitting extracts of correspondence between the Governments of Columbia and of the United States, from which it appeared that the opinion of the United States' Government was adverse to the right claimed in the present instance by the Peruvian Government. That Sir J. Pauncefote was also to inclose the first Report of the Law Officers on the case of the "Overdale," in which we should find the facts briefly stated.

That Sir J. Pauncefote was to request that we would take the papers transmitted into our consideration, and favour your Lordship with our opinion as to the instructions which should now be given to Her Majesty's Minister at Lima in regard to making a further demand on the Peruvian Government for compensation to the owners of the "Overdale" for the seizure and detention of their vessel.

In obedience to your Lordship's commands we have the honour to report—

Further demand for compensation in case of the "Overdale" may now be made.

That, in our opinion, Her Majesty's Minister at Lima may now be instructed to make a further demand on the Peruvian Government for compensation to the owners of the "Overdale" for the seizure and detention of their vessel.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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* List of Papers sent to the Law Officers on July 28, 1885 :—

(A.) Report from the Law Officers, April 10, 1885.
(B.) To Colonel Mansfield, No. 38, July 15, 1885.
(C.) Report from the Law Officers, February 17, 1885.
(D.) To Mr. Barrington, No. 22, March 12, 1885.
(E.) Mr. Barrington, No. 41, May 8, 1885.
(F.) ,, ,, No. 48, June 1, 1885.
(G.) ,, ,, No. 87, Aug. 28, 1884.
(H.) ,, ,, No. 49, June 5, 1885.
(I.) Law Officers, July 15, 1869; Confidential No. 2545, p. 107
(J.) Queen's Advocate, July 1, 1870; Confidential No. 3660, p. 177.
(K.) ,, ,, August 13, 1870; Confidential No. 3660, p 179
(L.) Law Officers, May 6, 1876; Confidential No. 4028, p. 41.
(M.) ,, ,, May 31, 1878; Confidential No. 4280, p. 75.
(N.) ,, ,, April 18, 1879; Confidential No. 4328, p. 90.
(O.) ,, ,, April 18, 1879; Confidential No. 4328, p. 91.
(P) ,, ,, July 16, 1883; Confidential No. 4974, p. 15.
(Q.) ,, ,, December 15, 1883; Confidential No. 4974, p. 75
(R.) Consul Stacey, No. 17, May 26, 1885.
(S.) Law Officers, January 6, 1885.

LIST of further Papers.

1 To Mr. Barrington, No. 11, Telegraphic, February 12, 1885
2. Mr. Barrington, No. 2, January 6, 1885.
3 ,, ,, Telegraphic, February 13, 1885.
4. To Messrs. Steel, Telegraphic, February 14, 1885.
5. Mr. Barrington, No. 74, July 22, 1884.
6. ,, ,, No. 95, September 10, 1884.
7. ,, ,, Private, October 22, 1884.
8. Doward, Dickson, and Co., Telegraphic, December 27, 1884.
9. Mr, Barrington, Telegraphic, December 27, 1884.
10. Doward, Dickson, and Co, Telegraphic, December 30, 1884
11. ,, ,, Telegraphic, December 31, 1884.
12. To Mr. Barrington, Telegraphic, December 31, 1884.
13. To Doward, Dickson, and Co., Telegraphic, December 31, 1884.
14. Mr. Barrington, Telegraphic, January 5, 1885.
15. To Doward, Dickson, and Co., Telegraphic, January 6, 1885.
16. Doward, Dickson, and Co., Telegraphic, January 6, 1885.
17. Law Officers, January 6, 1885.
18. To Mr. Barrington, Telegraphic, January 7, 1885.
19. Sir F. Herschell, January 8, 1885.
20. To Mr. Barrington, Telegraphic, January 12, 1885.
21. Law Officers, January 12, 1885.
22. Doward, Dickson, and Co., Telegraphic, January 16, 1885.
23. To Mr. Barrington, Telegraphic, January 16, 1885.
24. To Doward, Dickson, and Co., Telegraphic, January 16, 1885.
25. Mr. Barrington, Telegraphic, January 17, 1885.
26. To Doward, Dickson, and Co., January 19, 1885.
27. Doward, Dickson, and Co., Telegraphic, January 22, 1885.
28. Steel and Son, Telegraphic, January 22, 1885.
29. To Steel and Son, Telegraphic, January 22, 1885.
30. Doward, Dickson, and Co., January 21, 1885.
31. To Doward, Dickson, and Co., January 22, 1885.
32. To Mr. Barrington, Telegraphic, January 22, 1885.
33. Mr. Barrington, Telegraphic, January 24, 1885.
34. Field and Weightman, January 24, 1885.
35. To Admiralty, January 26, 1885.
36. Steel and Son, January 27, 1885.
37. Admiralty, Confidential, February 1, 1885.
38. Mr. Barrington, Telegraphic, February 3, 1885.
39. ,, ,, No. 123, December 31, 1884.
40. Admiralty, January 28, 1885.
41. ,, February 4, 1885.
42. Doward, Dickson, and Co., February 5, 1885.
43. Law Officers, February 3, 1885.
44. ,, ,, February 7, 1885.
45. Admiralty, February 7, 1885.
46. Messrs. Doward, Dickson, and Co., February 7, 1885.
47. Law Officers, February 11, 1885.
48. ,, ,, February 12, 1885.
49. Colonel Mansfield, No. 54, , 1885

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## No. 135.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received October* 29.)

My Lord, *Royal Courts of Justice, October* 28, 1885.

Seizure of the "Kirkloch" by Peruvian vessel on high seas, for breach of Decree closing port of Mollendo.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th instant, stating that, with reference to our predecessors' Report of the 10th April last, he was to transmit to us the papers relating to the seizure of the British ship "Kirkloch" by a Peruvian vessel of war on the high seas. That the facts of the arrest were detailed in the Report of Rear-Admiral Baird (A), and in Mr. Barrington's No. 10, January 1885 (B).

That, from those accounts, it appeared that the "Kirkloch" cleared from Newcastle for the port of Mollendo on the 20th September, 1884, with a cargo of coals for the Arequipa Railway Company. That she arrived at Mollendo on the evening of the 8th January, 1885, not having called at any intermediate ports since her departure from England.

That the port of Mollendo was, at the time, in possession of the rebel forces, and

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it had been declared early in September as closed to commerce by a Decree of the Peruvian Government.

That the "Kirkloch" arrived in ignorance of that fact, and anchored without opposition. Next morning the (rebel) Captain of the Port came on board and offered all facilities for the discharge of cargo, but made no mention of the orders of the Peruvian Government for closing the port, and it was not until later that the captain of the "Kirkloch," on going ashore, first heard of the existence of those orders.

That there was no blockade of the port, but that the Peruvian guardacosta "Santa Rosa," charged with the execution of the closing orders appeared and ordered the "Kirkloch" to sea. That it was supposed that the "Santa Rosa," which was lying off Mollendo, must have seen the "Kirkloch" anchor on the night of her arrival, but that no step was taken to order her to sea till the following day, the 10th January. That the order was at once complied with, the captain of the "Kirkloch" having received instructions accordingly from the consignees. That the "Kirkloch" was unmoored and hauled out to the buoy, where she was compelled to remain till next day for want of wind.

That during the time she was in port no attempt was made to discharge the cargo. That on the morning of the 11th January, there being sufficient wind, she put to sea. She was hailed by the "Santa Rosa," when about 25 miles from shore, a guard of three officers and eight armed men was put on board, and she was taken to Callao, where she arrived on the 17th January, and was detained under arrest.

That it was not until the 11th February following that she was released, on condition of the cargo being discharged in Callao, or any other port under the authority of the National Government (C and D).

That the above facts were laid before our predecessors on the 28th March, and that in their Report of the 20th April (E) they expressed their opinion that the seizure of the "Kirkloch" was unjustifiable, and that reparation should be demanded.

That, meanwhile, Mr. Barrington had received from the captain a statement of the expenses arising out of the detention of the vessel, and that he addressed a note to the Peruvian Government requesting reimbursement (F and G).

That a long interval elapsed without any reply being made to that representation, and that it was not until after further pressure that a reply was received, dated the 12th August, in which the Peruvian Government declined all liability in the matter (H).

That the case of the "Kirkloch" was aggravated by the fact of her seizure on the "high seas;" and that Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether the reply of the Peruvian Government contained anything which modified the conclusion arrived at by our predecessors, that the seizure of the vessel was "wholly illegal, and without any kind of justification."

In obedience to your Lordship's commands we have the honour to report—

Peruvian reply does not modify conclusion as to illegality of case.

That the reply of the Peruvian Government does not contain anything which modifies the conclusion arrived at by our predecessors, in which we concur, that the seizure of the "Kirkloch" "was wholly illegal, and without any kind of justification."

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

*List of Papers sent to Law Officers, October* 4, 1885.

(A.) Admiralty, March 18, 1885.
(B.) Mr. Barrington, No. 10, January 20, 1885.
(C.) Mr. Barrington, No. 19, February 11, 1885.
(D.) Mr. Barrington, No. 20, February 12, 1885.
(E.) Law Officers, April 10, 1885.
(F.) Mr. Barrington, No. 26, February 25, 1885.
(G.) Mr. Barrington, No. 29, March 6, 1885.
(H.) Colonel Mansfield, No. 65, August 15, 1885.

Doward, Dickson, and Co. (Telegraphic), January 22, 1885.
Steel and Son (Telegraphic), January 22, 1885.
To Steel and Son (Telegraphic), January 22, 1885.
To Mr. Barrington (Telegraphic), January 22, 1885.
Doward, Dickson, and Co., January 22, 1885.
Steel and Son, January 22, 1885.
To Law Officers, January 23, 1885.

Doward, Dickson, and Co., January 23, 1885.
Mr. Barrington (Telegraphic), January 24, 1885.
Field and Weightman, January 24, 1885.
To Mr. Barrington (Telegraphic), January 26, 1885.
Steel and Son, January 26, 1885.
To Field and Weightman, January 26, 1885.
To Admiralty, January 26, 1885.
Admiralty, January 26, 1885.
Steel and Son, January 27, 1885.
Admiralty, January 28, 1885 (A).
Ditto, January 28, 1885 (B).
Ditto, Confidential, February 1, 1885.
Law Officers, February 3, 1885.
Mr. Barrington (Telegraphic), February 3, 1885.
Admiralty, February 4, 1885.
To Law Officers, February 4, 1885.
To Dr. Deane, February 5, 1885.
To Admiralty, February 5, 1885.
Law Officers, February 7, 1885.
To Law Officers, February 9, 1885.
Steel and Son, February 10, 1885.
To Law Officers, February 11, 1885.
Steel and Son, February 11, 1885.
Doward, Dickson, and Co., February 11, 1885.
To Doward, Dickson, and Co., February 12, 1885.
To Steel and Son, February 12, 1885.
To Mr. Barrington (Telegraphic), February 12, 1885
Mr. Barrington (Telegraphic), February 13, 1885.
To Law Officers, February 14, 1885
To Steel and Son (Telegraphic), February 14, 1885.
Steel and Son, February 14, 1885.
Law Officers, February 17, 1885.
Admiralty, February 19, 1885.
Field and Weightman, February 25, 1885.
Mr Barrington (Telegraphic), February 26, 1885
To Field and Weightman, February 27, 1885.
To Mr. Barrington, No. 16, February 28, 1885
Ditto, No. 17 (Telegraphic), March 2, 1885.
Mr. Barrington, No. 12, January 24, 1885.
To Steel and Son, March 11, 1885
To Mr. Barrington, No. 32, March 12, 1885.
Ditto, No. 20, March 12, 1885.
Steel and Son, March 12, 1885.
Mr. Barrington, No 14, February 3, 1885.
To Law Officers, March 28, 1885.
Ditto, April 1, 1885.
To Steel and Son, April 1, 1885.
To Mr. Barrington, No. 32 (Telegraphic), April 16, 1885.
To Steel and Son, April 17, 1885.
Mr. Barrington (Telegraphic), April 17, 1885.
Steel and Son, April 18, 1885.
Ditto, May 18, 1885.
Layton and Steel, May 18, 1885.
To Layton and Steel, May 25, 1885.
To Mr. Barrington, No. 36, May 25, 1885.
Layton and Steel, May 27, 1885.
Mr. Barrington, No. 37, April 17, 1885.
Ditto, No. 41, May 8, 1885.
Ditto, No. 49, June 5, 1885.
To Colonel Mansfield, No. 38, July 15, 1885.
Colonel Mansfield, No. 54, June 16, 1885.
To Law Officers, July 28, 1885.
Ditto, July 29, 1885.
Law Officers, August 8, 1885.
Colonel Mansfield, No. 59, July 12, 1885.
Ditto, No. 63, July 21, 1885.
Leyton and Steel, September 11, 1885.
To Layton and Steel, September 16, 1885.
Layton and Steel, September 17, 1885.
To Colonel Mansfield, No. 49, September 25, 1885.
To Layton and Steel, September 25, 1885.
Colonel Mansfield, No. 65, August 22, 1885.
Layton and Steel, September 26, 1885.

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## No. 136.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received November 21.)*

My Lord, *Royal Courts of Justice, November* 20, 1885.

Seizure of the "Kirkloch" by Peruvians on the high seas.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th instant, stating that, with reference to our Report of the seizure of the British ship "Kirkloch" by a Peruvian man-of-war, on the high seas, he was directed to transmit to us the draft of a despatch which your Lordship proposed to address to Her Majesty's Minister at Lima, instructing him to address a note to the Peruvian Minister for Foreign Affairs, insisting on the settlement of that case. That our opinion was requested as to whether the proposed instruction was right and proper. That the papers to which our special attention was called in Sir J. Pauncefote's letter of the 14th ultimo were inclosed.*

In obedience to your Lordship's commands we have the honour to report—

Approve instructions to demand settlement of case.

That, in our opinion, the proposed instruction to Colonel Mansfield is right and proper.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J PARKER DEANE.

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### Annex.

*Draft of Despatch to Colonel Mansfield.*

(No. .)
Sir, *Foreign Office, November* , 1885.

ON receipt of your despatch No. 65 of the 15th August, inclosing a copy and translation of the note of the Peruvian Government in which they refuse to entertain the claim to compensation of the owners of the "Kirkloch," I caused the whole question to be referred to the present Law Officers of the Crown, who have reported that the reply of the Peruvian Government does not contain anything which should modify the conclusion already arrived at by their predecessors, that the seizure of the "Kirkloch" was wholly illegal and without any kind of justification.

It will, I think, be convenient to recall the circumstances of the case.

The "Kirkloch" cleared from Newcastle for the port of Mollendo on the 20th September, 1884, with a cargo of coals for the Arequipa Railway Company, and she arrived at Mollendo on the evening of the 8th January, 1885, not having called at any intermediate ports since her departure from England.

The port of Mollendo was at the time in possession of the rebel forces, and it had been declared early in September as closed to commerce by a Decree of the Peruvian Government.

Her Majesty's Government, as you are aware, dispute the right claimed by the Peruvian Government to close the port to foreign commerce by a Municipal Decree. They maintain that the port being in the possession of the rebels, it could only be closed, according to international law, by an efficient blockade.

The "Kirkloch," however, arrived in ignorance of the Decree, and anchored without opposition. The next morning the Captain of the Port in the service of the rebels came on board and offered all facilities for the discharge of the cargo. It was not until later that the master of the "Kirkloch" in going ashore, first heard of the existence of the Decree.

There was no blockade of the port, but the Peruvian guardacosta "Santa Rosa," charged with the execution of the Decree, appeared on the scene on the following day (the 10th January), and ordered the "Kirkloch" to sea. The order was at once complied with. The "Kirkloch" was unmoored and hauled out to the buoys, where she was compelled to remain till the next day for want of wind.

During the time the vessel was in port no attempt was made to discharge the cargo, and on the morning of the 11th January, there being sufficient wind, she put to

sea. While on the high seas, about 25 miles from land, the "Kirkloch" was hailed by the "Santa Rosa," a guard of three officers and eight armed men was put on board, and she was forcibly taken to Callao, where she arrived on the 17th January; she was there detained under arrest, and it was not until the 11th February following that the vessel was released, on condition of the cargo being discharged in Callao, or any other port under the authority of the National Government.

I have now to request you to address a note to the Peruvian Minister for Foreign Affairs insisting on a settlement of the claim. You will recapitulate the facts of the case, and you will add that the case is aggravated by the seizure of the "Kirkloch" on the high seas, which was a violation of the British flag.

I am, &c.

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# Portugal.

## No. 137.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received September 22.)*

My Lord, *Royal Courts of Justice, September* 21, 1885.

Oyster fisheries at Lisbon. Claim of Anglo-Portuguese Oyster Company.

WE were honoured with your Lordship's commands signified in Mr. Bourke's letter of the 3rd September instant, stating that he had to transmit to us, by your Lordship's direction, the papers noted in the accompanying list,* which related to the case of the Anglo-Portuguese Oyster Company, which formed the subject of the Report of the Law Officers of the Crown of the 11th September, 1884,† to which he was to refer us for a statement of the facts of the case so far as they were known to the Foreign Office. That from the correspondence subsequent to the Law Officers' Report we would perceive that the Company obtained a Judgment in their favour in the High Court of Justice. That that Judgment was a Judgment by default, service of the writ having been effected by a private agent of the Company at Lisbon, where the defendant M. Amorous (a French subject) resided.

Refusal of Portuguese to enforce British Judgment on account of informal service of citation.

That the Portuguese Courts refused to enforce the British Judgment on the defendant, who resided in Lisbon, because service was not effected in the manner set forth in No. 4 of the first paragraph of Article 1088 of the Code of Civil Procedure of Portugal (see copy of Judgment in Company's letter of the 7th August). That the Court laid down that the citation should have been effected according to the law of Portugal, or that the British Court should have addressed *literæ rogatoriæ* to the Portuguese Tribunals, in accordance with the procedure of the latter where citations

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* (A) Admiralty, March 18; (B) Mr. Barrington, No. 10, January 20; (C) ditto, No. 19, February 11; (D) ditto, No. 20, February 12; (E) Law Officers, April 10; (F) Mr. Barrington, No. 26, February 25; (G) ditto, No. 29, March 6: (H) Colonel Mansfield, No. 65, August 15, 1885.

† Law Officers, October 28, 1885.

* Papers sent to Law Officers. September 3, 1885.

Papers sent to Law Officers, August 12, 1884:—Anglo-Portuguese Oyster Company, November 16; to ditto, November 22; to Mr. Baring, No 34, November 23; Anglo-Portuguese Oyster Company, November 24; Sir C. Wyke, No. 109, December 17; to ditto, No. 40, December 29; to Anglo-Portuguese Oyster Company, December 29, 1883; Anglo-Portuguese Oyster Company, January 23; to Sir C. Wyke, No. 3, January 28; to Anglo-Portuguese Oyster Company, January 28; Anglo-Portuguese Oyster Company, February 1; to ditto, February 4; Anglo-Portuguese Oyster Company, March 29; ditto, April 3; to Mr. Petre, No. 35, April 8; to Anglo-Portuguese Oyster Company, April 8; Mr. Petre, No. 45, April 21; to Anglo-Portuguese Oyster Company, May 6; Anglo-Portuguese Oyster Company, May 12; to ditto, May 16; Anglo-Portuguese Oyster Company, May 28; to Mr. Petre, No. 44, May 30; Anglo-Portuguese Oyster Company, May 30; ditto, May 31; Mr. Petre, No. 54, May 31; to ditto, No. 45, June 5; to Anglo-Portuguese Oyster Company, June 7; Mr. Petre, No. 55, June 4; ditto, No. 57, June 7; to Anglo-Portuguese Oyster Company, June 12; Anglo-Portuguese Oyster Company, June 13; to ditto, June 14; to ditto, June 18, 1884.

Further Papers sent September 3, 1885:—Anglo-Portuguese Oyster Company, July 30; to ditto, August 12; Anglo-Portuguese Oyster Company, August 27; to ditto, August 30; to ditto, October 18, 1884; Anglo-Portuguese Oyster Company, August 7; to ditto, August 12; to ditto, August 17; Anglo-Portuguese Oyster Company, August 19; to ditto, August 24; Anglo-Portuguese Oyster Company, August 25, 1885.

† Confidential No. 5121, p. 91.

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issued by them have to be served in England. That an appeal against that Judgment is pending, and the Anglo-Portuguese Oyster Company now apply to the Foreign Office for an authoritative document or certificate showing that the mode of citation suggested by the Portuguese Court was unknown to practice in this country, and that the course actually pursued by them was the usual and only one acknowledged by the English Courts of Justice.

That, as regarded the question of reciprocity, Mr. Bourke was to state that applications were frequently made to the Foreign Office by foreign Representatives in that country to effect service of foreign citations, and that such applications were invariably refused, the parties interested being informed that they must employ private agents for the purpose.

That Mr. Bourke was to request that we would favour your Lordship with our opinion as to whether a certificate to the effect required should be given, and, if so, whether it should be given by Her Majesty's Minister in Lisbon, and in what terms.

In obedience to your Lordship's commands we have the honour to report—

**Should decline certificate as to British procedure.**

That, in our opinion, a certificate to the effect required should not be given by Her Majesty's Government, but that the Anglo-Portuguese Oyster Company (Limited) should be recommended to prove by other means before the Portuguese Tribunal the procedure of the English Courts.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 138.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received November* 9.)

My Lord, *Royal Courts of Justice, November* 7, 1885.

**Detention, after landing, of passengers from "Spartan" in lazaretto at Funchal. Claim for 2,000*l*.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th ultimo, stating that he was to transmit to us the papers* relating to a claim of 2,000*l*. put forward by Major Reeve on behalf of himself and six other British subjects, against the Portuguese Government, on account of their relegation to the lazaretto at Funchal, under the circumstances set forth in the despatch No. 22, Consular, from the Acting British Consul in Madeira, and in Major Reeve's letter of the 9th ultimo.

That the "Spartan" started from Southampton on the 13th August, reached Plymouth on the 14th, and there took on board ten third class Spanish passengers who had left Cadiz about the 1st August. That she reached Madeira on the morning of the 18th, was admitted to pratique and landed twenty-two passengers, among whom were the ten third class Spanish passengers from Cadiz.

That when it was noised abroad that those latter had come from Spain viâ Plymouth, there was great excitement, and all who had landed were ordered by the Civil Governor to go to a lazaretto for seven days.

That every one appeared to have complied except Major Reeve, who absolutely refused, in spite of the Acting Consul's recommendation to do so, under protest.

That when the Commissary of Police, the Major, the Judge, and a posse of police appeared on the scene, he gave in, and he and his wife went to the lazaretto till the 24th, when the period of seven days expired. That on the 20th July, a Notice had been issued by the Portuguese Government declaring Cadiz to be an *infected* port, and, by the terms of a Royal Decree dated Lisbon, the 26th July, 1884, it was provided that no vessel arriving from an *infected* port, should be allowed to communicate with the shore at all. That consequently, it would appear that, though the "Spartan" did not come from an *infected*, or even a *suspected* port, herself, she had passengers on board of her, who had left an infected port eighteen days before her arrival.

That it was not alleged that there was any sickness on board the "Spartan," and that the question arose whether the arrest of the British passengers on shore after they

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* To Mr. Petre, No. 53, Commercial; ditto, No. 56, Commercial; Mr. Petre, No. 86, Commercial; Acting Consul Faber, No. 22, Consular, August 21; Major Reeve, September 9, 1885; Portuguese Notice, July 26, 1884; ditto, July 20, 1885.

had been lawfully landed, and their forcible detention in the lazaretto upon discovery that among the passengers of the "Spartan" there were ten Spaniards who had left an infected port eighteen days before, afforded grounds for a diplomatic remonstrance, and for a claim of indemnity.

That Sir J. Pauncefote observed that in a recent case which arose in Sicily, the Italian Government stated that, apart from strict quarantine Regulations, their law permitted any measure which, in the urgent circumstances of the case, might be deemed necessary to escape the imminent danger of infection.

That the Portuguese might invoke a similar law, but that it could hardly be said that the presence on board the "Spartan" of the Cadiz passengers (who had left that port eighteen days before) was a sufficient cause for adopting so arbitrary a course against the British passengers.

That Sir J. Pauncefote was therefore to request our opinion on the validity of the claim of Major Reeve and his fellow passengers to compensation from the Portuguese Government for the treatment they received at the hands of the Madeira authorities, and (if it should be in the affirmative) as to the reasonableness of the amount claimed.

That it was assumed that Major Reeve was duly authorized by the other British passengers to prefer a claim on their behalf.

In obedience to your Lordship's commands we have the honour to report—

**Validity of claim depends on Portuguese law.**

That the question whether Major Reeve and his fellow passengers have a valid claim against the Portuguese Government in respect of the treatment they received at the hands of the Madeira authorities, is one of Portuguese law, and depends upon:—

1. Whether the Civil Governor at Funichal acted lawfully in confining the persons who landed from the "Spartan" in the lazaretto, and if not:

2. Whether any remedy against the Government is given, by Portuguse law, to persons wrongfully detained in a lazaretto, under the circumstances ot the case.

**Cannot make any demand while legal remedies are open.**

The British Government has no right to demand from the Portuguese Government any indemnity on behalf of Major Reeve and other British subjects, so long as they have those remedies open to them in the Portuguese Courts, which native Portuguese subjects would have, if treated in the same manner.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 139.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received December* 18.)

My Lord, *Royal Courts of Justice, December* 17, 1885.

**Anglo-Portuguese Oyster Company.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 30th ultimo, stating that he was to transmit to us the papers relating to the case of the Anglo-Portuguese Oyster Company, which matter formed the subject of our Report dated the 21st September last.

**Certificate required to prove practice of English Law Courts.**

That in the letter from the Foreign Office of the 28th October Mr. Hart was informed, in reply to a further appeal on behalf of the Company, that if the legal adviser of the Company in this country would prepare the form of certificate which they desired, the same would be submitted to the Law Officers.

That such a form of certificate was now submitted by Mr. Hart in his letter of the 20th ultimo, together with other legal documents, which were transmitted in Sir J. Pauncefote's letter now before us.

That in forwarding to us those papers for our consideration, Sir J. Pauncefote was to observe that as the Company had been the victims of a fraud, and represented (in Mr. Hart's letter of the 20th October) that no other mode of proving the practice of the English Courts would avail, your Lordship would be disposed to give them all reasonable assistance, and would be glad to know whether, on the papers now submitted, we were of opinion that a certificate to the effect desired could properly be given by Her Majesty's Minister at Lisbon or by the Secretary of State.

In obedience to your Lordship's commands we have the honour to report—

**No objection, but adhere to former Report.**

That we adhere to the opinion expressed in our Report of the 21st September last,

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but we see nothing objectionable in the form of certificate which is proposed by Mr. Hart.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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*List of Papers.*

Company, November 16, 1883.
To Company, November 22, 1883.
To Mr. Baring, No. 34, Commercial, November 23, 1883.
Company, November 24, 1883.
Sir C. Wyke, No. 109, Commercial, December 17, 1883.
To ditto, No. 40, Commercial, December 29, 1883.
To Company, December 29, 1883.
Company, January 23, 1884.
To Sir C. Wyke, No. 3, Commercial, January 28, 1884.
To Company, January 28, 1884.
Company, February 1, 1884.
To ditto, February 4, 1884.
Company, March 29, 1884.
Ditto, April 3, 1884.
To Mr. Petre, No. 35, Commercial, April 8, 1884.
To Company, April 8, 1884.
Mr. Petre, No. 45, Commercial, April 21, 1884.
To Company, May 6, 1884.
Company, May 12, 1884.
To ditto, May 16, 1884.
Company, May 28, 1884.
To Mr. Petre, No. 44, Commercial, May 30, 1884.
Company, May 30, 1884.
Ditto, May 31, 1884.
Mr. Petre, No. 54, Commercial, May 31, 1884.
To ditto, No. 45, Commercial, June 5, 1884.
To Company, June 7, 1884.
Mr. Petre, No. 55, Commercial, June 4, 1884.
Ditto, No. 57, Commercial, June 7, 1884.
To Company, June 12, 1884.
Company, June 13, 1884.
To Company, June 14, 1884.
Ditto, June 18, 1884.

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## No. 140.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received December 21.)*

My Lord, *Royal Courts of Justice, December* 19, 1885.

Detention, after landing, of passengers from "Spartan" in lazzaretto at Funchal.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 5th instant, stating that, with reference to our Report of the 7th ultimo, he was to transmit to us further papers* relating to the claim of Major Reeve and six other British subjects against the Portuguese Government.

That we should observe that in Senhor Bocage's note to Mr. Petre of the 21st ultimo it was stated that the conduct of the local authorities towards the passengers of the "Spartan" was justified by law, and that the Portuguese Minister appealed to a Law dated the 27th June, whereby the authorities were empowered to adopt *any measures whatsoever* that they might consider expedient in order to prevent the country being invaded by cholera.

That, as the claim depended on Portuguese law, your Lordship presumed that in view of the above reply it could not properly be pressed further on the Portuguese Government, but that before replying in that sense to Major Reeve, your Lordship would be glad to be informed whether we concurred in that view.

In obedience to your Lordship's commands we have the honour to report—

Concur in opinion that claim cannot be pressed.

That we concur in the view that the claim of Major Reeve, on behalf of himself and six other British subjects, cannot properly be pressed further on the Portuguese Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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* *List of Papers.*

To Mr. Petre, No. 53, Commercial, August 21, 1884.
Ditto, No. 56, Commercial, August 28, 1884.
Mr. Petre, No. 86, Commercial, August 26, 1884.
Acting Consul Faber, No. 22, Consular, August 21, 1884.
Major Reeve, September 9, 1884.
Portuguese Notice, July 26, 1884.
Ditto, July 20, 1885.
Mr. Petre, No. 111, Commercial, November 16, 1885.
To Mr. Petre, No. 75, Commercial, November 21, 1885.
Mr. Petre, No. 115, Commercial, November 25, 1885.

# Russia.

## No. 141.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 23.)*

My Lord, *Royal Courts of Justice, April* 23, 1885.

War between Great Britain and Russia. Position of British shipping bound to or lying in Russian ports in event of.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 16th instant, stating that he was to transmit to us the accompanying papers* relative to the position of British shipping bound to or lying in Russian ports, in the event of the outbreak of war between Great Britain and Russia.

That our opinion was requested as to whether the reply which your Lordship proposed to make to Messrs. Cooper and Mr. Grant was right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve reply to Messrs. Cooper, &c.

That we think the reply which your Lordship proposes to make to Messrs. Cooper and Mr. Grant is right and proper; but we would suggest that it should be added that there is no absolute obligation to allow such indulgence, and it cannot, therefore, be regarded as certain that Russia would now take this course.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

*Proposed Reply to Messrs. Patrick Cooper and Son.*†

Gentlemen, *Foreign Office, April* , 1885.

In reply to your letter of the 11th instant, inquiring what would be the position of British shipping bound to or lying in Russian ports in the event of the outbreak of war between Great Britain and Russia, I am directed by Earl Granville to acquaint you that *it would be impossible to state with any degree of certainty what course might be adopted by the Russian Government under such circumstances.*‡

I am, however, to inform you that on the outbreak of the Crimean War in 1854, all *bonâ fide* British vessels which were then taking in cargoes in Russian ports were

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* Messrs. Patrick Cooper and Son, April 11; Messrs. R. Mackie and Co. to Mr. A. Grant, M.P., April 13 (communicated April 15); Mr. A. Grant, M.P., April 14, 1885 (see Confidential No. 5183, pp. 6 and 7); and proposed reply to Messrs. P. Cooper and Son, &c.

† Similar letters were addressed to Mr. A. Grant, M.P., and the Secretary of Lloyd's.

‡ For passage in italics see reference to Law Officers, April 25.

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allowed six weeks to complete their loading and take their departure; and British vessels which had left a British for a Russian port before the commencement of hostilities were allowed to enter the port of destination, discharge the cargo, and depart without molestation.

An Order in Council, dated the 29th March, 1854, and a Russian Notice, dated the 6th April, 1854, upon this subject, will be found in vol. xlvi, pp. 39 and 381 of the State Papers.

I am, &c.

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## No. 142.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 2.)*

My Lord, *Royal Courts of Justice, May 1, 1885.*

Right to seize or lay embargoes on shipping on commencement of war. Letter from Lloyd's.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 25th ultimo, stating that, with reference to our Report of the 23rd ultimo, he was to transmit to us a letter from Lloyd's[*] as to the right of a belligerent to seize enemy's ships or lay embargoes immediately on the commencement of hostilities.

That our opinion was requested whether it would be desirable to refer Lloyd's to the letter addressed to them on the 24th ultimo, adding that it was probable that the course which might be pursued by any nation in that respect would greatly depend on the special circumstances of the case; or whether it would be expedient to make a more definite reply as to the rights of belligerents under the law of nations, and that if we should be of the latter opinion, we were requested to suggest the nature of such reply.

In obedience to your Lordship's commands we have the honour to report—

Should refer to Foreign Office letter of 24th ultimo, and explain privately impolicy of statement on subject.

That we think it would be desirable merely to refer Lloyd's to the letter addressed to them on the 24th ultimo, writing at the same time privately to Captain Hozier, pointing out that it would be very disadvantageous to English interests at the present time to enter into the question as to what are the extreme rights which Russia might enforce consistently with the principles of international law, inasmuch as any statement of her extreme rights might act as an inducement to assert them.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 143.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received May 7.)*

My Lord, *Royal Courts of Justice, May 6, 1885.*

Notice to shipping before declaration of war.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 1st instant, stating that he was to transmit to us a letter from the General Ship-owners' Society,[†] asking that notice should be given through the British Consuls, in order to enable British shipping in the Black Sea to complete their cargoes and withdraw in safety before any declaration of war was made by Great Britain against Russia; and that Mr. Currie was to request us to favour your Lordship with our opinion whether the reply which your Lordship would propose, with our concurrence, to make, and of which Mr. Currie was to inclose the draft, was right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve reply refusing to give such notice.
Impolicy of giving it.

That we approve of the reply which your Lordship would propose to make, subject to the slight alteration which we have made in the draft.

We concur in the view which your Lordship has already taken, that it would be impolitic to suggest a doubt as to the action of Russia being less considerate on the present occasion than it has heretofore been.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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[*] Lloyds (Captain Hozier), April 23, 1885. Confidential No. 5183, p. 9.
[†] Mr. Cooke, April 28, 1885. Confidential No. 5183, p. 15.

### Annex.

### (Draft as finally amended.)

*Mr. Currie to Mr. Cooke.*

Sir, *Foreign Office, May , 1885.*

IN reply to your letter of the 28th ultimo, I am directed by Earl Granville to state to you that, although in such an event as the cessation of friendly relations with Russia Her Majesty's Government could not undertake to give previous notice to British shipping of an intention to declare war, yet the practice amongst civilized States in recent times has been to give a certain amount of consideration to shipping engaged in peaceful commerce on the outbreak of hostilities.

And this course was adopted by Russia on the outbreak of the Crimean War in 1854.

All *bonâ fide* British vessels which were then taking in cargoes in Russian ports were allowed six weeks to complete their loading and take their departure, and British vessels which had left a British for a Russian port before the commencement of hostilities were allowed to enter the port of destination, discharge the cargo, and depart without molestation.

I am to add that an Order in Council, dated the 29th March, 1854, and a Russian notice, dated the 6th April, 1854, upon this subject, will be found in vol. xlvi, pp. 39 and 381, of the State Papers.

I am, &c.

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## No. 144.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June 13.)*

My Lord, *Royal Courts of Justice, June 12, 1885.*

War between Great Britain and Russia.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 30th April, stating that he was to transmit to us the draft of a Circular which your Lordship proposed to issue to Her Majesty's Diplomatic Agents abroad in the event of the outbreak of war between this country and Russia.

Circular to Her Majesty's Representatives abroad, and note to foreign Governments with regard to the Declaration of Paris.

That we should perceive that your Lordship proposed to inclose to each of Her Majesty's Representatives a draft of a note to be addressed by him to the Government to which he is accredited, accompanied by a copy of the Declaration which it was proposed to publish in the "London Gazette" for general information.

That the proposed instructions had been framed upon the model of the Circular which was issued to Her Majesty's Representatives abroad on the outbreak of war with Russia in 1854, but so altered as to have it clearly laid down that it was Her Majesty's determination to be guided in the conduct of the present war by the principles which were laid down in the Declaration of Paris of 1856 with regard to privateering, the trade of neutrals, and the validity of blockades.

That Mr. Currie also inclosed, for our information, a copy of the Notification respecting the observance of the Declaration of Paris of 1856, which was issued by the French Government on the outbreak of war between France and Prussia in July 1870, from which we should perceive that the wording of the Notification which your Lordship proposed to issue on the present occasion was in that respect as nearly as possible the same as that used by the French Government at the period referred to.

That a reference was made in the French Declaration of 1870 to the conduct to be pursued by France towards Spain and the United States, although those Powers were not parties to the Declaration of Paris. That Mr. Currie also forwarded a printed volume, in which would be found a copy of the despatch which was addressed by the French Minister at Washington to the United States' Government on that occasion; but that as no special appeal appeared to have been then made to those countries different to that which was made to the other neutral Powers to observe a strict neutrality during the war, your Lordship concluded that it would be sufficient if a note, couched in the same terms as that which your Lordship proposed should be addressed to Her Majesty's Representatives abroad to neutral Governments, were to be presented by Her Majesty's Ministers at Madrid and Washington to the Spanish and United States' Government.

That your Lordship's attention had, however, been called to the fact that there

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were other countries besides Spain and the United States which had not formally acceded to the Declaration of Paris, and that your Lordship therefore proposed, with our concurrence, to instruct Her Majesty's Representatives in Bolivia, Colombia, Mexico, Uruguay, Venezuela, Honduras, Salvador, and the Sandwich Islands to present notes to those Governments couched in precisely the same terms.

That it was of great importance that Her Majesty's Government should clearly ascertain the present views of all foreign Powers with regard to privateering, and that it would be satisfactory if an assurance could be obtained from each that they would prevent any cruizers from being sent out from their ports with letters of marque, and that they would be prepared to consider all privateers as pirates; but that your Lordship was inclined to think that if such an assurance was demanded from each country it might call forth replies which might be embarrassing, and that your Lordship was therefore of opinion, subject to our approval, that the Circular would be sufficient as it then stood.

That Mr. Currie was further to inquire whether, in view of the possible withdrawal of Russia from the Declaration of Paris, it would, in our opinion, be desirable that words should be inserted in the Circular and Declaration reserving for Her Majesty's Government liberty of action in such an event.

That Mr. Currie was to request our opinion on the questions submitted in his letter, and any general observations which we might have to offer on the general question.

In obedience to your Lordship's commands we have the honour to report—

That we approve of the drafts submitted to us.

Approve Circular and note, and proposal to send same to countries not parties to the Declaration of Paris.

We concur in thinking that it will be sufficient if a note, couched in the same terms as that which your Lordship proposes should be addressed by Her Majesty's Representatives abroad to neutral Governments, were to be presented by Her Majesty's Ministers at Madrid and Washington to the Spanish and United States' Governments.

We concur also in the proposal to instruct Her Majesty's Representatives in Bolivia and the other countries who are not parties to the Declaration to present notes to those Governments couched in precisely the same terms.

Not expedient to demand assurance against privateering.

We agree with the view that it would not be expedient to demand an assurance from foreign Powers that they would not permit privateering, and that the Circular is sufficient as it stands.

Course to be followed in case of withdrawal of Russia from the Declaration of Paris.

We think that Her Majesty's Government is entitled to assume that Russia will not withdraw from the Declaration of Paris, and to deal with the other Powers on this assumption.

We do not think Her Majesty's Government would be precluded from adapting their action to the new state of things created in case Russia should declare her intention of acting in violation of the Declaration.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## (A.)

### *Draft Circular to Her Majesty's Representatives abroad.*

*Foreign Office,* , 1885.

I TRANSMIT to you herewith a draft of a note which I have to instruct you to address to the Government to which you are accredited, in order to make known the principles upon which Great Britain has decided to act towards neutrals during the impending war with Russia, and also its resolution to adhere to the Declaration of Paris of the 16th April, 1856.

You will forward to me, with the least possible delay, the answer which you may receive from the Government, and you will not fail to use your utmost exertion to insure such a reply as shall be conformable to the just expectations of Her Majesty's Government.

I am, &c.

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## (B.)

### *Draft of Note to be addressed by British Agents abroad to Foreign Courts.*

THE Undersigned, &c., has received orders from his Government to make to his Excellency the following communication:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, being compelled to take up arms for the purpose of repelling the aggression of His Majesty the Emperor of Russia upon an ally; and being desirous to lessen as much as possible the disastrous consequences to commerce resulting from a state of warfare, has given orders that, in the prosecution of this war, the Commanders of her naval and military forces do scrupulously observe towards those Powers which remain neutral the rules of international law, and that they conform especially to the principles laid down in the Declaration of the Congress of Paris of the 16th April, 1856, that is to say:—

1. Privateering is and remains abolished.
2. The neutral flag covers enemy's goods with the exception of contraband of war.
3. Neutral goods with the exception of contraband of war are not liable to capture under enemy's flag.
4. Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

*Although Spain and the United States* [or—although Spain, the United States, and some other countries] have not acceded to the Declaration of 1856, the vessels of Her Majesty will not seize the property of the enemy found on board *a Spanish or an American vessel* [or—vessels of those countries] provided such property is not contraband of war; nor will Her Majesty claim the right to confiscate the property of *Spanish subjects or Amercan citizens* [or—the subjects or citizens of those States] not contraband of war which may be found on board enemy's ships.

Her Majesty the Queen of Great Britain and Ireland, Empress of India, has accordingly published the accompanying Declaration.

Her Majesty's Government confidently trust that the Governments of countries which may remain neutral during this war will sincerely exert every effort to enforce upon their subjects [citizens] the necessity of observing the strictest neutrality and the adherence to the principles laid down in the above-mentioned Declaration.

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## (C.)

### *Draft Declaration.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, having been compelled to take up arms in support of an ally, is desirous of rendering the war as little onerous as possible to the Powers with whom she remains at peace.

To preserve the commerce of neutrals from all unnecessary obstruction Her Majesty has given orders that, in the prosecution of this war, the Commanders of her naval and military forces do scrupulously observe towards those Powers which remain neutral the rules of international law, and that they conform especially to the principles laid down in the Declaration of the Congress of Paris of the 16th April, 1856, that is to say;—

1. Privateering is and remains abolished.
2. The neutral flag covers enemy's goods with the exception of contraband of war.
3. Neutral goods with the exception of contraband of war are not liable to capture under enemy's flag.
4. Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

It is impossible, however, for Her Majesty to forego the exercise of her right of seizing articles contraband of war, and of preventing neutrals from bearing the enemy's despatches; and she must maintain the right of a belligerent to prevent neutrals from breaking any effective blockade which may be established with an adequate force against the enemy's forts, harbours, or coasts.

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## (D.)

*Circular to Her Majesty's Representatives abroad, dated April 4, 1854.*

*Foreign Office, April* 4, 1854.

I TRANSMIT to you herewith a draft of a note which I have to instruct you to address to the Government to which you are accredited, in order to make known the principles upon which Great Britain and France have decided to act towards neutrals during the impending war, and also their joint resolution to abstain for the present from issuing letters of marque.

The Representative of His Majesty the Emperor of the French will be instructed to make to the                    Government a similar communication.

You will forward to me, with the least possible delay, the answer which you may receive from the                    Government, and you will not fail to use your utmost exertion to insure such a reply as shall be conformable to the just expectations of the two Governments.

I am, &c.

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## (E.)

*Draft of Note to be addressed by British Agents abroad to Foreign Courts.*

THE Undersigned, &c., has received orders from his Government to make to his Excellency                    the following communication:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of the French, being compelled to take up arms for the purpose of repelling the aggression of His Majesty the Emperor of Russia upon the Ottoman Empire; and being desirous to lessen as much as possible the disastrous consequences to commerce resulting from a state of warfare; their Majesties have resolved, for the present, not to authorize the issue of letters of marque.

In making this resolution known, they think it right to announce at the same time the principles upon which they will be guided, during the course of this war, with regard to the navigation and commerce of neutrals.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland has accordingly published the accompanying Declaration, which is identical with that published by His Majesty the Emperor of the French.

In thus restricting within the narrowest limits the exercise of their rights as belligerents, the allied Governments confidently trust that the Governments of countries which may remain neutral during this war will sincerely exert every effort to enforce upon their subjects [citizens] the necessity of observing the strictest neutrality.

Her Britannic Majesty's Government entertain the confident hope that the                    Government will receive with satisfaction the announcement of the resolutions thus taken in common by the two allied Governments, and that it will, in the spirit of just reciprocity, give orders that no privateer under Russian colours shall be equipped or victualled, or admitted with its prizes, in the ports of                    ; and also that the subjects [citizens] of                    shall rigorously abstain from taking part in armaments of this nature, or in any other measure opposed to the duties of a strict neutrality.

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## (F.)

*Declaration, dated March 28, 1854.*

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, having been compelled to take up arms in support of an ally, is desirous of rendering the war as little onerous as possible to the Powers with whom she remains at peace.

To preserve the commerce of neutrals from all unnecessary obstruction, Her Majesty is willing, for the present, to waive a part of the belligerent rights appertaining to her by the law of nations.

It is impossible for Her Majesty to forego the exercise of her right of seizing articles contraband of war, and of preventing neutrals from bearing the enemy's despatches; and she must maintain the right of a belligerent to prevent neutrals from breaking any effective blockade which may be established with an adequate force against the enemy's forts, harbours, or coasts.

But Her Majesty will waive the right of seizing enemy's property laden on board a neutral vessel unless it be contraband of war.

It is not Her Majesty's intention to claim the confiscation of neutral property, not being contraband of war, found on board enemy's ships, and Her Majesty further declares that, being anxious to lessen as much as possible the evils of war, and to restrict its operations to the regularly organized forces of the country, it is not her present intention to issue letters of marque for the commissioning of privateers.

*Westminster, March* 28, 1854.

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## (G.)

*Lord Lyons to Earl Granville.*

My Lord, *Paris, July* 25, 1870.

I HAVE the honour to inclose herewith to your Lordship, extracted from the "Journal Officiel" of this day, a Declaration respecting the rules of international law which will be observed during the war.

I have, &c.
(Signed) LYONS.

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*Extract from the "Journal Officiel" of July 25, 1870.*

LE Gouvernement de l'Empereur a donné des ordres pour que, dans la poursuite de la guerre, les Commandants des forces Françaises de terre et de mer observent scrupuleusement vis-à-vis des Puissances qui demeureront neutres les règles du droit international, et pour qu'ils se conforment notamment aux principes posés dans la Déclaration du Congrès de Paris du 16 Avril, 1856,* savoir:—

1. La course est et demeure abolie.
2. Le pavillon neutre couvre la marchandise ennemie, à l'exception de la contrebande de guerre.
3. La marchandise neutre, à l'exception de la contrebande de guerre, n'est pas saisissable sous pavillon ennemi.
4. Les blocus, pour être obligatoires, doivent être effectifs, c'est-à-dire maintenus par une force suffisante pour interdire réellement l'accès du littoral de l'ennemi.

Bien que l'Espagne et les États-Unis n'aient point adhéré à la Déclaration de 1856, les vaisseaux Français ne saisiront pas la propriété de l'ennemi chargée à bord d'un vaisseau Américain ou Espagnol à moins que cette propriété ne soit contrebande de guerre.

Le Gouvernement de l'Empereur ne compte pas non plus revendiquer le droit de confisquer la propriété des citoyens Américains ou Espagnols qui serait trouvée à bord des bâtiments ennemis.

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## No. 145.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August 18.)*

My Lord, *Royal Courts of Justice, August* 17, 1885.

Anglo-Russian war. Use of naval yards, &c., in Japan, in event of.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 10th instant, stating that he had the honour to transmit to us the papers relating to the question whether, in the event of war between Great Britain and Russia, those Powers should claim the right to use their naval yards and hospitals in Japan during the continuance of hostilities.

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* *Germany.*—Count Bismarck informed Lord A. Loftus, on the 23rd July, 1870, that the Declaration of the 16th April, 1856, was legally valid throughout the whole of the States of the North German Confederation, and would certainly be respected by the North German Confederation during the war with France.

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Rights under Treaty.

That Sir Julian Pauncefote stated that your Lordship would propose, with our concurrence, to inform Mr. Plunkett that the Treaty between Great Britain and Japan must be read subject to the obligations of international law in time of war, and that Great Britain could not claim, under the Treaty, to commit any act which would involve Japan in a breach of neutrality, but would insist on the same facilities being accorded to her as to the other belligerent.

That our opinion was requested as to whether the proposed instructions to Mr. Plunkett were right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed instructions.

That, in our opinion, the proposed instructions to Mr. Plunkett are right and proper.

We have, &c.
(Signed) R. E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

*List of Papers.*

1. Mr. Plunkett, No. 12 (Telegraphic), May 3, 1885, Confidential No. 5183, p. 18.
2. Mr. Plunkett, No. 125, May 3, 1885, Confidential No. 5183, p. 27.
3. Admiralty (Confidential), July 16, 1885, Confidential No. 5183, p. 28.
4. Memoranda on above, Confidential No. 5183, pp. 28-30.
5. Treaty between Great Britain and Japan, August 26, 1858, Treaty No. 433.

### Annex.

*The Marquis of Salisbury to Mr. Plunkett.*

(No. . Treaty. Confidential.)

Sir, *Foreign Office, August* , 1885.

I HAVE received your despatch No. 125 of the 3rd May last relative to the question whether, in the eventuality of war between Great Britain and Russia, those Powers would be able to claim the right to use their naval yards and hospitals in Japan during the continuance of hostilities.

In reply, I have to state to you that Her Majesty's Government are of opinion that the stipulations of the Treaty of the 26th August, 1858, between Great Britain and Japan, must be read as being subject to the obligations of international law in time of war, and that Great Britain cannot claim, under the Treaty, to commit any act which would involve Japan in a breach of neutrality, but would insist on the same facilities being accorded to her as to the other belligerent.

I am, &c.

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## Siam.

### No. 146.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January 6.)*

My Lord, *Royal Courts of Justice, January* 5, 1885.

Registration of British subjects in Siam.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 15th ultimo, and transmitting to us the papers* relating to the registration of British subjects in Siam.

* 1. Mr. Satow, No. 72, September 4, 1884.
2. Ditto, No. 73, September 15, 1884.
3. Siam Order in Council, July 28, 1856 (Confidential No. 575).
4. China and Japan Order in Council of March 9, 1865 (Confidential No. 1354).
5. Siam Order in Council, June 26, 1884 (Confidential No. 4986*).
Memorandum (E. H.), December 11, 1884.

That our attention was invited to the grounds on which Mr. Satow recommended the adoption of the inclosed draft Regulations.

Draft Regulations.

That those Regulations appeared to your Lordship to be on the whole unobjectionable, though your Lordship felt some doubt as to whether they should not be confined to British subjects resident in Siam, instead of being made applicable to all British subjects, even though merely transient.

That a Memorandum by Sir E. Hertslet, making certain comments on the draft Regulations, and also a copy of the China and Japan Order in Council, the provisions of which, as to registration, had been substantially adopted by Mr. Satow, were inclosed.

That your Lordship desired to be favoured with our opinion as to whether the Regulations might be approved.

In obedience to your Lordship's commands we have the honour to report—

The Regulations are not objectionable in form.

That assuming such Regulations to be expedient as a matter of policy, we think the proposed Regulations are unobjectionable in point of form.

If not to apply to travellers.

We are certainly disposed to concur in the view that they should not be applied to persons not resident or intending to reside in Siam, but who are merely passing travellers.

Regulation 8 should be modified.

If this view be adopted, the Regulations will require modification, particularly Regulation 8.

The points to which Sir E. Hertslet calls attention require consideration, but they are points rather of policy than law.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

### Annex.

THE following Regulation made by the Undersigned, Her Majesty's Agent and Consul-General in Siam, in virtue of the powers vested in him by section 1 of the Order in Council of the 28th day of July, 1856, to make Rules and Regulations for the peace, order, and good governance of Her Majesty's subjects being within the dominions of the Kings of Siam, and approved by Her Majesty's Principal Secretary of State for Foreign Affairs, is hereby notified for the information of British subjects:—

1. Every British subject resident in Bangkok, or within twenty-four hours' journey thereof, and every British subject resident in Chiengmai, or within twenty-four hours' journey thereof, being of the age of 21 years or upwards, or being married, or a widower or widow, though under that age, shall in the month of January 1885, and in every subsequent year, register himself or herself in the register-book kept for that purpose, either at Her Majesty's Consulate-General in Bangkok or at Her Majesty's Vice-Consulate at Chiengmai, and all British subjects resident in Siam beyond those limits shall, in like manner, register themselves as early as may conveniently be in the year 1885 and every subsequent year, subject to this qualification, that the registration of a man shall be deemed to include the registration of his wife, unless she is living apart from him.

2. Every British subject not so resident arriving at Bangkok, unless borne on the muster-roll of a British vessel there arriving, or arriving at Chiengmai, shall, within one month after his or her arrival, register himself or herself in the book kept for that purpose at Her Majesty's Consulate-General at Bangkok or at Her Majesty's Vice-Consulate at Chiengmai, as the case may be.

3. Any British subject failing so to register himself or herself, and not excusing his or her failure to the satisfaction of the Consular officer, shall be liable to a fine not exceeding 20 ticals for each instance of such failure.

4. Every person on registration of himself or herself shall pay a fee of 2 ticals.

5. The Consular officer shall issue to every person so registered a certificate of registration under his hand and Consular seal, which certificate shall be given up in exchange for a new certificate on each occasion of re-registration, and failure to produce the previous certificate, or to satisfactorily account for its non-production, shall render the person so failing liable to a fine not exceeding 20 ticals.

6. The transfer or loan of a certificate of registration shall render the person so transferring or lending to another liable to a penalty of 100 ticals.

7. The use of a certificate of registration by any other than the person to whom

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it was granted shall render the person so using such certificate liable to a penalty of 100 ticals.

8. The provisions of this Regulation are applicable to all British subjects, whether arriving or having arrived in Siam by sea or by land, and whether provided or not with a passport or certificate of nationality issued by any authority in Her Majesty's dominions.

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## No. 147.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received November* 19.)

My Lord, *Royal Courts of Justice, November* 18, 1885.

Marriage and registration. Siamese proposals.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 15th ultimo, stating that he had the honour to transmit to us the papers with reference to certain proposals and inquiries contained in a despatch from Mr. Satow, Her Majesty's Minister in Siam, on the following subjects:—

(1.) The marriages of British subjects.

(2.) The registration of persons who were to continue to enjoy the privilege of Consular protection.

(3.) The compulsory registration of British subjects.

That in his despatch (No. 63 of the 1st July, 1885—A) Mr. Satow stated at length the proposals which had been made by the Siamese Government in regard to each point, and at the same time submitted his own observations, and asked for instructions on certain points. That the substance of that despatch was briefly stated in the "Précis" (B).

Proposed reply as to:

That your Lordship proposed, with our concurrence, to reply to Mr. Satow upon each of the three subjects above mentioned as follows:—

(1.) Marriages of British subjects.

(1.) Marriages.

Their validity,

and conditions.

Her Majesty's Government do not think it desirable to enter into any agreement with the Siamese Government, whereby they would pledge themselves to recognize the validity of any particular marriage or class of marriages. They are not prepared to offer any advice to the Siamese Government as to what should constitute a valid marriage by Siamese Law. A British subject intending to marry a Siamese woman should fulfil the conditions required by the Law of Siam, so far as it may be possible to do so, as well as those imposed by British Law.

Validity in heathen countries.

That in reply to Mr. Satow's question as to the legality of a marriage celebrated by a Protestant or Roman Catholic missionary in a place of worship of either creed, your Lordship would propose to instruct Mr. Satow in the sense of the Law Officers' Report (C) of the 15th March, 1883, and to inform him that in heathen countries marriages [between British subjects]* celebrated by a priest in holy orders are deemed valid at common law.†

(2.) Registration of protected subjects.

(2.) Registration of persons who are to continue to enjoy British protection.

Status of Siamese women cohabiting with British subjects.

Her Majesty's Government are of opinion that although some such system is desirable, it would not be expedient that they should enter into any agreement respecting the status of Siamese women cohabiting with British subjects. They consider that it would be sufficient if a register of "Protected Persons" were kept in Her Majesty's Consulate-General, and if it were insisted that every person entitled to such protection should take out a certificate of registration as in the Ottoman Dominions, the questions which might arise as to what persons should be entitled to British protection should be settled by negotiation. Her Majesty's Government do not see the necessity of any alteration of the Law, and they are unable to assent to the proposal of the Siamese Government, that the personal and real property of a British subject dying intestate during cohabitation with a Siamese woman should be distributed according to Siamese Law: they consider that no attempt should be made to interfere with the law of succession to property, real or personal, as provided by Article 3 of the Supplementary Agreement of the 13th May, 1856 (D).

Distribution of property of such intestate British subjects.

Her Majesty's Government are of opinion that this should be now carried out in accordance with the draft Regulations proposed by Mr. Satow, annexed to the Report (E) of the Law Officers of the 5th January, 1885, but subject to the modifications suggested in the reference to the Law Officers, and concurred in by them.

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* Words in brackets interpolated by Law Officers.

† See Law Officers' Report (C).

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## Annex to No. 147.

### *Draft Regulations (amended).*

THE following Regulation made by the Undersigned, Her Majesty's Agent and Consul-General in Siam, in virtue of the powers vested in him by section 1 of the Order in Council of the 28th day of July, 1856, to make Rules and Regulations for the peace, order, and good governance of Her Majesty's subjects being within the dominions of the Kings of Siam, and approved by Her Majesty's Principal Secretary of State for Foreign Affairs, is hereby notified for the information of British subjects:—

1. Every British subject resident in Bangkok, or within twenty-four hours' journey thereof, and every British subject resident in Chiengmai, or within twenty-four hours' journey thereof, being of the age of 21 years or upwards, or being married, or a widower or widow, though under that age, shall in the month of January 1886, and in every subsequent year, register himself or herself in the register-book kept for that purpose, either at Her Majesty's Consulate-General in Bangkok or at Her Majesty's Vice-Consulate at Chiengmai, and all British subjects resident in Siam beyond those limits shall, in like manner, register themselves as early as may conveniently be in the year 1886 and every subsequent year, subject to this qualification, that the registration of a man shall be deemed to include the registration of his wife, unless she is living apart from him, and that the registration of the head of a family, whether male or female, shall be deemed to comprise the registration of all females being relatives to the head of the family (in whatever degree of relationship) living under the same roof with the head of the family at the time of his or her registration.

2. Any British subject failing so to register himself or herself, and not excusing his or her failure to the satisfaction of the Consular officer, shall be liable to a fine not exceeding 20 ticals for each instance of such failure.

3. Every person on registration of himself or herself shall pay a fee of 2 ticals.

4. The Consular officer shall issue to every person so registered a certificate of registration under his hand and Consular seal, which certificate shall be given up in exchange for a new certificate on each occasion of re-registration, and failure to produce the previous certificate, or to satisfactorily account for its non-production, shall render the person so failing liable to a fine not exceeding 20 ticals.

5. The transfer or loan of a certificate of registration shall render the person so transferring or lending to another liable to a penalty of 100 ticals.

6. The use of a certificate of registration by any other than the person to whom it was granted shall render the person so using such certificate liable to a penalty of 100 ticals.

7. The provisions of this Regulation shall be applicable only to British subjects resident, or intending to reside, in Siam; they shall be bound to take out a certificate of registration within one month of their arrival in the country.

That a copy of the draft Regulations so amended was inclosed (F).

That our opinion was requested as to whether the proposals and inquiries contained in Mr. Satow's despatch might properly be answered in the sense above indicated.

In obedience to your Lordship's commands we have the honour to report—

That we approve of the draft Regulations as amended.

Approve proposed answers with alteration.

The proposals and inquiries contained in Mr. Satow's despatch may, in our opinion, be properly answered in the sense indicated, subject to the suggestion that in the last line but one of (1), the words "between British subjects" be inserted after the words "holy orders."

We have, &c.
(Signed) RICHARD WEBSTER.
J. R. GORST.
J. PARKER DEANE.

### *List of Papers.*

(A.) Mr. Satow, No. 63, July 1, 1885.
(B.) Précis of above (A).
(C.) Law Officers' Report, March 15, 1883, Confidential No. 4974, p. 126.
(D.) Treaty with Siam of April 18, 1855, with Supplementary Agreement of May 13, 1856, Treaty No. 411.
(E.) Law Officers, January 5, 1885, with Inclosures, viz.:—
    1. Mr. Satow, No. 72, September 4, 1884.
    2. Mr. Satow, No. 73, September 15, 1884.
    3. Siam Order in Council, July 28, 1856, Confidential No. 575.
    4. China and Japan Order in Council, March 9, 1865, Confidential No. 1354.
    5. Siam Order in Council, June 26, 1884, Confidential No. 4986*.
    6. Memorandum by E. H, December 11, 1884.
(F.) Draft Regulations as amended.

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## No. 148.

### *The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received December 17.)*

My Lord, *Royal Courts of Justice, December 17, 1885.*

Opium-smuggling in Siam. Observance by British subjects of Siamese Law.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 3rd ultimo, stating that he was to transmit to us a despatch from Her Majesty's Minister at Bangkok,* which related to the observance by British subjects of the Siamese Law for the prevention of opium-smuggling and illicit dealing in that drug.

That Sir J. Pauncefote was further to transmit the draft of the reply which it was proposed to return to Mr. Satow, and, whilst submitting the latter for our approval, to call our attention to the Law Officers' Reports inclosed,† bearing upon the question, and also to the copies of the Treaties, &c., transmitted.‡ That the stipulation as to the seizure and confiscation of opium by the Siamese authorities was contained in Article VIII, paragraph 3, of the Treaty of 1855. That your Lordship desired our opinion as to whether the draft of the reply which it was proposed to return to Mr. Satow's despatch met with our concurrence and approval.

In obedience to your Lordship's commands we have the honour to report—

Ought not to express formal approval of Mr. Satow's conduct respecting arrest of Mong Chu.

That it is not, in our opinion, right to express a formal approval of Mr. Satow's proceedings in the matter of Mong Chu.

Mong Chu appears to have infringed Article VIII of the Treaty of 1856, as well as the Siamese Opium Law.

The Consul was bound by Article II of the Treaty of 1856 to enforce the observance by British subjects of all the provisions of the Treaty, and was further bound by the undertaking of his predecessor in 1871 to enforce the Siamese Opium Laws.

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* Mr. Satow, No. 75, September 8, 1885.

† December 31, 1878: Confidential No. 4280, p. 39A; September 22 and October 3, 1879: Confidential No. 4328, pp. 41 and 44.

‡ Treaty, April 18, 1855, No. 411; Order in Council, July 28, 1856 (confirmed by 20 & 21 Vict., cap. 75): Confidential No. 575.

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The circumstance that our Orders in Council and Regulations were insufficient in law to enable the Consul to fulfil his obligations seems rather to give the Siamese Government some ground for complaint than to afford Her Majesty's Government a valid reason for demanding compensation for the false imprisonment of a British subject.

Approve remainder of draft.

The remainder of the reply to Mr. Satow's despatch meets with our concurrence and approval.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.

Dr. Deane of opinion that Mr. Satow's conduct should be approved.

I am unable to agree with that part of the Report of the Attorney- and Solicitor-General which says that it is not right to express a formal approval of Mr. Satow's proceedings in the matter of Mong Chu.

Mr. Satow in his despatch states that the Siamese constables have orders to effect the arrest of any person denounced to the opium-farmers as having infringed the Siamese Opium Laws.

By the Treaty the Siamese may not seize a British subject; they can only seize and confiscate the opium.

I cannot see how a defect in the British Consul's powers can justify the breach of the Treaty by the Siamese; and, in my opinion, the conduct of Mr. Consul Satow may properly be approved.

(Signed) J. PARKER DEANE.

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### Annex.

*Draft of Despatch to Mr. Satow.*

(No. .)
Sir, *Foreign Office, January* , 1886.

I HAVE received your despatch No. 75 of the 8th September last, inclosing a draft Regulation enjoining on British subjects the observance of the Siamese Law for the prevention of opium-smuggling and illicit dealing in that drug.

The municipal laws of Siam are binding on British subjects when not contrary to, or inconsistent with, rights secured to them by Treaty, but such laws can only be enforced on British subjects in the British Consular Court at Bangkok. The proper course, therefore, to pursue is to notify them to British subjects, and to issue a Regulation under section I of the Order in Council of the 28th July, 1856, imposing a penalty for their violation not exceeding the limit prescribed in section 4.

The draft Regulation transmitted in your despatch has been submitted to the Law Officers of the Crown, and is approved by them, subject to the omission of that part of it written in red ink in the draft, which imposes forfeiture of the smuggled opium, which is *ultra vires* and practically unnecessary, as the right of its seizure and confiscation by the Siamese authorities is already conceded by Treaty. The Regulation should, however, set out that part of the Treaty which provides for seizure and confiscation.

Subject, therefore, to the above amendment, I sanction the issue of the proposed Regulation.

I am, &c.

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# Spain.

## No. 149.

*The Law Officers of the Crown and Sir J. Deane to Earl Granville.—(Received March 11.)*

My Lord, *Royal Courts of Justice, March 10, 1885.*

Claim on part of Don A. M. Regidor for capture in 1796 of Spanish vessel "San Juan de Dios," *alias* "Vascongada," by Her Majesty's ship "Magicienne."

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 14th ultimo, stating that he was to transmit to us papers* relating to a claim advanced by the representatives of the owners of the Spanish vessel "San Juan de Dios," *alias* "Vascongada," which was captured by Her Majesty's ship "Magicienne" on the 9th August, 1796.

That the details of that claim, which had been recommended to the favourable consideration of Her Majesty's Government by the Spanish Minister at this Court, were set forth in the Memorial drawn up by Don A. M. Regidor, which formed the inclosure in the Minister's note of the 10th May last.

That the matter was submitted to the Registrar of the High Court of Admiralty, and that a Report upon the case, drawn up by him in 1871, at the request of the Lords Commissioners of the Treasury, was annexed, together with a draft of a note based upon it, which was addressed by your Lordship to the Spanish Minister on the 28th May, 1884, declining to entertain the claim on the grounds therein stated.

That a renewed representation had, however, been made upon the subject by the Spanish Minister, as would be seen by a perusal of the note, of which translation was annexed, and the accompanying Report upon it had been furnished by Mr. Rothery.

That our special attention was invited to the two last-named documents, and that he was to request that we would favour your Lordship with our opinion as to the answer which should be returned to the claim urged by the Spanish Minister, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Claim not well-founded, and cannot be entertained.

That we think the claim urged by the Spanish Minister is not well founded, and that an answer should be returned based on the lines of Mr. Rothery's Report of the 9th February, 1885. It should also be pointed out that even if the claim had been otherwise well founded, it would have been impossible for Her Majesty's Government to entertain a claim arising out of the hostilities between the two countries prior to 1808, having regard to the Conventions of 1823 and 1828, and the proceedings which took place in relation to them.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 150.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 26.)*

My Lord, *Royal Courts of Justice, March 26, 1885.*

Boarding of the British vessel "Virgen de los Angeles" by the Spanish gun-boat "Salamandra" near Gibraltar.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th instant, stating that he was to transmit to us papers† relating to the boarding of the British vessel "Virgen de los Angeles" by the Spanish gun-boat "Salamandra," in the neighbourhood of Gibraltar, on the 10th ultimo.

That it seemed to be admitted that the British vessel was overhauled, but while the depositions, on oath, of the crew of that vessel, fix the precise spot where she was boarded at half-a-mile from Europa Point, the Commander of the gun-boat declared

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* List of Papers submitted to Law Officers, February 14, 1885:—Report by Mr. Rothery. November 27, 1871; Dr. Jurado, June 26, 1882; M. Casa Laiglesia, May 10; to Mr. Rothery, May 17; Mr. Rothery, May 19; to M. Casa Laiglesia, May 28; to Dr. Jurado, May 28, 1884; M. Casa Laiglesia, January 15; to ditto, February 6; to Mr Rothery, February 6; Mr. Rothery, February 9, 1885.

† Colonial Office, February 28; to ditto, March 6; Colonial Office, March 7, 1885.

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that the occurrence took place at a distance of more than 3 miles from that point. (See General Vitoria to Sir J. Adye, 22nd February, 1885.) That the observations made by the officer in question with regard to the Treaty of Utrecht, and to the alleged smuggling into Spain by Gibraltar merchants, appeared to your Lordship to be entirely uncalled for, and to throw some suspicion on his version of the matter. That your Lordship would accordingly propose to recommend to the Colonial Office that the Governor of Gibraltar should be instructed to take exception to the Spanish Commander's remarks on the above-mentioned points, and to inform the Governor of Algeciras that, in view of the depositions of the crew of the British vessel, it was to be regretted that the Spanish authorities had not thought fit to institute a searching inquiry, as the letter of the Commander could not be accepted as disposing of the question of fact.

Proposed reply as to Spanish statements and failure to make inquiry.

That our opinion was requested as to whether we concurred in the proposed reply, under all the circumstances of the case.

Approve proposed reply.

In ebedience to your Lordship's commands we have the honour to report—

That we concur in the proposed reply.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 151.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received November* 21.)

My Lord, *Royal Courts of Justice, November* 20, 1885.

Imprisonment in Cuba of J. Thomson, a British seaman on the Haïtian vessel "Independiente." Claim for compensation.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 29th ultimo, stating that he was to transmit to us the papers* relating to the case of John Thomson, a British seaman serving on board a Haïtian steamer flying the French flag, who had been confined in gaol in Cuba for seven months and twenty-seven days, and who claimed compensation from the Spanish Government on account of the sufferings and losses inflicted on him through the delays of justice.

That the circumstances of the case were detailed in a despatch from Her Majesty's Consul-General in the Havana (No. 5, February 7, 1884) and in a Memorial from Thomson dated the 30th June, 1884, to which our especial attention was drawn.

That it appeared from those documents that on the 12th July, 1883, the "Independiente," a Haïtian schooner, put into the port of Santiago di Cuba under the French flag.

That the Spanish authorities, considering that there were grounds for suspicion, detained the vessel, arrested the crew, and threw them into prison. That among them was a British subject named John Thomson, who was kept in confinement for nearly eight months without trial, and then released without being informed of the nature of his accusation, and with the loss of all his clothes and personal effects.

That it was averred that the "Independiente" had no right to fly the French flag, and that the Havana authorities believed that her ostensible object—that of loading salt—was an assumed one, and alleged that her real mission was to trade for the benefit of the Haïtian revolutionists; but that as nothing could be proved against her except that she had put to sea with informal documents, and had improperly hoisted the French flag, it was resolved that her crew, who could not be identified, should be restored to liberty. That the vessel was shortly afterwards wrecked in Santiago Bay, and her wreck was delivered over to the Haïtian Consul.

That the case was represented to the Spanish Government, together with several others, in a note from Her Majesty's Chargé d'Affaires at Madrid, dated the 9th July, 1884, and which formed the inclosure in Mr. de Bunsen's despatch No. 75 of the 10th of that month.

Spanish explanations.

That the first reply of the Spanish Government to the representation in John Thomson's case would be found in Sir R. Morier's despatch No. 40 of the 25th April, 1885. That it was considered unsatisfactory, and a further representation was addressed to them in a note of which a copy was inclosed in Sir R. Morier's No. 56 of the 2nd June, 1885.

That a reply to that note had been received, consisting of a Report from the Commandant of Marines at Havana, which was transmitted in Mr. de Bunsen's No. 124 of the 2nd ultimo.

That in that Report it was contended that the arrest of Thomson was in accordance with law, and based on the "piratical character" of the vessel.

That he was regarded as guilty of the crime of "piracy" (in the sense described in the Report).

That the length of his imprisonment without trial was attributed to the zeal of the officials in sifting the facts and obtaining information from Haïti.

That nothing was said as to the loss of his clothes and personal effects.

That a Memorandum drawn up in the Foreign Office respecting the capture of vessels sailing under improperly-used flags was sent therewith, and that Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether the reply of the Spanish Government should be accepted as disposing of the case, or whether it called for further action on the part of Her Majesty's Government.

In obedience to your Lordship's commands we have the honour to report—

Spanish reply unsatisfactory; further action called for.

That, in our opinion, the reply of the Spanish Government cannot be accepted as disposing of the case, and further action on the part of Her Majesty's Government is called for.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 152.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received December* 29.)

My Lord, *Royal Courts of Justice, December* 28, 1885.

Imprisonment in Cuba of J. Thompson, of the "Independiente."

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 3rd instant, stating that with reference to our Report of the 20th ultimo respecting the case of J. Thompson, in which we advised that further action was called for on the part of Her Majesty's Government, he was to request that we would inform your Lordship whether we considered the reply of the Spanish Government as insufficient only in so far as it showed no reasonable excuse for the delay of justice and the non-restoration of Thompson's effects, or whether, in our opinion, exception should be taken to the contention that the facts of the case justified a charge of piracy against Thompson.

That your Lordship would be glad to be favoured with any observations which we might have to make in regard to the nature of the further representation to be made to the Spanish Government.

In obedience to your Lordship's commands we have the honour to report—

That the reply of the Spanish Government is insufficient, because—

Reasons for insufficiency of Spanish reply.

1. It shows no reasonable excuse for the delay of justice and the non-restoration of John Thompson's effects.

2. The facts of the case did not justify a charge of piracy against John Thompson at the time when he was thrown into prison.

Suggestions as to further representations.

3. We think that in the further representation to be made to the Spanish Government there should be—

1. A statement of the judgment of Her Majesty's Government upon the points above mentioned.

2. An invitation to the Spanish Government to express their own decision upon the case as submitted to them by their subordinate officers, which they have at present abstained from indicating to Her Majesty's Government.

3. A demand from the Spanish Government of a reasonable sum to be paid to John Thompson, as compensation for his imprisonment and the loss of his effects.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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* Consul-General Crowe, No. 5, February 7; to Mr. de Bunsen, No. 73, June 5; Mr. de Bunsen, No. 75, July 10; to ditto, No. 93, July 17; Consul-General Crowe, No. 21, July 19; to Sir R. Morier, No. 108 August 15, 1884; Sir R. Morier, No. 40, April 25; to ditto, No. 51, May 29; Sir R. Morier, No. 56, June 2; to ditto, June 10; Sir R. Morier, June 18; Mr. de Bunsen, No. 124, October 2; Memorandum, Foreign Office, October 15, 1885.

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*List of Papers.*

Consul-General Crowe, No. 5, February 7, 1884.
To Mr. de Bunsen No. 73, June 5, 1884.
Mr. de Bunsen, No. 75, July 10, 1884.
To Mr. de Bunsen, No. 93, July 17, 1884.
Consul-General Crowe, No. 21, July 19, 1884.
To Sir R. Morier, No. 108, August 15, 1884.
Sir R. Morier, No. 40, April 25, 1885.
To Sir R. Morier, No. 51, May 29, 1885.
Sir R. Morier, No. 56, June 2, 1885.
To Sir R. Morier, June 10, 1885.
Sir R. Morier, June 18, 1885.
Mr. de Bunsen, No. 124, October 2, 1885.
Memorandum (Foreign Office), October 15, 1885.
Law Officers, November 20, 1885.

## Switzerland.

### No. 153.

*The Law Officers of the Crown and Sir J. Deane to Earl Granville.—(Received March 26.)*

Expulsion of Mr. Rabey, of the "Salvation Army," from Neuchâtel.

My Lord, *Royal Courts of Justice, March 26, 1885.*

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th instant, stating that he was to transmit to us a despatch from Her Majesty's Minister at Berne* forwarding copy of a note from the Swiss Government relative to the delay which had taken place in dealing with the protest against the expulsion of Mr. Rabey from the Canton of Neuchâtel, and with the request for explanations, which were addressed to them by Her Majesty's Chargé d'Affaires on the 3rd January last, in pursuance of your Lordship's instructions, and in conformity with the terms of our Report of the 17th of the preceding month.

That our opinion was requested as to whether Her Majesty's Government should press for an immediate reply to the protest above mentioned.

In obedience to your Lordship's commands we have the honour to report—

Opinion on further representations as to delay in answering British note.

That the letter of the President of the Swiss Confederation of the 28th February does not purport to promise a reply to the note of the British Minister.

It states that his Excellency had manifested a desire to know whether the Federal Council would soon arrive at a decision on the several cases brought before them "by members of the Salvation Army," and indicates when this decision may be expected; but it makes no reference to the diplomatic remonstrance of Her Majesty's Minister.

We think attention should be called to this, and that some explanation of the delay and promise of an early reply should be required.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr Adams, No. 15, March 3; Mr. Thornton, No. 1, January 5, 1885 (with previous correspondence in print).

### No. 154.

*The Law Officers of the Crown and Sir J. Deane to Earl Granville.—(Received June 25.)*

My Lord, *Royal Courts of Justice, June 23, 1885.*

Expulsion of Mr. Rabey, of the "Salvation Army," from Canton of Neuchâtel.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 23rd ultimo, stating that he was to transmit to us papers* relating to the protest lodged by Her Majesty's Government with the Swiss Government respecting the expulsion of Mr. Rabey, of the "Salvation Army," from the Canton of Neuchâtel, which formed the subject of our Reports of the 17th December last and the 20th March.

That we should observe that the Swiss Government, in reply to the diplomatic remonstrance made by Her Majesty's Minister at Berne, endeavoured to justify the action which had been taken in that matter, and set forth certain reasons which induced them to deny that the expulsion of Mr. Rabey had involved any violation of the Treaty between Great Britain and Switzerland.

That the particulars of the action taken by the Swiss Government against Mr. Rabey would be found at pp. 41–58 of the print, Part II, and pp. 1–6, Part III.

That a copy of the Treaty in question was also annexed, together with copies of our previous Reports upon the rights enjoyed by this country thereunder.

That Mr. Lister was to request that we would favour your Lordship with our opinion as to what further action, if any, should be taken in that case.

In obedience to your Lordship's commands we have the honour to report—

That it will be observed that in the despatch of the 8th May, written on behalf of the Swiss Government, the expulsion of Mr. Rabey is sought to be justified by virtue only of the Regulations of the Conference of Berne, and that all other grounds for such expulsion are abandoned, of which fact note may be taken.

Now justified under Regulations of Conference of Berne.

In our Report of the 17th December, 1884, we pointed out "that the Reports of Professor König and M. Monnier afforded good ground for believing that these Regulations were beyond the competence of the Cantonal authorities. But it appears to us that it cannot be expected that the mere allegation of such incompetency in the shape of diplomatic representations will be acquiesced in by the Swiss Government, and that in order to entitle Mr. Rabey to establish any claim to compensation he must proceed to obtain an annulment of the Regulations in question by appealing to the proper authority, viz., the Federal Council.

Cannot make any representations before the annulment of these Regulations.

Until the Regulations are annulled, they must be taken to have legal effect, and, as they affect Swiss subjects equally with foreigners, we think no diplomatic representations can be made or based on a violation of the Treaty rights of British subjects.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

## Tunis.

### No. 155.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 25.)*

My Lord, *Royal Courts of Justice, February 24, 1885.*

G. Pace imprisoned in Malta for murder. Petition for remission of sentence.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th February, stating that he had the honour to transmit to us the

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* Mr. Adams, No. 41, May 11; ditto, No. 42, May 12, 1885; Print, Part II, Confidential No. 5010; ditto, Part III, Confidential No.     ; Treaty, Great Britain and Switzerland, September 6, 1855, No. 401; Law Officers' Reports: March 8, 1883, Confidential No, 4974, p. 112; November 1, 1883, Confidential No. 4974, p. 113; December 15, 1883, Confidential No. 4974, p. 115; January 24, 1884, Confidential No. 5121, p. 107; July 18, 1884, Confidential No. 5121, p. 108; September 10, 1884, Confidential No. 5121, p. 109.

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papers* which related to a Petition from Giuseppe Pace, a Consular prisoner in the Malta gaol, praying for a mitigation of the sentence of five years' imprisonment that he was then undergoing. That the Petition, together with the particulars of the prison history of the prisoner, would be found in the Colonial Office letter of the 31st December last, and that the minutes and notes of evidence, taken at the trial of the prisoner, were also included among the previous papers on the subject, transmitted therewith. That on the 23rd January, 1883, Sir Julian Pauncefote referred the case to us for our advice in determining the sentence to be passed on the prisoner, under sections 269 of the Ottoman Order in Council, and that on the 2nd February, 1883, we reported that the justice of the case would be met by a sentence of five years' imprisonment, which was the term the petitioner now sought to have mitigated.

That our opinion was requested as to whether, under the circumstances of the case, any remission of Pace's punishment could properly be granted.

**No ground for the remission of his sentence.**

In obedience to your Lordship's commands we have the honour to report that we see no sufficient ground for granting any remission of Pace's punishment. It might be pointed out to him that when he was sent back to prison after his escape, he was not sentenced to any further term of imprisonment, but merely required to serve in prison the term to which he was originally sentenced.

We have, &c
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 156.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received May* 13.)

My Lord, *Royal Courts of Justice, May* 11, 1885.

Remission of sentences of Spiteri, Busattil, and Francalanzu. Petitions.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 13th ultimo, stating that he was to transmit to us the papers† relating to Petitions of three Consular prisoners at Malta praying for some mitigation of their sentences.

That Dr. Arpa, Her Majesty's Acting Consul and Judge at Tunis, was requested to furnish a Report upon the several cases in question, and that we were requested to take the papers transmitted into our consideration, and favour your Lordship with our opinion as to whether any mitigation of those sentences should be granted, and if so, to what extent.

In obedience to your Lordship's commands we have the honour to report—

No ground for remission except in case of Francalanzu, in which two years may be remitted.

That in the cases of Spiteri and Busattil we think there is no sufficient ground for a remission of any part of their sentences.

In the case of Francalanzu we think that two years of the sentence might properly be remitted.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Colonial Office, December 31, 1884; Law Officers' Report, February 2, 1883 (Confidential No. 4974, p. 115); Consul-General Fawcett, No. 70, December 30, 1882; Order in Council, May 18, 1881 (Confidential No. 4446); Order in Council, May 18, 1881 (Levant), (Confidential No. 2354).

† Colonial Office, February 25; ditto, February 26; Dr. Arpa, No. 10, March 28; ditto, No. 11, March 28, 1885.

# Turkey.

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### No. 157.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received January* 9.)

My Lord, *Royal Courts of Justice, January* 9, 1885.

**E. Fisher. Question as to his deportation from Smyrna.**

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 1st instant, stating that he was to transmit to us a despatch from Mr. Dennis,* Her Majesty's Consul at Smyrna, respecting the case of Ernest Fisher, a British subject residing in that port, who had been repeatedly brought before the Consular Court charged with various offences. That Mr. Dennis found considerable difficulty in dealing with that person, and was anxious to have him removed from Smyrna; but that in his opinion, and in that of Mr. Fawcett, the Judge of Her Majesty's Supreme Consular Court at Constantinople, he had no power, under section 311 of the Levant Order in Council of 1873, to deport him, because, although a British subject, he was not born in Her Majesty's dominions.

Incorrectness of view taken by Consul.

That it appeared, however, to your Lordship that Mr. Fawcett and Mr. Dennis had taken an incorrect view of the Order in Council, and that your Lordship had accordingly caused the accompanying draft of a despatch to be prepared, which your Lordship proposed, with our concurrence, to address to Mr. Dennis, in reply to his request for instructions.

That a copy of the Order in Council was also inclosed,† and that Mr. Lister was to request that we would inform your Lordship whether the terms of the draft met with our approval.

In obedience to your Lordship's commands we have the honour to report—

Approving draft instructions as to his deportation, though not born in Her Majesty's dominions.

That the terms of the inclosed draft meet our approval.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## Annex.

*Draft of Despatch to Consul Dennis.*

(No. Smyrna.)
Sir, *Foreign Office, January* , 1885.

I HAVE laid before Earl Granville your despatch No. 36 of the 5th December, respecting the case of Ernest Fisher.

You observe that section 311 of the Order in Council of 1873 does not allow of his deportation, as he was not born within Her Majesty's dominions, and that, in the opinion of Mr. Fawcett, section 311 of the Order in Council limits the punishment of deportation to offenders who are natives of some portion of Her Majesty's dominions, and makes no provision for deporting those British subjects who happen, as in the case of Fisher, to have been born in a foreign land.

I am directed by Earl Granville to state to you that under section 311 of the Order in Council every British subject is liable to deportation. By the interpretation clause of the Order (section 4), "subject" is declared to mean a "subject of Her Majesty by birth or naturalization." Mr. Ernest Fisher, although not born within Her Majesty's dominions, is described as a British subject, and it is presumed, therefore, that his father, or his grandfather by the father's side, is or was a natural-born British subject: if so, he must be deemed a British subject by birth, under the Statutes 4 Geo. II, cap. 21, or 13 Geo. III, cap. 21. Section 311 of the Order in Council no doubt indicates places of deportation in the case of natives of India, Malta, Gibraltar and Her Majesty's dominions, and prohibits their deportation to other places

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* Mr. Dennis, No. 36, December 5, 1884.

† Order in Council, December 12, 1873: Confidential No. 2354.

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without their consent. But that provision does not restrict the general power of deportation of British subjects, though they may not have been born in the places mentioned. It is competent, therefore, to the Court, subject to the other conditions of the section, to deport Mr. E. Fisher to England.

I am, &c.

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## No. 158.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received January* 28.)

My Lord, *Royal Courts of Justice, January* 27, 1885.

Consular jurisdiction.

Refusal of Porte to grant a Berat co-extensive with the Consul's Commission.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th November last, stating that, with reference to our Report of the 11th November, in which we asked for further information before advising on the question as to the right of a British Consular Officer in the Levant to exercise jurisdiction over British subjects anywhere within the limits of the Consular district assigned to him by his Commission, without reference to the limits of his Berat, he was to transmit to us a further Memorandum by Sir E. Hertslet,* giving all the information that the Foreign Office could supply on the points referred to in our Report.

That we have also the honour to acknowledge the receipt of a further letter from Sir J. Pauncefote, bearing date the 12th ultimo, forwarding a Memorandum by Sir E. Hertslet on the practice of issuing Consular Exequaturs, and at the same time forwarding a despatch from Her Majesty's Chargé d'Affaires at Constantinople,† reporting that the Turkish Government were unable to extend Consul-General Blunt's Firman, as requested on the 24th September last.‡

In obedience to your Lordship's commands we have the honour to report—

Question a very serious one.

That the question raised by the refusal of the Turkish Government to grant to a Consular Officer a Berat co-extensive with his Commission is a very serious one, especially in relation to the question submitted to us as to the jurisdiction of such an officer over British subjects in a district which is not within the limits of the Berat.

We gather from the Memorandum of Sir E. Hertslet that there is no precedent, either in Turkey or any other country, for the refusal to recognize a Consul by his Exequatur or Berat, as Consul for the whole of the territory defined in his Commission.

It appears always to have been considered that it was for the sovereign Power commissioning him to determine within what territorial limits he should act as its Representative.

And, as we understand, the Exequatur or Berat has been given only as a sanction to the individual designated by the Commission discharging his functions as Consul in the territory of the Sovereign. It would, therefore, create a serious precedent to admit that a Power, whilst sanctioning the residence of a person as Consul in its country, and his acting there as a Representative of the Sovereign commissioning him, could confine within narrower limits than his Commission the district within which he was to act as such Representative.

And this, whilst a serious matter in every country, would obviously be of even graver moment in a country like Turkey, where we possess exterritorial jurisdiction. For there would be no limit to the extent to which the jurisdiction of the Consular Officer must be thus confined.

Protest should be made.

We think, therefore, that the strongest possible protest should be made against the intention of the Turkish Government, and that Her Majesty's Government should clearly convey to the Porte that no consent can be given to the proposed limitation of the British Consul's Commission.

Course to be adopted in case of refusal of Porte to act upon British representation.

In the event of the Turkish Government refusing to act upon such representation, practical difficulties will probably arise.

We think that if the question of jurisdiction be strictly confined to its application to British subjects, a Consul, although acting in respect of causes arising beyond the limits of the Berat, will have jurisdiction to the full extent of the powers conferred upon him by his Commission.

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* Memorandum (Sir E. Hertslet), November 21, 1884. Together with papers referred to the Law Officers in Mr. Lister's letter of 13th September, 1884, viz.:—Lord Dufferin, No. 22, Consular, April 11; ditto, No. 29, Consular, May 1; Memorandum (Sir E. Hertslet), September 4; ditto, September 5, 1884; Capitulations of 1675 (Confidential No. 86), Protocol July 28, 1868, Treaty No. 510.

† Mr. Wyndham, No. 75, Consular, November 25, 1884.

‡ To Mr. Wyndham, No. 54 Consular, of September 24, 1884.

If, however, in the course of exercising such a jurisdiction extending beyond the limits of the Berat, Turkish interests or persons should in any way be affected, or Turkish assistance required, there will be great difficulty in contending successfully against the opposition of the Turkish authorities, which will doubtless be raised to the action of the British Consuls.

Difficulties must be dealt with as they arise.

With such difficulties it seems impossible to deal until they arise, and we can only suggest that they should, if possible, be anticipated by immediate representations to the Turkish Government, in the sense we have above pointed out.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 159.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February* 7.)

My Lord, *Royal Courts of Justice, February* 6, 1885.

Turkish titles to land in provinces ceded to Greece.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo, stating that he was to transmit to us the papers noted in the margin,* relative to the question of the recognition of title-deeds to land held by Turkish subjects in the districts ceded to Greece.

Investigation of Greek Tribunals.

That on the 22nd November your Lordship addressed a note to the Turkish Ambassador in accordance with the opinion expressed in our Report of the 5th November, informing his Excellency that, in the opinion of Her Majesty's Government, disputed questions of title to land between individuals in the ceded provinces must be referred to the Greek Tribunals, and that it was no violation of the Convention of the 24th May, 1881, that disputes should be thus decided; but that if those Tribunals were shown to disregard, or to refuse to recognize, the Firmans, Hodjets, &c., under which properties were held, Her Majesty's Government considered that remonstrances might justly be addressed to the Greek Government on the subject, and that if Her Majesty's Government were to understand that the Greek Tribunals refused to accept Turkish documents of title to land as *primâ facie* proof of ownership in the same manner as Greek documents of title were received, they were of opinion that that would afford just ground of complaint, and that they would be ready to support any representation which the Porte might make to the Greek Government on the subject.

Turkish objections.

That your Lordship had received the accompanying note in reply from the Turkish Ambassador, stating that the Porte objected to the mode of settlement indicated above, on the ground of the practical difficulties which would arise in its application; and that, relying on the stipulations of the Convention of the 24th May, they again requested the good offices of Her Majesty's Government in order to obtain the recognition by the Greek Government, "purement et simplement," of the title-deeds produced by the inhabitants of the ceded districts, without the holders being compelled to obtain their verification of the Tribunals of the country.

That it appeared to your Lordship that the Greek Government must satisfy itself that the documents of title produced were genuine, and that it was unreasonable to expect that the Greek Government should accept as conclusive proof of title to land, without further inquiry, any "Firman, Hodjet, or Tapou," or other document which a claimant or possessor might produce. That the question appeared to be whether the Porte could adduce any instance in which such documents had been improperly rejected.

That our opinion was requested as to whether the note of Musurus Pasha of the 6th January might properly be answered in the sense of the above observations thereon.

In obedience to your Lordship's commands we have the honour to report—

That it is impossible to understand what the exact grievance complained of is, in the absence of particular examples of it.

The Turkish Government contends that the Greek Government ought to recognize purely and simply the titles of property produced by the inhabitants of the ceded territories, "sans les faire homologuer par les Tribunaux du pays." This would seem

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* (A) To Musurus Pasha, November 22; (B) Law Officers, November 5, 1884, Confidential No. 5121, p. 129; (C) Musurus Pasha, January 6, 1885.

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to imply that the Greek Government refuse to treat as of any avail the documents of title, whether there be a dispute about them or not, until they have been confirmed by the Greek Tribunals.

Inquiry into genuineness reasonable.

We think the note of Musurus Pasha of the 6th January may properly be answered in the sense of the observations thereon contained in Sir Julian Pauncefote's letter.

Should ask for instances of proceedings complained of and for text of refusal to recognize titles.

And we would suggest that the Turkish Government should be invited to give examples of the proceedings of which they complain, and also the text of any Decree or Order of the Greek Government relating to the refusal to acknowledge the documents of title until confirmed by the Greek Tribunals.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 160.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received February 25.)*

*Royal Courts of Justice, February 24, 1885.*

My Lord,

Alleged murder at Kerbellah by British-Indian subject.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 13th instant, stating that he was to transmit to us, by your Lordship's direction, the papers* relating to a murder alleged to have been committed at Kerbellah by a British-Indian subject, the victim being also a British-Indian subject, and father-in-law of the accused.

That the depositions and report of the proceedings of the preliminary inquiry held before Her Majesty's Consul-General at Bagdad were inclosed in Mr. Fawcett's despatch No. 22, Judicial, of the 2nd instant.

Case cannot be tried by Consul at Bagdad; but must be by Judge from Constantinople or be sent to Bombay.

That it would be seen that under section 266 of the Levant Order in Council (copy inclosed), the Consular Court at Bagdad was not competent to try capital cases, and that the case must either be sent for trial to Bombay, under section 265, or the Judge or Assistant Judge of the Supreme Court at Constantinople must proceed to Bagdad to try it on the spot, under the provisions of section 34.

That the case appeared to your Lordship to be a grave one, and all the parties being native Indian subjects, it would probably be dealt with more satisfactorily before the Supreme Court of Bombay. That, moreover, the alternative of sending the Judge or Assistant Judge from Constantinople would, as shown by Mr. Fawcett's despatch No. 73, be attended with much inconvenience, expense, and delay; but that, if it should be thought preferable that the trial should take place at Bagdad, Mr. Fawcett would be directed to proceed there at once, or to depute Mr. Tarring, the Assistant Judge, for that purpose.

That our opinion was requested as to the course which should be pursued in that case.

In obedience to your Lordship's commands we have the honour to report—

No legal objection to trial of case at Bombay if witnesses can be secured there.

That we see no legal objection to the case being sent for trial to Bombay, if that is considered, on grounds of economy, and otherwise, the more expedient course, provided that the presence of the witnesses, including any the prisoner may desire to call, can be secured there.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 161.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 26.)*

*Royal Courts of Justice, March 26, 1885.*

My Lord,

Alleged murder at Kerbellah by a British-Indian subject.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 20th instant,† stating that with reference to our Report of the 24th ultimo on the arrangements to be made in regard to the trial of the Kerbellah murder case, he was to inform us that in consequence of a telegram which had been received from Her Majesty's Consul-General at Baghdad, pointing out that the expenses and inconvenience of sending the case to Bombay for trial would be very great, your Lordship telegraphed to Her Majesty's Consul-General at Constantinople, instructing him to proceed to Baghdad, or to send Mr. Tarring, Her Majesty's Assistant Judge, to try the case on the spot. That a telegram had been received from Mr. Tarring, in which he stated that Mr. Fawcett had been dangerously ill, and would not be fit for duty for at least a month, and that consequently the Court would be left without any one in charge were he now to proceed to Baghdad.

Proposed appointment of Consul-General at Baghdad as Acting Assistant Judge,

That in view of the difficulties which had thus arisen, and in order to save further delay, it had been suggested that Mr. Tarring should be appointed Acting Judge at Constantinople during the illness of Mr. Fawcett, and that Consul-General Plowden, though stationed at Baghdad, should be appointed Acting Assistant Judge, so as to qualify him to try the case on the spot. That we were referred to section 6 of the Order in Council of 3rd May, 1882, under which it was proposed that those appointments should be made.

That, judging from the depositions already submitted to us, the case, though a capital one, did not appear to be one of difficulty, nor did it involve capital punishment (Order in Council, 12th December, 1873, section 269). But that, if deemed necessary, a barrister might be sent from Bombay to Baghdad to assist the Consul-General in trying the case.

with barrister to assist him.

That our opinion was requested as to whether the course above proposed could be properly followed, and, if so, whether we considered it necessary, in view of section 269 above referred to, that a barrister should be sent from Bombay to attend the trial.

In obedience to your Lordship's commands we have the honour to report—

Objections to proposed course.

That we entertain grave doubts whether the suggested arrangement can be carried out. Section 6 enables an Acting Judge to be appointed in case of the illness of the Judge, with the proviso that, unless the Secretary of State otherwise orders, the Assistant Judge is to be appointed as Acting Judge. But he is neither ill nor absent, and section 6 does not appear in such a case to authorize the appointment of any person as Acting Assistant Judge in his place. We are not aware whether there is any other power which enables the appointment of an Acting or additional Assistant Judge.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Mr Fawcett, No. 73, November 15, 1884; ditto, No. 20, February 2; ditto, No. 22, February 2, 1885; Levant Order in Council. (Confidential No. 2873.)

† Law Officers' Report, February 24, 1885, and the Correspondence referred to therein; Orders in Council of December 12, 1873, and May 3, 1882, in Confidential No. 2354; Consul-General Plowden, Telegraphic, March 4; to Consul-General Fawcett, Telegraphic, March 12; Mr. Tarring, Telegraphic, March 13; ditto, Recorder, No. 30, March 14, 1885.

## No. 162.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 26.)*

*Royal Courts of Justice, March 26, 1885.*

My Lord,

Pitts *v.* Fawcett. Expenses of Mr. Fawcett.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 17th instant, stating that he was to transmit to us a letter, received from the Lords Commissioners of Her Majesty's Treasury,* reporting that their Lordships, having taken under their consideration the two statements of the expenses of Mr. Fawcett at Constantinople in the case of Pitts *v.* Fawcett, amounting to (1) Personal expenses on journeys, and abatements of salary, 1,259*l.* 13*s.* 10*d.*; (2) Legal expenses, 2,088*l.* 2*s.* 5*d.*, were not prepared to sanction any payment whatever in respect of the first charge, but, adverting to our Report of the 5th November last, were ready to sanction, in respect of the second statement such payment, not exceeding 2,000*l.*, as might be consistent with our recommendation "that the assistance to be rendered to Mr. Fawcett should be limited to a moderate amount."

That our opinion was requested as to what answer should be returned to the inquiry of the Lords of the Treasury.

That Consul-General Fawcett's Memorandum of the circumstances of the case (dated the 23rd May, 1884), and our Report of the 5th November, were inclosed.

In obedience to your Lordship's commands we have the honour to report—

Should not pay for personal expenses.

That we concur in the view entertained by the Lords of the Treasury, that no payment should be made to Mr. Fawcett in respect of "personal expenses on journeys and abatements of salary."

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* Treasury, March 5, 1885.

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Sum for legal expenses should be taxed.

The sum of 2,088*l.* for legal expenses appears to us to be a far larger amount than might have been expected to have been incurred for the costs in question, and we suggest that the claims by the different solicitors should be subjected to some taxation or revision here.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

## No. 163.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June* 12.)

My Lord, *Royal Courts of Justice, June* 11, 1885.

Claim of Messrs. Shalom and Zagal on Her Majesty's Government on account of the closing of their warehouses, &c., by British Consular authorities.

WE are honoured with your Lordship's commands signified in Mr. Lister's letter of the 30th ultimo, stating that he was to transmit to us the papers* relating to a claim brought against Her Majesty's Government by Messrs. Shalom and Zagal.

That it appeared that Messrs. Shalom and Zagal, who were Ottoman subjects, sent a British subject named Gabbay to Manchester, as their agent or partner. That Gabbay died, and at the instance of his family, who alleged that the firm was indebted to him on account of a share in the profits of certain transactions, the late Lieutenant-Colonel Stewart, who was, at the time, Acting British Consul at Aleppo, and who subsequently accompanied General Gordon to Khartoum, caused the Consular seals to be placed on their office and warehouses, although, as was stated by Mr. Henderson, the firm expressed their readiness to satisfy any claims the family of Gabbay might bring against them, and, in fact, did so as soon as the exact amount of the claim was ascertained.

That the seals were affixed in June and remained till Mr. Henderson resumed his duties in August, when he at once removed them and put the firm in possession of their property.

Messrs. Shalom and Zagal now claimed compensation to the amount of 7,000*l.*, on the following grounds:—

1. Injury to their reputation through the action of Colonel Stewart.
2. Damage to their goods from damp.
3. Depreciation in the general value of their goods.
4. Loss on bills of exchange through the bankruptcy of houses by whom they were drawn, which they could not present at maturity, such bankruptcy having taken place after the bills had matured.
5. Injury to their credit in consequence of their being unable to meet their engagements owing to their property being sealed up.
6. Having been compelled to pay interest at 12 per cent. during the time when their property was so sealed up on the debts which they were unable to settle.

That Mr. Henderson, in his No. 7 of the 28th April, estimated the amount of the actual losses of the firm at 3,100*l.*, independently of the damage done to their business, the loss of their profits, interest on unpaid bills matured, and other items.

That our opinion was requested as to the course which should be pursued by Her Majesty's Government in dealing with that claim, and as to the measure of damages which might be claimed by the applicants if they should be considered to have a reasonable case for compensation.

In obedience to your Lordship's commands we have the honour to report—

The closing was illegal, and their claim should be admitted.

That if the facts be as stated by Mr. Henderson, the closing of the business premises of Messrs. Shalom and Zagal, and keeping them closed for two months, was a wholly illegal and unjustifiable act, which caused most serious injury to innocent persons. Under these circumstances, we entertain no doubt that the case is one in which the claim to compensation should be admitted.

It is impossible to say upon the materials before us what that compensation should be, but we think it should be assessed in a liberal spirit, so as to afford, as far as may be, an indemnity, at all events, for the pecuniary losses sustained.

Mr. Henderson should negotiate the amount.

We suggest that it might be left to Mr. Henderson to negotiate the amount, for the claim of 7,000*l.* put forward by Messrs. Shalom and Zagal, viewed in the light of the information afforded by Mr. Henderson's letter, does not appear to evidence any disposition, on their part, to insist on an extravagant or outrageous amount of compensation.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* Shalom and Zagal, April 15; ditto, November 1, 1884; Mr. Wyndham, No. 12, Consular, February 24; Shalom and Zagal, March 30; Consul Henderson, No. 7, April 28, 1885.

## No. 164.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June* 12.)

My Lord, *Royal Courts of Justice, June* 11, 1885.

Coasting trade of Ottoman Empire and passenger traffic in Gulf of Smyrna. Right of British vessels to take part in.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 9th February, stating that he was to transmit to us papers* relating to the

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* *List of Papers.*

To Colonel Rose (Constantinople), No. 12, January 17, 1853.
To Sir H. Elliot, No. 80, Commercial, December 23, 1872.
Memorandum by Sir E. Hertslet, November 28, 1872; appended to which will be found the extracts from the Treaties between Turkey and foreign Powers bearing on the question. Confidential No. 2575.
Mr. Goschen, No. 27, Commercial, April 18, 1881.
To Mr. Goschen, No. 38, Commercial, April 28, 1881.
Lord Dufferin, No. 65, Commercial, July 17, 1881.
To Lord Dufferin, No. 72, Commercial, July 28, 1881.
Mr. Wyndham, No. 17, Commercial, January 27, 1883.
To Mr. Wyndham, Nos. 22 and 52, Commercial, February 10 and March 6, 1883.
Consul Dennis, Nos. 4 and 7, Commercial, June 1 and June 9, 1883.
Mr. Wyndham, No. 158, Commercial, June 22, 1883.
To Mr. Wyndham, No. 96, Commercial, June 29, 1883.
Mr. Wyndham, Nos. 156, 167, and 174, Commercial, June 20, 29, and 30, 1883.
Memorandum by Sir E. Hertslet, July 16, 1883: Confidential No. 4793; appended to which will be found the Reports from the Law Officers on the subject of the Ottoman coasting trade.
To Mr. Wyndham, No. 122 A, Commercial, July 31, 1883.
Mr. Wyndham, Nos. 226, 227, 247, and 264, Commercial, July 25, July 26, August 10, and August 22, 1883.
To Mr. Wyndham, No. 154, Commercial, September 4, 1883.
Consul Dennis, No. 10, Commercial, August 31, 1883; ditto (Telegraphic), September 13, 1883.
Mr. Wyndham, Nos. 272, 278, and 281, Commercial, August 30, September 3, and September 5, 1883.
To Mr. Wyndham, No. 161, Commercial, September 17, 1883.
To Consul Dennis, No. 1, Commercial, September 19, 1883.
To Mr. Wyndham, No. 165, Commercial, September 19, 1883.
Mr. Wyndham, Nos. 304, 309, and 312, Commercial, September 20 and 22, 1883.
To Lord Dufferin, Nos. 176 and 177, Commercial, October 2, 1883.
Consul Dennis, No. 11, Commercial, October 4, 1883.
Lord Dufferin, No. 329, Commercial, October 17, 1883.
Memorandum by Sir E. Hertslet, October 28, 1883.
To Lord Dufferin, Nos. 204 and 205, Commercial, November 21, 1883
To Consul Dennis, No. 2, Commercial, November 21, 1883.
Lord Dufferin, No. 357, Commercial, December 13, 1883.
To Lord Dufferin, No. 231, Commercial, December 24, 1883.
Lord Dufferin (Telegraphic), March 2, 1884.
To Lord Dufferin, No. 27, Commercial, March 3, 1884; ditto (Telegraphic), March 4, 1884; ditto, Nos. 36, 37, 38, and 39, Commercial, February 25, March 1, and March 4, 1884.
Consul Dennis (Telegraphic), March 11, 1884.
Lord Dufferin, No. 46, Commercial, March 7, 1884; ditto (Telegraphic), March 12, 1884.
To Lord Dufferin, No. 30, March 12, 1884.
Lord Dufferin, Nos. 41, 42, and 50, Commercial, March 2, 4, and 11, 1884.
Consul Dennis (Telegraphic), March 17, 1884.
To Lord Dufferin, Nos. 33 and 34, Commercial, March 18, 1884.
Consul Dennis, No. 13, March 11, 1884.
Lord Dufferin, No. 58, Commercial, March 18, 1884; ditto (Telegraphic), March 25, 1884; ditto, No. 51, Commercial, March 12, 1884.
To Lord Dufferin, No. 37, Commercial, March 27, 1884.
Lord Dufferin, No. 62, Commercial, March 24, 1884.
To Lord Dufferin, No. 41, Commercial, April 1, 1884.
Lord Dufferin, Nos. 63, 68, and 71, Commercial, March 25 and 31, 1884.
To Lord Dufferin, No. 49, Commercial, April 16, 1884.
Lord Dufferin, Nos. 76 and 78, Commercial, April 6 and 10, 1884.
To Lord Dufferin, Nos. 52 and 53, Commercial, April 28, 1884.
To Musurus Pasha, April 29, 1884.
Lord Dufferin, No. 111, Commercial, June 7, 1884.
Musurus Pasha, June 30, 1884; with a Memorandum thereon by Sir E. Hertslet, respecting the case of the British steamers which at one time carried passengers on the Bosphorus.
To Musurus Pasha, July 5, October 3 and 21, 1884.
Law Officers, December 23, 1884. Confidential No. 5121, p. 132.
Musurus Pasha, February 4, 1885.

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right of British vessels to participate in the coasting trade of the Ottoman Empire, and more particularly to carry passengers in the Gulf of Smyrna.

That on the receipt of our Report of the 23rd December the draft note to the Ottoman Ambassador was amended in accordance with our suggestions and sent off. That your Lordship had now received his Excellency's reply, under date of the 4th February.

That it appeared to your Lordship that that note was, in the main, a reproduction of arguments already used.

That your Lordship, moreover, failed to see the distinction sought to be established between lines of passenger steamers established in France or Austria, and those established in Turkey, as regarded the right to carry passengers from one Ottoman port to another, nor could your Lordship see the distinction between a "privilège exclusif" and a monopoly.

That Sir J. Pauncefote was to request our opinion as to whether the reply of the Turkish Ambassador called for any further remarks in support of the position taken up by your Lordship in the note to Musurus Pasha of the 30th December last, and to which it was a reply.

In obedience to your Lordship's commands we have the honour to report—

**No new points raised in Turkish reply.**

That no substantially new point appears to be raised by the reply of M. Musurus, but it may be well to deal with his several arguments in the order in which they are urged.

**Remarks on arguments used.**

1. We are unable to appreciate the distinction suggested between the "privilège exclusif," which it is proposed to give to the Ottoman Company, and a monopoly.

2. Although the admission of the Ottoman Government made at the time of the discussion relating to the Chirket-i-Khairie was not embodied in a Treaty, its importance as an admission of the rights of British subjects is not thereby diminished.

The admission was made as the result of a diplomatic controversy in reference to British rights, and was not founded upon any principle limited to a particular locality.

3. Whether the Gulf of Smyrna constitutes a single port like the port of Constantinople is, of course, a question of fact. As far as we can judge from the map, this does not appear to be so, and the fact that the only important place on the gulf is the town of Smyrna at the bottom of it, and that there is no other town upon it of sufficient importance to be considered a port of commerce, does not, we think, tend to show that the entire gulf forms part of the port of Smyrna.

4. It is admitted that the vessels of the Messageries Maritimes and Austrian Lloyd's carry from one Ottoman port to another, and we do not think that any valid distinction can be drawn between such traffic and the traffic of vessels which ply only between Ottoman ports.

5. It is asserted that this case and that of the "Compagnie du Bosphore Chirket-i-Khairie" are identical. It may be well again to point out to the Turkish Government the distinction.

That case supports the contention of Her Majesty's Government, unless it can be established that the Gulf of Smyrna is to be regarded as a single port.

It may deserve investigation whether some part of the voyages performed by Messrs. Joly and Co.'s steamers would not come within the principle conceded in the case of the Bosphorus, even though this may not apply to the whole gulf.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 165.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.*—(*Received June* 15.)

My Lord, *Royal Courts of Justice, June* 12, 1885.

**Mrs. Kendall v. Madame Auriol Refusal of Consul-General to grant protection to former;**

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 12th ultimo, stating that he had the honour to transmit to us, by your Lordship's direction, the accompanying papers* relative to a complaint made by Elizabeth Kendall against Her Majesty's Consul-General at Bagdad for declining to give her British protection in an action in the Consular Court against Madame Auriol, a French subject.

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* Mrs. Kendall, January 24; Consul-General Plowden, No. 169, April 1; Consul-General Plowden to Mr. Currie, April 3, 1885; Ottoman Order in Council, December 12, 1873 (Confidential No. 2354).

That the Consul-General stated that Mrs. Kendall had applied to him in the matter on the 13th October last, that he had ascertained that she had failed to take out a single annual registration certificate (as required by the Ottoman Order in Council of the 12th December, 1873) since 1877, and that he had consequently caused her to be informed that he could not entertain her application; that she had subsequently registered herself in November, but that he had explained to her that, though that act of registration would entitle her to his protection from the date when it took place, it would not avail her for a claim, like that against Madame Auriol, which had accrued prior to that date.

**as claim accrued prior to her registration as a British subject.**

That the Consul-General stated that she had failed to satisfy him that her failure to register arose from ignorance; that she, on the other hand, asserted that she was ignorant of the regulations.

That the question arose whether the Consul-General was justified in limiting his protection to cases arising subsequently to Mrs. Kendall's registration, or whether, under the circumstances, she was entitled to claim his protection in the action against Madame Auriol.

That Mr. Lister was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in his letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

**Consul should have granted her protection.**

That we do not think the Consul-General is justified in limiting his protection to cases arising subsequently to Mrs. Kendall's registration, and are of opinion that the Consul-General should give her such protection and assistance as the case may properly call for.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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## No. 166.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received September* 21.)

My Lord, *Royal Courts of Justice, September* 21, 1885.

**Farrer v. Asche. Jurisdiction of British Consular Court over German subject at Busrah.**

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he was to transmit to us papers relating to the case of Farrar *v.* Asche, then pending before the British Consular Court at Busrah.

That Mr. Asche was a German subject who had enjoyed full British protection, but who had never taken out a certificate of registration, as required by section 16 of the Levant Order in Council of the 12th December, 1873.

That, when sued in the Consular Court, he objected to the jurisdiction on the ground that he carried on business in partnership with an Ottoman subject, and that the case should be tried by the Native Tribunals.

That the German Ambassador at Constantinople had intervened in the matter, and contended that, although German interests at Busrah might have been placed under British protection, that did not give jurisdiction to the British Consular Court over German subjects.

That, on the other hand, Article 16 of the Order in Council declared that a person failing to register himself "shall not be entitled to be deemed a subject or protected person."

That two questions therefore arose:—

1. Whether the British Consular Court could exercise jurisdiction over a foreigner unless he had accepted British protection with the assent of his Government.

2. Whether, assuming the foreigner to have accepted British protection with the assent of his Government, the Consular Court might exercise jurisdiction in proceedings instituted *against* him, notwithstanding his failure to take out a certificate of registration under section 16 of the Order in Council.

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That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion on the questions submitted in that letter, and as to the instructions which should be sent to Her Majesty's Consul-General at Constantinople in relation to that case.

In obedience to your Lordship's commands we have the honour to report—

Cases in which foreigners become amenable to British Consular jurisdiction.

That the mere acceptance of British protection by a foreigner, without the assent of his Government, will not of necessity confer jurisdiction on the British Consular Court; but that if a foreigner has given evidence, by his general course of conduct, of an intention to submit himself to the jurisdiction of such Court, its jurisdiction may be exercised over him, subject to diplomatic objection by his Government.

No person against whom proceedings have been instituted, and who is otherwise amenable thereto, can evade the jurisdiction of the Court on the sole ground that he has neglected to take out a certificate of registration under section 16 of the Order in Council.

Assent of German Government to proceedings against Mr. Asche should be obtained.

German Ambassador at Constantinople should be fully informed of facts of case.

No further proceedings should, in our opinion, be taken against Mr. Asche in the case now pending in the Consular Court at Busrah, without the assent of the German Government.

We understand the matter to be still under the consideration of the German Government, and we recommend that Her Majesty's Consul-General at Constantinople should be instructed to take care that all facts and arguments are laid before the German Ambassador at Constantinople which tend to show that Mr. Asche has, by his general conduct, given evidence of an intention to place himself under the jurisdiction of the British Consular Court at Busrah, and that the German Government ought, under the circumstances, to assent to the exercise of jurisdiction over him by that Court.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

*List of Papers sent to Law Officers, September* 1, 1885.

J. Farrar and Co., July 1; to ditto, July 20; J. Farrar and Co., July 23; Clyde Steam-ship Owners' Association, July 13; Sir W. White (Telegraphic), July 12; Mr. Fawcett, No. 65, July 13; Acting Consul-General Tarring (Telegraphic), August 5; ditto, No. 75, August 11, 1885.

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## No. 167.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received September* 22.)

My Lord, *Royal Courts of Justice, September* 21, 1885.

Status of the Turkish ship "Djanik" of the Mahsoussieh Company

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 29th ultimo, stating that he was to transmit to us correspondence* relating to a question which had arisen as to the status of the Turkish vessel "Djanik" of the Mahsoussieh Company.

with Turkish prisoners on board.

That it would be seen that the vessel in question had twice called at Malta with Turkish prisoners on board, and that if her status be that of a "merchant-ship" within the meaning of the Malta Ordinance No. III of 1882, it would be the duty of the police, should she again carry prisoners when touching at Malta (which was one of the ports of call of the Mahsoussieh Line), to inform a magistrate, in order that the latter might inquire whether any of the prisoners were in custody for a political offence.

That the "Djanik" had, however, claimed the privileges of a Turkish Government vessel, and that the Porte had supported that claim (see note of Musurus Pasha of the 21st August, 1884, and the Earl of Dufferin's despatch No. 287 of the 25th August, 1884).

That the only particulars which it had been possible to obtain respecting the status of the vessels belonging to the Mahsoussieh Company, of which the "Djanik" was one, were stated in the Governor of Malta's despatch No. 188 of the 25th August, 1884 (Colonial Office letter of the 16th September, 1884, Inclosure 2), and in a telegram from Her Majesty's Minister at Constantinople, No. 110 of the 18th ultimo.

That our attention was invited to Sir J. L. Simmons' despatch inclosed in the Colonial Office letter to the Foreign Office of the 14th ultimo, and that our opinion was requested as to whether the status of the vessels of the Company was such as to exempt them from the operation of the Malta Ordinance above mentioned.

That Mr. Currie was to add that the Judgments of the Court of Admiralty and Court of Appeal in the case of the "Parlement Belge" (Law Reports, Probate Division, vol. iv, p. 129, vol. v, p. 197), had some bearing upon that point.

In obedience to your Lordship's commands we have the honour to report—

Exempt from operation of the Malta Ordinance of 1882.

That, assuming the facts to be as stated in paragraph 4 of Sir J. L. Simmons' letter of the 25th August, 1884, the status of the vessels of the Mahsoussieh Company is such as to exempt them from the operation of the Malta Ordinance No. III of 1882.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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* Colonial Office, August 15; ditto, August 16; Musurus Pasha, August 21; Colonial Office, August 21; Earl of Dufferin, No. 287, August 28; Colonial Office, September 10, 1884; ditto, August 14; To Sir W. White, No. 74 (Telegraphic), August 17; Sir W. White, No. 110 (Telegraphic), August 18, 1885; Malta Ordinance No. III of 1882.

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## No. 168.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received October* 5.)

My Lord, *Royal Courts of Justice, October* 5, 1885.

Farrer *v.* Asche. British Consular jurisdiction over a protected foreigner.

WE were honoured with your Lordship's commands signified in Mr. Lister's letter of the 21st ultimo, stating that, with reference to his letter of the 1st September, he had the honour to transmit to us the papers noted in the accompanying list,* relative to the case of Farrer *v.* Asche, which was then before us.

That Mr. Tarring, the Acting British Judge and Consul-General at Constantinople, having reported in his despatch No. 75, Consular, of the 11th August, that Asche had received British protection in consequence of instructions contained in a Circular from Her Majesty's Embassy at Constantinople, he had been instructed to send home a copy of that Circular, which was inclosed and marked (A).

That it would be seen from the correspondence which had taken place between the Foreign Office and the German Embassy and Her Majesty's Representative at Constantinople in 1883 that, at the request of the German Government, Her Majesty's Consul-General at Bagdad was instructed in the Circular referred to to take charge of the interests of German subjects, there being no German Representative there.

That it was in consequence of those instructions that the Consular Court assumed jurisdiction over Mr. Asche as a "protected person," although he failed to take out a certificate of registration, as required by section 16 of the Levant Order in Council.

But that the German Ambassador at Constantinople apparently considered that such protection only applied to Consular protection as against the local authorities.

With reference to the further papers above referred to, we have the honour to report—

Strong grounds for urging German Government to assent to British Consular jurisdiction over Mr. Asche.

That the request of the German Government for British protection to German subjects at Bagdad, and the compliance of the British Government with such request, afford strong grounds for urging the German Government to assent to the exercise of British Consular jurisdiction over Mr. Asche.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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* Papers sent to Law Officers, September 21, 1885:—Count Münster, February 28, 1883; translation of above letter; to Count Münster, March 10; to Mr. Wyndham, No. 87, March 10; Mr. Wyndham, No. 174, March 24, 1883; Instructions from Her Majesty's Embassy at Constantinople to Consul at Bagdad to protect German interests (marked A), dated March 24, 1883 (inclosure in Mr. Tarring's despatch No. 80, September 5, 1885).

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## No. 169.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received October 30.)*

My Lord, *Royal Courts of Justice, October 28*, 1885.

Murder at Kerbela by British-Indian subjects.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 17th instant, stating that he was to transmit to us papers* relating to the trial in the Consular Court at Bagdad of three persons for the murder of the Rajah Himmut Bahadur and Hidayat Ali at Kerbela.

That the trial, which was held before Mr. Tarring, Assistant Judge of the Supreme Consular Court, resulted in the conviction of the three prisoners for the murder of Rajah Himmut Bahadur, and of the two prisoners Abdul Ghani and Mehdi Hussein for the murder of Hidayat Ali, the prisoner Abdul Rahim being acquitted on the charge in the latter case.

That sentence of death was recorded against the three prisoners on the first indictment, and against Abdul Ghani and Mehdi Hussein on the second.

That we were referred to section 269 of the Levant Order in Council of the 12th December, 1873, which regulated the procedure after sentence in capital cases.

That the notes of evidence and a report on the trial by Mr. Tarring was in Mr. Fawcett's No. 59 of the 23rd June last.

That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion as to the punishment which should be inflicted, and which was limited by section 268 of the Order.

That Sir J. Pauncefote was to add that the prisoners were all British Indian subjects, and might be sent to Bombay to undergo their sentence of imprisonment under section 309 of the Order.

In obedience to your Lordship's commands we have the honour to report—

No reason for mitigation of sentence.

That we have considered the evidence which was adduced at the trial of Abdul Rahim, Abdul Ghani, Mehdi Hussein, and we are unable to perceive any extenuating circumstances which call for a mitigation of the extreme term of imprisonment with hard labour prescribed by section 268 of the Levant Order in Council.

We have, &c.

(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 170.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received November 11.)*

My Lord, *Royal Courts of Justice, November* 10, 1885.

Coasting trade of the Ottoman Empire and passenger traffic in Gulf of Smyrna.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 30th ultimo, stating that he was to transmit to us papers relating to the right of British vessels to participate in the coasting trade of the Ottoman Empire, and more particularly to carry passengers in the Gulf of Smyrna.

That in the printed correspondence would be found the last note from the Ottoman Ambassador on the subject, and our particular attention was called to the draft which had been prepared in answer to that note, in accordance with the Reports of our predecessors (pp. 69 and 77 of print).

That the point on which your Lordship was especially desirous of obtaining our opinion was as to the soundness of the distinction attempted to be established between the local traffic in passengers between Turkish ports, and carried on entirely in Turkish waters, and that carried on by vessels plying between Turkey and foreign countries.

That the latter was admitted to be within the Treaty rights of foreigners, as would be seen by the despatch of Aarifi Pasha to Musurus Pasha of the 8th ultimo (copy inclosed).

But that it was insisted by Assim Pasha, in his note to Mr. Goschen of the 5th April, 1881 (print, p. 4), and also by Musurus Pasha, in his letter of the 4th February last (p. 74), that the former traffic (styled by Assim Pasha "petit cabotage") was not within the Treaty rights of any foreign Power, and, as a matter of fact, was never carried on under any foreign flag, except in the case of Messrs. Joly and Co., which gave rise to the present controversy.

For a statement of the Treaty rights of this country, and of other countries in matters of navigation, we were referred by Sir J. Pauncefote to Sir Edward Hertslet's Memorandum dated the 16th July, 1883, and that our opinion was requested on the question submitted in the letter of Sir J. Pauncefote.

In obedience to your Lordship's commands we have the honour to report—

No such distinction as made by the Porte can be soundly drawn.

That, in our opinion, no sound distinction can be drawn between the traffic in goods and passengers carried on from one Turkish port to another, by such Companies as the Messageries Maritimes and Austrian Lloyd's, by vessels plying between Turkey and foreign countries, and the traffic in goods and passengers carried on by vessels which ply only between Ottoman ports.

We have, &c.

(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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*List of Papers.*

Colonel Rose, No. 56, February 16, 1853.
Sir H. Elliot, No. 75, November 5, 1872.
Queen's Advocate, January 13, 1853.
Memoranda (Sir E. Hertslet), Confidential Nos. 2575 and 4793
Printed Correspondence, Confidential, No.
Musurus Pasha, communicated October 8, 1885.
Draft to Musurus Pasha, marked (A).

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### Annex.

*Draft of Letter to Musurus Pasha.*

(A.)

M. l'Ambassadeur, *Foreign Office, November* , 1885.

I HAVE the honour to inform your Excellency that I have carefully considered the arguments contained in your note of the 4th February last in support of the monopoly granted by the Porte to the Hamidieh Company of the passenger traffic in the Gulf of Smyrna, and I regret to have to state that I am quite unable to view the subject in the same light as your Excellency.

I have also to express my regret at the delay which has occurred in replying to your Excellency's note; but it is principally due to the desire of Her Majesty's Government to obtain Reports from British officials in Turkey on certain points.

The question at issue is not a new one. A similar controversy was raised in 1853, and again in 1872, and on various occasions from 1881 to the present time, as to the right of British vessels to engage in the coasting trade of the Ottoman dominions both as regards goods and passengers.

That right, which has been invariably maintained by successive Governments of the Queen, was exercised and enjoyed by British vessels without any objection on the part of the Porte until 1881, when Assim Pasha, in a note to Mr. Goschen of the 5th April of that year, endeavoured to establish a distinction between the coasting trade carried on by foreign vessels exclusively between Turkish ports and that carried on by vessels coming from abroad, such as those of the Messageries Maritimes and the Austrian Lloyd's.

In your Excellency's note of the 4th February the same distinction is again insisted on as an argument against the right claimed by Her Majesty's Government for British vessels to enjoy the privilege in question; and with reference to the Concession granted to the Hamidieh Company, a distinction is attempted to be drawn between a "privilège exclusif" and a "monopoly."

It is further urged that the present case is identical with that of the "Chirket-i-Khairié," which occurred in 1853 with reference to the Bosphorus, and in which your Excellency states that the British claim now contended for was abandoned.

In reply to those arguments I have the honour to state that, in the opinion of Her Majesty's Government, no valid distinction can be drawn between the traffic in goods and passengers carried on from one Turkish port to another by such Companies

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* Consul-General Fawcett, No. 59, June 23, 1885; and Ottoman Orders in Council, Confidential No. 2354.

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as the Messageries Maritimes and Austrian Lloyd's and the traffic of vessels which ply only between Ottoman ports, that traffic having been carried on for years by foreign vessels of both classes indifferently, and without objection. Nor can they appreciate the distinction suggested between the "privilège exclusif" and a "monopoly."

As regards the "Chirket-i-Khairié" case, I have to observe that far from affording a precedent in favour of the monopoly in question, it supports entirely the contention of Her Majesty's Government, unless it could be established that the Gulf of Smyrna is to be regarded as a single port. But a glance at the map disposes of any such pretension. The Gulf of Smyrna has always been treated as forming part of the coastal waters of Turkey. It has ports with separate custom-houses, and, for the purposes of the coasting trade, no distinction can be admitted between those ports and any other ports of the Turkish dominions open to foreign shipping.

At the time of the discussion of the "Chirket-i-Khairié" case, it was declared by the Porte (as pointed out in Earl Granville's note of the 30th December last) that British vessels had a right to carry goods and passengers from one Turkish port to another in the Danube, the Sea of Marmora, and the Dardanelles, but not in the Bosphorus, because the Bosphorus, it was stated, formed part of the port of Constantinople.

It appears to Her Majesty's Government that this declaration and admission by the Porte, having been made as the result of a diplomatic controversy in reference to the British right now claimed, and not having been founded on any principle limited to a particular locality, must be taken as conclusive of the present question. Her Majesty's Government are ready to abide by the principle laid down in that case, and they are prepared to recognize the validity of the Concession granted to the Hamidieh Company if confined to the real port of Smyrna, whatever the limits of that port may ultimately be settled to be; but so far as it purports to give to the Company a monopoly of the passenger traffic in the Gulf of Smyrna, Her Majesty's Government must continue to protest against the Concession and against any attempt to enforce it.

At the same time, they are quite willing to agree to any reasonable regulations which may be issued for the proper control of the passenger traffic, and for the removal of the complaints which have been made by the Turkish authorities as to the facilities afforded by foreign vessels engaged in it for the escape of offenders.

I have, &c.

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## United States.

### No. 171.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received March 6.)*

My Lord, *Royal Courts of Justice, March* 5, 1885.

Detention of the "Anjer Head" at San Francisco. Claim for indemnit.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 26th ultimo, stating that he was to transmit to us the papers* relating to a claim amounting to 29,979 dol. 67 c. against the United States' Government by way of indemnity for the losses sustained by Mr. John Steward Lapraike, of London, charterer of the British steamer "Anjer Head," and Leong Atai, of Hong Kong, sub-charterer of that steamer, by reason of her detention at San Francisco, in June 1882, by the United States' authorities, under the circumstances set forth in the printed Memorial inclosed in Messrs. Parker, Garrett, and Parker's letter of the 12th June, 1883. That it would be seen from the correspondence that Her Majesty's Minister at Washington was instructed to present that Memorial to the United States' Government for their favourable consideration, but that they had declined to grant the relief sought by the memorialists, for the reasons stated in the Report of the Attorney-General at San Francisco, which was inclosed in Mr. West's despatch No. 80 of the 8th April last. That that document having been sent to the solicitors for the memorialists, they contended that the Report was inaccurate in many important particulars; and it appeared that their legal representative at Washington was now desirous that Her Majesty's Minister at Washington should request the Secretary of the United States' Government to refer the matter to the Court of Claims, pursuant to the provisions of the second section of the Act of Congress of the 3rd March, 1883, a copy of which was inclosed.

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* *List of Papers.*

Parker and Co., June 12, 1883.
To Mr. West, No. 41, Commercial, June 26, 1883.
Mr. West, No. 175, July 16, 1883.
To Parker and Co., August 7, 1883.
Mr. West, No. 80, Commercial, April 8, 1884.
To Parker and Co., April 28, 1884.
Parker and Co., May 22, 1884.
Mr. West, No. 37, Commercial, January 30, 1885.

That there was nothing apparently in the Act of Congress requiring the intervention of Her Majesty's Representative for the purpose in question, nor did it appear that any direct application had been unsuccessfully made by the memorialists to the United States' Government.

That with reference to Mr. West's remarks in his despatch No. 37 of the 30th January, as to the risk of establishing an inconvenient precedent, Sir J. Pauncefote was to inclose a copy of our Report of the 17th May, 1882,* in Tunstall's case, in which we advised that the question of the liability of the United States in that particular case ought not to be left to the determination of the Court of Claims; but that your Lordship presumed that the same considerations did not apply to the present case; and that as the parties themselves desired that it should be adjudicated upon by that Tribunal, there could be no objection to the good offices of Mr. West being extended to them, as desired, for that purpose.

That your Lordship desired to be favoured with our opinion whether there was any objection to Mr. West being instructed to ask the United States' Government to refer the matter to the Court of Claims, as requested.

In obedience to your Lordship's commands we have the honour to report—

No objection to refer matter to Court of Claims.

That we do not see any objection, in the circumstances, to Mr. West being instructed to ask the United States' Government to refer the matter to the Court of Claims, as requested.

Should intimate that it is done at instance of claimants.

But, in view of the considerations pointed out in Mr. West's despatch, we think it desirable that he should intimate that this course is taken at the instance of the claimants.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 172.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received October 5.)*

My Lord, *Royal Courts of Justice, October* 5, 1885.

Marriage at British Legation under 4 Geo. IV, cap. 91.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo, stating that he was to transmit to us the papers† noted in the margin, relating to an application made to Sir L. West, Her Majesty's Minister at Washington, by Mr. W. M. McDowell, solicitor, of Tallulah, Louisiana, on behalf of a British subject (male) who sought to be married, at Her Majesty's Legation in that capital, to an American citizen, under the Act 4 Geo. IV, cap. 91.

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* Confidential No. 4783, p. 96.

† Sir L. West, No. 257, August 27, 1885; Circular Instruction, Foreign Office, February 10, 1873, No. 1034; Act 4 Geo. IV, c. 91.

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That it appeared that there was no precedent for marriages having been performed at Her Majesty's Legation at Washington under that Act, and Sir L. West added that a question might arise as to the validity of a marriage under the Act, if celebrated by a clergyman of the American Episcopal Church, or other American Minister, and not by a clergyman of the Church of England.

Question as to validity of marriage by other than a clergyman of Church of England.

That under those circumstances Sir L. West had requested instructions as to the expediency of establishing a precedent for the marriage of British subjects at Her Majesty's Legation.

That Sir Julian Pauncefote was to inclose a copy of the Foreign Office Circular Instructions in the case of mixed marriages, dated the 10th February, 1873.

That there did not seem to be any reason why those instructions should not be followed by Her Majesty's Representative in the United States as well as in other countries.

But that, as regarded the question whether such marriage would be held invalid in England if solemnized by a "clergyman of the American Episcopal Church or other American minister," Sir Julian Pauncefote was to observe that the Act declared the validity of marriages solemnized at British Embassies or Legations by a "minister of the Church of England."

That your Lordship therefore proposed, with our concurrence, to instruct Sir L. West that he should decline to allow a marriage to be celebrated at Her Majesty's Legation except by a "minister of the Church of England," in conformity with the Act above mentioned, and unless the parties had previously complied with the Marriage Law of the United States as far as it might be possible to do so, and generally to follow the directions contained in the Circular above referred to.

That our opinion was requested as to whether Sir L. West's inquiry might properly be answered in the sense above suggested.

In obedience to your Lordship's commands we have the honour to report—

Marriage should be celebrated by clergyman of Church of England.

United States' Law and Foreign Office Circular complied with.

That Sir L. West's inquiry may properly be answered by instructing him to decline to allow a marriage to be celebrated at Her Majesty's Legation except by a minister of the Church of England, in conformity with 4 Geo. IV, cap. 91, and unless the parties have previously complied with the Marriage Law of the United States so far as it may be possible to do so; and generally to follow the directions contained in the Foreign Office Circular of the 10th February, 1873.

We have, &c.

(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 173.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received December* 19.)

My Lord, *Royal Courts of Justice, December* 19, 1885.

Murder of Mr. J. H. Tunstall in New Mexico.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 4th September last, stating that he had the honour to transmit to us the papers relating to the murder of Mr. J. H. Tunstall, a British subject, on the 18th February, 1878, in Lincoln County, New Mexico, United States.

Claim for compensation.

That the Sheriff of the County and other public officers (said to have been associated with a "ring" of lawless characters) were implicated in the outrage, which was perpetrated in the execution of their public functions, and hence a claim for compensation had been made on the United States' Government on behalf of Mr. Tunstall's representatives.

That the whole correspondence which had passed on that subject was transmitted therewith, and that a résumé of the facts as presented on behalf of Mr. Tunstall's representatives would be found therein.

That the outrage was first brought to the notice of the United States' Government by Her Majesty's Minister at Washington in a note to Mr. Evarts dated the 9th March, 1878, and an official inquiry was set on foot, the Government having, for that purpose, employed a special Agent. (Confidential Print, No. , pp. 2 and 7.)

That the Report of the United States' Attorney-General on the case (with evidence annexed) would be found in Sir E. Thornton's despatch No. 30 of the 3rd February, 1879. (Print, No. , p. 24.)

That our special attention was invited to the following documents:—

1. Opinion of Mr. Calderon Carlisle, the Legal Adviser of the British Legation at Washington, on the Report of the Attorney-General of the United States. (In Sir E. Thornton's No. 24 A of the 26th January, 1880, Print, p. 57.)

2. Report of the Law Officers of the Crown on Mr. Calderon Carlisle's opinion. (April 14, 1880, Print, p. 60.)

3. Claim presented to the United States' Government and Mr. Evarts' reply. (Sir E. Thornton's No. 202 of the 28th June, 1880, and No. 70 of the 7th March, 1881, pp. 62 and 65.)

4. Report of the Law Officers on grounds of rejection of claim by the United States' Government. (9th May, 1881, Print, p. 67.)

5. Opinion of the Earl of Selborne. (21st May, 1881, Print, p. 70.)

6. Instructions thereon to Sir E. Thornton. (To Sir E. Thornton, No. 103 of the 31st May, 1881, Print, p. 71.)

7. Proposal of the United States' Government to refer the matter to the Court of Claims. (In Mr. West's No. 43 of the 31st January, 1882, Print, p. 75.)

8. Explanations as to the constitution of the Court of Claims and the questions which it would be called on to decide. (In Mr. West's No. 158, Print, p. 78.)

9. Report of the Law Officers on the proposal of the United States. (Received 17th May, 1882, Print, p. 79.)

10. Instructions thereon to Her Majesty's Minister at Washington (Sir Lionel West), as approved by the Law Officers. (To Mr. West, No. 182 of the 15th June, 1882, Print, p. 81.)

That in January 1882 Mr. Freylinghuysen addressed a note to Her Majesty's Minister at Washington, in which he proposed that, in view of the considerable divergence between Her Majesty's Government and the United States' Government as to the facts and the legal effect of the testimony relating thereto, the case should be referred to the adjudication of the Court of Claims, subject to the approval of Congress.

That that proposal was, by advice of the Law Officers of the Crown, declined by Her Majesty's Government, who objected to the question of the liability of the United States' Government being determined by the Court of Claims.

That no further progress was made in the matter, notwithstanding the repeated representations of Her Majesty's Government.

That in the meantime a change of Government took place in the United States, and, on the 1st June last, Mr. Bayard, who had succeeded Mr. Freylinghuysen as Secretary for Foreign Affairs, addressed a note to Sir L. West,* in which, after reviewing the case at great length, he concluded by stating that the United States' Government "cannot admit any liability as attaching to it in the premises, either directly towards the representatives of the murdered man, or internationally towards Her Majesty's Government demanding on their behalf."

That Mr. Bayard's note was referred to Mr. Calderon Carlisle for his opinion, and that Sir J. Pauncefote invited our attention to his Report thereon.

That Sir Julian Pauncefote was to inclose:—

1. A short statement of the case of Mr. George in Ireland, which was referred to in Mr. Bayard's note.

2. Volume of "Foreign Relations of United States," referred to in the same note.

3. Volume of opinions of United States' Attorneys-General, referred to in the same note.

4. Printed Memorandum by Sir E. Hertslet on "Outrages on Foreigners in British Dominions."

5. Selection from the Reports of the Law Officers of the Crown on cases of outrages by public officers abroad on British subjects.

That our opinion was requested as to whether the contention of the United States' Government that no liability attaches to them in relation to the murder of Mr. Tunstall was well founded, or whether Her Majesty's Government would be justified in continuing to press their claim for compensation, and if so, that we would be good enough to indicate what passages or arguments in Mr. Bayard's note should be taken exception to, and on what grounds.

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* In Mr. West's No. 206 of the 2nd June 1885, Print, pp. 91–98.

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In obedience to your Lordship's commands we have the honour to report—

Claim for compensation should not be pressed further.

That, having regard to all the circumstances of this case, we cannot advise that Her Majesty's Government should continue to press their claim for compensation.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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*List of Papers of Correspondence respecting the Murder of Mr. J. H. Tunstall, on February* 18, 1878, *in Lincoln County, New Mexico, United States.*

(A.) Correspondence concerning the murder of Mr. Tunstall. (Print, Confidential No. .)
(B.) "George Case." Extract from letter from Dublin Castle, September 18, 1882.
(C.) Memorandum respecting outrages on foreigners in British dominions, and on British subjects abroad. (Confidential No. 3279.)
(D.) Reports of Law Officers of the Crown on outrages on British subjects. (1873-1879.)
(E.) Volume of Foreign Relations of the United States, 1881, p. 319.
(F.) Opinions of Attorneys-General of the United States. (1835–42, vol. 3, pp. 252–253. 8vo. 1108.

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## Venezuela.

### No. 174.

*The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received June* 23.)

My Lord, *Royal Courts of Justice, June* 23, 1885.

Claims arising out of the seizure of the "Josephine" and the "Henrietta" by the Venezuelan authorities.

WE are honoured with your Lordship's commands signified in Mr. Currie's letter of the 29th April, stating that he was to transmit to us the papers* relating to the claims arising out of the acts of the Venezuelan authorities in connection with the British vessels "Josephine" and "Henrietta."

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* List of Papers sent to Law Officers, April 29, 1885:—
1. Colonel Mansfield, No. 42, July 14, 1883.
2. Mr. Anderson, M.P., November 24, 1883.
3. Colonel Mansfield, No. 2, Commercial, January 7, 1884.
4. Ditto, No. 4, Commercial, January 15, 1884.
5. To ditto, No. 11, March 3, 1884.
6. To Colonial Office, March 4, 1884.
7. Colonel Mansfield, No. 19, March 29, 1884.
8. Ditto, No. 26, April 8, 1884.
9. To Colonial Office, May 6, 1884.
10. Colonial Office, May 13, 1884.
11. Colonel Mansfield, No. 28, April 14, 1884.
12. Colonial Office, May 26, 1884.
13. To Colonel Mansfield, No. 19, May 30, 1884.
14. Colonial Office, August 21, 1884.
15. To ditto, August 28, 1884.
16. Colonial Office, September 2, 1884.
17. To Colonel Mansfield, No. 35, September 5, 1884.
18. Colonel Mansfield, No. 74, October 26, 1884.
19. To Colonial Office, November 27, 1884.
20. Colonial Office, December 8, 1884.
21. To Colonel Mansfield, No. 51, December 22, 1884.
22. Colonel Mansfield, No. 13, February 8, 1885.
23. To Colonial Office, March 13, 1885.
24. Ditto, April 29, 1885.
(A.) Colonel Mansfield, No. 16, March 9, 1885.
(B.) Memorandum (Sir E. Hertslet), April 17, 1885.
Treaty between Great Britain and Colombia, April 18, 1825. Hertslet's Treaties, vol. iii, p. 56.

Are they such as to justify diplomatic intervention, or should they be brought before the Venezuelan Courts?

That the special point upon which our opinion was desired was, whether, in view of the provisions of the Treaty between this country and Colombia of the 18th April, 1825, which was still in force as regarded Venezuela, the present claims were such as would justify diplomatic intervention by the law of nations, or ought, in the first instance, to be brought before the Venezuelan Courts of Justice, and that in drawing our special attention to Colonel Mansfield's despatch No. 16 of the 9th March, and to the Memorandum thereupon by Sir E. Hertslet, Mr. Currie was to request that we would favour your Lordship with our opinion upon the papers transmitted, together with any general observations we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Diplomatic intervention, when justifiable

That it is not an easy matter to determine in what cases British subjects should be left to their remedy against the Government of any country in the Courts of that country, and in what cases diplomatic intervention is proper, without requiring resort to such Courts in the first instance. But when the action of the officials of any country has been arbitrary and unjust, and there appears to be adequate ground for believing that no sufficient remedy would be afforded by proceedings before the Tribunals, we think that diplomatic intervention is justifiable.

Justifiable in present case; but if judicial proceedings are pending, the claim should be deferred.

And upon a review of all the circumstances, we are of opinion that the present case is within that category. If judicial proceedings are actually pending in the case of one of the vessels, it would probably be better to defer any claim in respect of that vessel until they are concluded, provided there is no unreasonable delay.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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### No. 175.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August* 6.)

My Lord, *Royal Courts of Justice, August* 6, 1885.

Detention of the "Henrietta" on charge of smuggling.

WE are honoured with your Lordship's commands signified in the Foreign Office letter of the 14th ultimo, in which papers* were forwarded to us relating to the seizure, by the Venezuelan authorities, of the British vessels "Spring Bird," "Josephine," and "Henrietta," and the detention of their crews on charges of smuggling.

That as regarded the two first-named (vessels) the claim in the case of the "Spring Bird" had been abandoned, whilst that of the "Josephine" was still *sub judice*.

That the case of the "Henrietta" was therefore the only one which called for attention. That a full statement on behalf of the owners of the latter vessel would be found in the letter addressed by Mr. Schœffer to the Colonial Secretary of Trinidad, and its annexes (marked A), a copy of which accompanied Colonel Mansfield's despatch No. 26 of the 8th April, 1884.

That the papers were referred to the Law Officers of the Crown on the 29th April last, and that we should perceive by their Report of the 23rd ultimo (marked B) that their attention was directed only to a question arising under the Treaty of the 18th April, 1825, and not to the merits of the particular claim under consideration.

That our opinion was now invited on the claim of the "Henrietta," and to the defence set up by the Venezuelan Government, and contained in the Venezuelan Minister's (Señor Quenna) reply to it. (Colonel Mansfield's despatch No. 16 of the 9th March, 1885, Inclosure 2, C.)

That the defence appeared to be that there was *primâ facie* evidence sufficient to

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* Colonel Mansfield, No. 42, July 14; Mr. Anderson, M.P., November 24, 1883; Colonel Mansfield, No. 2, Commercial, January 7; ditto. No. 4. Commercial, January 15; to ditto, No. 11, March 3; to Colonial Office, March 4; Colonel Mansfield, No. 19, March 29; ditto, No. 26, April 8; to Colonial Office, May 6; Colonial Office, May 13; Colonel Mansfield, No. 28, April 14; Colonial Office, May 26; to Colonel Mansfield, No. 19, May 30; Colonial Office, August 21; to ditto, August 28; Colonial Office, September 2; to Colonel Mansfield, No. 35, September 5; Colonel Mansfield, No. 74, October 26; to Colonial Office, November 27; Colonial Office, December 8; to Colonel Mansfield, No. 51, December 22, 1884; Colonel Mansfield, No. 13, February 8; to Colonial Office, March 13; ditto, April 29; Colonel Mansfield, No. 16, March 9; Memorandum by Sir E. Hertslet, April 17, 1885; Treaty between Great Britain and Colombia, 1825, Hertslet's Treaties, vol. iii, p. 56; Law Officers, June 23, 1885.

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justify the arrest of the vessel and crew on the charge of smuggling; that the vessel, on her voyage from Maturin to La Guayra, "in charge of her owners," was lost in a storm by the act of God; that there was no unreasonable delay or denial of justice, and that, under those circumstances, no responsibility attached to the Government.

That, according to the statement of the owners of the "Henrietta," the vessel was lost while in charge of Venezuelan officers, having been ordered to proceed, in their custody, from Maturin to La Guayra.

That assuming, however, the latter version of the facts to be correct, it was presumed that the Venezuelan Government would not be liable for the loss of the vessel, provided she was at the time in lawful custody, and that her loss was not attributable to any default on the part of the Venezuelan officers in charge.

Proposed instructions.

That your Lordship would therefore propose, subject to our opinion, to instruct Her Majesty's Representative in the above sense, and to call on him to report how far the reply of the Venezuelan Minister could be controverted as to the facts, and in what respect it could be clearly shown that there had been any irregularity in the legal proceedings, or any delay or denial of justice; and, particularly, whether the vessel, at the time of her loss, was in lawful custody, or was under lawful orders to proceed to La Guayra for the purposes of the judicial trial and inquiry then pending.

That our opinion was requested as to whether instructions, in the above sense, might properly be sent to Her Majesty's Minister, or whether we should advise any other course under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

That we concur in the general principles expressed by the Law Officers in their Report of the 23rd June, and in their application of those principles to the case of the "Henrietta."

The whole of the documents now laid before us, including the defence now set up by the Venezuelan Government, and contained in the Venezuelan Minister's despatch of the 14th February, 1885, were before the Law Officers on the 29th April.

It does not appear from the allegations of the Venezuelan Minister that any legal proceedings were ever taken against the "Henrietta."

In a suit to which the owner of the "Henrietta" was not a party, a Judge seems to have stated that there were sufficient grounds for initiating a prosecution against the "Henrietta." But it does not appear that any such prosecution was ever initiated, and her arrest was an arbitrary and unjust act.

The statement of the Venezuelan Minister, that the vessel, when lost, was in charge of the owners, is contrary to the evidence, and especially to that of the Collector of Customs at Maturin, as given in the inclosure to Colonel Mansfield's No. 28 of the 14th April, 1884.

There is no doubt that if the "Henrietta" was in lawful custody, and her loss was not attributable to any default on the part of the officers in charge, the Venezuelan Government would not be liable.

But we think the evidence negatives both these assumptions.

Claim should be proceeded with.

We are therefore of opinion that there is no ground for suspending the claim already made on the Venezuelan Government in order to make further inquiry into the facts, and that it would not be desirable to send instructions to Her Majesty's Minister in the sense indicated in the letter of the 14th July, 1885, addressed to us, but that the claim should be proceeded with.

Proposed instructions not desirable.

We have, &c.  
(Signed) R. E. WEBSTER.  
J. E. GORST.  
J. PARKER DEANE.

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### No. 176.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received August* 26.)

General Pulgar's rebellion.

My Lord, *Royal Courts of Justice, August* 25, 1885.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that he was directed by your Lordship

to transmit to us the accompanying papers[*] relative to the revolutionary movements directed against Venezuela, and to the recent appearance on the coasts of the Republic of an armed insurgent vessel. That that vessel, which was named the "Justicia Nacional," appeared to have cleared from Antwerp.

Case of the "Justicia Nacional."

That by a Decree of the Venezuelan Government, dated the 30th June last, the vessel was declared a pirate and lawful prize if captured by any ship of whatever nationality.

Venezuelan demands.

That the Venezuelan Minister at this Court had called upon Her Majesty's Government to issue orders by telegraph forbidding the supply of coals or other stores to the said vessel in any British port; and that Señor Guzman Blanco requested them further to order her detention should she come into any such port, or, failing that, her capture on the high seas by Her Majesty's naval forces.

That with reference to this case, our attention was called to the Law Officers' Reports of the 21st July, 1877, and the 2nd March, 1878, relative to the case of the "Huascar," and to the case alluded to by General Guzman Blanco, as having occurred in 1826, which was probably the "Terceira affair," which took place in 1829-30, and of which an account is given in Wheaton by Dana, page 566.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to what action should be taken on the letter of the Venezuelan Minister, and with any general observations which we might have to offer upon the case.

That Sir Julian Pauncefote was further to ask whether we were of opinion that the proceedings of the Governor of Trinidad in the matter might be approved.

The "Ambrose Light" a similar case.

We were also honoured with Sir Julian Pauncefote's letter of the 13th instant, transmitting a despatch from Her Majesty's Minister at Washington,[†] reporting the case of the "Ambrose Light," which was seized as a pirate by a cruiser of the United States, and giving the substance of the Judgment of the United States' District Court

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[*] List of Papers sent to the Law Officers, August 8, 1885:—

(A.) Inclosure in Colonial Office, August 4, 1885.  
(B.) General Blanco, July 31, 1885.  
(C.) Law Officers, July 21, 1877 (Confidential No. 4216, p. 44).  
(D.) Law Officers, March 5, 1878 (Confidential No. 4280, p. 46).

1. Law Officers, March 30, 1881 (Confidential No. 4637, p. 42).  
2. Treasury, October 22, 1884.  
3. To Treasury, November 10, 1884.  
4. Law Officers, November 5, 1884 (Confidential No. 5121, p. 138).  
5. Treasury, November 18, 1884.  
6. Colonel Mansfield, No. 76, November 14, 1884.  
6*. Law Officers, December 17, 1884 (Confidential No. 5121, p. 139).  
7. To Colonial Office, December 18, 1884.  
8. To Treasury, December 27, 1884.  
9. Colonial Office, December 27, 1884.  
10. Treasury, January 7, 1885.  
11. Colonial Office, January 8, 1885.  
12. To Colonel Mansfield, No. 2, 1885.  
13. Colonial Office, March 17, 1885.  
14. Ditto, April 7, 1885.  
15. Ditto, April 15, 1885.  
16. To General Blanco, April 20, 1885.  
17. To Colonel Mansfield. No. 20, 1885  
18. Colonial Office, May 16, 1885.  
19. To General Blanco, May 23, 1885.  
20. To Colonel Mansfield, No. 24, May 23, 1885  
21. General Blanco, July 3, 1885.  
22. To Colonial Office, July 11, 1885.  
23. To General Blanco, July 11, 1885.  
24. Mr. Hartmont, July 14, 1885.  
25. Colonial Office, July 15, 1885.  
26. To Colonial Office, July 21, 1885.  
27. To Mr. Hartmont, July 21, 1885.  
28. General Blanco, July 21, 1885.  
29. To General Blanco, July 22, 1885.  
30. To Colonial Office, July 23, 1885.  
31. To General Blanco, July 23, 1885  
32. To Treasury, July 23, 1885.  
33. To Mr. St. John, No. 31, July 24, 1885.  
34. Treasury, July 25, 1885  
35. Mr. St. John, No. 43, July 3, 1885.  
36. To Admiralty, July 30, 1885.  
37. To Colonial Office, Immediate, July 30, 1885

[†] Mr. West, No. 243, July 25, 1885.

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at New York, which appeared to be in conflict with the views of Her Majesty's Government on the subject. That the question was much discussed during the civil war, and was fully treated in chapter 5 of Mountague Bernard's work on the neutrality of Great Britain during the American War.

That Sir Julian Pauncefote was to inclose a copy of a Report of the Law Officers of the 23rd June last* bearing on the question, and to request that we would take these further papers into consideration in connection with the case submitted for our opinion in his letter of the 8th instant.

We also have the honour to acknowledge the receipt of two further despatches relative to General Pulgar's revolutionary movements against Venezuela,† which were transmitted to us by Sir Julian Pauncefote on the 20th instant.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, such action as has already been taken by Her Majesty's Government on the letter of the Venezuelan Minister is proper.

Opposed to action against revolutionists except in case of breach of Foreign Enlistment Act.

1. We cannot advise that the persons participating in the expedition should not be allowed to return to Trinidad, Grenada, or other British colony, or to any part of the United Kingdom. But if the Government of any such colony or Her Majesty's Government should receive evidence of any person so returning having been guilty of an offence against the Foreign Enlistment Act, he should be prosecuted for such offence.

Directions for observance of Act will meet second demand.

2. By directing the colonial authorities at Trinidad and Grenada to enforce strictly the Foreign Enlistment Act, Her Majesty's Government has done all that can properly be done to meet the second demand of the Venezuelan Minister.

Should not detain vessels except for piracy or breach of Act.

3. We do not think the steamers belonging to the expedition should be detained unless evidence is adduced that either the offence of piracy or some breach of the Foreign Enlistment Act has been committed.

Approve action of Governor of Trinidad.

We are further of opinion that the proceedings of the Governor of Trinidad, as described in his despatch of the 7th July, 1885, may be approved.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 177.

*The Law Officers of the Crown and Dr. Deane to the Marquis of Salisbury.—(Received August 28.)*

My Lord, *Royal Courts of Justice, August* 27, 1885.

Rebellion under General Pulgar.

Alleged breach of neutrality on part of Great Britain.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th instant, stating that with reference to his letters of the 8th‡ and 13th§ August, relating to the complaints of the Venezuelan Minister at this Court against Her Majesty's Government for neglecting the duties of neutrality, and giving aid and countenance to the rebel subjects of his country, he was directed by your Lordship to transmit to us the further correspondence noted in the margin.‖

Proposed reply to Venezuelan Minister.

That Sir J. Pauncefote was to inclose the draft of a letter which your Lordship proposed to address to General Guzman Blanco, and to request that we would be good enough to inform your Lordship, at our earliest convenience, whether we concurred in its terms, or whether it required any modifications or additions.

In obedience to your Lordship's commands we have the honour to report—

Approve letter denying allegations, with an omission.

That we recommend the omission at the end of the draft of the words "and, as a matter of fact, no such breach has taken place."

In other respects we concur in the terms of the draft letter.

We have, &c.
(Signed) R. E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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* Colombia.

† Colonial Office, August 4, 15, and 17; General Blanco, July 23 and 29 and August 5; to ditto, August 8; Treasury, August 8 and 14; to ditto, August 13; and Mr. St. John, Nos. 48, 49, and 50 of 1885.

‡ For List of Papers sent to the Law Officers, August 8, 1885, see footnote to No. 176, p. 181.

§ Mr. West, No. 243, July 25, 1885; Law Officers, June 23, 1885 (Colombia); "Neutrality of Great Britain during the American War" (by M. Bernard), Chapter V.

‖ Treasury, August 8 and 14; Colonial Office, August 4 and 17; General Guzman Blanco, July 23 and 29, and August 5, 1885.

### Annex.

*Draft of Despatch from the Marquis of Salisbury to General Guzman Blanco.*

M. le Ministre, *Foreign Office, August* , 1885.

I HAVE had the honour to receive your letters of the 29th ultimo and the 5th instant, in which you bring to the notice of Her Majesty's Government the circumstances under which it is stated that an invasion of Venezuelan territory was recently made under the leadership of General Pulgar.

I need not assure you, M. le Ministre, that Her Majesty's Government have learned with sincere regret that the peace and tranquillity of the Republic have been again disturbed by political agitators.

You are already acquainted, from the communications that have been addressed to you by this Department, that stringent instructions have been repeatedly issued to the responsible British authorities to use their utmost endeavours to prevent any breach by this country of the provisions of the Foreign Enlistment Act.

In the opinion of Her Majesty's Government no ground of complaint has been established against this country in respect of any violation of that Act. The measures that have been taken both in England and in Trinidad, some of which are related in your letter of the 29th July, tend to show the great care that has been taken by the British authorities to prevent any such violation, so far as circumstances permitted of their doing so. No evidence has been produced by the Venezuelan Government which could enable those authorities to proceed according to law against any person for a breach of the Foreign Enlistment Act [and, as a matter of fact, no such breach has taken place].*

I have, &c.

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## No. 178.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received December 8.)*

My Lord, *Royal Courts of Justice, December* 8, 1885.

Seizure and sale of the "Western Star" for entering the port of Ciudad Bolivar without proper papers.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 26th ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, the papers noted in the list accompanying,† relating to the case of the British vessel "Western Star," which was seized and sold by order of the Venezuelan authorities for having entered the port of Ciudad Bolivar without proper papers.

That a précis of the case was inclosed.

That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion as to whether any claim could properly be made, under the circumstances, upon the Government of Venezuela, on behalf of the owner of the "Western Star," and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

No claim can be made under the circumstances.

That no claim can properly be made, under the circumstances, upon the Government of Venezuela, on behalf of the alleged owner of the "Western Star."

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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* Passage in brackets omitted at recommendation of Law Officers.

† Mr. A. St. John, No. 56, August 6; to Colonial Office, August 31; Colonial Office, September 18; to Mr. A. St. John, No. 38, September 24; Colonial Office, November 12, 1885 Précis (marked A).

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CONFIDENTIAL.

(5440.)

# REPORTS

BY THE

# LAW OFFICERS OF THE CROWN.

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# LIST OF REPORTS.

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| 1 | Law Officers | Mar. 29, 1886 | Administration of territories in districts of Lower Niger. Draft of Charter to be granted to the National African Company. Approve Charter with alterations introduced to remove ambiguities | 1 |
| 2 | Law Officers | July 19, | National African Company. Proposed change of name to "The Royal Niger Company (Chartered, Limited)." Alteration in the Articles of Association. No objection to proposed changes | 2 |
| 3 | Law Officers | Dec. 13, | Proposed cession of Victoria, Ambas Bay, to Germany. Doubt possibility of justifying cession without sanction of Parliament; but it must now be completed | 3 |

## ARGENTINE CONFEDERATION.

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| 4 | Law Officers | Jan. 8, 1886 | Claim of Mr. Cantlon for losses and injuries caused by men of the National Guard. Approve instructions to Mr. Edwardes. Should lay stress on the admission by the Argentine Government of their responsibility, and the correctness of Mr. Cantlon's story | 4 |
| 5 | Law Officers | May 25, | Arrest and imprisonment or G. H. Johns, of the "Dart," and the detention of that vessel at Rosario. Circumstances of Johns' case justify a claim for compensation, but information as to the detention of the "Dart" too vague to justify, at present, any claim on that account | 5 |
| 6 | Lord Chancellor. (Memorandum) | July 15, | Arrest and imprisonment of G. H. Johns, of the "Dart." No case for claim on Argentine Government | 8 |

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| 7 | Law Officers | May 12, 1886 | British Claims. Arbitration. May decline to proceed without arrangement as to reception of evidence. As to declining to recognize awards. Opinion on following cases: Fry, Minhinnick, Simpson, Mathison, Lima Railway Company, Scott, Long, Bishop, Noble. Last should be heard. Extension of six months under Article IX of Claims Convention. Principles to govern Commission should be exactly defined | 8 |
| 8 | Law Officers | Aug. 3, | Peruvian bondholders' claims on Chile. Agreement between the bondholders and Messrs. Dreyfus, Brothers, and Co. Approve draft of reply to French Government declining to intervene under the terms of that Agreement, and stating policy of Her Majesty's Government | 16 |

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| 9 | Law Officers | Jan. 8, 1886 | Opium monopoly at Ningpo. Affords grounds for remonstrance. Information as to effect of compromise on compensation insufficient | 17 |
| 10 | Law Officers | July 31, | Extradition from Hong Kong of Cheung-a-chi and Cheung-ayo refused by Hong Kong authorities. Instructions to Governor of Hong Kong for his guidance in extradition cases. Approve draft to Colonial Office with certain alterations. Extradition of Cheung-ayo was rightly refused | 18 |
| 11 | Law Officers | Oct. 2, | Payment of probate duty on landed property of a British subject, Mr. Jones, at Amoy. Duty wrongly imposed; it should be returned. Agree in opinion of predecessors as to personalty and realty. Do not advise issue of new Order in Council | 20 |

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| 13 | Law Officers | 23, | Illicit importation of grain on the coast of the Red Sea, north of Suakin. Separate opinions of the Law Officers as to issue of a Decree prohibiting; establishment of a blockade of places not under control of Khedive, and seizure of vessels and cargoes by Her Majesty's ships, and rewards for captures | 21 |
| 14 | Law Officers | Mar. 24, | Jurisdiction of British officer charged with administration of port of Zeyla. Questions as to British military occupation, declaration of martial law, and jurisdiction of foreign Consuls. Martial law not justifiable. An Egyptian Civil Governor should be appointed, and British officer invested with civil functions | 24 |
| 15 | Law Officers | 29, | G. Salamone. Imprisoned for coining. May accede to petition for the mitigation of his sentence; but he should be allowed to return to Egypt | 25 |
| 16 | Lord Chancellor. (Memorandum) | Apr. 2, | Widening of the Suez Canal. Agree with M. Treitt as to powers of Company for effecting. Khedive's sanction necessary for required alteration of Statutes | 26 |
| 17 | Law Officers | 28, | Petition for the mitigation of sentence on P. Gameo for coining. No reasons for acceding to petition | 29 |
| 18 | Lord Chancellor. (Memorandum) | May 12, | Enforcement on foreigners of Egyptian Press Law. Precedents in cases of the "Bosphore Égyptien," the "El Ahram," and G. Laffon. Question as to manner of enforcing Egyptian Administrative Order suppressing a foreign journal. Course followed in case of "L'Indépendant," in which the appeal to the Court at Aix against the enforcement of its suppression by the French Consul was dismissed. Principle followed in Japan, and views of United States' Government thereon. The action of the Egyptian Government in case of the "Bosphore Égyptien" contrary to the Judgment of the Court at Aix. British Circular to the Powers, with draft Law, which latter the French Government decline to accept. Lord Chancellor of opinion that, though foreigners are bound by local laws, they are free from Egyptian jurisdiction; their Consuls must, therefore, enforce obedience to such laws. Pointing out proper course for Egyptian Government to pursue | 29 |
| 19 | Law Officers | May 25, | Egyptian tribute on account of Massowah, now occupied by the Italians. Cannot make claim either for reinstatement of the Egyptians by the Porte at that place, or for their relief from payment of a proportion of the tribute; nor can payment of the Zeyla tribute be withheld until the proportion is settled | 33 |

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| 25 | Law Officers .. | Apr. 28, | Petition for remission of sentence on A. Bahagier for housebreaking and stabbing. No reason at present for mitigation of sentence. Matter may be considered at a later date .. .. .. .. .. .. | 40 |
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| 27 | Law Officers .. | May 11, | Protection of submarine cables. Conflict between Treaty and Act as to liability for injuries to cables. Objection to the 100-fathom limit in Act. Action for injuries beyond the territorial jurisdiction would not lie in British Courts without proof of negligence. Proposed modification of Article IV of Treaty, in event of surrender of the 100-fathom limit, too vague. Suggesting amendment .. .. .. | 41 |
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| 29 | Law Officers .. | 29, | Paolo Lia, British subject. His arrest in Tunis and removal by the French to Algiers for trial for crime committed in Algeria. (1) Views of Her Majesty's Government against his deportation are correct, but correctness of those as to jurisdiction of French Courts depends on position of French subjects. (2) Approve past action of the Government. (3) They should maintain their protest against his deportation, and protest against his trial in Tunis, unless French subjects would be triable under similar circumstances .. | 43 |

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**CONFIDENTIAL.**

# REPORTS BY THE LAW OFFICERS OF THE CROWN: 1886.

## Africa.

### No. 1.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received March* 29.)

[In reply to the following Reference, the Law Officers and Sir J. Deane reported as on page 2.]

*Sir J. Pauncefote to the Law Officers of the Crown and Sir J. Deane.*

Gentlemen,

*Foreign Office, March* 13, 1886.

Administration of districts of the Lower Niger.
Draft of Charter for National African Company.

I HAVE the honour, by direction of the Earl of Rosebery, to transmit to you the accompanying draft of a Royal Charter by which it is proposed to confer on the National African Company (Limited) authority to undertake the administration of certain territories in the districts of the Lower Niger and the Benué, in West Africa, under powers vested in them by the native Chiefs, and under the supervision and control of Her Majesty's Government.

The draft Charter has been settled by Mr. R. S. Wright, and it follows generally the precedent of the North Borneo Charter, of which a copy is annexed.

Article 14 has been inserted to carry out the arrangements between the British and German Governments contained in the correspondence laid before Parliament in June last ("Africa No. 6, 1885").

It is intended that the judicial administration should be carried on under the West African Order, 1885, and, therefore, by officers holding direct authority from the Crown. On this point I am to refer you to the obligations undertaken by Her Majesty's Government under Article XXX of the General Act of the Berlin Conference, and to the draft of a Supplemental Order in Council which has been prepared by Mr. Wright to enable the judicial authorities in the Niger districts to carry them out.

It is of importance from the political point of view that the Charter should now be issued with the least possible delay, and it has already been submitted to and approved by the Lord Chancellor; but, before taking the further steps requisite, Lord Rosebery would be glad to be informed whether it also meets with your approval.

The various papers referred to are herewith inclosed.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

*List of Papers.*

1. Draft Charter. For Charter as granted to the National African Company, July 28, 1886, see Confidential No. 5269*.
2 West African Order in Council, March 26, 1885. Confidential No. 5094*.
3. Parliamentary Paper, "Africa No. 6 (1885)." No. 2979.
4. General Act of the Berlin Conference, "Africa No. 4 (1885)." No. 2951.
5. British North Borneo Company's Charter, November 7, 1881. Confidential No. 4528.

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*Report.*

Approve draft Charter with alterations introduced to remove ambiguity.

That we venture to suggest to your Lordship that, in order to remove the ambiguity in Lord Granville's despatch of the 16th May, 1885, and in Count Münster's reply of the 2nd June, 1885, but which was explained in Lord Granville's despatches of the 10th June, 1885, and the 16th June, 1885, some such words should be inserted in Article 14 of the draft Charter, between the words "markets" and "subjects," as the following, viz.: "but foreigners alike with British subjects will be." In other respects we approve the draft Charter.

(Signed) C. RUSSELL.
H. DAVEY.
J. PARKER DEANE.

*Royal Courts of Justice, March 29, 1886.*

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## No. 2.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received July 19.)*

My Lord, *Royal Courts of Justice, July 19, 1886.*

National African Company. Proposed change in name and Articles of Association

WE are honoured with Sir J. Pauncefote's letter of the 14th instant, stating that he was to transmit to us the papers relating to the Charter which has been issued to the National African Company, conferring powers on them in the Niger district.

That the Directors now proposed to change the name of the Company to that of "The Royal Niger Company (Chartered and Limited)."

That they proposed also to make certain alterations in the Articles of Association, which were specified in the paper marked "D," being a notice to the shareholders of the intended changes.

That they had requested the sanction of the Secretary of State, which was required by the penultimate paragraph of the last clause of the Charter, entitled "General Provisions, &c."

That Sir J. Pauncefote was to observe, with reference to the new title which the Company desired to assume, namely, "The Royal Niger Company (Chartered and Limited)," that the Charter granted to the Company was not a Charter of Incorporation.

That the Company retained its original status under the Companies' Acts, and that the Charter merely conferred on it authority to accept the benefit of the cessions from the native Kings, Chiefs, and peoples therein referred to subject to certain conditions and restrictions.

That the proposed new title seemed to imply that the Company was a Chartered Company in the sense of a Company incorporated by Royal Charter.

That if we should think that there was any weight in that objection, your Lordship would suggest to the Company that the words "Chartered and" be omitted from the new title.

That before sanctioning the other change proposed in the Articles of Association, your Lordship would be gald to be favoured with our opinion as to whether they might properly be approved by the Secretary of State.

That Sir J. Pauncefote was to add that the matter presses, and that it was important that an answer should be returned to the Company with the least possible delay.

In obedience to your Lordship's commands we have the honour to report—

No objection to proposed changes.

That (1) we do not think that the proposed new name of the Company (although not very happily chosen) is so likely to mislead as to induce us to advise your Lordship not to approve of it; (2) we are of opinion that the proposed changes in the Articles may be properly approved by your Lordship.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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*List of Papers.*

(A.) Draft of Charter as issued. See Confidential No. 5269*.
(B.) Memorandum of Articles of Association of the National African Company (Limited).
(C.) Letter from National African Company of July 13, 1886.
(D.) Notice to Shareholders of changes in the Articles of Association (Inclosure in C).

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## No. 1*.

*Memorandum by the Lord Chancellor.*

Proposed Charter for the National African Company.

I HAVE considered the draft Charter of the National African Company in conference with Mr. Wright, by whom it was finally drafted in its present form.

Position of Company.

There is no doubt that considerable difficulty is created by the fact that the Charter deals with an existing Corporation, and does not create a new one. The consequence is that the rights which the first clause professes to confer are not really conferred by it, but are possessed by the existing Company, and the only penalty for the violation of the restrictions imposed being a revocation of the Charter, that revocation would not, I think, have any legal effect.

Differs from that of North Borneo Company.

The Corporation would still exist if the Charter were revoked, and would possess substantially all its property and rights. In this respect the Charter differs from that granted to the North Borneo Company, and I cannot find any precedent for it.

But I am informed, and can well imagine it to be so, that *practically* the position of the Company would be likely to be so much affected by a revocation of the Charter that this may afford a sufficient inducement to submit to the restrictions and comply with the obligations imposed.

Best course to approve Charter with alterations.

I think, therefore, that the Charter may be approved. But it will be expedient, in my opinion, to make the slight alterations which I have suggested in clauses 1 and 2, and the consequential alteration in clause 4.

The situation is an awkward one, but, having regard to the position of the Company, and to our position under the Berlin arrangement, this is probably the best thing that can be done.

(Signed) HERSCHELL.

*May 20, 1886.*

## No. 3.

*The Law Officers of the Crown to the Earl of Iddesleigh.*—(*Received December* 14.)

My Lord, *Royal Courts of Justice, December* 13, 1886.

Proposed cession of Victoria, Ambas Bay, to Germany.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the proposed cession to Germany of the British possession known as Victoria, Ambas Bay.

That by the arrangement which was concluded in 1885 between Great Britain and Germany for separating and defining their mutual spheres of action in certain parts of Africa, it was agreed (amongst other things) that both Powers should withdraw any Protectorates which might have (? been) already established within the limits to be assigned by either Power to the other. That a reservation was, however, specially made with respect to the "Settlement of Victoria, Ambas Bay," which was to continue to be a "British possession," unless and until the German Government should come to an understanding with the English Missionary Society, who had settled there, in regard to the sale of their property, in which event it was stated by Her Majesty's Government that any difficulty as to the cession of Ambas Bay would disappear, and that they would agree to that Settlement also being included in the territories to be placed, in accordance with the arrangements, under German protection.

That the Missionary Society having sold their property at Ambas Bay, Her Majesty's Government were consequently desirous of carrying out their engagements towards Germany in respect of that Settlement.

That that engagement was not, however, made conditional upon Her Majesty's Government first obtaining Parliamentary sanction to the withdrawal of the British Protectorate over Ambas Bay, and that the question arose whether it was within the competence of the Crown to make the contemplated cession without the previous assent of Parliament.

That such a cession would seem to be properly described as part of a scheme of territorial partition or exchange, and that in view of the Report of the 3rd June, 1884, of the then Law Officers of the Crown, it was not unimportant also to observe that Ambas Bay was not subject to Parliamentary Government, nor possessed of a representative Legislature.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the question submitted in his letter, and with any general observations which we might have to offer on the case.

We were also honoured with Mr. Lister's letter of the 8th instant, in reply to a letter from this Department dated the 25th November, stating that he was directed by your Lordship to transmit to us a copy of an extract from a despatch dated the 16th May, 1884,* in which Lord Granville instructed Consul Hewett to annex Ambas Bay in Her Majesty's name, and also a copy of a despatch from Consul Hewett dated the 28th July, 1884,† in which he informed Lord Granville that he had annexed the territory in question, and in which he inclosed the Proclamation which he had issued to that effect.

That Mr. Lister was to add that no notice of the above annexation had appeared in the official Gazette.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to report—

Doubt possibility of justifying cession without sanction of Parliament; but must now carry it out.

That it is not necessary to enter into the general question whether the Crown can cede any part of British territory without the authority of Parliament; but we entertain very grave doubt whether the action of the late Government in concluding the Arrangement in question with Germany in 1885, without making that Arrangement subject to the approval of Parliament, can be justified. Having regard, however, to the circumstances now stated, and to the fact that, in pursuance of that Arrangement, the British subjects settled at Ambas Bay have now sold their property and withdrawn from that territory, we think that the Government should not refuse the

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* "Africa No. 1 (1885)," p. 16, Parliamentary No. 2928.

† "Africa No. 1 (1885)," p. 29, Parliamentary No. 2928.

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formal step needed to complete the cession, which was practically effected by the late Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

- Law Officers' Report (to Colonial Office) on Cession of Gambia, July 13, 1870 (Confidential No. 3660, p. 36*).
- Law Officers' Report on Exchange of Territory in India, June 3, 1884 (Confidential No. 5121, pp. 38–40).
- Arrangement between Great Britain and Germany, concerning their respective Spheres of Influence in parts of Africa, "Africa No. 6 (1885)," Parliamentary No. 2979.
- Law Officers' Report on Conquest of Upper Burmah, December 18, 1885 (Confidential No. 5246, p. 22.)
- Memorandum from Colonial Office, March 6, and May 6, 1875.

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# Argentine Republic.

## No. 4.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received January 9.)*

My Lord, *Royal Courts of Justice, January* 8, 1886.

Claim of Mr. Cantlon for losses and injuries caused by men of National Guard.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 15th ultimo, stating that he was to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Buenos Ayres, relating to Cantlon's claim against the Argentine Government. That in that despatch was a translation of the reply of the Argentine Minister for Foreign Affairs to a note which, in accordance with the terms of the Law Officers' Report of the 13th June last, Mr. Edwardes had been instructed to address to his Excellency in regard to the case.

That the draft of a further instruction was transmitted which your Lordship proposed to address to Mr. Edwardes in the matter, and that our opinion was requested as to whether it was right and proper under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed instructions to Mr. Edwardes.

That the instruction to Mr. Edwardes is right and proper for the prosecution of the claim made by the advice of our predecessors upon the Argentine Government.

Should lay stress on admission of responsibility by Argentine Government.

We think stress might also be laid upon the consideration that, in March 1885, when the Report of the 28th December, 1880, had been for several years in the possession of the Argentine Government, they were prepared to admit that Mr. Cantlon's story was substantially correct, and to offer him reasonable compensation upon that assumption, and that from an admission and concession of that kind the Argentine Government should not afterwards recede.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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*List of Papers sent to the Law Officers, December* 15, 1885.

(A.) Mr. Monson, No. 95, November 27, 1884.
(B.) Mr. Cantlon, December 8, 1884.
(C.) To Mr. Cantlon, January 19, 1885.
(D.) To Mr. Monson, No. 1, January 19, 1885.
(E.) Mr. Monson, No. 20, March 2, 1885
(F.) Mr. Monson, No. 25, March 16, 1885.
(G.) (1.) Mr. Monson, No. 33, March 31, 1885.
    (2.) Mr. Monson, No. 38, April 16, 1885.
(H.) Treaty between Great Britain and the Provinces of Rio de la Plata of February 2, 1825 (Treaty No 211).
(I.) To Mr West, No. 14, April 10, 1877 (in Argentine Confederation vol., January to December 1877).
(K.) Memorandum respecting Outrages on Foreigners in British Dominions and on British Subjects Abroad (Confidential No. 3279)
(L.) Law Officers, September 12, 1876 (Confidential No. 4028, p. 45).
(M.) Law Officers, August 26, 1879 (Confidential No. 4328, p. 30).
(N.) To Mr. Corbett, No 5, 1869 (in Guatemala vol., 1869).
(O.) Mr. Graham, No. 79, 1879 (in Guatemala vol., 1879).
(P.) (1.) Mr. Graham, No. 87, 1879 (in Guatemala vol., 1879).
    (2.) To Mr. Graham, No. 7, 1880 (in Guatemala vol., 1880).
(Q.) Mr. Howard, No. 161, 1883.
(R.) To Mr. Bennett, No. 6, 1884.
(S.) Mr. Harriss-Gastrell, No. 91, 1884.
(T.) Memorandum by Sir E. Hertslet, Octobor 21, 1884.
(U.) To Mr. Harris-Gastrell, No. 53, 1884.
(V.) Memorandum by Mr. Oakes, December 6, 1884 (in Confidential No. 5071).

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### Annex.

*Draft of Despatch to Mr. Edwardes.*

Sir, *Foreign Office,* , 188 .

I HAVE received your despatch No. 84 of the 28th October, together with its inclosures, in regard to the claim of Patrick Cantlon against the Argentine Government.

I have to state to you, in reply, that Her Majesty's Government cannot admit the contention advanced by the Argentine Minister for Foreign Affairs, in his letter to you of the 16th October, that a Government incurs no responsibility for the wrongful acts of its agents which it has not authorized.

Her Majesty's Government adhere to the opinion that the Argentine Government are, according to international law, responsible in this case for the wrongful acts of the National Guards, though committed without their authority; and seeing that it is practically impossible for Mr. Cantlon to bring the offenders to justice, and that he is without redress, Her Majesty's Government consider the refusal of the Argentine Government to grant him compensation unjust and unfriendly.

You will address a representation to Dr. Ortiz in the above sense, and at the same time remind his Excellency that in March last, when the Report of the 28th December, 1880, had been for several years in the possession of the Argentine Government, the latter were prepared to admit that Mr. Cantlon's story was substantially correct, and to offer him reasonable compensation upon that assumption, and you will add that Her Majesty's Government, while regretting the difference of opinion which has arisen, trust that the Argentine Government will, on further consideration, give effect to that view.

I have, &c.

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## No. 5.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received May 26.)*

My Lord, *Royal Courts of Justice, May* 25, 1886.

Arrest and imprisonment of G. H. Johns, of the "Dart," at Rosario.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 16th March, stating that he was to transmit to us the papers relating to questions arising out of the action of the Argentine authorities in seizing the British brigantine "Dart," at Rosario, on the 19th December, 1883, and imprisoning George Howard Johns, the mate of that vessel.

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That the facts relating to that case were as follows:—

It appeared that on the 17th December, 1883, the "Dart" arrived at Rosario, after passing a considerable time at Buenos Ayres, spent in discharging a portion of her cargo.

That it might be mentioned incidentally as having some bearing on a charge subsequently made against the mate of that vessel, that, on her outward voyage from England* she lost a man overboard, that fact being duly entered in her log.

That the day after she anchored at Rosario (18th December, 1883) her captain and mate were summoned to appear at the Port Captain's office, where an investigation was held, which they could not fully understand, but from which they gathered that they were accused of ill-treating the crew. That they were not detained, but on the following day the crew were taken off in the Port Captain's boat from the vessel, to which they did not return, their effects being subsequently carried on shore by the same means.

That on the 29th December the mate (G. H. Johns) was induced to go ashore in the same boat, under the belief that the British Vice-Consul had sent for him, and as soon as he landed he was put in prison.

That the captain of the vessel (S. Phillips) was in the meanwhile called upon to pay off his men, which he declined to do in view of what had taken place.

That finally, on the 19th January, the Argentine authorities issued an order for the detention of the vessel.

That those proceedings were at once notified by the British Consular authorities at Buenos Ayres and Rosario to Mr. Barrington, and that Her Majesty's Chargé d'Affaires represented them without delay to Dr. Ortiz, the Argentine Minister for Foreign Affairs.† That on the 15th January Dr. Ortiz notified to Mr. Barrington that the mate had been arrested on suspicion of having committed a murder on the high seas.‡ That on the 19th of the same month the Argentine Minister wrote that the charge which brought about the man's arrest arose from an act of disrespect shown to an Argentine Custom-house official.§

That on the 29th January Mr. Mallet, Acting British Vice-Consul at Rosario, reported the arrival of Her Majesty's ship "Wrangler" at that port, and from a letter received from the Admiralty on the 24th March (Admiralty, 22nd March), it appeared that Commander Arbuthnot, having held a Naval Court on the questions at issue between the captain and crew of the "Dart," was successful in effecting the release of that vessel and the liberation of her mate, subject to Mr. Haynes, the advocate for the defence, becoming responsible for any fines which might eventually be imposed.

That on the 24th March a despatch‖ was addressed to Mr. Barrington, in which Her Majesty's Government approved his communication with the Argentine Government on that question, and intimated that the whole of the correspondence had been referred to the Board of Trade for opinion.

**Claim for compensation to Johns.**

That that Department replied on the 28th April, and after commenting strongly on the various questions of jurisdiction at which Her Majesty's Government and the Argentine authorities were at issue, went on to state, with regard to Johns' imprisonment, that there appeared, "on the whole view of this case, to be reasons not only for serious remonstrance with the Argentine Government, but for a claim for pecuniary compensation for the serious suffering and indignities which the unwarrantable action of the authorities have caused to Mr. Johns."

That a despatch was thereupon addressed to Mr. Monson, who, since the commencement of that case had been appointed Her Majesty's Minister at Buenos Ayres, furnishing him with a copy of the Board of Trade letter, and instructing him to address a communication in the sense of it to the Argentine Government, reserving, however, the claim of compensation on Mr. Johns' behalf until receipt of their reply.

That on the 16th July¶ Mr. Monson inclosed a copy of the note addressed by him to the Argentine Government, and on the 31st Dr. Ortiz merely acknowledged his communication, promising a further answer on the subject.

That on the 29th November Her Majesty's Minister reported that he was still without a reply to his representation.

That, in the meanwhile (25th October), the Colonial Office forwarded to the Foreign Office a Memorial from Mr. Johns, the mate of the "Dart," setting forward a case against the Argentine Government claiming 20,000 dollars as damages for false imprisonment, and praying for the intervention of Her Majesty's Government on his behalf.

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* ? New York.

† Inclosures in Mr. Barrington, No. 2, January 23, 1884.

‡ Ibid., Inclosure 14.

§ Inclosure 44.

‖ No. 3, Consular.

¶ No. 9, Consular.

That as no action could be taken with regard to that claim before the answer of the Argentine Government to Her Majesty's Government's representation was received, Mr. Monson was instructed on the 4th November* to again bring the matter to Dr. Ortiz' notice.

That on the 16th December† Mr. Monson forwarded a copy of the reply of the Argentine Government, dated the 13th December, from which it appeared that the explanation given by the Federal Judge at Rosario as to the origin of the proceedings in relation to the "Dart" was that they were initiated in consequence of a Report addressed to the maritime authorities at Rosario by a Custom-house officer, who accompanied the vessel on her voyage from Buenos Ayres to that port. That that officer's Report described the acts of cruelty which he had witnessed on board during the passage up the river, and the want of respect shown to himself and an official of the Government, whom the master and mate of the vessel had threatened to throw overboard, treating him in a manner to make him feel that his life was in danger.

That the subsequent proceedings Dr. Ortiz justified upon the Report of the Federal Judge as having been in entire consonance with the laws of the country, and as having been pressed through with a rapidity quite exceptional, and, as the Judge asserted, rendered all the more difficult by the summer heats.

That the note further stated that, in the opinion of the Argentine authorities, the only explanation that could be given of the fact that the complaints made by Her Majesty's Government should have been thought by them to be well founded was that the information which had been supplied to them was "isolated, extra-judicial, and incomplete." That we were referred to the translations of Dr. Ortiz' note and of the Report of the Argentine Judge, which formed Inclosures 6 and 8 in Mr. Monson's despatch No. 19, Consular, of the 16th December, 1884, and which contained a vindication of the proceedings of the Argentine authorities in that case, and their refusal to admit that there existed any ground of complaint on the part of Her Majesty's Government.

**Claim by owners for detention of the "Dart."**

That a further communication had been received from the Colonial Office,‡ forwarding a claim from A. W. Smith and Co., the owners of the "Dart," for 1,270 dol. 70 c., on account of losses which they alleged they had suffered by the detention of their vessel at Rosario. That that letter was, in due course, forwarded to Mr. Monson, and he answered on the 6th July that the aspect of the case at Buenos Ayres remained unchanged, the Argentine authorities throwing the whole blame of the occurrence on the shoulders of the captain and mate of the "Dart."

That Mr. Monson further suggested that, if it was intended to push the claims for compensation, sworn statements should be obtained from the officers of the English vessel denying the accusation brought against them with regard to their treatment of the Custom-house official, as that charge, if not disproved, would, in Mr. Monson's opinion, be regarded by the Argentine authorities as a complete answer to any claim for damages which might be put forward.

That the Colonial Office were accordingly applied to, and that the requisite statutory declarations of Messrs. Phillips and Johns were contained in the letter from that Department of the 12th January last.

That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion as to whether, in view of the explanations given by the Argentine Judge in his Report above referred to, and the absence of precise and reliable particulars respecting the acts of injustice or delay of justice complained of, the circumstances of the case were such as to justify Her Majesty's Government in making a claim on the Argentine Government for compensation to the owners of the "Dart" and to G. H. Johns, the mate of that vessel.

In obedience to your Lordship's commands we have the honour to report—

**Johns arrested and imprisoned without due cause.**

That we think that the fair inference, from the documents before us, is that Johns was arrested and kept in prison for twenty-five days on a charge for which there was no reasonable foundation, and which was not cognizable by the Argentine Tribunals, and the other charges were only put forward by the authorities as the "reason and cause" for his arrest when they had discovered that the real ground was untenable.

On the other hand, we ought to point out to your Lordship that, in the 11th paragraph of his Petition to Her Majesty, Johns seems to admit that he was

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* No. 11, Consular.

† No. 19, Consular.

‡ March 25, 1885.

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informed, while in prison, by his attorney, Mr. Haynes, though it is not stated on what date, that he was arrested upon the charges not only of committing murder upon the high seas, but also of savagely ill-treating the crew, and of having abused the Custom-house officer.

Johns was acquitted of these latter charges both by the Naval Court and the Argentine Tribunal, though they seem to have been made not without foundation.

Circumstances of case justify claim.

On the whole, we think that the circumstances of the case are such as to justify Her Majesty's Government in making a claim on the Argentine Government for compensation to Johns.

Information as to detention of vessel too vague to justify claim.

With regard to the detention of the vessel, the information in your Lordship's possession is so vague and unsatisfactory as not, in our opinion, to be sufficient to justify, at present, a claim for compensation on behalf of the owners.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

*List of Papers.*

Mr. Barrington, No. 2, January 23; ditto, No. 3, February 4; ditto, No. 5, February 9; Admiralty, March 22; to Mr. Barrington, No. 3, Consular, March 24; Board of Trade, April 28; to Mr. Monson, No. 5, Consular, May 19; Mr. Monson, No. 9, Consular, July 16; ditto, No. 10, Consular, July 31; ditto, No. 17, Consular, November 29; Colonial Office, October 25; Mr. Monson, No. 19, Consular, December 16, 1884; Colonial Office, March 25; Mr. Monson, Consular, July 6, 1885; Colonial Office, January 12, 1886.

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### No. 6.

*Memorandum by the Lord Chancellor.*

Arrest and imprisonment of G. H. Johns, of the "Dart."

I CANNOT think that there is a case such as to warrant our making and insisting upon a claim against the Argentine Government.

An allegation seems to have been made that Johns had committed a criminal offence or offences. Upon this he was arrested, and thereupon the Argentine Tribunals appear to have proceeded in ordinary course, according to their customary procedure, and without any unusual delay. Assuming that the charges made were not well-founded, assuming, too, that some or all of them were not cognizable by the Argentine Tribunals, still, if all these questions were adjudicated upon according to the ordinary course of criminal procedure of that country, I do not see how this affords a sound basis for a claim of compensation under such circumstances as existed in the present case.

No case for claim.

I have myself known of a case where an American sailor was detained in prison in this country and tried on a charge of manslaughter. It was held at the trial that the Courts of this country were not competent to try him, and on this ground he was acquitted. I am sure we should not have thought a claim for compensation made on his behalf by the United States' Government to be well-founded.

H.

46, *Grosvenor Gardens, July* 15, 1886

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## Chile.

### No. 7.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.*—(*Received May* 12.)

[In reply to the following Reference, the Law Officers reported as on page 11.]

*Sir J. Pauncefote to the Law Officers of the Crown and Sir J. Deane.*

Gentlemen, *Foreign Office, March* 31, 1886.

Arbitration for settlement of British claims.

I HAVE the honour to transmit to you, by direction of the Earl of Rosebery, the papers noted in the accompanying list, and to request that you will favour his Lordship with your opinion on certain questions which have arisen out of the arbitration now pending between Great Britain and Chile for the settlement of the claims of British subjects for losses sustained by them during the war between Chile and Peru.

As to admission of evidence in support of claims.

The arbitration was agreed to by a Convention signed on the 4th January, 1883, and I am to refer you to the inclosed printed Statement of the general facts of the case, from which you will perceive that Conventions similar to the British one were entered into by Chile with France, Germany, and Italy respectively, and that the British, French, and Italian arbitrations have been suspended pending the settlement of a difficulty which has arisen respecting the admission of evidence in support of the claims. The German arbitration has not yet commenced, and the German Government decline to enter upon it until a satisfactory arrangement has been arrived at on the question of evidence.

I am next to invite your attention to the documents referred to in paragraph 3 of the printed Statement and to Document (M), which contains Mr. Fraser's despatches Nos. 50, 51, 60, 61, and 62, in which the nature of the dispute which has given rise to the present deadlock is explained. In Mr. Fraser's No. 60 copies are inclosed of the notes addressed by him and by the German Representative (Baron Schenck) to the Chilean Government (Document M).

The French and Italian Representatives also addressed notes to the Chilean Government, but no copies of them have been received. (See Mr. Fraser's No. 62, Document M.)

The replies of the Chilean Government will be found also in Mr. Fraser's No. 62.

It is contended by the foreign Representatives that numerous claims have been rejected in consequence of the improper exclusion of material evidence.

The Articles of the Convention which bear on the question of Procedure and Evidence are IV, V, and VI (see Convention, Document A), from which it will be seen that the Mixed Commissions are bound to follow "the practice and jurisprudence established by analogous modern Tribunals of highest authority," and to set forth briefly in their Judgments the facts, the evidence in support of them, and the principles of law on which each decision is based.

Before proceeding to notice the British cases which are the subject of dispute, I am to refer to Mr. Fraser's despatch No. 61 (Document M), containing extracts from the award of the Italo-Chilean Commission in the case of Pedro Viola, and his remarks thereon.

It is explained in the Statement annexed that the Brazilian Umpire originally appointed (Senhor Netto) resigned in February 1885, and was replaced in the following August by Senhor Lafayette.

The cases heard by the Anglo-Chilean Commission since it resumed its labours with the new Brazilian Umpire are the following:—

1. Fry.
2. Minhinnick.
3. Simpson.
4. Mathison.
5. Lima Railways Company.
6. Scott and Long.
7. James Bishop.

The first three claims stand in a peculiar position. They were heard under the presidency of the first Brazilian Umpire. No Judgment has been delivered, but there was a signed award in the two first cases, and in the third case only a *procès-verbal*, recording that it was disallowed. The Commission, when it resumed its sittings with the new Brazilian Umpire, delivered Judgment on the first two cases in accordance with the original awards; and in the third case, in which no award had been signed, they adopted the *procès-verbal* in the place of a formal sentence. (Mr. Fraser's No. 48, Appendix A, p. 3 A.)

Copies of five of the awards in the above seven cases will be found in Appendix (A), and references to the despatches and other documents relating thereto will be found at the end of the printed Statement.

There is another case to which I am to request your attention, and which was decided before the appointment of the new Brazilian Umpire. It is that of James Noble, whose claim was dismissed because he was unprepared to prove his British nationality, though no notice had been given that such proof would be required.

The particulars of the case will be found in the Report of the Law Officers of the 11th November, 1884 (p. 71, Confidential Print No. 5070 of 1884, No. 97), and Mr. Drummond Hay's despatches Nos. 8 and 9 of August 1884 (pp. 54 and 60 of the

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same, Nos. 80 and 81), and Mr. Pakenham's No. 53 of September 1884 (p. 61 of the same, No. 82). In accordance with the Report of the Law Officers, instructions were sent to Mr. Pakenham to address a remonstrance to the Chilean Government against the hardship and injustice of that decision (Mr. Pakenham's No. 64 of the 21st November, 1884, p. 72 of Confidential Print No. 5070 of 1884, No. 101).

The reply of the Chilean Government will be found in Mr. Fraser's despatch No. 64 of the 27th October, 1885 (p. 118 Confidential Print 1885, No. 164).

From the despatches of Her Majesty's Representatives at Santiago, and the awards themselves, it seems difficult to establish that there was any rejection of evidence in the sense of a refusal to admit its production. The evidence seems to have been received and examined, and the real complaint would rather seem to be that it was not accorded any weight, but treated as worthless on grounds which cannot be supported, such, for instance, as that the evidence was taken without "countercitation," or that the witnesses were interested parties, such as servants or persons themselves having other claims of a similar kind.

The decisions are based on a variety of considerations which renders it extremely difficult to judge whether, even if proper weight had been given to such evidence, the result would have been different.

Fry's case.

In case No. 1 (Fry's) the decision was based on three grounds, one of which was that the claimant had failed to prove his ownership of the cargo destroyed. The decision there was unanimous.

Minhinnick's and Simpson's cases.

In cases 2 and 3 (Minhinnick's and Simpson's) the British Arbitrator dissented from the adverse decision, and the question of the validity of the awards seem to turn, not on the rejection of evidence, but on the particular mode in which the case was dealt with, as detailed in the Tabular Statement inclosed in Mr. Drummond Hay's No. 8 (Appendix A., p. 3).

Mathison's case.

In case No. 4 (Mathison's) no copy of the award has been furnished, and it only appears from the Tabular Statement inclosed in Mr. Drummond Hay's No. 11 (Appendix A, p. 5) that the claim was rejected on the ground of "insufficient proof."

Lima Railways Company's case.

In case No. 5 (Lima Railways, Appendix A, p. 7) the complaint seems to be that the conclusion on the facts, with respect to the misconduct of the Chilean troops, is diametrically opposed to that arrived at in the previous case of the Chorrillos Gas Company, reported in Mr. Pakenham's despatch No. 62 of the 24th October, 1884 (Confidential Print p. 87), and that the Tribunal rejected all the evidence tendered by the claimants, and founded its judgment solely on the official Reports of the Chilean and Peruvian Commanders, and on an account of an officer of the French navy, who was a spectator.

Scott and Long's case.

In case No. 6 (Scott and Long), all the evidence adduced by the claimants was rejected as invalid, contrary to the vote of the British Arbitrator. The particulars are given in the Tabular Statement inclosed in Mr. Drummond Hay's No. 11 (Appendix A, p. 6), and the award, *ibid.*, p. 18.

Bishop's case.

In case No. 7, the evidence of the claimant was held "unworthy of consideration, being vague and contradictory in detail." (See Tabular Statement in Mr. Drummond Hay's No. 11 (Appendix A, p. 5), and Award, *ibid.*, p. 22.)

But whatever view may be formed on a perusal of the documents, it is conceived that Her Majesty's Government were fully justified in declining to proceed with the arbitration, on the ground stated by Mr. Fraser in his note to the Chilean Minister of the 13th October, 1885 (Document M, p. 99).

"I could not," wrote Mr. Fraser, "without a grave failure of duty, permit British claims to be judged under conditions declined by all the Representatives of other nationalities engaged in similar discussions with the Republic, as contrary both to the general principle of arbitration and to the evident sense of our several Conventions."

The original term of two years fixed for the sittings of the Commission by Article IX of the Convention would naturally have expired on the 1st March of this year, but Her Majesty's Government have contended that the period which elapsed between the resignation of the first Brazilian Umpire and the appointment of the second should not be included in the computation of that term. The Chilean Government, however, declined to accede to that view; but they are willing to extend the term for a further term of six months, as provided by Article IX.

I am to request that you will take all the papers into your consideration, and that you will favour Lord Rosebery with your opinion—

Points submitted for opinion.

1. Whether, under the circumstances, Her Majesty's Government are justified in declining to proceed with the arbitration until a satisfactory arrangement has been arrived at between all the Powers concerned in regard to the reception of evidence.

2. Whether any of the awards are such as Her Majesty's Government can properly decline to recognize, on the ground of illegality, injustice, irregularity, or departure from the terms or the spirit of the Convention.

3. Whether Her Majesty's Government are entitled to insist on the claim of James Noble being heard, and, in the meanwhile, to refuse to recognize the dismissal of his claim as binding under the Convention.

4. Whether, if the arbitration is to be resumed, Her Majesty's Government can only claim an extension of six months under Article IX of the Convention, notwithstanding the resignation of the first Brazilian Arbitrator.

5. And generally, as to the course which should be pursued by Her Majesty's Government with reference to the present position of this arbitration.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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### *List of Papers.*

1. Printed Statement (see p. 12).
2. Appendix (A). List of British claims decided by the Claims Commission since the reopening of the Tribunal on the 10th August, 1885.
3. Documents marked (A–R), viz.:—
    - (A.) Convention between Great Britain and Chile, January 4, 1883. "Chile No. 2 (1883)." Foreign Office No. 2663.
    - (B.) Mr. Hay, No. 3, March 1, 1884. Confidential No. 5070, p. 26.
    - (C.) Mr. Barrington, No. 117, November 24, 1884, containing Memorial from the claimants. Confidential No. 5210, p. 6.
    - (D.) Law Officers, March 13, 1885, containing Memorandum. Confidential No. 5246, p. 23.
    - (E.) To Mr. Barrington, No. 34, April 27, 1885. Confidential No. 5210, p. 50.
    - (F.) Mr. Pakenham, Telegraphic, February 3, 1885. Confidential No. 5210, p. 18.
    - (G.) Mr. Townley, Telegraphic, May 19, 1885. Confidential No. 5210, p. 60.
    - (H.) Mr. Fraser, No. 38, Confidential, August 6, 1885. Confidential No. 5210, p. 83.
    - (I.) Mr. Hay, Telegraphic, September 21, 1885. Confidential No. 5210, p. 84.
    - (J.) To Sir J. Walsham, October 3, 1885. Confidential No. 5210, p. 86.
    - (K.) Sir J. Walsham, October 8, 1885. Confidential No. 5210, p. 86.
    - (L.) To Mr. Fraser, Telegraphic, October 14, 1885. Confidential No. 5210, p. 87.
    - (M.) Mr. Fraser, No. 50, September 15; ditto, No. 51, September 19; ditto, No. 60, October 14; ditto, No. 61, October 15; ditto, No. 62, October 24, 1885. Confidential No. 5210, pp. 93, 94, 98, 101, and 110.
    - (N.) Memorandum, December 8, communicated by M. Catalani, December 9, 1885. Confidential No. 5210, p. 110.
    - (O.) To M. Catalani, December 15, 1885. Confidential No. 5210, p. 127.
    - (P.) M. Catalani, December 28, 1885. Confidential No. 5416, p. 1.
    - (Q.) To M. Catalani, January 7, 1886. Confidential No. 5416, p. 1.
    - (R.) Señor Martinez, December 14, 1885. Confidential No. 5210, p. 126.
4. Confidential Print, 1879–1881. Confidential No. 4602.
5. Ditto, 1884. Confidential No. 5070.
6. Ditto, 1885. Confidential No. 5210.

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### *Report.*

### *The Law Officers and Sir J. Deane to the Earl of Rosebery.*

IN obedience to your Lordship's commands, conveyed on the 31st March, we have the honour to report—

Her Majesty's Government may decline to proceed with arbitration until question of evidence has been settled.

That (1) having regard to the action taken by the French and Italian Governments, we are of opinion that, under the circumstances, Her Majesty's Government are justified in declining, in concurrence with the Representatives of those Powers, to proceed with the arbitration, until a satisfactory arrangement has been arrived at between all the Powers concerned, in regard to the reception of evidence.

But, for the reasons stated in the following paragraphs of this Report, we do not anticipate that much advantage will be gained without a reconstitution of the Tribunal of Arbitration.

At the same time, Her Majesty's Government will probably not be disposed to assent to the extreme doctrines asserted in the Memorandum of the French "Comité Consultatif."

Question of declining to recognize awards. There has not been such a disregard of evidence as to amount to denial of justice.

(2.) Subject to our observations in James Noble's case, and some of the other cases, we are of opinion that it will be difficult for Her Majesty's Government to decline to recognize any of the awards, on the ground of illegality, injustice, irregularity, or departure from the terms or spirit of the Convention. Although some of the "considerations" contain propositions of international law, which are, perhaps, too broadly stated, the awards purport to proceed on the result of the evidence before the Tribunal, and the vice (if any) of the awards appears to us to consist, not so much in

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the wrongful rejection of evidence, but in the insufficient weight attached by the Tribunal, to the evidence tendered by the claimants.

The estimate of the weight of evidence is a matter peculiarly within the jurisdiction of the Arbitrators, and, on the materials before us, we cannot advise your Lordship, either that there was no evidence upon which the Arbitrators could rightly come to the conclusions expressed in their awards, or that there has been such a perverse disregard of the evidence tendered by the claimants as to amount to a denial of justice.

To take the cases in detail.

**Fry's case. Nothing more to be done.**

No. 1 (Fry's case). This was unanimously disallowed for want of proof of his ownership of the goods, and nothing more can be said about it.

**Minhinnick's and Simpson's cases should be reheard.**

Nos. 2 and 3 (Minhinnick's and Simpson's cases). These were adjudicated on before Senhor Netto resigned. An award was signed by Senhor Netto, apparently after his resignation, in Simpson's case, but it refers for its reasons to the award in Minhinnick's case, which was also signed by Senhor Netto, but his signature to which was afterwards erased by him.

We think that Her Majesty's Government would be justified in demanding to have these cases reheard, on the ground that Senhor Netto was apparently *functus officio* when he signed the award in Simpson's case, and also on the ground (which seems to us the stronger one) that there is no final sentence whatever in Minhinnick's case, as required by Article VI of the Convention, and that, as regards Simpson's case, the award (even if properly signed) is not really such a final sentence as is contemplated by Article VI, inasmuch as it purports (in the first consideration) to proceed upon the precedent of Minhinnick's case, the award in which was repudiated by Senhor Netto.

**Mathison's case. Express no opinion.**

No. 4 (Mathison's case) was disallowed, and apparently unanimously, for insufficiency of proof.

There is no award, and we can express no opinion upon it.

**Lima Railways Company's and Scott and Long's cases. Cannot say awards are wrong.**

No. 5 (Lima Railways Company) and No. 6 (Scott and Long). The Tribunal seems to have come to the conclusion of fact, that the town was fired on the 13th January, 1881, in the course of, and for the purpose of, the military operations of the Chilean army, and that the fire spread for three days, and that the railway stations and store were (or may have been) burnt in this conflagration, and, further, that the pillage complained of took place in the course of, or immediately after, the storming of the town.

We must remark that the burden of proof was on the claimants, and although it is difficult to avoid the suspicion that a thoroughly satisfactory Tribunal would have come to a different conclusion, we cannot, on the materials before us, say that the awards are certainly wrong, or, at any rate, perversely so. Not much (we think) can be made of the different award in the previous case of the Chorrillos Gas Company.

The Chilean Government may say that the decision in that case was arrived at on other evidence, and in the last resort, that the decision in the Gas Company's case was wrong, and that in the Railways Company's case was right.

**Bishop's case is the strongest case for remonstrance.**

No. 7. (Bishop's case). This seems to us the strongest case for remonstrance on the part of Her Majesty's Government. The Tribunal seems to have decided it on the ground that the claimant had not made out his case. But if it be the fact that the house was situate a mile or a mile and a-half from the battle-ground, and that the Peruvians made no real resistance at Miraflores (as stated by Mr. Fraser in his despatch of the 11th November, 1885), we agree in his conclusion that "there is no real question here of injury in regular military operations."

**Noble's claim.**

3. Inasmuch as James Noble states in his declaration (made in compliance with the rules, and duly sworn before a British Consular Agent) that he was then a British subject, and (as we understand) there was no evidence to the contrary, or grounds for suspecting the untruth of his statement, we think that there was evidence of his nationality upon which the Tribunal ought to have acted, and proceeded to hear his claim on the merits.

**Should insist on its being heard.**

And we are of opinion that their refusal either to accept such *primâ facie* evidence or to give Noble time to adduce further evidence, was such a denial of justice as entitles Her Majesty's Government to insist in his claim being heard, and, in the meanwhile, to refuse to recognize the dismissal of his claim as binding under the Convention.

**Extension of six months under Article IX.**

4. We are of opinion that Her Majesty's Government can only claim an extension of six months under Article IX of the Convention, notwithstanding the resignation of the first Brazilian Arbitrator.

**Concert with other Powers. Principles to govern Commission should be more exactly defined.**

5. We have so fully discussed the different points of the case in the foregoing paragraphs of this Report, that we feel we cannot usefully trouble your Lordship with any further observations, beyond pointing out that it is desirable, as far as possible, to act in concert with the other Powers concerned, and that, if possible, the principles to govern the Commission should be more exactly defined.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## *Statement to accompany Reference to the Law Officers.*

ON the 4th January, 1883, a Convention was signed between Great Britain and Chile by Mr. J. de V. Drummond Hay, Her Majesty's Chargé d'Affaires at Santiago representing Great Britain, and Señor Luis Aldunate, Minister for Foreign Affairs, representing Chile, for the settlement of the claims of British subjects arising out of the acts and operations of the Chilean forces during the war between Chile on the one part, and Peru and Bolivia on the other.

A copy of the Convention is annexed (Document A). Similar Conventions with Chile were entered into by France and Italy, and at a later period by Germany. The British, French, and Italian Commissions have heard and decided a certain number of claims, but the German Commission has not yet entered upon its functions.

The three Conventions, which are identic, consist of twelve Articles, of which the following is the substance:—

Article I provides for the settlement of British claims by means of a Tribunal of Arbitration or Mixed International Commission.

Art. II specifies that the Commission shall be composed of three members: one named by Her Majesty, the other by the President of Chile, and a third by the Emperor of Brazil.

Art. III lays down that the losses or damages for which compensation is claimed must have been incurred between the 14th February, 1879, and the day on which Treaties of Peace or Covenants of Truce may be concluded between the belligerents, or until such time as hostilities cease.

Art. IV deals with the mode of examination of claims.

Art. V provides for the appointment of an Agent by each Government to act on its behalf in presenting the claims.

Art. VI explains the principles on which the Commissioners will act, and the forms of procedure.

Art. VII treats of the appointment of secretaries and such other officers as may be deemed requisite, as well as the mode of carrying out the decisions of the Commission.

Art. VIII enacts that claims shall be presented to the Commission within six months from the date of its first sitting, and that all claims presented subsequently will be barred. It also provides for the creation of fresh claims in the contingency of a continuance of hostilities.

Art. IX fixes the duration of the Commission at two years from the date of its first meeting, and provides for its prolongation for a further term, not exceeding six months, in certain indicated eventualities.

Art. X provides for the expenses of the Commission, salaries of Commissioners and other officers, and the payment of such awards as may be made.

Art. XI states that the decisions of the Commission will be accepted as final.

Art. XII deals with the question of ratification.

**Mr. Drummond Hay No. 3; March 1, 1884.**

2. The Commission met for the first time on the 1st March, 1884, the Commissioners being Mr. Pakenham, Her Majesty's Minister in Chile, for Great Britain; Senhor Luis Aldunate, for Chile; and Senhor Lopez Netto, Third Commissioner and Umpire. The latter was elected President of the Tribunal, and other preliminary steps were taken for the organization of the Court. (Document B.)

3. In October 1884 the Italian Ambassador at this Court addressed a note to Earl Granville, calling attention to certain general principles maintained by the Tribunal of Arbitration to which exception was taken by his Government (Count Nigra, 30th October, 1885: Confidential Print No. 5070, 1884, p. 66*, No. 89*).

That note was referred to the Law Officers of the Crown, whose Report thereon will be found at p. 84 (No. 104) of the Confidential Print No. 5070, 1884.

In the same month Mr. Barrington, Her Majesty's Representative at Lima, transmitted a Memorial from British subjects in Peru complaining of the proceedings of the Anglo-Chilean Commission, especially in regard to the exclusion of evidence (*Ibid.*, p. 73, No. 103).

The instructions sent to Mr. Barrington in reply to that Memorial will be found in Document E.

Mr. Barrington, No. 117; November 24, 1884.

On the 24th November following Mr. Barrington forwarded to Lord Granville two copies of a joint Memorial addressed to the foreign Representatives in Lima by the International Committee acting on behalf of the foreign residents in Peru, who had presented claims against the Chilean Government complaining of the decisions of the Commission on certain grounds therein stated. (Document C.) This Memorial was referred to the Law Officers for their opinion, and their Report, dated the 13th March, 1885, is annexed. (Document D.) Instructions in the sense of that Report were sent to Her Majesty's Representatives both in Peru and in Chile. (Documents C, E.)

Law Officers; March 13, 1885.

To Mr. Barrington, No. 34; April 27, 1885.

Mr. Pakenham, Telegraphic; February 3, 1885.

4. On the 3rd February, 1885, a telegram was received from Her Majesty's Minister at Santiago, stating that the Brazilian Commissioner had been ordered home, and that he would not return. (Document F.)

Mr. Townley, Telegraphic; May 19, 1885.

Mr. Fraser, No. 38, Confidential; August 6, 1885.

5. On the 19th May, 1885, Her Majesty's Chargé d'Affaires at Rio de Janeiro reported by telegraph that Senhor Lafayette had been named Brazilian Commissioner in place of Senhor Netto. In August following, Mr. Fraser, who had succeeded Mr. Pakenham as Her Majesty's Minister in Chile, reported the arrival of Senhor Lafayette at Santiago; and, whilst expressing the hope that the sittings of the Commission would be resumed, pointed out several causes which might create difficulties. (Documents G and H.)

Mr. Drummond Hay, Telegraphic; September 21, 1885.

Sir P. Currie to Sir J. Walsham; October 3, 1885.
Sir J. Walsham to Sir P. Currie; October 10, 1885.

6. A telegram dated the 21st September, 1885, was received from Mr. Drummond Hay, the British Agent on the Claims Commission, reporting that the arbitration was hopeless, and that the reason had been telegraphed in full to Paris. Inquiry was accordingly made in Paris, when it appeared that the difficulty had been caused by the action of the new Brazilian Commissioner and Umpire in regard to the rejection of evidence. The French Representative had in consequence been instructed by telegraph to suspend all proceedings as regarded French claims until he had had an opportunity of discussing the question with Senhor Lafayette. The French Government proposed, should the latter persist in maintaining his views, to submit the whole matter to the British and Italian Governments, with a view to concerted action. Her Majesty's Minister in Chile was instructed by telegraph to follow the same course as his French colleague. (Documents I, J, K, L.) The Italian Government have also followed the same course. (Document N.)

To Mr. Fraser, Telegraphic; October 14, 1885.

Mr. Fraser, No. 60; October 14, 1885.
Ibid., No. 61; October 15, 1885.
Memorandum communicated by M. Catalani; December 9, 1885.
To M. Catalani; December 15, 1885.
M. Catalini; December 28, 1885.
To M. Catalani; January 7, 1886.
Señor Martinez to Sir J. Pauncefote; December 14, 1885.

7. Detailed despatches have since been received from Mr. Fraser, explaining more fully the difficulties which have arisen, and a correspondence has taken place with the Italian Chargé d'Affaires in London upon the subject. The Chilean Minister at this Court has likewise written to inquire what course Her Majesty's Government propose to adopt. (Documents M, N, O, P, Q, R.)

An account of the British claims heard by the Commission up to the present time, with the decisions thereon, is contained in Appendix (A).

8. The first three decisions are those in the claims of Fry, Minhinnick, and Simpson, of which an account is given in Mr. Fraser's despatch No. 48 of the 8th September and Mr. Drummond Hay's despatch No. 8 of the 25th September last (Appendix A, pp. 1 and 3 A).

9. The next four decisions are those in the cases of (1) Mathison, (2) The Lima Railways Company, (3) Scott and Long, and (4) Bishop, of which particulars are given in Mr. Fraser's despatch No. 63 of the 26th October last (Appendix A, p. 7), Mr. Fraser's No. 70 of the 10th November (Appendix A, p. 18), and Mr. Drummond Hay's No. 11 of the 27th November last (Appendix A, p. 4).

10. The last decision is that in the case of Bishop, the particulars of which are given in Mr. Fraser's despatch No. 71 of the 11th November last (Appendix A, p. 21).

11. The nature of the difference which has arisen between the Chilean Government and the foreign Representatives is explained in Mr. Fraser's despatch No. 60 of the 14th October, 1885 (Document M), from which it appears that the main question turns on the proper construction of Article IV of the Convention, and the degree of latitude given by its terms in regard to the reception of evidence.

12. From the same despatch, it will be seen that the German Government decline to enter upon their arbitration until this point is satisfactorily settled.

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The documents containing the particulars of the decisions of the Commission, and its awards in each of the British cases above referred to, are the following:—

### 1.—*Fry's Case.*

See Mr. Fraser's No. 48 of the 8th September, 1885 (Appendix A, p. 3 A), containing the award, and Mr. Drummond Hay's No. 8 of the 25th September, 1885 (Appendix A, p. 1). (Tabular Statement No. 10, Appendix A, p. 3.)

### 2.—*Minhinnick's Case.*

See Mr. Fraser's No. 48 of the 8th September, 1885 (Appendix A, p. 3 A), and Mr. Drummond Hay's No. 8 of the 25th September, 1885 (Appendix A, p. 1). (Tabular Statement No. 17, Appendix A, p. 3.)

No award, but *procès-verbal* substituted.

See explanation in Mr. Fraser's No. 48 and Inclosure 3 (Appendix A, p. 3 A).

### 3.—*Simpson's Case.*

See Mr. Fraser's No. 48 of the 8th September, 1885, and award in Inclosure 2 (Appendix A, p. 3 A). Also Mr. Drummond Hay's No. 8 of the 25th September, 1885 (Appendix A, p. 1). (Tabular Statement No. 18, Appendix A, p. 3.)

### 4.—*Mathison's Case.*

See Mr. Drummond Hay's No. 11 of the 27th November, 1885 (Tabular Statement No. 16). (Appendix A, pp. 4 and 5.)

No award.

### 5.—*Lima Railways Case.*

See Mr. Fraser's No. 63 of the 26th October, 1885 (Appendix A, p. 7), containing the award, and Mr. Drummond Hay's No. 11 of the 27th November, 1885 (Tabular Statement No. 25). (Appendix A, pp. 4 and 5.)

See also Memorial in Mr. Barrington's despatch No. 106 of the 22nd October, 1884 (Confidential Print No. 5070, 1884, p. 73, No. 103).

Printed Statement, paragraph 3.

Also Mr. Pakenham's despatch No. 62 of the 24th October, 1884 (Confidential Print No. 5070, 1884, p. 87, No. 111).

Also account of the Battle of Chorillos and Miraflores given in Sir Spenser St. John's despatch No. 9 of the 22nd January, 1881 (Confidential Print No. 4602, 1879-81, p. 35, No. 38).

### 6.—*Scott and Long's Case.*

See Mr. Fraser's No. 70 of the 10th November, 1885 (Appendix A, p. 18), containing the award.

Also Mr. Drummond Hay's No. 11 of the 27th November, 1885 (Tabular Statement No. 31). (Appendix A, pp. 4 and 6.)

### 7.—*Bishop's Case.*

See Mr. Fraser's No. 71 of the 11th November, 1885 (Appendix A, p. 21), containing the award, and Mr. Drummond Hay's No. 11 of the 27th November, 1885 (Tabular Statement No. 19). (Appendix A, pp. 4 and 5.)

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### No. 8.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received August 4.)*

*Royal Courts of Justice, August* 3, 1886.

My Lord,

Peruvian Bondholders' claims on Chile. Agreement between bondholders and Messrs. Dreyfus and Co.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 17th ultimo, stating that he was to transmit to us the papers relating to the question of an Agreement which was signed on the 23rd March last between the Peruvian Bondholders' Committee and Messrs. Dreyfus, Brothers, and Co., settling disputed questions of priority and making arrangements for joint action concerning their respective rights against the Chilean Government. (Print, p. 21.)

That, by section 5 of that Agreement, its validity was made dependent on the consent of the British and French Governments to accept the obligations defined in section 2, under the heading of "Intervention of the Governments," and that on that point communications had taken place between Her Majesty's Government and that of France, to which our special attention was invited. (Print, pp. 65 and 69.)

That the question of the intervention of Her Majesty's Government on behalf of the English holders of nitrate certificates and of the bondholders was reported on by the Law Officers of the Crown in two letters dated the 2nd February, 1884. (Print, pp. 93, 94.)

That your Lordship proposed to reply to M. Waddington's last letter in the terms of which a draft was inclosed therewith, and that Sir J. Pauncefote was to request that we would favour your Lordship with our opinion whether that reply met with our concurrence and approval.

In obedience to your Lordship's commands we have the honour to report—

Approve draft reply to French Government declining to intervene under terms of Agreement.

That we approve the draft of the despatch which your Lordship proposes to write to M. Waddington.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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Annex.

*Draft of Note from the Earl of Iddesleigh to M. Waddington.*

*Foreign Office*, , 1886.

M. l'Ambassadeur,

I HAVE the honour to acknowledge the receipt of the note addressed by your Excellency to my predecessor on the 2nd ultimo, in which you convey the wish of your Government to be informed of the views of Her Majesty's Government in regard to two points arising out of the Agreement signed on the 23rd March last between Messrs. Dreyfus and the holders of Peruvian bonds.

The French Government inquire through your Excellency—

1. Whether, in the opinion of Her Majesty's Government, "it is expedient that the two Governments should accept the part assigned to them by Article 4 of the above-named Agreement, namely, to examine jointly the claims of their nationals, to determine their validity, and to discuss the amount at which they should be fixed."

2. If Her Majesty's Government should, like that of France, pronounce themselves in favour of the affirmative, what is their view as to the best course to follow in order to obtain from Chile an efficacious recognition of the rights of their respective nationals?

In reply to the above questions, I have the honour to observe that the Agreement of the 23rd March seeks to impose on the two Governments obligations of a very extensive and undefined character.

It will be seen, in referring to sections 2 and 5, that the Governments of Great Britain and France are invited to "undertake the charge of the interests of the parties thereto," and, in fact, to become parties to the Agreement for the purpose of carrying out the various provisions enumerated under the heading of "Intervention of the Governments."

The validity and continuance of the Agreement is dependent on the acceptance by the two Governments of that obligation.

But Her Majesty's Government are not aware of any precedent for such a course, and they must decline altogether entering into any compact with the claimants, such as would be involved in accepting the obligation "to take charge of their interests" in accordance with the provisions of the Agreement in question.

Her Majesty's Government can see no reason to depart from the usual mode of dealing diplomatically with such claims. They are quite prepared to unite with the other Governments interested in examining any questions in dispute in relation to the character and amount and validity of these claims, with a view to reopening negotiations with Chile for the settlement of this long-pending controversy on a fair and equitable basis; and they are willing, if necessary, to take steps for disposing of it ultimately by arbitration.

The Chilean Government have not shown themselves unwilling to do justice in the matter, for they have already set apart for the bondholders large sums of money derived from the revenues of Tarapacá, thus admitting in principle the validity of the claim.

An understanding among the various claimants as to their respective priorities would, no doubt, facilitate matters; but, in the view of Her Majesty's Government, it should be arrived at quite independently of the Governments interested.

Any steps which Her Majesty's Government may take in furtherance of the object in view must be entirely unconnected with the Agreement of the 23rd March. Subject to that reservation, and while retaining full liberty of action, Her Majesty's Government are ready to support by diplomatic means the reasonable claims of the creditors on the revenues of Tarapacá to the fullest extent that is warranted by justice and international law.

I have, &c.

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*List of Papers.*

Correspondence respecting Foreign Creditors of Peru, 1881–84. Confidential No. 5046.
Ditto, 1885. Confidential No. 5245.
Ditto, 1886. Confidential No. 5426.
M. Waddington, July 2, 1886. Confidential No. 5426, p 71.
To M. Waddington, , 1886.

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## China.

### No. 9.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received January 9.)*

*Royal Courts of Justice, January* 8, 1886.

My Lord,

Opium monopoly at Ningpo.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 12th ultimo, stating that he was to transmit papers* relating to a question which had been recently raised at Ningpo, where the local authorities had interfered to prevent the purchase by any other than the Opium Guild, of opium, the property of certain British firms at that port, contrary, as was contended by Her Majesty's Chargé d'Affaires at Peking, to the stipulations contained in the Treaties between this country and China, regulating the opium traffic, and undoubtedly tending, if admitted, to injure British interests.

That the circumstances of the case were fully reported in Mr. O'Conor's No. 400 of the 22nd September, 1885.

That a Memorandum showing the several Treaty stipulations affecting opium was likewise annexed, for convenience of reference.

That under those stipulations opium might be lawfully imported into China on payment of the Tariff duty. But that it could only be sold at the port of entry, and Chinese alone might carry it into the interior.

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* Mr. O'Conor, No. 400, September 22; ditto, No. 409, September 29; Memorandum, December 5, 1885: Clause 1, Trade Rule 5 of November 8, 1858, "State Papers," vol. xlviii, p. 60.

That it was manifest, however, that if the Chinese authorities would not permit it to be carried into the interior unless it had been sold to a particular Guild of Chinese merchants, the importer could only sell it to that Guild, and at the price which that Guild might choose to pay.

That our opinion was requested as to whether the proceeding complained of afforded grounds for a remonstrance by Her Majesty's Government as being a restriction of the Treaty rights of British merchants who claimed the right to sell opium to any Chinese buyers at the port, and, if so, whether, in the present case, the sellers had waived their claim to compensation by accepting the compromise offered to them.

In obedience to your Lordship's commands we have the honour to report—

Affords ground of complaint.

That we are of opinion that the proceeding complained of affords grounds for remonstrance by Her Majesty's Government, as being a restriction on the Treaty right of British merchants to sell opium to any Chinese buyer at the port. The information contained in Mr. O'Conor's despatch of the 22nd September, 1885, is insufficient to enable us to form an opinion as to whether, in the present case, the sellers have waived their claim to compensation.

Information as to effect of compromise on compensation insufficient.

That would depend upon whether such a waiver was involved in or was expressly, or by implication, made one of the terms of the compromise arrived at.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## No. 10.

*The Law Officers of the Crown and Dr. Deane to the Earl of Rosebery.—(Received August 2.)*

*Royal Courts of Justice, July* 31, 1886.

My Lord,

Extradition from Hong Kong of Cheung-a-Chi and Cheung Ayo refused by Hong Kong authorities.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was to transmit to us the papers* relating to a demand made by the Chinese Government for the extradition from Hong Kong of two Chinese named Cheung-a-Chi and Cheung Ayo.

That we should observe that in the case of Cheung-a-Chi the Hong Kong authorities had declined to surrender the accused to the Chinese (A, from Colonial Office, May 25), and that considerable dissatisfaction had been thereby caused to the Chinese Government (B and C, from Mr. O'Conor Nos. 138 and 147).

That the extradition of Chinese fugitives in Hong Kong was carried out under Article XXI of the Treaty of Tien-tsin and the Colonial Ordinance No. 2 of 1850, supplemented by Ordinance No. 2 of 1871.

That you were also to refer us to the decision of the Privy Council in the case of Kwok Asing *v.* the Attorney-General of Hong Kong (L. R., Privy Council Appeal Cases, vol. v, 1873-74, p. 179).

That Sir J. Pauncefote was to inclose the draft of a reply to the letter from the Colonial Office of the 25th May, and that he was to request that we would be good enough to inform your Lordship whether it met with our concurrence, and, if not, that we would favour your Lordship with our opinion as to the nature of the instructions which should be sent to the Governor of Hong Kong for his guidance in these extradition cases.

That, as regarded the case of Cheung Ayo, your Lordship was disposed to think that the extradition of the prisoner was properly refused, and that your Lordship would be glad to be informed whether we concurred in that view.

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* Treaty of Tien-tsin, June 26, 1858, No. 448; Ordinances of Hong Kong, No. 2 of 1850, and No. 2 of 1871, Confidential No. 2855 (see volumes of Hong Kong Ordinances, inclosed); Law Officers' Report, September 18, 1884, Confidential No. 5121, p. 12; ditto, August 20 and September 19, 1885, Confidential No. 5246, pp. 27-29; Judgment of Privy Council in Kwok Asing *v.* Attorney-General of Hong Kong (see 5 Law Reports, Appeal Cases, p. 179); Colonial Office to Foreign Office, May 25, 1886 (Case of Cheung-a-Chi); ditto, July 6, 1886 (Case of Cheung Ayo); Mr. O'Conor, No. 138, April 29; ditto, No. 147, May 3, 1886; proposed Draft to Colonial Office.

In obedience to your Lordship's commands we have the honour to report—

Instructions to Governor of Hong Kong for his guidance in extradition cases.

That we think that the limitation of the cases in which the Governor in Council may properly decline to extradite after a prisoner has been committed by the Magistrate proposed in your Lordship's draft despatch to the Colonial Office is too narrow. We assume that the Magistrate does not feel himself bound to commit unless there are "probable reasons for believing that the prisoner is guilty," and, whilst the Governor in Council should not dissent from the Magistrate's conclusion except on grave grounds, yet, if he is satisfied that the opinion of the Magistrate was founded on insufficient evidence, he may properly, and ought to, decline to act on it.

Approve draft to Colonial Office with certain alterations.

We venture, therefore, to submit for your Lordship's consideration that the instructions intended to be contained in the paragraph in question should be altered in the manner which we have ventured to indicate in red ink in the draft proposed despatch.

Subject to these observations, we concur in and approve of the views proposed to be expressed by your Lordship in the draft despatch.

Extradition of Cheung Ayo was rightly refused.

We concur with your Lordship in thinking that the extradition of Cheung Ayo was rightly refused.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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### Annex.

*Draft of Letter to Colonial Office.*

[The alterations made by the Law Officers are printed in *italics*.]

(Confidential.)

*Foreign Office, August* , 1886.

Sir,

I AM directed by the Earl of Iddesleigh to acknowledge the receipt of your letter of the 25th May, inclosing a despatch from the Officer administering the Government of Hong Kong, relative to the case of Cheung-a-Chi, whose extradition has been applied for by the Chinese authorities, and requesting to be informed whether Mr. Marsh's action in the matter should be approved.

I am, in reply, to transmit to you two despatches from Her Majesty's Chargé d'Affaires at Peking, in which he reports the dissatisfaction of the Chinese Government at the manner in which extradition cases under Article XXI of the Treaty of Tien-tsin are dealt with in Hong Kong.* There is great difficulty in forming an opinion here as to the sufficiency of "the proof of guilt" which is required by the Treaty.

In the case of the eleven fugitives whose surrender was refused about two years ago, the Law Officers in 1885 differed from their predecessors in 1884 as to the sufficiency of the proof.

The former were of opinion that the "proof of guilt" was sufficient, while the latter had grave doubts, but on the whole reported in favour of the conclusion arrived at by the Governor in Council. I am to inclose (confidentially) copies of their Reports.†

As regards the present case of Cheung-a-Chi, Lord Iddesleigh is not prepared to say that the conclusion arrived at by the Governor of Hong Kong was wrong.

It is difficult to lay down any precise rule in such a matter, but his Lordship is disposed to think that where the magistrate has committed the fugitive on evidence *which, in his opinion, constitutes a* primâ facie *case, the extradition should not be refused unless the Governor in Council is satisfied, on a review of the evidence, that the decision of the magistrate was erroneous, either on the ground* (1) *that the material evidence against the alleged fugitive criminal was unworthy of belief by reason of bribery, intimidation, or other circumstances; or* (2) *that taking the evidence as a whole it fails to support the conclusion arrived at by the magistrate. But his Lordship thinks that the Governor in Council should in each case weigh the matter with great care, and differ from the magistrate only where he feels constrained by a strong and clear opinion so to do.*

*His Lordship presumes that the Governor in* Council *acted in that spirit in the*

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* Mr. O'Conor, No. 138, April 29; ditto, No. 147, May 3, 1886.

† Law Officers, September 18, 1884; ditto, September 19, 1885.

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present case. There *seems* reason, *however*, to believe that the prisoner is an old offender.

It is not unlikely, therefore, that the evidence to be adduced against him on the further sixteen charges of piracy, which it is stated are hanging over him, may be sufficient to justify his extradition.

Mr. Marsh's despatch is returned herewith, and I am to request that Mr. O'Conor's two despatches, which are sent herewith in original, may be returned to this Office.

I am, &c.

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### No. 11.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.*—(*Received October* 2.)

My Lord, *Royal Courts of Justice, October* 2, 1886.

Payment of probate duty on landed property of a British subject.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 18th ultimo, stating that he was to transmit to us papers* relating to the payment of probate duty on the landed property of a deceased British subject at Amoy.

That the question was raised by Messrs. Bone and Sons, solicitors for the deceased, and was referred to Sir R. Rennie, Chief Justice of the Supreme Court for China and Japan, whose opinion would be found in his despatch No. 2 of the 13th July.

That a similar question had arisen last year in Japan, and that the Report of the Law Officers of the Crown thereon was inclosed.

That it would be seen that the tenure of land held by British subjects in China and Japan was a species of fee farm, or perpetual lease at a peppercorn rent, and that the Law Officers advised, in the Report above mentioned, that, such property not being regarded as personalty, according to English law, it was not subject to probate or administrative duty, under Her Majesty's Order in Council of the 9th March, 1865.

Case of late Mr. Jones at Amoy.

That a copy of the title-deed of the land of the late Mr. Jones at Amoy, and also a copy of the Report of the Law Officers of 1855, referred to in Sir R. Rennie's despatch, were transmitted therewith.

That our opinion was requested as to whether the probate duty in the present case was wrongly imposed, and should be returned to the representatives of the deceased; and, further, whether we concurred in the recommendation in the last paragraph of Sir R. Rennie's despatch, that a new Order in Council should be passed declaring that all lands held by British subjects in China should be taken to be personalty, and not realty.

That Sir J. Pauncefote was to observe that so general a declaration might be attended with inconvenience in mixed cases between Chinese and British subjects, under Article I of the Treaty of Tien-tsin, unless the devolution of realty in China, in case of intestacy, were the same under the *lex situs* as under the proposed Order in Council.

That it appeared from Sir R. Rennie's despatch that, by Chinese law, realty descends to all male children equally, whether legitimate or not, and to the exclusion of females.

That if, however, we should be of opinion that the proposed Order, which would alter the rule of succession to realty both as regarded British law and Chinese law, in the case of British subjects, might properly be passed, it would seem desirable to extend its operations to Japan, Corea, and Siam.

In obedience to your Lordship's commands we have the honour to report—

Duty wrongly imposed; it should be returned. Do not advise new Order.

That, in our opinion, the probate duty, in this case, was wrongly imposed, and should be returned to the representatives, and that we are not at present prepared to advise the issue of the new Order in Council suggested by Sir R. Rennie.

Agree in opinion of predecessors as to personalty and realty.

We concur with the opinion of our predecessors given in January 1885, but the question whether the distinction between personalty and realty should be abolished will require most careful consideration.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
E. CLARKE.  
J. PARKER DEANE.

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* Messrs. Bone and Sons, April 22; to Sir R. Rennie, No. 4, May 3; Sir R. Rennie, No. 2, July 13, 1886; Law Officers, January 9, 1885 (Confidential No. 5246, p. 112); China and Japan Order in Council, March 9, 1865 (Confidential No. 1354); Hertslet's Treaties with China (Treaty of Tien-tsin), p. 16.

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## Egypt.

### No. 12.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received January* 21.)

My Lord, *Royal Courts of Justice, January* 21, 1886.

Illicit importation of grain on coast of Red Sea.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th instant, stating that he had the honour to transmit to us, by direction of your Lordship, the accompanying despatch from Her Majesty's Acting Agent at Cairo,* relative to the grain trade in the Red Sea, and the action of Her Majesty's ships in connection with its prohibition.

In reference to the specific points raised in the inclosure to the despatch of Her Majesty's Acting Agent at Cairo, dated the 5th January, 1886, we have the honour to report—

Capture and disposal of dhows and cargoes.

(*a*.) That dhows cannot be seized by Her Majesty's ships upon the high seas, or in ports not within the *de facto* dominion of the Egyptian Government, unless they—

(i.) Are the property of the insurgent Soudanese, or—

(ii.) Carry cargoes which are intended to assist the insurgent Soudanese in prosecuting hostilities against Her Majesty's forces.

Dhows and cargoes which are within the *de facto* dominion of the Egyptian Government can be seized under the authority of Egyptian law, if their owners have committed offences against that law which justify such seizure.

(*b*.) In the former case, the crews should not be tried by court-martial, unless they have committed some offence against the laws of war.

The dhows and cargoes should be brought before an Admiralty Court, by which they, or some portion of them, according to the circumstances of the case, may be adjudged to the captors as prizes of war.

(*c*.) In the latter case the dhows and cargoes should be handed over to the Egyptian Customs authorities to be dealt with according to Egyptian law: the captors are entitled only to such bounty or gratuity as the Egyptian law may award them.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
J. E. GORST.

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### No. 13.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received January* 28.)

My Lord, *Royal Courts of Justice, January* 23, 1886.

Illicit importation of grain on coast of the Red Sea north of Suakin.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th ultimo, stating that he was directed by your Lordship to transmit to us a correspondence (as marked in the accompanying list)* with regard to the action of Her Majesty's ships of war in the Red Sea in preventing the illicit importation of grain on the Red Sea coast to the north of Suakin, for the use of the insurgent Arab tribes.

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* Mr. Egerton, No. 6, January 5, 1886.

That it would be perceived that in the opinion of the military authorities it was of great importance, for the effectual suppression of the insurrection, that that traffic should be suppressed, and that the means at the disposal of the Egyptian Government for the purpose being insufficient, the duty had been undertaken by some British cruizers. But that the action of Her Majesty's vessels, though in the nature of hostile measures against insurgents, was technically taken for the enforcement of Egyptian Customs Regulations, there being only two authorized ports of entry in that vicinity—at Suakin and Agig. That the prizes, therefore, which were captured were sent for condemnation by the Egyptian Court, and that a portion of 16 per cent. only of the value had been accorded to the captors, which was considered by the naval officers as insufficient. That questions of greater difficulty might arise in the event of vessels engaged in the trade hoisting the flag of some European nation.

Question as to issue of prohibitive Decree affecting coast held by insurgents.

That Sir Julian Pauncefote was to call our attention to a Report by the former Law Officers of the Crown, in August 1882, as to the proper course to be taken at that time for preventing the landing of coal, and of munitions of war at ports on the Egyptian coast in possession of rebels against the authority of the Khedive, and that Sir Julian Pauncefote was to request us to favour your Lordship with our opinion as to whether, on the present occasion, it would not be desirable that a Decree should be issued by the Khedive, similar to that then recommended, prohibiting the importation of grain, or munitions of war, on the coast in possession of the insurgents, under penalty of seizure and confiscation, and empowering the British cruizers to enforce it within Egyptian waters; or whether we would advise any other course to remove possible question as to the regularity of the proceedings of Her Majesty's vessels.

We were also honoured with Sir Julian Pauncefote's letters of the 7th and 28th ultimo, and of the 9th and 19th instant, inclosing further correspondence relative to the same subject.†

Sending separate opinion.

In obedience to your Lordship's commands we have taken the papers into our consideration, but owing to our inability to agree to a joint Report, we have written separate opinions, which we have the honour to append hereto.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
J. E. GORST.  
J. PARKER DEANE.

### *The Attorney-General's Opinion.*

Opposed to a blockade.

Unless Her Majesty's Government are prepared to maintain an effective blockade, and to treat the Soudanese as belligerents, I cannot advise that a declaration of blockade should be made.

Issue of Decree desirable.

Under the circumstances, I think it is desirable that a Decree should be issued by the Khedive (similar to that recommended in the Report of the Law Officers of August 1882) prohibiting the importation of grain, or munitions of war, on the coast in the occupation of the insurgents, under penalty of seizure and confiscation, and empowering British cruizers to enforce such Decree in Egyptian waters; but such Decree will not justify the seizure and confiscation of ships and cargoes, which do not belong to the Soudanese, in places which are not within the *de facto* sovereignty of the Khedive. Her Majesty's ships are, however, justified in carrying on war against the insurgent Soudanese, by destroying the property and capturing, even upon the high seas, stores intended for the use of their armies.

Applicable only to places under Egyptian control.

Insurgent ships and stores may be seized.

(Signed) RICHARD E. WEBSTER.

### *The Solicitor-General's Opinion.*

Not desirable to issu Decree.

It is, in my judgment, not desirable that a Decree similar to that of 1882 should be issued by the Khedive, because such Decree would not justify that which is intended, viz., the seizure and confiscation of ships and cargoes importing grain or munitions of war on the coast in the possession of the insurgents, and not within the *de facto* sovereignty of the Khedive. Similar Laws have, on several recent occasions, been objected to by Her Majesty's Government. See, for example, the attempt of the Haïtian Government to close the ports of Jacmel and Jeremie to commerce, while in the possession of insurgents, by a Municipal Law (Law Officers' Reports 1883, p. 75).

Her Majesty's ships may seize vessels and stores of insurgents as acts of war.

In places which are beyond the *de facto* sovereignty of the Khedive, Her Majesty's ships must confine their operations to those acts which can be justified as acts of war. Without maintaining an effective blockade, which I understand to be impracticable, they may, either upon the high seas or in the Red Sea ports, destroy the property of the insurgent Soudanese, and they may capture their ships and stores, whether of grain or other munitions of war, which are intended for the use of their armies.

(Signed) J. E. GORST.

### *Sir J. Deane's Opinion.*

Great Britain is not at war with the Soudanese. Her Majesty's forces by sea and by land are assisting the Khedive in putting down the insurrection of some of his subjects.

A blockade of the coast in possession of the insurgents by Her Majesty's ships is, in the circumstances, not practicable. No question arises, as suggested apparently in some of the despatches, as to the seizure of slavers.

The Egyptian Government consider the matter as one of illicit traffic in grain, in other words, as a smuggling transaction which is to be stopped.

Her Majesty's ships cannot assist Egyptian Custom

In my opinion, Her Majesty's ships cannot properly be employed as cruizers to assist the Customs Regulations and protect the revenue of the Khedive; but Her Majesty's forces are carrying on hostile operations against the insurgents, and, in the furtherance of those operations, might seize and destroy on land all ammunition, provisions, &c., going to, or intended for, the use of the insurgents; so may Her Majesty's ships properly seize, bring in, or destroy, all dhows, provisions, and munitions, or stores intended for, or fit for, military purposes, found within the territory occupied by the Soudanese insurgents, or on the coasts of, and adjoining, the said territory, whether belonging to the said Soudanese insurgents or not. Her Majesty's cruizers may, on the high seas, seize or destroy all property belonging to the Soudanese insurgents, and carried in craft belong to, or in the employ of, the insurgents.

but, as acts of war, may seize, &c., vessel of insurgents.

Egyptian Governmen must give rewards fo captures.

Looking to the constitution and practice of the English Prize Courts, I consider that no such Court would entertain a claim for the capture of the dhows and cargoes. The crews of Her Majesty's ships must look to the Egyptian Government for their rewards.

Issue of Decree immaterial.

Taking the view which I do of the nature of the employment of Her Majesty's ships in the Red Sea, the proposed Decree will in no way affect the nature of their operations, and it becomes immaterial whether such Decree is issued or not.

(Signed) J. PARKER DEANE.

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* *List of Papers.*

Law Officers, August 14, 1882. Confidential No. 4783, p. 27.  
Mr. Egerton, No. 622, August 25, 1885. Confidential No. 5167, p. 90.  
Ditto, No. 623, August 26, 1885. Confidential No. 5167, p. 91.  
Admiralty, August 25, 1885. Confidential No. 5167, p. 80.  
Ditto, September 2, 1885. Confidential No. 5167, p. 88.  
Mr. Egerton, No. 650, September 4, 1885. Confidential No. 5167, p. 113.  
Admiralty, September 12, 1885. Confidential No. 5167, p. 116.  
Ditto, September 19, 1885. Confidential No. 5167, p. 126.  
To Admiralty, September 19, 1885. Confidential No. 5167, p. 120.  
Admiralty, September 26, 1885. Confidential No. 5167, p. 139.  
Ditto, October 24, 1885. Confidential No. 5226, p. 38.  
Sir H. Drummond Wolff, No. 83, Telegraphic, November 1, 1885. Confidential No. 5226, p. 41.  
Admiralty, November 3 and 5, 1885. Confidential No. 5226, p. 53.  
To Admiralty, November 12, 1885  
Admiralty, November 27, 1885.

† Admiralty, December 3; Mr. Egerton, No. 499, Telegraphic, December 27, Confidential No. 5226, p. 112; ditto, No. 856, December 27, 1885; Admiralty, January 15, 1886.

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## No. 14.

### *The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.*—(*Received March* 24.)

*Royal Courts of Justice, March* 24, 1886.

My Lord,

Jurisdiction of British officer charged with administration of port of Zeyla.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 26th ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, correspondence which had passed as to the jurisdiction to be exercised by the British officer now charged with the administration of the port of Zeyla.

That on the 29th May, 1884,* a despatch was addressed to Her Majesty's Ambassador at Constantinople, stating that it had been decided to withdraw the Egyptian authorities and troops from the whole coast which they had hitherto occupied from the Straits of Berbera to Ras Hafoun, and stating that if the Porte were ready to take steps on the withdrawal of the Egyptians, and to maintain its authority over Tajourra and Zeyla, Her Majesty's Government would be willing, on certain specified conditions, to recognize the authority of the Sultan over the coast as far as the latter place.

That that communication was made to the Porte on the 17th July following, but the offer had not been accepted, nor had any steps been taken by the Porte to assert its authority on the coast in question.

That on the 1st August, Lord Dufferin was instructed to inform the Turkish Government that unless they were prepared to take immediate steps for the occupation of Zeyla, as proposed, it would be necessary for Her Majesty's Government to send a force there, to preserve order.

That a British expedition for the purpose left Aden on the 18th August, 1884.

That on the 19th November, 1884,† the Egyptian Government addressed a letter to the Porte, explaining that they were no longer able to maintain Egyptian administration on the western shore of the Red Sea from Massowah to Zeyla, and that that part of the coast reverted to the administration of the Porte.

That no definite reply was returned to that communication, and that it had been held by the former Law Officers of the Crown that, pending a definite arrangement with the Porte, the Khedive was still bound to pay the tribute of 15,000*l.* a-year, in consideration of which the administration of Zeyla was granted, by Firman, to Ismaïl Pasha.

That the expedition to Zeyla was under the command of Major Hunter, of the British Residency at Aden, who held the appointment of Her Majesty's Consul for the Somali Coast.

That the arrangements which he made for the future administration of the port would be found at pp. 204 and 213 of the accompanying volume.‡

That the former Egyptian Governor, Abubekr Pasha, was nominally retained as Civil Governor, but all real authority was vested in the British officer (Lieutenant Kingsmill), whom Major Hunter appointed Agent and Consul-General.

That that officer was directed by Major Hunter to investigate all charges of offences committed, and to attend when the Pasha disposed of them. That the punishments were to be regulated by the Indian Penal Code (p. 213).

That Abubekr Pasha, the Egyptian Governor, had since died, and that no one had been appointed to succeed him.

That under those circumstances, Captain Mein, who had succeeded Lieutenant Kingsmill, R.N., as Acting British Vice-Consul at Zeyla, held a Court and pronounced a sentence on an Abyssinian, who subsequently declared himself under French protection.

That that proceeding had given rise to a correspondence with the French Vice-Consul, who claimed the prisoner as a French-protected subject.

That the judicial proceedings were manifestly irregular, and that the Law Officers, to whom the case was referred had recommended that the prisoner should be released. (Law Officers, 24th October, 1885.)

That a despatch which was inclosed (No. 4 of the 19th December, 1885) was addressed to Major Hunter on the 19th December last, explaining that the British Consular officers could, as such, only exercise jurisdiction over British subjects and persons under British protection, and that such jurisdiction must be administered under the existing Orders in Council for the Levant, and that jurisdiction over natives must be exercised by native Tribunals, but that their proceedings should be under British supervision.

That it was explained, in reply, that no native Tribunals existed at Zeyla, and it was suggested by Her Majesty's Agent and Consul-General at Cairo, that the most convenient solution of the difficulty would be that the British officer in charge should be vested with full military and civil authority, and that a state of siege should be proclaimed. (Sir E. Baring, No. 6, Consular, 30th January, 1885.)

Questions as to British military occupation, declaration of martial law, and jurisdiction of foreign Consuls.

That Sir J. Pauncefote was to request that we would take the papers into our consideration, and favour your Lordship with our opinion as to whether the course suggested by Sir E. Baring might properly be adopted under the circumstances, namely, that Zeyla should be considered as under British military occupation and governed by martial law, and, if so, whether that should be effected by a Declaration of the Egyptian Government, or of the British military authorities in occupation of the place, and whether the instructions of Major Hunter to Lieutenant Kingsmill of the 11th November, 1884, referred to in Sir E. Baring's despatch, might, in that case, be confirmed; and, further, whether the jurisdiction of foreign Consuls at Zeyla over their own nationals and "protégés" would be suspended during the existence of martial law.

In obedience to your Lordship's commands we have the honour to report—

Martial law not justifiable.

That we are of opinion that no circumstances are shown to exist which would justify either the British authorities or the Egyptian Government in proclaiming a state of siege or martial law.

There is no state of war or civil commotion to render such a course necessary.

Appointment of an Egyptian Civil Governor, or investiture of British officer with civil functions.

It appears to us that the Khedive's Government is still the lawfully constituted civil authority at Zeyla, and the difficulty which exists seems to have arisen from the failure of that Government to appoint a successor to the former Civil Governor, Abubekr Pasha.

The proper solution of the difficulty, therefore, would seem to be, to procure the Egyptian Government either to appoint a successor to Abubekr Pasha, or to procure the Egyptian Government to invest the British officer with the authority of the Civil Governor.

The succeeding questions in Sir Julian Pauncefote's letter do not (in view of the opinion above expressed), strictly speaking, arise.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

### *List of Papers sent to the Law Officers, February* 26, 1886.

Law Officers, February 14, 1885. Confidential No. 5246, p. 42.
Memorandum (T. H. S.), September 15, 1885.
Mr. Egerton, No. 677, September 16, 1885.
To Mr. Lascelles, No. 75, October 12, 1885.
Mr. Egerton, No. 740, October 14, 1885.
To Law Officers, October 16, 1885
Law Officers, October 17, 1885. Confidential No. 5246, p. 62.
Ditto, October 24, 1885. Confidential No. 5246, p. 64.
To Mr. Egerton, No. 50, Consular, November 4, 1885.
Mr. Egerton, No. 71, Consular, November 24, 1885.
To Mr. Egerton, No. 56, Consular, December 19, 1885.
To Major Hunter, No. 4, December 19, 1885.
To India Office, December 31, 1885.
Sir E. Baring, No. 6, Consular, January 30, 1886.

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## No. 15.

### *The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.*—(*Received March* 30.)

*Royal Courts of Justice, March* 29, 1886.

My Lord,

G. Salamone. Imprisoned for coining.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th instant, stating that he was directed by your Lordship

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* Confidential No. 5057, p. 45.

† Confidential No. 5057, pp. 195, 196.

‡ Confidential No. 5057.

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to transmit to us the accompanying papers* relative to the Petition of Giuseppe Salamone, a prisoner in the Corradino Civil Prison at Malta, for a remision of a portion of the sentence of three years' penal servitude that he was then undergoing for the crime of coining.

That the notes of evidence taken at the trial would be found in Mr. Cookson's despatch No. 16 of the 27th ultimo, and that it would be seen, from Mr. Cookson's No. 6 of the 27th January last, that he recommended that if any mitigation of the sentence was granted it should be accompanied by the condition that the applicant should not return to Egypt.

That our opinion was requested as to whether any mitigation of the sentence could properly be granted.

In obedience to your Lordship's commands we have the honour to report—

Petition for mitigation of sentence may be granted.

That, having regard to the Report of the Prison Superintendent, we are of opinion that some mitigation of sentence may properly be granted in the case of Giuseppe Salamone, as an encouragement to good conduct in prison, and we see no objection to the remission of the remainder of his sentence as prayed, but the question is, of course, one for your Lordship's discretion.

He should be allowed to return to Egypt.

With regard to Mr. Cookson's suggestion that the pardon should be conditional on the convict not returning to Egypt, we have to point out that if, as stated in the Petition, the man's wife and family and his home are in that country, the imposition of such a condition would deprive Her Majesty's mercy of a large measure of its gracious effect.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## No. 16.

### *Memorandum by the Lord Chancellor.*

Widening of the Suez Canal. Agree with M. Treitt as to powers of Company for effecting.

I AGREE generally with the opinion expressed by M. Treitt. In the short time at my disposal since I heard that my opinion was desired by to-morrow, I am unable to state my reasons at length.

But even if it be clear that the Canal Company would be acting within their rights, as I think they would, in widening the Canal in the manner proposed, without the consent of the Khedive, a serious difficulty seems to arise from the fact that, under their present scheme, it is apparently admitted on all hands, they are unable to effect their object without an alteration of their Statutes, and that for this the consent of the Khedive is requisite.

Khedive's sanction necessary for required alteration of Statutes.

He seems, therefore, to be somewhat master of the situation. There is nothing to bind him to give his consent to any alteration unless he please. And if he should choose to do so, he would seem just as well able to insist upon some pecuniary advantage for giving his consent to the change in the Statutes, whatever may be thought of the propriety of such a course, as he would be to stipulate for such an advantage as a condition of his consent to a widening of the Canal.

H.

*House of Lords, April* 2, 1886.

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## ANNEX.

(Inclosure in Sir J. Walsham's No. 16 of January 10, 1886.)

### *Opinion of M. Treitt respecting the enlargement of the Suez Canal.*

§ 1. Des différents documents qui m'ont été soumis, il résulte que le Gouvernement d'Égypte refuse de donner son assentiment aux changements des Statuts nécessaires pour effectuer un emprunt dans les conditions votées par l'assemblée générale des actionnaires de la Compagnie du Canal Maritime de Suez.†

Le refus du Gouvernement Égyptien est fondé sur le motif que cet emprunt a pour objet, entre autres travaux indiqués, l'exécution de l'élargissement du Canal de Suez ; or, aucune autorisation pour

l'exécution de travaux destinés à l'élargissement du Canal n'ayant encore été demandée au Gouvernement Égyptien (autorisation que celui-ci prétend nécessaire), il ne peut donner son consentement à un emprunt qui doit servir à l'exécution de ces travaux.

§ 2. Les motifs du refus du Gouvernement Égyptien sont exposés dans un Mémorandum signé par M. Keller; mais par une lettre écrite du Caire le 22 Novembre, 1885, son Excellence Nubar Pacha déclare à Mr. Egerton que ce Mémorandum, quoique signé par M. Keller seul, est le résumé de l'opinion émise par tout le Contentieux et partagée par M. Émile Ollivier.

C'est donc le Mémorandum qu'il faut examiner.

§ 3. D'abord, le Mémorandum prétend que le Gouvernement Égyptien n'est pas tenu à l'observance des décisions de la Commission Scientifique Internationale concernant la largeur du Canal de Suez.

Cette prétention est absolument erronée :

En effet, l'Article 3 de l'Acte de Concession du Canal, en date du 5 Janvier, 1856, déclare expressément que le Canal sera creusé à la profondeur et à la largeur fixées par la Commission Scientifique Internationale.

Or, quelle est la largeur fixée par cette Commission ?

Elle est de 80 à 100 mètres à la ligne d'eau.

Après mûr examen, la Commission dit, dans son Rapport, qu'un tel Canal lui semble devoir satisfaire longtemps encore à tous les besoins de l'avenir, et elle ajoute que rien, dans les conditions déterminées par elle, ne s'opposerait à des développements nouveaux pour peu qu'on les juges nécessaires.

Il est bon, je crois, de transcrire ici les conclusions de la Commission Scientifique Internationale :—

"En fixant toutes les conditions du Grand Canal Maritime qui doit unir la Méditerranée à la Mer Rouge et donner passage au commerce du monde, nous avions deux fautes à éviter : faire trop ou trop peu ; tenter une entreprise gigantesque, ou nous borner à des travaux insuffisants. Ces deux fautes auraient été à peu près aussi fâcheuses l'une que l'autre ; et nous ne devions jamais perdre de vue ni les intérêts généraux de la civilisation que ce projet doit immensément servir, ni les intérêts particuliers de la Compagnie qui doit l'exécuter.

"Nous croyons, après le plus mûr examen, être restés dans la mesure convenable et n'avoir exagéré les choses ni dans un sens ni dans l'autre.

"Un Canal de 80 à 100 mètres de large avec 8 mètres de profondeur, sans écluses à ses entrées, sans courant dangereux, de 30 lieues de long environ, avec des ports vastes et sûrs à ses deux extrémités, d'une conservation certaine et d'un entretien facile, s'ouvrant sur deux mouillages d'une étendue indéfinie, un tel Canal nous paraît satisfaire à tous les besoins de la navigation tels qu'ils se manifestent aujourd'hui. Il nous semble même qu'il satisfaira encore longtemps à tous les besoins de l'avenir. Rien d'ailleurs, dans les conditions déterminées par nous, ne s'opposerait à des développements nouveaux pour peu qu'on les jugeât nécessaires."

En d'autres termes, la conclusion de la Commission Scientifique est qu'un Canal de 80 à 100 mètres de largeur suffira aux besoins actuels, mais que le concessionnaire en se bornant quant à présent à cette largeur, aura le droit de l'augmenter en cas de nouveaux développements de la navigation.

Cette fixation de la largeur du Canal à 80 ou 100 mètres est devenue partie intégrante de l'Acte de Concession du 5 Janvier, 1856 ; elle en *complète l'Article* 3 ; cet Article oblige les deux Parties Contractantes, qui s'en étaient rapportées à la Commission Scientifique pour déterminer la profondeur et la largeur du Canal.

Cette largeur de 80 à 100 mètres est donc un droit acquis à la Compagnie de Suez, avec réserve à son profit d'étendre encore cette largeur en cas de nouveaux besoins.

§ 4. A moins de violer l'Article 3 de l'Acte de Concession du 5 Janvier, 1856, Article dont le texte a été complété par la Commission Scientifique Internationale, le Gouvernement Égyptien ne peut empêcher la Compagnie de Suez d'élargir son Canal ; celle-ci n'a pas besoin de l'autorisation du Gouvernement pour exécuter les travaux d'élargissement. Rien, dans l'Acte de Concession du 5 Janvier, 1856, ne restreint la liberté des mouvements de la Compagnie. Elle a été parfaitement libre de ne donner d'abord au Canal qu'une largeur de 22 mètres ; elle pensait alors que cette largeur suffirait aux besoins de la navigation ; c'était, paraît-il, aussi l'opinion du Gouvernement Égyptien ; aucune objection n'a été faite par lui, et le Canal a été inauguré sous ses auspices.

N'est-ce point là preuve manifeste que dans la pensée des deux Parties Contractantes, le concessionnaire n'avait à subir aucune entrave dans ses procédés pour arriver à la meilleure exploitation de sa Concession ?

Aujourd'hui, la Compagnie, d'accord avec le monde maritime et commercial, pense que les exigences de la navigation demandent l'élargissement du Canal à 37 mètres ; personne ne peut lui refuser le droit de faire des travaux à cet effet.

Ne serait-il pas insensé de supposer que la Compagnie se soit laissé interdire le droit d'élargir le Canal ? Jamais pareille pensée n'a pu entrer dans l'esprit des deux Parties Contractantes au moment de la Concession ; si elle s'était manifestée, nul doute que l'éminent concessionnaire ne l'eut énergiquement repoussé, alors qu'il engageait des capitaux considérables dans cette entreprise.

La Compagnie est donc absolument libre, pendant toute la durée de la Concession, de donner à son Canal sur les terres qui lui ont été concédées, et dans les conditions fixées par la Commission Scientifique, la largeur que comportent les intérêts généraux de la navigation et l'intérêt de ses actionnaires, comme elle a été d'abord libre de ne donner au Canal qu'une largeur moindre.

Il y a là un fait acquis incontestable ; le dénier c'est violer l'Acte de Concession du 5 Janvier, 1856.

§ 5. Aussi le Mémorandum a-t-il dû chercher d'autres motifs pour donner une base au refus du Gouvernement Égyptien.

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* Inclosures in Foreign Office letter of March 15, 1886, to Her Majesty's Law Officers :—
Consul Cookson's despatches Nos. 6 and 16 of January 27 and February 27, 1886, respectively ; and
Inclosures in Colonial Office letter of December 23, 1885.

† Voir la lettre de M. Charles de Lesseps à M. Émile Ollivier, 6 Juin, 1885.

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C'est à la Sentence Arbitrale rendue le 6 Juillet, 1864, par l'Empereur Napoléon III, que le Mémorandum a recours.

Son argumentation peut, je crois, se résumer ainsi qu'il suit:—

"Les Articles 10 et 11 de l'Acte de Concession du 5 Janvier, 1856, abandonnaient à la Compagnie de Suez la jouissance des terres qui pourront lui être *nécessaires* le long du Canal, et ces terres devaient figurer sur des plans annexés à l'Acte de Concession.

"Ces plans n'ayant jamais été dressés, la concession des terres nécessaires doit être considérée comme nulle, et toutes les dispositions concernant la largeur du Canal doivent être considérées comme n'ayant aucune valeur pratique par défaut de sanction, puisque le Gouvernement Égyptien n'avait encore concédé aucun terrain."

Cette argumentation ne peut résister à un examen sérieux.

Prétendre que toutes les dispositions concernant la largeur du Canal doivent être considérées comme nulles par le motif qu'aucun terrain n'avait encore été concédé ni désigné, ne peut se soutenir ni en fait ni en droit.

En fait:

La concession de terres le long du Canal avait été faite par l'Acte même de Concession du 5 Janvier, 1856. La Concession du Canal et des terres pour l'établir sont chose indivisible; par l'Article 10 de l'Acte de Concession, il est abandonné à la Compagnie, sans impôt ni redevance, la *jouissance de tous les terrains n'appartenant pas à des particuliers qui pourront être nécessaires.*

En vertu du texte de l'Article 10, l'abandon des terres nécessaires est définitif; il ne reste plus qu'à déterminer l'étendue et les limites des terrains concédés ou abandonnés à la Compagnie.

Pour cela, les parties avaient déclaré qu'elles s'en référaient aux plans annexés.

§ 6. Or, ces plans n'ayant jamais été dressés, le Mémorandum en conclut que la concession des terres *nécessaires,* stipulée dans l'Article 10, est nulle.

En droit:

Cette conclusion est parfaitement erronée, car un acte est valable et produit ses effets, lors même que l'exécution de cet acte est temporairement entravée ou bien est soumise à une condition comme la confection de plans à annexer; les terres *nécessaires* étaient l'objet d'un abandon définitif, sauf à en déterminer l'étendue et les limites.

Le Gouvernement Égyptien et la Compagnie de Suez ont si bien compris que le défaut des plans n'entraînait pas la nullité de la concession des terres *nécessaires,* que d'un commun accord les deux parties ont constitué un Arbitre pour déterminer l'étendue et les limites de ces terres. La largeur du Canal était indépendante des terres concédées, lesquelles avaient pour objet non seulement le creusement du Canal, mais aussi l'exploitation du pays sur les deux bords du Canal, la défense de ces bords, en un mot, le développement industriel de l'entreprise.

L'Arbitre, l'Empereur Napoléon, a rendu sa décision le 6 Juillet, 1864.

Cette sentence complète les Articles 10 et 11 de l'Acte de Concession, comme la décision de la Commission Scientifique en avait complété l'Article 3.

§ 7. Le Mémorandum prétend aussi qu'il est évident que la largeur du Canal était subordonnée à la concession des terrains sur lesquels le creusement devait être effectué.

Cette évidence ne m'apparaît pas le moins du monde.

On ne voit nulle part que la largeur du Canal ait jamais été l'objet d'une discussion entre le Souverain de l'Égypte et le concessionnaire.

Les deux contractants ont été d'accord pour s'en rapporter à la décision de la Commission Scientifique; la largeur du Canal ne pourrait être subordonnée à la concession des terrains sur lesquels le creusement devait se faire; les terrains à concéder devaient être considérables sur les deux bords du Canal, de manière à pouvoir donner à l'entreprise tous les développements qu'elle comportait; l'espace occupé par le Canal était peu considérable, et sa largeur ne devait pas compter pour beaucoup dans la quantité des terres abandonnées à la Compagnie.

Aussi, cette largeur n'a jamais été l'objet d'une discussion; c'est aujourd'hui la première fois qu'elle devient l'objet d'un dissentiment.

Il n'en a pas été fait non plus mention dans la Convention du 23 Avril, 1869, par laquelle le Gouvernement Égyptien et la Compagnie de Suez ont réglé toutes les questions qui restaient à résoudre entre les deux parties; bien au contraire, l'Article III de cette Convention stipule que la Compagnie n'a pas d'autre objet que l'exploitation, l'entretien, et *l'augmentation* du Canal Maritime.

L'augmentation du Canal est donc un droit acquis à la Compagnie.

§ 8. Il faut aussi remarquer que la Sentence Arbitrale, qui me paraît avoir jugé avec beaucoup d'équité les différentes questions soumises à son appréciation souveraine, n'a pas eu à dire un mot sur la largeur du Canal, tant il était vrai pour les parties intéressées que cette question avait été définitivement tranchée par la Commission Scientifique Internationale. N'y a-t-il pas là preuve évidente que c'est bien inopportunément que cette question est soulevée aujourd'hui?

§ 9. Enfin, le Mémorandum prétend que le Gouvernement Égyptien n'a laissé à la Compagnie, sur les deux côtés du Canal, qu'une bande de terrains en formant les dépendances, et les a affectés à une destination spéciale qui ne saurait être changée sans un nouvel accord entre les deux parties.

Il y a là encore une inexactitude qui ne peut se justifier.

C'est en vertu de la Sentence Arbitrale du 6 Juillet, 1864, et par interprétation et application de l'Article 3 de la Concession du 5 Janvier, 1856, que la Compagnie a été mise en possession et jouissance de terres nécessaires longeant, les deux côtés, le Canal. La largeur de ces terres varie de 200 à 1,500 mètres; elles sont destinées à faciliter l'exploitation du Canal et à assurer sa prospérité. Ces terres n'ont pas, que je sache, d'autre destination. Je cherche en vain *l'affectation spéciale* dont parle le Mémorandum, à moins qu'on applique improprement cette dénomination au droit réservé au Gouvernement Égyptien de créer sur ces terres des établissements de Douanes, de péage, ou de défense; mais il faut bien noter que ce droit n'existe au profit du Gouvernement Égyptien qu'autant que ces établissements ne gêneront pas l'exploitation du Canal.

On ne saurait donc voir une affectation spéciale dans la réserve créée au profit du Gouvernement Égyptien, dont le droit est subordonné à la volonté ou aux besoins de la Compagnie.

J'ai donc le droit de reprocher au Mémorandum de n'avoir pas dit en quoi consistait *l'affectation spéciale* dont il argumente, et dont je n'ai pu me rendre compte.

§ 10. Les terres concédées sont entre les mains de la Compagnie une propriété temporaire pendant toute la durée de la Concession.

La Compagnie a le droit d'user de ces terres pour élargir le Canal sans autorisation; elle opère sur *sa propre chose,* et peut ainsi donner *aux besoins de l'entreprise une entière et complète satisfaction.*

Ajoutons que la prétention actuelle du Gouvernement Égyptien ne s'est pas manifestée pendant les opérations de l'Arbitrage Impérial du 6 Juillet, 1864. Je ne doute pas que si cette prétention se fut produite alors, elle n'eut été écartée par une disposition spéciale de la sentence, car à aucune époque il n'a pu entrer dans l'esprit des deux contractants que le concessionnaire fut soumis à des restrictions si peu justifiables.

Il était évidemment dans la *commune intention des parties,* que la Companie eût toute la liberté d'action pour l'élargissement du Canal, afin de donner satisfaction à tous les besoins maritimes et commerciaux, à mesure que ces besoins se produiraient.

§ 11. Pour ces motifs, mon opinion est que le Gouvernement Égyptien commet un *acte arbitraire et injuste* en s'opposant à l'élargissement du Canal de Suez, sans une compensation pécuniaire.

Les annales de la jurisprudence constatent qu'en pareils cas la justice a toujours pris en considération l'intention commune des contractants au moment du contrat, ainsi que les prescrivent les Articles 1156 et suivants du Code Civil Français.

Or, il résulte de tous les faits relatifs au Canal de Suez, que le concessionnaire devait avoir toute liberté d'action pour le développement et la prospérité de son œuvre, à laquelle le Gouvernement de l'Égypte a, dès 1850, apporté un bienveillant concours.

Je ne puis comprendre que le Gouvernement actuel de l'Égypte apporte des entraves à une entreprise dont l'influence bienfaisante et civilisatrice est appelée à régénérer les bords du Nil.

(Signé) TREITT,
*Avocat à la Cour d'Appel.*

*Paris, le* 9 *Janvier,* 1886.

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## No. 17.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received April* 28.)

*Royal Courts of Justice, April* 28, 1886.

My Lord,

Petition for mitigation of sentence on P. Gameo for coining.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 14th instant, stating that he was to transmit to us the papers* relating to the Petition of Pietro Gameo, a prisoner in the Corradino civil prison at Malta, for a remission of a portion of the sentence of seven years' hard labour, which he was undergoing for the crime of coining.

That the notes of evidence taken at the man's trial were inclosed in Mr. Cookson's No. 18 of the 29th ultimo, and that it would be observed that Mr. Cookson, in forwarding the information, added that "he knows no special circumstances in the case which would authorize him in recommending a remission of the sentence."

That, nevertheless, the sentences imposed by Her Majesty's Consular Courts in the Levant had been so frequently mitigated on the advice of the Law Officers of the Crown, that our opinion was requested as to whether the prayer of the Petition should be granted in that case, and, if so, to what extent.

In obedience to your Lordship's commands we have the honour to report—

No reason for acceding to Petition.

That we do not see any special circumstances in this case which should induce your Lordship to recommend any remission of the sentence pronounced.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## No. 18.

*Case prepared by Sir J. Pauncefote for the Opinion of the Lord Chancellor; in reply to which the Memorandum of* 12*th May, as printed below, was received.*

*Foreign Office, January* 26, 1886.

Enforcement of Egyptian Press Law on foreigners.

IN Turkey foreigners committing offences against the Ottoman Government or Ottoman subjects are amenable to the jurisdiction of the Native Tribunals, subject to the conditions laid down in the Capitulations as to the presence at the trial of the

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* Inclosures 2 and 3 in Colonial Office letter of March 12, 1886.

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Ambassador or Consul. Memorandum by Sir E. Hertslet, Consular Jurisdiction in the Levant, 4118, of the 22nd April, 1880, and instructions to Sir H. Layard, No. 319, of the 13th May, 1880. (Docs. 2 and 3.)

But in Egypt foreigners committing offences against natives or the local laws are not amenable to the Native Tribunals. (Doc. 4: Report by Consul Cookson, in Sir E. Malet's despatch No. 328 of the 26th July, 1883, paragraph 7, Confidential Print on Judicial Reforms in Egypt, p. 14.)

The Press Law in Egypt is now regulated by the Decree of the 26th November, 1881. (Doc. 5: Parliamentary Paper, "Egypt No. 5, 1882," p. 18.)

It was previously regulated by the Ottoman Law of the 1st January, 1865, and by a Vizirial Ordinance of the 12th March, 1867. (Docs. 6 and 7, and Law Officers' Report, Doc. 8).

**Case of the "Bosphore Égyptien."**

The correspondence laid before Parliament with regard to the suppression of the "Bosphore Égyptien" newspaper is inclosed (Doc. 9: Parliamentary Paper, "Egypt No. 12, 1885"); and also the Reports of the Law Officers of the Crown on the question which arose out of that incident. (Doc. 10.)

In that case, the Egyptian Government having cancelled the licence to print the newspaper which had been granted under the Press Law of 1881, and their order for its suppression having been disobeyed, they proceeded to enter forcibly the premises where the printer, M. Serrière, a French subject, carried on the publication, and to close the printing-office, in defiance of the protest of the French Consul, to whom they had given notice of the intended course of action, and whose co-operation they had invoked in accordance with the Capitulations. (Doc. 9, p. 41.)

The French Government demanded reparation for this proceeding, as being an infraction of the Capitulations, and Her Majesty's Government thought it right, after consideration of the facts, to advise the Egyptian Government to convey to the French Government an expression of regret. (Doc. 9, p. 29.)

M. Serrière had obtained his licence to print the "Bosphore Égyptien" under the Law of 1881; but it will be seen that the French Acting Consul-General, M. Taillandier, declared that the Law of 1881 had never been accepted by the French Government, and was not binding on French subjects. (Doc. 9, p. 15.)

I am to observe, however, that the old Law of 1875 and Vizirial Ordinance of 1867 were repealed so far as any of their enactments might be contrary to the new Law (see section 22 of Law of 1881); and it would seem that even if M. Taillandier's contention were correct, it was still competent to the Egyptian Government to order the suppression of the "Bosphore Égyptien" under the old Law, which was certainly accepted by all the Powers.

**Case of the "El Ahram."**

This was held in the case of the "El Ahram" newspaper before the Mixed Tribunals. (See copy of Report: Doc. 11.)

On this point I am to invite attention to the Report of the Law Officers of the Crown of the 1st February, 1882, in which they advised that the Press Law of 1881 was binding on foreigners. (Doc. 12.)

**Case of Gustave Laffon.**

An important decision was also delivered by the Court of Appeal of the Mixed Tribunals at Alexandria in June 1884 in the case of Gustave Laffon, a French subject. That case was decided on the Law of 1865 and the Vizirial Ordinance of 1867, and the Court laid down that the Egyptian Government had the right, by an administrative Order, to suppress a journal, independently of any other penalties which might have been incurred under the Law. (Doc. 13.)

**How is the Egyptian administrative order suppressing foreign journals to be enforced?**

Assuming, therefore, that either under the Law of 1865 and the Vizirial Ordinance of 1867, or under the Law of 1881, the Egyptian Government has the right to suppress a foreign journal by an administrative Order, the next question is how such Order, if disobeyed, can be enforced.

In considering this question, it should be borne in mind that the Egyptian Government can exercise no jurisdiction, civil or criminal, over foreigners.

Accordingly, in the correspondence relating to the case of the "Bosphore Égyptien" the French Government (as appears from the French Yellow Book 1885, p. 3) admitted the right of the Egyptian Government to order the suppression of a foreign journal, but denied their right to close a foreign printing-office in execution of the Order of Suppression. (Doc. 14.)

It is important to observe that the question of the right of the Egyptian Government to enforce its own Order of Suppression of a foreign journal has been judicially decided in France.

**Suppression of "L'Indépendant" enforced by French Consul.**

In 1871 the Count de Maillard de Maray (sometimes styled "Marafy") issued a newspaper in Egypt called "L'Indépendant," without a licence. The Egyptian

Government claimed the right of closing the printing-press from which it issued, and which was situated in a foreign dwelling, and they called on the French Consul-General to assist, as required by the Capitulations, but the latter declined to admit the right which they claimed of closing the printing-press.

The point was referred to the arbitration of the British, German, and Italian Consuls-General, who delivered an award declaring that it was the duty of the French Consul-General to take the necessary measure to put a stop to the violation of the Press Law complained of. (Doc. 15.)

Accordingly, the French Consul-General himself ordered the suppression of the "Indépendant," and against that order Count de Maillard de Maray appealed to the Court of Aix, which is the French Court of Appeal from the Judgments of the French Consular Courts in the Levant.

**And appeal against such action dismissed by Court at Aix.**

The Judgment of the Court of Aix dismissing the appeal was delivered by M. Féraud-Giraud, the author of the well-known work on French jurisdiction in the Levant. (Doc. 16.)

The Judgment lays down the principle that the Press Law of Egypt is binding on foreigners, but that the French Consular Court is alone competent to punish a French subject for a violation of that Law; that such Court cannot apply either the enactments of the Egyptian Press Law nor those of the French Press Law, but that, on the complaint of the Egyptian Government that a French subject has violated the Egyptian Law by publishing a journal without authority, it was the right and the duty of the French Consular Court to repress the abuse; and that in the case before the Court, the Consul, without attempting to apply the penalties of fine and imprisonment prescribed by the Egyptian Press Law, had properly taken the necessary measures to put a stop to its violation.

**Principles applied in Japan.**

The same principle has been generally acknowledged and applied in Japan, where foreigners enjoy by Treaty the same immunities of person and property, and the same Consular jurisdiction, as they do in Egypt under the Capitulations and usages.

**Views of the United States' Government.**

In a despatch from Mr. Fish (United States' Secretary of State) to Mr. Bingham (then United States' Minister in Japan), dated the 7th January, 1884 ("Foreign Relations of the United States," 1874, p. 658: Doc. 17), it is observed that, while the Japanese laws are binding on foreigners, they cannot be put into execution against them by the Japanese authorities, but can only be enforced through the action of the Consuls; and in a further despatch of the 2nd May, 1876 ("Foreign Relations of the United States," 1876, p. 367: Doc. 18), the same view is expressed as regards the Press Laws of Japan.

That view has likewise been maintained in a succession of Reports by the British Law Officers of the Crown, of which copies are also inclosed. (Doc. 19.)

**Principle laid down by Appeal Court of Aix.**

If the principle laid down by the Appeal Court of Aix be correct, it would seem that the proper course for the Egyptian Government to pursue, in the case of the journals which have lately appeared without authority, is to call on the Consuls whom it may concern to take the necessary measures for their suppression.

**Egyptian action in case of the "Bosphore Égyptien" contrary to judgment of Court at Aix.**

But Nubar Pasha, the present Minister for Foreign Affairs in Egypt, declines to accept the law as laid down by the Court of Aix, and insists that the Egyptian authorities have the right themselves to enforce the Egyptian Press Law on foreigners, and are only called on to invoke the aid of the foreign Consuls when it becomes necessary for that purpose to enter the premises of a foreigner, owing to the immunities afforded by the Capitulations.

Accordingly, in the case of the "Bosphore Égyptien," it being necessary to enter the premises of M. Serrière for the purpose of closing his printing-press, the Egyptian Government invited the French Consul to attend whilst the Egyptian authorities executed the law; and on the refusal of the French Consul to permit the entry, they proceeded *non obstante*.

As before stated, Her Majesty's Government were unable to support the Egyptian Government in this proceeding, which they considered a breach of the Capitulations.

The ground on which Nubar Pasha takes exception to the decision of the Court of Aix will be gathered from the notes on that case which have been furnished by his Excellency. (Inclosure 2 in Mr. Egerton's despatch No. 830 of the 13th ultimo: Doc. 20.)

It will be seen that his Excellency still adheres to the view of the law under which he proceeded in the case of the "Bosphore Égyptien," and that, in his opinion, the Egyptian authorities are alone competent to enforce the Egyptian Press Law, and have the right to do so.

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British Circular to the Powers, with draft of Press Law.

In the hope of promoting a solution of the difficulty, Her Majesty's Government, with the concurrence of the Egyptian Government, addressed a Circular to the Powers inviting them to agree to a draft of a Press Law giving to the Mixed Tribunals the necessary powers to punish foreigners for publishing newspapers in Egypt without licence from the Government, or after the licence should have been withdrawn.

A copy of the draft Law and of the Memorandum which accompanied it is inclosed. (Doc. 21.)

French Government decline to accept Draft Law.

Further violation of Law.

The Governments of Germany, Austria-Hungary, and Italy have expressed their willingness to accept that Law, but the French Government have declined to do so.

In the meanwhile, as will be seen from Mr. Egerton's despatch No. 760 (Doc. 1), no less than five foreign journals, taking advantage of the situation, have appeared without licence; and it is a matter of urgent importance that this "flagrant violation of the law," as it is termed in the Judgment of the Court of Aix, should be stopped.

I am to inclose two further despatches just received from Mr. Egerton on the subject (Nos. 27 and 28 of the 19th January, 1886), reporting the action taken by Nubar Pasha.

Questions decided.

The question on which the Secretary of State desires to be favoured with the opinion of the Lord Chancellor is, whether the Egyptian Government are right in their contention that their own authorities are competent to enforce against a foreigner an administrative Order for the suppression of a journal; or whether, as laid down by the Court of Aix, the proper course is for the Egyptian Government to call on the foreign Consul of the offender's nationality to take the necessary measures for the enforcement of the Order.

(Signed) JULIAN PAUNCEFOTE.

P.S. *February* 4, 1886.—Two further despatches are inclosed, the first from Mr. Egerton (No. 30 of the 20th January), forwarding a Judgment delivered by the Mixed Court of First Instance at Cairo in the case of the proprietor of the "Bosphore Égyptien," against the Egyptian Government. This Judgment declares illegal the closing of the printing-press by the Egyptian Government, and condemns the latter to the payment of damages for the loss resulting from such action.

The second despatch (Sir E. Baring, No. 36, of the 27th January) contains the observations of Mr. Cookson, Her Majesty's Consul at Alexandria, on this decision.

J. P.

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*List of Documents.*

No.
1. Mr. Egerton, No. 760, October 24, 1885.
2. Memorandum, Sir E. Hertslet, No. 4118, April 22, 1880.
3. To Sir H. Layard, No. 319, May 13, 1880.
4. Report, Consul Cookson, July 24, 1883.
5. Press Law of Egypt, November 26, 1881; "Egypt No. 5 (1882)." Foreign Office No. 2552.
6. Ottoman Press Law, January 1, 1865, 8vo. 5296, p. 320.
7. Vizirial Ordinance on the Press, March 12, 1867. (In Lord Lyons' despatch No. 155 of April 23, 1867.) See 8vo. 5296, p. 325.
8. Law Officers' Report on above Law and Ordinance, July 25, 1872. Confidential No. 4098, p. 170.
9. Parliamentary Paper, "Bosphore Égyptien;" "Egypt No. 12 (1885)." Foreign Office No. 2964.
10. Law Officers' Reports on suppression of ditto, April 1885. Confidential No. 5246, pp. 46-48.
11. Judgment in case of "El Ahram" newspaper. (In Sir E. Baring's No. 297 of April 2, 1885.) Confidential 5148, pp. 2–4.
12. Law Officers' Report on Press Law of 1881. Confidential No. 4783, p. 20.
13. Decision of Court of Appeal in case of G. Laffon. (In Mr. Egerton's No. 830 of December 13, 1885.)
14. French Yellow Book, 1885, "Bosphore Égyptien." (In Lord Lyons' No. 341 of May 24, 1885.)
15. Awards of English, German, and Italian Consuls-General. Case of "l'Indépendant." (In Sir E. Baring's No. 286 of March 29, 1885.) Confidential No. 5106, p. 311.
16. Judgment of Court of Appeal of Aix in case of "l'Indépendant."
17. Despatch from Mr. Fish to Mr. Bingham respecting Japanese Press Law, January 7, 1874. ("Foreign Relations of United States, 1874," p. 658.)
18. Ditto, ditto, May 2, 1876. ("Foreign Relations of United States, 1876," p. 367.)
19. Law Officers' Reports, May 2 and July 5, 1876, Confidential No. 4028, pp. 47 and 49; September 1877, Confidential No. 4216, p. 32; December 31, 1878, Confidential No. 4280, p. 39 A; September 22 and October 3, 1879, Confidential No. 4328, pp. 43 and 44.
20. Objections of Nubar Pasha to Decision of Court of Aix. (Inclosure in Mr. Egerton's No. 830, December 13, 1885.)
21. Draft Law and Memorandum by Mr. R. West, September 1885. (Inclosure in despatch to Sir J. Walsham, No. 752, September 12, 1885.)

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Foreigners bound by local laws.

Their immunity from Egyptian jurisdiction.

Consuls bound to enforce local laws.

Course open to Egyptian Government.

I think it clear that foreigners in Egypt are bound to obey the local laws made for the peace, order, and good government of the country. It seems clear, too, that the Egyptian Government are not entitled to exercise criminal jurisdiction over a foreigner. The Native Tribunals cannot affect his person or property by their own authority alone, or warrant an entry upon his premises against his will Nor can the Government, as an administrative act, enforce a penalty, attack his person, or violate his premises. But it follows, in my judgment, from this very immunity, that the offender's natural authorities are bound to enforce obedience to local laws, such as Press Law, enacted for the peace and good government of the country. And I think that the proper course is for the Egyptian Government to call upon the foreign Consul of the offender's nationality to take the necessary measures for the enforcement of an administrative Order for the suppression of a journal. It would, of course, be competent for the Egyptian Government to take any steps for the enforcement of such an Order which would be possible for them consistently with the immunity from local jurisdiction possessed by foreigners in Egypt.

(Signed) HERSCHELL.

46, *Grosvenor Gardens, May* 12, 1886.

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## No. 19.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received May* 26.)

My Lord, *Royal Courts of Justice, May* 25, 1886.

Egyptian tribute on account of Massowah, now occupied by the Italians.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th ultimo, stating that he was to transmit to us a letter which had been received from Mr. Edgar Vincent,* the Financial Adviser to the Egyptian Government, on the subject of the tribute paid by the Government to the Porte, on account of the ports of Zeyla and Massowah, which had now passed out of the practical possession of the Khedive, and were respectively in British and Italian occupation.

That Sir J. Pauncefote was further to inclose a Memorandum which had been drawn up in the Foreign Office upon the question, and copies of opinions given by the Law Officers of the Crown in February and October of last year, together with a collection of Firmans relating to Egypt, and those which related specially to the cession of Zeyla and Massowah to the Khedive Ismaïl.†

That it would be seen that by the terms of the present Khedive's Firman of Investiture (August 2, 1879) His Highness was precluded from abandoning to others on any pretext or motive, in whole or in part, the privileges accorded to Egypt, or which were confided to him, and which were an emanation of the prerogatives inherent in the Sovereign Power, nor any portion of territory.

That it would not, therefore, be open to the Egyptian Government to enter into any formal arrangement for the temporary or permanent acquisition by England of Zeyla, or by Italy of Massowah, in consideration of a money payment, without the previous sanction of the Porte.

But that Sir J. Pauncefote was to request our attention to the opinion expressed by the Law Officers in their Report of the 14th February, 1885, already referred to, that the arrangement for payment of tribute to the Sultan could only be got rid of by a new Agreement, except, it might be, in the case of the territories being lost to Egypt by conquest.

As to claim for the reinstatement of Egyptians by the Porte, or for relief from proportion of the tribute.

That the proceedings of the Italian authorities at Massowah amounted to a forcible dispossession of the Egyptian Administration, and that your Lordship wished to know whether, in our opinion, the Egyptian Government could, under those circumstances, claim that the Porte should either take steps to restore Egyptian authority there, or should relieve Egypt of such a proportion of the total tribute as might be considered to represent the value of Massowah.

Further, whether until that proportional amount was ascertained, the Khedive would be entitled to withhold payment of the tribute of £ T. 14,000 a-year, now payable on account of Zeyla.

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* Mr. E. Vincent, March 11, 1886.

† Memoranda (T. H. S.), September 15 and October 2; Law Officers, February 14 and October 17, 1885 (Confidential No. 5246, pp. 42 and 62); Firmans, 1841–1879 (Confidential No. 4747); Sir H. Drummond Wolff, No. 37, January 23, 1886 (Confidential No. 5361, p. 56).

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Also as to withholding Zeyla tribute until the proportion is settled.

That Sir J. Pauncefote was to observe, in connection with those two questions, that the general tribute for Egypt was entirely pledged by the Porte as security for the payment of various foreign loans. That the Zeyla tribute did not appear to be so pledged.

In obedience to your Lordship's commands we have the honour to report—

Such claim cannot be made.

That we are of opinion that the Egyptian Government could not successfully claim that the Porte either should take steps to restore Egyptian authority at Massowah, or should relieve Egypt of such a proportion of the total tribute as may be considered to represent the value of Massowah.

This seems to us to follow from the opinions expressed by our predecessors in their Reports of the 14th February and the 17th October, 1885, with which we agree.

The Porte would probably reply that it was not through any default or omission on their part that the Egyptian Government ceased to exercise jurisdiction over Massowah. It follows, therefore, that the Khedive would not be entitled to withhold payment of the Zeyla tribute until the proportional part of the general tribute attributable to Massowah should be ascertained.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## No. 20.

[In reply to the following communication, the Lord Chancellor replied as under:—]

(Private.)
*Foreign Office, June* 12, 1886.

My dear Lord Chancellor,

Claims of the ex-Khedive against the Egyptian Government.

**LORD ROSEBERY** would be extremely obliged to you if you would kindly look at the following papers relating to the claims of the ex-Khedive of Egypt, Ismaïl Pasha, and his family:—

1. Printed correspondence, Confidential No. 5220.
2. Memorandum thereon, 14th May, 1886, Confidential No. 5276.
3. Law of Liquidation, Parliamentary Paper No. 2322.
4. Memorial of Ismaïl.

As at present advised, Lord Rosebery is disposed to hold that, as a question of strict right, the Law of Liquidation is a complete bar to the whole of these claims, which do not come within the exception mentioned in Article 86 of that Law. Further, that the Liquidation having been an international Act, the Khedivial claims could not be entertained, with a view to an equitable settlement, without the consent of the Powers parties to the Law of Liquidation.

Sir H. D. Wolff's last despatch on the subject No. 173 of the 31st May (Most Confidential and Secret) is annexed in MS., and Lord Rosebery is disposed to send the telegram which you will find among the papers in red ink.

Before doing so, however, he would be very glad to be favoured with your opinion on the point.

I remain, &c.
Signed) JULIAN PAUNCEFOTE.

P.S.—The "barring" clause of the Law of Liquidation is section 86. But no notice seems to be taken of section 83, which appears equally strong.

J. P.

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### *Memorandum by the Lord Chancellor.*

Claims excluded by the Law of Liquidation. Concurrence of Powers necessary for their consideration.

I CONCUR in the view that, as matter of strict right, the ex-Khedive's claims are excluded by the Law of Liquidation. Any appeal for an equitable consideration of these claims could, I think, only be entertained on the concurrence of all the Powers who were parties to the Law of Liquidation.

H.

46, *Grosvenor Gardens, S.W., June* 15, 1886.

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## No. 21.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.—(Received September* 3.)

My Lord,
*Royal Courts of Justice, September* 2, 1886.

Khedivial Civil List. Right to surrender a portion for use of the State.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, and to request that we would favour your Lordship with our opinion on a question which had been raised in connection with the financial administration of Egypt, namely, whether the Khedive and his Council of Ministers had the right legally to surrender to the State, towards its public expenditure, any portion of the Civil List of 300,000*l.* set apart in the yearly Budget for the maintenance of the members of the Khedivial family, or whether the whole of that sum must be applied for their benefit.

That the circumstances under which the Civil List was created and fixed at 300,000*l.* a-year were as follows:—

That the ex-Khedive of Egypt, Ismaïl Pasha, abdicated on the 26th June, 1879. That an account of the circumstances attending that event would be found in the Reference to the Law Officers which was embodied in their Report of the 21st November, 1883.

That up to the time of the abdication of Ismaïl Pasha the Khedive of Egypt had unlimited control over the finances of the country. That he could grant pensions and withdraw them at pleasure, and, in fact, subject to the payment of the stipulated tribute to the Sultan of Turkey, he was, during the period of his tenure of the Khediviate, the absolute and irresponsible Controller of the Egyptian revenues. That thus Ismaïl Pasha had been able to secure for himself and members of his family large estates which had been acquired by methods of rapacity and oppression, and at the expense and to the detriment of the country and of the public creditors.

That in 1878 Egypt had been reduced to bankruptcy by his extravagance and extortions; and that an International Commission of Inquiry was instituted ("Commission Supérieure d'Enquête"), which resulted in the unconditional restitution by the Khedive and the members of his family of all their estates.

That it was important to note that the "Commission Supérieure d'Enquête," in its Preliminary Report, after stating its conclusion respecting the restitution of those estates, added:—

"Les conclusions auxquelles nous sommes arrivés doivent nécessairement avoir pour conséquence l'obligation d'inscrire au Budget du Gouvernement les dotations que réclame la situation du chef de l'État et des membres de sa famille."

That in its second Report (10th April, 1879) the Commission dealt in greater detail with that subject, and that our particular attention was invited to the extract from that Report at p. 47 of the print.

Arrangements as to amount of Civil List.

That it would be seen that the Commission, after recording the loyal assent of the Khedive to the principle laid down that the Chief of the State, having theretofore exercised "une autorité sans limite," was personally responsible for the disastrous results, and that, after stating that His Highness and the members of his family had consequently surrendered their estates, they proceeded to give effect to their proposal above quoted as to the grant of proper dotations to the Head of the State and the members of his family, and recommended a sum of 300,000*l.* a-year to be set apart out of the revenues and applied for that purpose, pending final arrangements with all the creditors of the State.

That, almost immediately after the date of that Report, Ismaïl Pasha abdicated (26th June, 1879), and the Council of Ministers, by an Order dated the 1st July, 1879, proceeded to make such change in the distribution ("allocations") of the Civil List of 300,000*l.* as were called for by that event.

That further changes in the distribution of the Civil List of 1880 were made by a Ministerial Order of the 21st January of that year (Print, p. 44), and a further sum of 15,000*l.* was added for the use of Prince Halim (see Report of Commission, p. 47).

That in March 1880 the International Commission was established, charged with the task of preparing the Law of Liquidation, for the settlement of the Egyptian Debt, and the adoption of a financial system destined to obviate for the future the renewal of past abuses.

That the Powers agreed by anticipation to the Law to be so framed; that it was

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passed on the 17th July, 1880, and is obligatory on all Tribunals in Egypt, and on persons of all nationalities.

That the Commission inquired into the claims of the Khedivial family, and made provision for them by Articles 74, 75, 76, and 77 of the Law.

That it fixed the Civil List at 300,000*l.*, plus an allowance of 15,000*l.* to Prince Halim.

That it imposed certain sacrifices on the public creditors, and that, having made a complete financial settlement, it introduced in the Law the all-important Article 86, barring all claims against the State existing before January 1880.

That the Declaration of the Powers under which they bound themselves to accept the conclusions of the International Commission would be found at p. 43 of the Parliamentary Paper "Egypt No. 10 (1884)," and that it would be observed that the Decree appended thereto, and establishing the Commission, declared that it should take the conclusions of the "Commission Supérieure d'Enquête" as a point of departure.

That the conclusions of the last-named Commission, so far as concerned the Civil List, were contained in the extract from its Report already referred to (see Print, p. 47).

That the Civil List had accordingly been fixed in the yearly Budget at 300,000*l.*, plus 15,000*l.* specially allotted to Prince Halim by section 78 of the Law of Liquidation.

**Control of Khedive over Civil List.**

That the distribution of the sum of 300,000*l.* set apart for the Civil List was clearly within the absolute discretion of the Khedive acting with the advice of his Ministers.

That that appeared from the extract of the Report of the "Commission Supérieure d'Enquête" (Print, p. 47), also from the Memorandum of M. Serra-Rocca, one of the Legal Advisers of the Egyptian Government (Print, p. 41, "Deuxième Réclamation"); also from the arguments presented on behalf of the Egyptian Government in the case of the Princess Fatma Hanem before the Native Tribunal of First Instance (Print, p. 16), and from the Judgment of that Court (Print, p. 15). That it had been contended, however, that the Khedive was not bound to exhaust the fund at his disposal, but might economize any portion of it which he might not think fit to apply for the benefit of any member of the Khedivial family, and surrender such portion to the State for ordinary purposes of public expenditure.

**Question as to distribution of the "allocation" of the late mother of Ismaïl.**

That that question had been raised on the occasion of the recent death of the mother of Ismaïl Pasha, whose "allocation" in the Civil List for 1886 amounted to 20,000*l.* (Print, p. 15).

That the other members of the Khedivial family insisted that the 20,000*l.* which had thus fallen in should be applied for the purposes of the Civil List only, and distributed accordingly among them.

That it was no doubt the fact that the Commission of Liquidation had adopted the recommendation of the "Commission Supérieure d'Enquête," appearing in their Report (Print, p. 47), which was to be the "point of departure," and that they had merely increased the special allowance to Prince Halim from 10,000*l.* to 15,000*l.*

That it might be argued that, under the terms of that Report, the members of the Khedivial family had a vested interest in the 300,000*l.*, and that the Khedive, though entitled to apportion it among them, could not divert its application from the particular objects and purposes for which it was set apart by the Commission of Liquidation and by agreement among the Powers; and that if such right were admitted, he might entirely defeat such objects and purposes by surrendering to the State any portion of the money, leaving members of the Khedivial family who had surrendered their estates without any provision, contrary to the intention expressed in the Report of the "Commission Supérieure d'Enquête" (Print, p. 47).

That on the other hand it was urged that if the whole of the 300,000*l.* should not be reasonably required to meet the suitable needs of the Khedivial family, there was no reason why a portion should not be economized in the public interest, and the unapplied balance appropriated to such uses and in the same manner as the surplus of any sums inscribed in the Budget to meet other items of public expenditure.

That on that point, however, some doubt was thrown by the last paragraph but one of the argument of the Egyptian Government in the case of the Princess Fatma Hanem (Print, p. 18).

That our attention was invited to four despatches from Sir H. D. Wolff, Nos. 203, 206, 210, and 217 (Papers 7 to 10), which dealt with the question.

**Views of French Chargé d'Affaires and Khedive.**

That it would be seen from Sir H. D. Wolff's telegram of the 8th July (Paper 6, No. 5), that the French Chargé d'Affaires in Egypt held that the 20,000*l.* which had become available by the death of Ismaïl Pasha's mother could not properly be applied to any other purposes but those of the Civil List, and that it appeared from his despatch No. 206 (Paper 8) that the Khedive took the same view. That on the other hand the opinion of the Law Advisers of the Egyptian Government, of which a copy would be found in his despatch No. 217 (Paper 10), was to a contrary effect.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the question submitted in his letter.

In obedience to your Lordship's commands we have the honour to report—

That it appears both from the Preliminary Report of the "Commission Supérieure d'Enquête" of August 1878, and from their second Report of the 10th April, 1879, that the allocation of £ E. 300,000 per annum for the needs of the ex-Khedive and his family formed the basis of arrangement between them and the present Egyptian Government. Upon that footing the Powers sanctioned the recommendations of the International Commission of Liquidation, which adopted the recommendation of the "Commission Supérieure d'Enquête" (increasing merely the special allowance of Prince Halim from 10,000*l.* to 15,000*l*). The sum to be applied as a provision for the ex-Khedive and his family was therefore settled by the Commission of Liquidation; it was inserted in the maximum of budgetary expenses fixed by the Law of Liquidation (5220 Print, continuation, p. 5), and has since 1880 (the date when the settlement was arrived at) remained unaltered.

**Khedive has no right to surrender any portion of the Civil List to the State.**

Under these circumstances, we are of opinion, upon the documents submitted, that the Khedive and his Ministers have no right legally to surrender to the State, towards its public expenditure, any portion of the Civil List of 300,000*l.* set apart in the yearly Budget for the maintenance of the Khedivial family.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
J. PARKER DEANE.

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*List of Papers.*

1. Confidential Print No. 5220.
2. Memorandum on above by Sir J. Pauncefote, of the 14th May, 1886. Confidential No. 5276.
3. Law Officers' Report of the 21st November, 1883. Confidential No. 4974, p. 37.
4. "Egypt No. 10 (1884)." Parliamentary No. 2822.
5. "Egypt No. 4 (1880)." Parliamentary No. 2322.
6. Sir H. D. Wolff, No. 158, Telegraphic, June 27, 1886.
   To Sir H. D. Wolff, No. 82, Telegraphic, June 28, 1886. Confidential No. 5404.
   Sir H. D. Wolff, No. 162, Telegraphic, July 1, 1886. Confidential No. 5404.
   To Sir H. D. Wolff, No. 85, Telegraphic, July 2, 1866. Confidential No. 5404.
   Sir H. D. Wolff, No. 169, Telegraphic, July 8, 1886 Confidential No. 5404.
   Ditto, No. 174, Telegraphic (Secret), July 12, 1886. Confidential No. 5404.
   To Sir H. D. Wolff, No. 88, Telegraphic, July 13, 1886. Confidential No. 5404.
   Sir H. D. Wolff, No. 185, Telegraphic, August 1, 1886. Confidential No. 5404.
   To Sir H. D. Wolff, No. 96, Telegraphic, August 2, 1886. Confidential No. 5404.
7. Sir H. D. Wolff, No. 203, June 26, 1886. Confidential No. 5404, p. 15.
8. Ditto, No. 206, Confidential, July 1, 1886. Confidential No. 5404, p. 18.
9. Ditto, No. 210, July 5, 1886. Confidential No. 5404, p. 19.
10. Ditto, No. 217, July 10, 1886. Confidential No. 5404, p. 20.

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## No. 22.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.—(Received October 21.)*

My Lord, *Royal Courts of Justice, October 20, 1886.*

**Condemnation of G. Vella for murder of Marie Detrey.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list* relative to the case of Giuseppe Vella, a British Maltese subject, who was tried in the Consular Court at

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* *List of Papers.*

Consul-General Fawcett's No. 56 of September 16, 1886.
Ottoman Order in Council, 1873 (Confidential No. 2354).

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Alexandria on the 26th August last for the murder of Marie Detrey, a French subject.

That the trial, which was held before Mr. Burrell, Acting Judge at Alexandria, resulted in the conviction of the prisoner, against whom sentence of death was recorded on the first indictment.

That Sir Julian Pauncefote was to refer us to section 269 of the Levant Order in Council of 1873, which regulates the procedure after sentence in capital cases.

That the notes of evidence and a Report on the trial by Mr. Burrell would be found in Consul-General and Judge Fawcett's despatch No. 56 of the 16th ultimo.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to the punishment which should be imposed, and which was limited by section 268 of the Order in Council, and the last paragraph of section 269.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Full sentence of twenty years' imprisonment should be imposed.

That in our judgment the murder was premeditated and without any extenuation; and that in our opinion the full sentence of twenty years' imprisonment should be imposed.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
J. PARKER DEANE.

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## France.

### No. 23.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received March 20.)*

*Royal Courts of Justice, March* 18, 1886.

My Lord,

Esparto grass Concession in Tunis.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 19th ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, the papers relating to the complaint of Messrs. Perry, Bury, and Co., and that of Mr. Arbib, who were engaged in the trade of exporting, from the Regency of Tunis, esparto grass, the fibre of which was largely used for various manufactures.

That it appeared that in 1881 a Concession was granted by the Tunisian Government to M. Duplessis of the exclusive right of gathering esparto grass on four mountains specified in the grant.

Complaint that its extension is a monopoly.

That that Concession was afterwards transferred to the "Franco-English-Tunisian Esparto Fibre Supply Company," and that it was now sought to extend the area of the Concession practically over the whole of the Regency, and thus to turn the Concession into a monopoly.

That our attention was directed to Article IX of the Treaty between this country and Tunis of the 19th July, 1875, wherein the Bey of Tunis undertook to abolish all monopolies of agricultural produce or of any other article, with certain specified exceptions.

That the complainants assert that the proposed extension of the Company's Concession would comprise nearly the whole territory of the Regency where esparto grew, except districts so distant as to render the trade unprofitable.

That it would amount virtually to the concession of a monopoly, contrary to the Treaty, and would be ruinous to the interests of British subjects who had invested their capital in the trade, and were the first to open up the esparto grass trade in Tunis.

That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion as to whether the complaint of the Company and of Mr. Arbib was such as to justify a representation to the French Government on the ground of a departure from the spirit, if not from the terms, of Article IX of the British Treaty.

In obedience to your Lordship's commands we have the honour to report—

Concession not a monopoly within Treaty;

That we are of opinion that the concessions by the Bey to the French Company of the exclusive right of gathering esparto grass in the specified districts do not, according to the true construction of Article IX of the British Treaty, constitute a monopoly within the meaning of that Article.

but a departure from its spirit.

Representation justifiable.

If, however (as stated by the complainants), the effect of the recent delimitation of the boundaries of the original Concession be to give the concessionnaires the practical monopoly of the export esparto trade, we think that there is such a departure from the spirit of the Treaty as might justify a representation on that ground to the French Government. But this is a matter of policy to be determined by your Lordship, and we need not point out the objections which exist to the assertion of a right which cannot be supported according to the true construction of the Treaty.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

*List of Papers.*

Consul Sandwith, Tunis, No. 1, Commercial, January 13, 1886 (Confidential No. 5334, p. 1).
Sir E. Hertslet, Memorandum, March 13, 1882.
" " " February 12, 1886 (Confidential No. 5334, p. 5).
Perry, Bury, and Co., January 21, 1886 (Confidential No. 5334, p. 3).
Mr. Arbib, January 28, 1886 (Confidential No. 5334, p. 4).
Convention between Great Britain and Tunis, July 19, 1875 (Treaty No. 586).
Plan.

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### No. 24.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received March 30.)*

*Royal Courts of Justice, March* 29, 1886.

My Lord,

Removal of Elsa Roller from jurisdiction of Divorce Court and her detention.

Application of Mr. J. Roller for assistance.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to us the accompanying papers* relative to an application which had been made by Messrs. Lewis and Lewis, on behalf of their client, Mr. Josef Roller, for instructions to be issued to Her Majesty's Ambassador at Paris to ask the French authorities to render assistance to Mr. Roller in obtaining the custody of his daughter, Elsa Roller, aged 10, who was alleged to have been removed out of the jurisdiction of the Divorce Division of the High Court of Justice, and to be unlawfully detained at Nice.

That Sir Julian Pauncefote was at the same time to forward, for our consideration in connection with the matter, a correspondence which took place in 1881† in regard to an application which was made to Earl Granville by Messrs. Fladgate, Smith, and Fladgate for the exercise of his Lordship's authority to enforce the obedience of Mr. Vice-Consul Stigand to an order issued by the same Court, directing him to send over his two elder children from France to this country.

That the Law Officers advised that the circumstances did not justify the interference of the Secretary of State, and that the client of Messrs. Fladgate, Smith, and Fladgate should be left to seek such remedies as the law afforded.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into consideration, and favour your Lordship with our opinion as to whether your Lordship should take any, and what, action in the matter, or leave Mr. Roller to take legal advice for the protection of his interests.

In obedience to your Lordship's commands we have the honour to report—

Cannot interfere. He must seek legal remedies.

That we are of opinion that the case is not one for your Lordship's interference,

* Messrs. Lewis and Lewis, March 18; to ditto, March 19, 1886.

† Messrs. Fladgate, Smith, and Fladgate, June 28; to Law Officers, July 27; Law Officers, August 9; Confidential No. 4637, p. 22; to Messrs. Fladgate, Smith, and Fladgate, August 19, 1881.

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and that Mr. Roller should be left to such legal remedies for the protection of his interests as he may be advised.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## No. 25.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received April 28.)*

*Royal Courts of Justice, April* 28, 1886.

My Lord,

Petition for remission of sentence on A. Bahagier for house-breaking and stabbing.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 13th instant, stating that he was to transmit to us the papers[*] relating to the Petition of Andrea Bahagier, a prisoner in the Corradino civil prison at Malta, for a remission of a portion of the sentences of five years' penal servitude and four years' imprisonment with hard labour, which he was then undergoing for the crimes of house-breaking and stabbing.

That the notes of evidence in the case were inclosed in Consul Sandwith's despatch No. 6 of the 23rd January last, and that Sir J. Pauncefote was to request our opinion as to whether any mitigation of sentence could properly be granted to the applicant.

In obedience to your Lordship's commands we have the honour to report—

No reason at present for mitigation of sentence.

That, having regard to the nature of the offences of which the prisoner was convicted, and the comparatively short portion of his sentence which he has undergone, we do not think that there are any grounds upon which any mitigation of sentence can, *at present*, properly be granted to the applicant.

Question may be considered later.

If his conduct in prison continues to be good, the matter would be one proper, we think, for your Lordship's consideration at a later period.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## No. 26.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received April 28.)*

*Royal Courts of Justice, April* 28, 1886.

My Lord,

Arrest of a British subject in Tunis, and his removal by the French to Algiers for trial, for crime committed in Algeria.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 18th ultimo, stating that he was to transmit to us despatches[†] from Her Majesty's Consul-General at Algiers, reporting that the French Procureur-Général had ordered the arrest in Tunis, and removal to Algiers, of a Maltese who was condemned in default at Algiers, in 1866, on a charge of manslaughter, but who escaped to Tunis, where he had resided ever since.

That the Parliamentary Paper "Tunis No. 1 (1876)" was inclosed, containing the Convention of the 19th July, 1875, between this country and Tunis, which was still in force; also the Parliamentary Paper "Tunis No. 6 (1881)," containing the Treaty between France and Tunis of the 12th May, 1881, the IVth Article of which guaranteed the execution of the Treaties at that date existing between the Regency and foreign Powers, together with a copy of a note from Earl Granville to the French Ambassador of the 20th May, 1881, in which Her Majesty's Government explicitly stated that the Convention of the 19th July, 1875, between Great Britain and Tunis, was, and remained, in force.

That, before the establishment of the French Protectorate in Tunis, no British subject in the Regency could lawfully have been surrendered by the Bey to any foreign Government on an extradition demand.

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[*] Inclosure in Colonial Office letter of December 23, 1885.

[†] Consul-General Playfair, No. 12, March 1; ditto, No. 13, March 3; Consul Sandwith, No. 5, March 3; ditto, No. 6, March 4; ditto, No. 7, March 8; ditto, No. 8, March 10, 1886. Parliamentary Papers: "Tunis No. 1 (1876)," Treaty No. 586; "Tunis No. 6 (1881)," Foreign Office No. 2415; "Tunis No. 1 (1884)," Foreign Office No. 2767.

That, by an Order in Council of the 31st December, 1883 (Parliamentary Paper "Tunis No. 1 (1884)," p. 31), British Consular jurisdiction in Tunis was abandoned, and British subjects became justiciable by the French Tribunals established in the Regency.

That the French Law, and the Decree of the Bey under which those Tribunals were established, would be found at pp. 8–21 of the Parliamentary Paper above referred to.

Is such action justifiable and in accordance with British Treaty rights in Tunis?

That it was conceived that the French authorities in Tunis are entitled to exercise full criminal jurisdiction over British subjects in regard to crimes and offences committed by them within the Regency; but that the question arose whether, considering that Tunis was not French territory, but only under the Protectorate of France, and that the Bey's Treaties with foreign Powers remained in force, except so far as the rights of exterritorial jurisdiction had been waived, the French authorities had the right to remove a British subject from Tunis to Algiers to take his trial for an offence committed by him in that country.

That it appeared that the Maltese prisoner referred to had been liberated on bail of 20,000 fr., and Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether Her Majesty's Government were entitled to protest against the action of the French authorities in Tunis in that case, and, if so, what representation should be made to the French Government.

In obedience to your Lordship's commands we have the honour to report—

That with reference to the statement in Sir Julian Pauncefote's letter, that "before the establishment of the French Protectorate in Tunis no British subject in the Regency could lawfully have been surrendered by the Bey to any foreign Government on an extradition demand," we presume that Sir Julian founds that opinion on Article V of the Convention of the 19th July, 1875, whereby the Bey engaged to protect British subjects who might come to his country either for the purposes of trade or for travelling, and further engaged that they should be free to trade or to travel in any part of the Regency without hindrance or molestation.

He ought not to have been given up without previous communication. France bound by Treaty obligations of the Bey.

We think that, having regard to Article V quoted above, the British subject ought not to have been given up without previous diplomatic communication with Her Majesty's Government; and under the Treaty between France and Tunis of the 12th May, 1881, the French Government is bound by all the Treaty obligations of the Bey.

Should protest and make representations as to French action.

We are, therefore, of opinion that Her Majesty's Government are entitled to protest against the action of the French authorities in Tunis in this case, and that a representation should be made to the French Government to the effect that, in the view of Her Majesty's Government, the British subject should be unconditionally released.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## No. 27.

*The Law Officers of the Crown to the Earl of Rosebery.—(Received May 11.)*

*Royal Courts of Justice, May* 11, 1886.

My Lord,

Protection of submarine cables. Conflict between the Treaty and the Act as to liability for injuries.

WE were honoured with your Lordship's commands signified in Mr. Bryce's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us the papers (noted in the margin[*]) relative to a question which had arisen with respect to a conflict between the provisions of section 4 of "The Submarine Telegraph Act, 1885," and Article IV of the Convention of the 14th March, 1884, for the protection of submarine telegraphs.

That Article IV of the Convention provided that the owner of a cable who, on laying or repairing his own cable, breaks or injures another cable, must bear the cost of repairing the breakage or injury.

That it would be perceived that section 4 of the Act provided that Article IV of

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[*] Printed Correspondence, Confidential No. 5374; "The Submarine Telegraph Act, 1885," 48 & 49 Vict., cap. 49.

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the Convention should not apply "to that part of a cable which is laid in a depth of water exceeding 100 fathoms." That that limitation was inserted at the instance of the British Submarine Telegraph Companies during the passage of the Bill through Parliament; and that the reasons given for that deviation from the strict terms of the IVth Article of the Convention would be found in the papers Nos. 1, 5, 14, 43, and others in the accompanying printed correspondence.

Objection to the 100-fathom limit.

That objection had been taken to that limitation by some of the foreign Powers parties to the Convention of 1884 (Correspondence, Nos. 2, 9, 12, 18).

That the French Ambassador, in his letter of the 17th November last (Correspondence, No. 12, p. 9), pointed out that the Conference had affirmed the general principle that the owner of a submarine cable which had been injured by the laying or repairing of another cable should be indemnified, and that no objection was raised to the contention of the German Delegate that priority of occupancy gave no rights to the owner of a submarine cable, and that no consideration, not even that of priority, could relieve a person causing injury to another from the obligation of compensating him.

That the difficulties and risks attending the repairing of deep-sea cables were so great that the British Telegraph Companies were unwilling to accept the very heavy responsibility which they might incur, under the unqualified terms of Article IV of the Convention, in cases of injury caused to cables below the depth of 100 fathoms. That at that depth they could form a pretty accurate estimate of the liability involved; and that though section 4 of the Act (to which exception was taken by foreign Governments) reserved any legal remedy which the owner of a cable lying at a greater depth than 100 fathoms might have, independently of the Convention, it might be that the British Telegraph Companies doubted whether, apart from a Convention, any legal remedy existed in such cases.

That it was to be observed, also, that the terms of Article IV of the Convention were very absolute, and might be held to preclude the party sued from pleading that he exercised proper and reasonable care, and that the injury was due to no default of his own, but to the bad condition or insufficient dimensions of the injured cable, or to some defect in its laying or otherwise for which he was not responsible.

That the risks of injury to cables arising from the absence of proper measures of safety, both as regarded the track of the cable and its dimensions, were discussed in the Conference; and that Article III of the Convention was inserted for the purpose of obviating them as far as possible.

That a further Conference was about to be held at Paris, and that it was possible that the Delegates of the Powers might not be disposed to amend Article IV of the Convention in the sense of section 4 of the Act. That it would facilitate the further consideration of that question, and the action of the British Delegates at Paris, if we would favour your Lordship with our opinion on the following points:—

Question as to—
1. Legal remedy for injuries beyond the territorial jurisdiction.

1. Apart from a Convention, and an Act of Parliament to give it effect, would an action for damages lie in the Courts of this country against a person to recover damages for injuries caused by the defendant to the plaintiff's submarine cable lying under the high seas beyond the limits of the territorial jurisdiction?

2. Modification of Article IV in event of surrender of limit.

2. In the event of Her Majesty's Government agreeing to give up the 100-fathom limit, would it be desirable to insist, as a condition, that a proviso be added to Article IV to the effect that nothing in that Article should be deemed to preclude the party sued from proving any facts which, in the opinion of the Tribunal before which the claim might be brought, were such as to relieve him wholly or partially from liability?

That the Conference was to meet at Paris on the 12th instant, and that Mr. Bryce was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Action would not lie in British Courts without proof of negligence.

1. That, without proof of negligence, we are of opinion that no action for damages would, in the case put in the first question, lie in the Courts of this country to recover damages for injuries caused by the defendant to the plaintiff's submarine cable lying under the high seas beyond the limits of the territorial jurisdiction. But if "negligence" were alleged and proved, such an action would lie.

Proviso too vague; suggesting amendment.

2. We are of opinion that the terms of the suggested proviso to Article IV of the Convention are too vague and indefinite, and we are apprehensive that they might not be construed so as to qualify the absolute liability imposed by Article IV, but only so as to admit proof of collateral facts. We suggest the introduction of the words "wilfully or negligently" after the word "cable" on the first line of Article IV.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.

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## No. 28.

*The Law Officers of the Crown to the Earl of Iddesleigh.*—(*Received November* 16.)

My Lord, *Royal Courts of Justice, November* 13, 1886.

Application for a passport in a third country by a British subject of double nationality with a domicile in that third country.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the case of Mr. Ehrensperger, who had applied to the British Consulate at Paris for a passport on the ground of his being a British subject, an application which it was considered undesirable to grant without the previous authority of the Secretary of State.

That Mr. Ehrensperger, as we should observe from the papers therewith, was born in London on the 26th October, 1862, his father being a Dutch subject and his mother an Englishwoman.

That he was consequently of double nationality, and that it would further appear that his domicil was not of either of those nationalities, but was at present French.

That, under those circumstances, your Lordship doubted the propriety of issuing a passport to Mr. Ehrensperger; and that, before sending final instructions to the British Consulate in Paris upon the point, your Lordship desired to be informed whether, in our opinion, it was advisable in cases of double nationality to confine the issue of passports to those persons only who were resident in the United Kingdom or some British possession at the time of their application, or whether the privilege might be safely extended to a case like the present.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in his letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Conditions under which Mr. Ehrensperger's application may be granted.

That, in our opinion, a passport should be issued to Mr. Ehrensperger upon his satisfying the authorities that he has not made a declaration of alienage under the Act 33 & 34 Vict., cap. 14, sec. 4, and that he has not voluntarily become naturalized in any foreign State.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers to accompany Reference to Law Officers of October* 29, 1876.

Law Officers, August 14, 1876. Confidential No. 4028, p. 32.
Mr. Egerton, No. 485, September 13, 1886.
To Mr. Egerton, Treaty, No. 36, October 12, 1886.
Mr. Ehrensperger, October 15, 1886.
To Mr. Ehrensperger, October 23, 1886.
Mr. Ehrensperger, October 24, 1886.

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## No. 29.

*The Law Officers of the Crown to the Earl of Iddesleigh.*—(*Received November* 29.)

My Lord, *Royal Courts of Justice, November* 29, 1886.

Paolo Lia, British subject. His arrest in Tunis, and removal by the French to Algiers to be tried for crime committed in Algeria.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the action of the French Government with respect to the case of Paolo Lia, a British subject of Maltese birth, who, having previously escaped to Tunis, where he had since resided, was in 1866 condemned, in default of appearance, at Algiers upon a charge of manslaughter.

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That early in the present year Paolo Lia was arrested at Tunis by order of the French Procureur-Général, and was ordered to be removed for trial at Algiers.

That in consequence, however, of representations made by Her Majesty's Government to that of the French Republic, he was, pending an inquiry into his case by the French authorities, released on bail, and that he had since remained at Tunis awaiting the result of that inquiry.

Protest against his removal, and jurisdiction over him.

That meanwhile, Her Majesty's Government had strongly protested, both through Her Majesty's Ambassador at Paris and on the spot, against the removal of Paolo Lia to Algiers for trial, and against the exercise of any jurisdiction over him at Tunis in respect of an offence alleged to have been committed by him out of the Regency.

That unfortunately those protests had not hitherto met with the desired effect, as, according to the latest advices which had been received from Algiers, it was the intention of the French authorities that Paolo Lia should take his trial at the ensuing assizes which were to be held in December, and that it therefore became necessary at once to decide what further steps (if any) Her Majesty's Government ought, in the circumstances, to take.

That Sir Julian Pauncefote was particularly to call our attention to a Report, dated the 28th April last, of the late Law Officers of the Crown upon the case, and that he was to add, with reference to the first paragraph of that Report, that the opinion that "before the establishment of the French Protectorate in Tunis no British subject in the Regency could lawfully have been surrendered by the Bey to any foreign Government on an extradition demand" was founded, not only on a consideration of the terms of Article V of the Convention of the 19th July, 1875, therein alluded to, but also of those of the Capitulations existing between Her Majesty's Government and the Sublime Porte.

That, quite apart from the Convention of 1875, and its special application to Tunis, it was conceived that in no part of the Levant, such as Tunis, which was subject to those Capitulations, could a British subject be deported or extradited by the local authorities without the assent of Her Majesty's Government; nor had any case ever occurred in which even an attempt had been made so to extradite a British subject from either Turkey or Egypt.

That before Tunis was placed under French Protectorate the local authorities there had no power to arrest a British subject except *flagrante delicto*, and that then they were bound to hand such British subject over, at the first opportunity, to be dealt with by the British Consul.

That they could not, therefore, surrender him to a foreign Power; nor, as it was submitted, were the rights of the French authorities, by reason of the transfer of the Consular jurisdiction to the new French Tribunals, in that respect any more extensive than were those of the Beylical authorities.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship, at the earliest possible date, with our opinion—

Questions as to:
1. Views as to French jurisdiction.
2. Action of Her Majesty's Government.
3. Further steps.

1. Whether the view indicated above of the extent and limits of the French jurisdiction over British subjects in Tunis with respect to their extradition and deportation was correct;

2. Whether the past action of Her Majesty's Government in the matter had been right and proper; and

3. As to what further steps it was now advisable for Her Majesty's Government to take.

In obedience to your Lordship's commands we have the honour to report—

That we are of opinion that the French authorities have no right to remove Paolo Lia to Algiers for trial, or to require him to appear before the Court.

If the question were one of extradition there would be no doubt about it; but the real question is *not one of extradition*, but of the effect of the Order in Council of the 31st December, 1883, and of the Agreement made between the English and French Governments respecting the establishment of the French Tribunals.

By the Decree of the Bey of the 5th May, 1883, "The subjects of friendly Powers are amenable to the jurisdiction of the French Tribunals under the same conditions as the French themselves."

The Order in Council of the 31st December, 1883, recites (though there is no distinct enacting provision), that the Queen has consented, with a view to "British subjects in the Regency being justiciable by the said French Tribunals (*i.e.*, the Tribunals in the Regency) under the same conditions as French subjects and *to the extent of the jurisdiction vested by law* in the said Tribunals."

The real question appears, therefore, to us to be, assuming Paolo Lia to be a French subject, Have the French Tribunals jurisdiction—

1. To remove him to Algiers for trial?
2. To try him at Tunis?

Upon the first question, we see no jurisdiction to remove him to Algiers for trial. By the French law, applicable to the Tribunals, the Courts of First Instance are to sit at Tunis. The Court of Algiers is a Court of Appeal, and that in some cases only. (See Laws of the 27th March, 1883.) The appeal in other cases is to the Court of Cassation in Paris. Moreover, by Article 5 of the Memorandum, at pp. 26, 27, it was distinctly stated, with regard to a British subject, that he would not be sent to Algiers, but would await his trial at Tunis.

As to the second question, viz., the right to try Paolo Lia (assuming him to have been a French subject) at Tunis, we feel much more difficulty. The words of Article 2, pp. 13–15, are very wide "for infractions of the law, misdemeanours, and crimes," but we think it scarcely probable that the French Courts were intended to have jurisdiction over crimes committed by French subjects *wherever they were committed*. The words in the Order in Council are "to the extent of the jurisdiction vested by law in the said Tribunals." If, in fact, the Tribunals have jurisdiction to try, as a Court of First Instance, a French subject for a crime committed out of the Regency, there is, in our opinion, jurisdiction to try a British subject for such a crime; but upon the information before us we see no evidence that there is jurisdiction to try a French subject for such a crime.

Our answers to the questions submitted to us are therefore—

1. That as regards the proposed deportation of British subjects to Algiers, the view taken by Her Majesty's Government is correct. That as to the extent and limits of the French jurisdiction over British subjects *in Tunis* is concerned, the correctness of the view depends upon the question whether the French Tribunals have jurisdiction over a French subject.

1. Views as to deportation correct; as to jurisdiction, depends on position of French subjects.

2. That the past action of Her Majesty's Government has been right and proper.

3. That Her Majesty's Government should maintain its protest against the removal of Paolo Lia to Algiers under any circumstances, and should urgently call the attention of the French Government to the fact that such removal would be a breach of the diplomatic engagements, having regard to the distinct terms of the Memorandum handed by Count d'Aunay to Lord Granville on the 20th June, 1883; and should further protest against his trial at Tunis, unless they are satisfied that the French Tribunals at Tunis have jurisdiction to try, in Tunis, a French subject for a similar offence committed out of the Regency.

2. Approve past action.
3. Should maintain protest against deportation; and protest against trial in Tunis unless French subject would be similarly triable.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

To Viscount Lyons, No. 22, May 19, 1886.
„ „ No. 23, May 19, 1886.
„ „ No. 25, May 22, 1886.
„ „ No. 49, October 27, 1886.
„ „ No. 51, November 2, 1886.
„ „ No. 54, November 19, 1886.
Viscount Lyons, No. 19, May 20, 1886.
„ „ No. 21, May 25, 1886.
„ „ No. 23, May 26, 1886.
„ „ No. 24, June 2, 1886.
„ „ No. 25, June 14, 1886.
Mr. Egerton, No. 46, October 18, 1886.
Viscount Lyons, No. 50, November 6, 1886.
„ „ No. 52, November 7, 1886.
„ „ No. 53, November 7, 1886.
„ „ No. 54, November 9, 1886.
„ „ No. 59, November 22, 1886.
To Consul-General Playfair, No. 9, May 12, 1886.
„ „ Telegraphic, May 18, 1886.
„ „ Telegraphic, November 2, 1886.
Consul-General Playfair, No. 31, May 14, 1886.
„ „ Telegraphic, May 22, 1886.
„ „ No. 35, May 19, 1886.
„ „ No. 37, May 22, 1886.
„ „ No. 71, October 23, 1886.
„ „ No. 74, November 4, 1886.

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Consul-General Playfair, No. 75, November 13, 1886.
" " Telegraphic, November 21, 1886.
To Consul Sandwith, Telegraphic, May 26, 1886.
" " Telegraphic, November 1, 1886.
Consul Sandwith, Telegraphic, May 14, 1886.
" " No. 24, May 17, 1886.
" " No. 26, May 27, 1886.
" " No. 31, November 3, 1886.
" " No. 33, November 8, 1886.
" " Telegraphic, November 20, 1886.
Law Officers' Report, April 28, 1886.
Parliamentary Paper, "Tunis No. 1 (1876)" (Treaty No. 586).
" " "Tunis No. 6 (1881)" (Parliamentary No. 2415).
" " "Tunis No. 1 (1884)" (Parliamentary No. 2767).

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## General.

### No. 30.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received January* 27.)

My Lord, *Royal Courts of Justice, January* 26, 1886.

Consular Marriage Warrants.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 13th instant, stating that he was to transmit to us copy of the form of Marriage Warrant supplied to British Consular officers to enable them to solemnize marriages of British subjects under the Act 13 Vict., cap. 68, together with a copy of that Act.

That Consular officers furnished with that warrant had from time to time been promoted to rank while remaining at the same post, as, for instance, from the rank of Vice-Consul without a Royal Commission to that of Her Majesty's Consul, or from the rank of Her Majesty's Consul to that of Consul-General, and that it had not been the custom in such cases to issue new warrants.

That a Vice-Consul, as a rule, had no district assigned to him, and was merely appointed British Vice-Consul at the town where he resided, but that on promotion to the rank of Consul a district might, or might not, be assigned to him.

That the question had now arisen whether the original warrants issued to them remained effective for the district therein mentioned after they had been raised to the higher rank, or whether fresh warrants should, in such cases, have been issued, and if so whether marriages which might have been performed by such officers after promotion under their original warrants were valid.

That our opinion was requested on those questions.

In obedience to your Lordship's commands we have the honour to report—

Remain valid within original district after promotion of Consuls.

That the original warrants issued to Consular officers remain effective for the districts therein mentioned after such officers have been raised to the higher rank, and the marriages which may have been performed by such officers after promotion within the districts named in their original warrants are valid.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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*List.*

Messrs Hough, November 6, 1885.
" November 13, 1885.
To " November 12, 1885.
Fugitive Offenders' Act 1881, 44 and 45 Vict., cap. 69.
Ottoman Order in Council, December 12, 1873. In Confidential No. 2873.
" " May 3, 1882. " "
Tunis Order in Council, December 31, 1883 (Confidential, 4905*).

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### No. 31.

*The Law Officers of the Crown to Earl Granville.*—(*Communicated in Colonial Office letter of June* 23, 1886; *received June* 24.)

My Lord, *Royal Courts of Justice, April* 21, 1886.

Right to exercise jurisdiction over foreigners in British protected territory.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 15th ultimo, stating that he was directed by your Lordship to invite our opinion as to the right of Her Majesty to exercise jurisdiction over foreigners in countries which, though under her Protectorate, were not part of her dominions.

That on the 3rd August, 1880, the then Law Officers, Sir Henry James and Sir Farrer Herschell, stated, in the 4th paragraph of their Report of that date, that they were of opinion that Her Majesty could, by Treaty with a native Chief, obtain jurisdiction within his territories over subjects of foreign civilized States resident within such territories, but that the exercise of any such jurisdiction might be objected to by the State to whose subject it might be sought to apply it, and that as a rule it should not be exercised without the concurrence of such State.

That in 1884 Her Majesty assumed a Protectorate over a portion of South Africa, called Bechuanaland, and comprising:—

(*a*.) The territories of the Chiefs Mankoroane and Montsioa.
(*b*.) The territories of certain other native Chiefs.
(*c*.) A portion of territory known as Stellaland which had previously belonged to Mankoroane and other Chiefs, and in which certain British subjects and other white men had purported to have constituted a Republic.

That in order to provide judicial machinery for the Protectorate, an Order in Council, under the Foreign Jurisdiction Acts, 1843-78, was passed on the 27th January, 1885, empowering the High Commissioner (Sir H. Robinson) to establish Courts within certain geographical limits.

That a copy of that Order was inclosed, together with copies of the Law Officers' Reports of the 3rd August, 1880, 15th November, 1884, and 23rd December, 1884.

That the Order purported to give effect to certain Treaties (recited in the Order) by which Mankoroane and Montsioa had respectively given to Her Majesty full legal jurisdiction over all persons within their territories, and that as regarded the territories of other Chiefs, the Order purported to give to Her Majesty jurisdiction only over British subjects, or persons for the time being subject to British law, and over persons properly enjoying Her Majesty's protection within such territories.

That, on the 10th August, 1885, the late Law Officers (Sir R. Webster and Sir J. E. Gorst) reported that in their opinion no native African Chief could, either by Treaty or sufferance, confer upon Her Majesty jurisdiction over the subjects of any civilized Power other than Great Britain. That a copy of that Report was inclosed.

That since that date the territories of Mankoroane and Montsioa, and the territory of Stellaland, had been declared to be a part of the Queen's dominions under the name of "British Bechuanaland," and that the present question therefore affected only the territories of those Chiefs outside of British Bechuanaland which were within the Protectorate established in 1884.

That of those the Chiefs Ghasitsive, Sechele, and Khama had made various offers of partial cession to Her Majesty through Her Majesty's Special Commissioner, Sir Charles Warren, G.C.M.G., the particulars of which would be found at pp. 36-48 of the inclosed Blue Book (C.—4588).*

That Khama had said (p. 45), "I give to the Queen to make laws, and to change them, in the country of the Bamangwato, with reference to both black and white."

That Sechele had said (p. 47), "I wish to rule among my people according to custom, but I give to the Queen to rule among white people, wherever they are."

That Ghasitsive had said (p. 48), "I give to the Queen to rule above me, as she is the protection of the whole country, while I rule under her among my own people, white inhabitants of the country being under the rule of the Queen."

That no civilized Power, except Great Britain, had any claim to jurisdiction in the territories of those Chiefs, or any official Representatives there. That the native Chiefs were completely independent of any superior authority (except so far as Her Majesty might possess jurisdiction in their territories), and it might be taken that they were competent to cede or delegate their sovereign authority, or any portion of it.

That it was not understood that there was any rule of international law limiting the right of an independent Chief to exercise full civil and criminal jurisdiction over

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* "Further Correspondence respecting the Affairs of the Transvaal and adjacent Territories."

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any person, European or otherwise, within his territory, although the manner in which such jurisdiction had been exercised might, in different parts of the world, have been made the subject of foreign intervention.

That no definite acceptance of the above-mentioned offers had taken place, and that it was not proposed that Her Majesty should acquire any sovereign power in the territories of those Chiefs further than might be involved in the acceptance of legal jurisdiction over persons who were not British subjects nor natives of the country.

That if we should be of opinion that it was impossible for Her Majesty to acquire jurisdiction over subjects of foreign civilized States by Treaties or Conventions with native Chiefs, the further question would arise whether the particular words used by the above-named Chiefs were sufficient to confer such jurisdiction.

That should the language of those proposals or offers be insufficient for that purpose, no difficulty was anticipated in obtaining from the Chiefs a Treaty in whatever form might be thought desirable.

That, as illustrating the power of acquiring jurisdiction over foreigners by Treaty with a third Power, Mr. Bramston was to draw our attention to the Conventions with the Sublime Porte (of which copies were inclosed), upon the authority of which Her Majesty's Government exercised full jurisdiction in Cyprus over all persons of whatever nationality.

That your Lordship would be obliged if we would take the subject into our consideration, and favour him with our advice upon it, reporting particularly whether, in our opinion—

1. Her Majesty could lawfully acquire by Treaty with the above-named Chiefs the right to exercise civil and criminal jurisdiction over subjects of civilized Powers other than Great Britain within the territories of the Chiefs named?

2. Whether the language employed by those Chiefs in the proposals printed at pp. 45 to 48 of the Blue Book (C.—4588) would, if embodied in a formal Agreement or Treaty, suffice to confer such jurisdiction?

3. If so, whether such jurisdiction could be properly exercised by Courts established under an Order in Council similar to the Order in Council of the 27th January, 1885, for all persons within the territories of Mankoroane and Montsioa?

That Mr. Bramston was also to state that your Lordship would feel obliged if we would favour your Lordship with any observations upon the subject generally that might appear to us to be desirable.

In obedience to your Lordship's commands we have the honour to report—

Language of Chiefs confers jurisdiction which should obtain consent of Power concerned.

1. That we are of opinion that, as against the Chiefs, Her Majesty can lawfully acquire by Treaty with them the right to exercise civil and criminal jurisdiction over subjects of civilized Powers other than Great Britain within the territories of the Chiefs; but as against the subjects of other civilized Powers, we think that the jurisdiction (whatever may be its theoretical limits) should be exercised with, and cannot safely be exercised without, the assent of the Power concerned, given generally or in the particular case.

Should embody language of Chiefs in a Treaty.

2. Subject to our previous answer, we think that a formal Agreement or Treaty, embodying in more precise and artificial language what is said by the Chiefs, would suffice to confer such jurisdiction.

As to establishment of Courts.

3. Subject as before, we think the jurisdiction can be properly exercised by Courts established under an Order in Council similar to that of the 27th January, 1885.

Sovereignty of Chiefs assumed.

4. We assume that the Chiefs have sovereign territorial authority, and do not merely exercise tribal or personal authority as Chiefs.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.

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## No. 32.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received April* 28.)

*Royal Courts of Justice, April* 28, 1886.

My Lord,

Remarriage of British subjects where no tidings of husband and wife for seven years.

WE are honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 2nd instant, stating that he was to transmit to us despatches from Her Majesty's Consular officers at Odessa and Rio de Janeiro,* respecting the marriages of certain British subjects at those places.

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* Consul-General Perry, No. 16, March 16; Consul Ricketts, No. 3, February 22, 1886.

That James Briant, whose case had been referred to the Foreign Office by Mr. Perry, Her Majesty's Consul-General at Odessa, stated that he was deserted by his wife, Anna Maria Briant, some eleven years ago, and was now desirous of contracting another marriage with a Russian woman. That, in order to satisfy the ecclesiastical authorities at Odessa that no legal impediment to that marriage existed, he had applied to Her Majesty's Consul-General for a certificate to that effect, furnishing at the same time proofs that during the interval of eleven years he had received no tidings of his wife's whereabouts.

Certificate as to legality required by Russian ecclesiastics.

That Mr. Perry hesitated, in view of the unusual circumstances of the application, to grant the required certificate.

Case of Elizabeth Stewart at Rio.

That the case at Rio de Janeiro related to a British subject named Elizabeth Stewart, whose husband deserted her seven years ago, and had not been heard of since.

That she now desired to be married again to a British subject, by Her Majesty's Consul, but that Mr. Ricketts felt himself unable to comply with her request pending directions from the Secretary of State.

That Sir T. Villiers Lister was to request that we would favour your Lordship with our opinion as to the instructions which should be sent to Mr. Perry and Mr. Ricketts respectively.

In obedience to your Lordship's commands we have the honour to report—

That, according to the law of England, there is a *primâ facie* presumption that a person of whom nothing has been heard for seven years by those who, from their connection, naturally would have heard [? is dead]; and if a man or woman of whose wife or husband nothing has been heard for upwards of seven years, marries again, he or she cannot be indicted for bigamy; and we are of opinion that any clergyman of the Church of England, or Registrar, would be justified in solemnizing a marriage between such person and another.

But if the lost wife or husband should prove to have been alive at the date of the second marriage, it will be void.

Consul at Odessa may give certificate.

Under these circumstances, we suggest that your Lordship should give instructions to Mr. Consul Perry, at Odessa, that he may give a certificate that any English clergyman or Registrar would be justified in performing the ceremony of marriage under the circumstances.

Consul at Rio may marry Elizabeth Stewart.

And that Mr. Consul Ricketts, at Rio de Janeiro, be informed that he may properly solemnize the proposed marriage.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## No. 33.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received July* 10.)

*Royal Courts of Justice, July* 9, 1886.

My Lord,

British nationality. Power of naturalized subjects to divest themselves of it.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 9th ultimo, stating that he was directed to transmit to us papers* relative to the question whether, and in what way, naturalized British subjects could divest themselves of their British nationality.

Application of Mr. Hoffnung, appointed Hawaiian Chargé d'Affaires.

That the question had arisen in several cases of late, and notably in that of Mr. Hoffnung, who had been appointed Hawaiian Chargé d'Affaires at this Court, but who, being a naturalized British subject, could not be received in a diplomatic capacity in this country.

That Mr. Hoffnung produced letters of denization from the Hawaiian Government, but that it was considered that they had not the effect of divesting him of his British nationality, and the Home Office were consulted as to whether section 6 of the Naturalization Act of 1870 was applicable to naturalized as well as natural-born subjects, seeing that section 3 only empowered naturalized subjects to divest themselves of their British nationality for the purpose of resuming their nationality of origin, and, moreover, appeared to be applicable only in cases where there existed a

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* Mr. Hoffnung, March 31; to Home Office, April 16; Home Office, May 24, 1886; to Mr. Hoffnung.

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Convention to the effect therein mentioned, and that no such Convention existed between Great Britain and Hawaii.

Proposed reply.

That your Lordship was informed by the Home Office, in reply, that Mr. Secretary Childers, after consultation with the Law Officers, was of opinion that the words "any British subject" included a naturalized British subject, and that section 3 prescribes a particular mode in which such a person might conclusively show his intention to divest himself of the status of a British subject. That a draft of a reply to Mr. Hoffnung had accordingly been prepared in that sense, in answer to his letter of the 31st March last, but that before dispatching it your Lordship desired to be favoured with our opinion as to whether it was right and proper under the circumstances.

In obedience to your Lordship's commands we have the honour to report—

Suggest modification of reply.

That we are of opinion that the passage in your Lordship's proposed despatch from the words "and that if," &c., to the end of the sentence, should be omitted.

Section 3 of "The Naturalization Act, 1870," it is true, affords a particular mode whereby citizens of a foreign State who have become naturalized in this country may conclusively show their intention to divest themselves of the status of British subjects, but it only applies to cases where there is a Convention between Her Majesty and a foreign State, and to persons who were originally subjects of those foreign States.

Section 3 of Naturalization Act not applicable.

We understand that there is no such Convention with Hawaii, and Mr. Hoffnung was not originally a subject of Hawaii. Section 3, therefore, has no application to his case.

We may observe that section 6 (although in our opinion the words "any British subject" include a naturalized British subject) applies only to persons "when in any foreign State" becoming naturalized in such State.

We suggest, therefore, that the earlier portion of your Lordship's draft despatch should also be modified so as to make it clear to Mr. Hoffnung that the section cannot apply to him, while residing in this country.

We have, &c.  
(Signed) C. RUSSELL.  
HORACE DAVEY.  
J. PARKER DEANE.

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### Annexes.

### (1.)

*Draft as submitted to the Law Officers.*

*Sir J. Pauncefote to Mr. Hoffnung.*

*Foreign Office, June* , 1886.

Sir,

In reply to your letter of the 31st March last, I am directed by the Earl of Rosebery to acquaint you that, by section 6 of the Naturalization Act of 1870, your status as a naturalized British subject would cease upon your voluntarily becoming naturalized in Hawaii; and that, if you should obtain such naturalization in Hawaii, a declaration of alienage, made in the manner prescribed by section 3 of the Act, would conclusively show your intention to divest yourself of your British nationality.

Your letter of denization from His Majesty the King of Hawaii, which is returned herewith, does not operate so as to change your nationality, and to remove the difficulty respecting your recognition at this Court in a diplomatic capacity.

I am, &c.

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### (2.)

*Draft as finally Amended.*

*Sir J. Pauncefote to Mr. Hoffnung.*

*Foreign Office, July* 15, 1886.

Sir,

In reply to your letter of the 31st March last, I am directed by the Earl of Rosebery to acquaint you that the letters of denization from His Majesty the King of

[Treasury.]

## No. 33 A.

*The Law Officers of the Crown to the Lords Commissioners of Her Majesty's Treasury.*

**[Communicated to the Foreign Office by the Treasury in their letter of September 7, 1886.]**

### CASE.

Liability of Mr. F. Verney, English Secretary to Siamese Legation, to income tax (Schedule A) in respect of his house.

A QUESTION has arisen as to the liability of Mr. Frederick Verney, the English Secretary to the Siamese Legation in London, to income tax, Schedule (A), in respect of the house, No. 6, Onslow Gardens, which he occupies as a residence, and the lease of which was purchased by him some years since, subject to the payment of a small ground-rent. By a Treasury Order made in April 1885 it was directed that Dr. Macartney, Mr. Stuart Lane, and Mr. Frederick Verney should be exempted, during their tenure of office as Secretaries to the Chinese, Japanese, and Siamese Legations respectively, from establishment licences and from inhabited house duty in respect of one house each in London occupied in their official position. The duties from which these gentlemen were thus relieved are personal duties attaching only to residents in this country. Income tax, Schedule (A), from which Mr. Verney now claims to be exempt, is a tax upon property, paid directly or indirectly by every owner of lands, tenements, or hereditaments situate in this country, whether such owner be a subject of Her Majesty or not, and whether resident here or abroad. In the circumstances, the Board of Inland Revenue, acting under the directions of the Lords Commissioners of Her Majesty's Treasury, have caused a Case to be prepared, which they now submit to the Law Officers for their opinion as to the validity of the claim put forward by Mr. Verney.

Schedule (A) of the income tax is contained in 16 & 17 Vict., cap. 34, sec. 2, and is as follows:—

"For and in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom, and to be charged for every 20*s*. of the annal value thereof."

By section 5 of the same Act the duties granted are to be assessed and raised under the provisions of 5 & 6 Vict., cap. 35.

By No. IX in section 63 (5 & 6 Vict., cap. 35), the duties, except where other provisions are made for estimating particular properties, are to be "charged on and paid by the occupier for the time being." Every person "having the use of any lands or tenements" is to be "taken and considered for the purposes of this Act as the occupier," and the duties are to be "levied on the occupier." By the 9th Rule of No. IV of section 60, the occupier of any lands, &c., "being the tenant of the same, and paying the said duties," is to deduct the duty out of the rent, and is to be "acquitted and discharged of so much money as if the same had been actually paid" to the landlord.

(In the case of an owner who occupies his own house, he is, of course, assessed and bears the duty.) The 8th Rule of No. IV contains the following provision:—

"The duty to be charged under this Schedule in respect of any house or tenement occupied by any accredited Minister from any foreign Prince or State shall be charged and paid by the landlord or person immediately entitled to the rent of the said house or tenement."

It will be observed that, even in the case of a house occupied by a duly accedited foreign Minister, the property is not exempted from Schedule (A), the only difference being that, instead of the duty being charged upon and paid by the occupier, and by him deducted from the rent, the landlord is assessed and pays it directly. Mr. Verney having purchased the long lease of the house in which he resides, subject only to a small ground-rent, the allowance of his claim to relief would of course mean the total exemption of the property from income tax, Schedule (A). He is landlord as well as occupier for the purposes of the income tax.

By section 111 of "The Taxes Management Act, 1880" (43 & 44 Vict., cap. 19), the duties may be "sued for and recovered, with full costs of suit, and all charges

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attending the same, from the person charged therewith in the High Court as a debt due to the Crown, or by any other ways or means whereby any debt of record or otherwise due to the Crown can or may at any time be sued or prosecuted for or recovered, as well as by the summary means specially provided by this Act or the Tax Acts for levying the said duties.

The following is a copy of a letter received by the Board of Inland Revenue from Mr. Verney:—

"Sir, "*Siamese Legation, April* 6, 1886.

"By way of further reply to your letter of the 19th of last month. I now beg to inform you that an opinion has been procured from Sir Travers Twiss as to my liability, as English Secretary of this Legation, to pay income tax under Schedule (A) for my house, No. 6, Onslow Gardens. Sir Travers Twiss was informed that my tenure was that of a usufructuary for a term of years subject to 'an annual payment of rent to the owner of the ground,' but that I am not a tenant under a house landlord.

"Sir Travers Twiss points out that this is an Imperial tax, the collectors of which are directed by the Statute to levy it by process against the chattels of the occupant of each house upon which it is assessed, and, failing process against the chattels, to proceed against the occupants of the house personally. Sir Travers then shows how both these methods of procedure are, in such a case as this, absolutely prohibited by Statute, and he then deals with the silence of the Income Tax Acts as to the exemption from the incidence of taxation of the residence of one of the suite of a foreign Minister, and explains how such silence cannot be taken to sanction a violation of the law of nations, on which (and not on the Statute) these claims for exemption are based. In conclusion, Sir Travers Twiss says: 'I am led irresistibly to the conclusion that income tax may not lawfully be levied by the collectors of it by any process against Mr. Verney or against the furniture of his house.'

"I am, &c.

(Signed) "FREDERICK VERNEY.

"The Secretary, Inland Revenue."

The Board's reply was as follows:—

"Sir, "*Inland Revenue, April* 22, 1886.

"With reference to your letter of the 6th instant, giving the opinion of Sir Travers Twiss as to your liability to pay income tax, Schedule (A), for your house in Onslow Gardens, I am directed to inform you that the claim of privilege thus advanced cannot, the Board are advised, be properly admitted. In view of your nationality, and your position at the Legation, the rejection of such claim would not seem in any way to conflict with the law of nations or the common law, of which the Act 7 Anne, cap. 12, sec. 3, was declaratory. Without going into the current of authorities dealing with the question of privilege, and the extent to which it goes in embracing those attached to Embassies or Legations, it appears sufficient to draw attention to a recent case in which these authorities are dealt with, viz., the case of Parkinson *v.* Potter (16 Q. B. D., p. 152), and particularly to the following passage in the Judgment of Mr. Justice Wills in p. 162: 'Most writers on international law are of opinion that a subject of the country in which the Ambassador is resident remains subject to the law of his country, and that in respect of him the immunity that would be afforded to a foreigner cannot be claimed.'

"Setting aside, then, the plea of privilege, it is only necessary for the Board to add that, as already pointed out, and as is admitted by Sir Travers Twiss, there is no exemption in the Income Tax Acts that can operate in your favour.

"I am, &c.

(Signed) "W. H. COUSINS.

"F. W. Verney, Esq."

In the case of Parkinson *v.* Potter (16 Q. B. D., p. 152), to which reference is made in the Board's letter, it was held by the Court (Matthew and Wills, JJ.) that payment of parochial rates was not enforceable against a *foreign* Attaché of a foreign Embassy in respect of his residence in this country. A rate is, of course, on a totally different footing to income tax, Schedule (A), being a personal charge in respect of the occupation, and not a charge in respect of the ownership of the property.

Mr. Justice Wills came to the conclusion that there was "nothing in the current of English authorities to contravene the doctrine of exemption from process, a part of the privileges which constitute the exterritoriality of foreign jurists, as laid down by the writers on international law," and nothing in the circumstances of the Case to prevent its application. The opinion of Sir Travers Twiss, referred to by Mr. Verney, appears to be based on somewhat similar grounds. It may be worthy of remark that the Statute, which is admittedly declaratory of the law of nations, does not contain any prohibition of *Crown* process, the Crown not being mentioned in it.

The following passage occurs at p. 300 of Wheaton's "International Law" (Boyd's edition): "The hotel in which he" (the Minister) "resides, though exempt from the quartering of troops, is subject to taxation in common with the other real property of the country, whether it belongs to him or his Government." And Phillimore's "International Law" (3rd ed. 1882), vol. ii, p. 240, treating of the exemption of the personality of the Minister from taxation, states that this immunity is never extended to "real property." So that, assuming Mr. Verney to be entitled to the privileges of a Minister, any real property acquired by him in this country must remain subject to taxation.

It is true that it is stated in Wheaton, p. 283, that the immunity from local jurisdiction extends to the house in which the Minister resides; and in Phillimore, p. 241, "the house, or (as it is usually called) the hotel of an Ambassador," is stated to be "by universal consent inviolable and inaccessible to the ordinary officers of justice or revenue;" but the question arises whether this immunity from process is otherwise than as respects the Minister's residence only, and extends to the house of Mr. Verney, who is a subject of this country. The observation of Mr. Justice Wills in Parkinson *v.* Potter, that "most writers on international law are of opinion that a subject of the country in which the Ambassador is resident remains subject to the law of his country, and that in respect of him the immunity that would be afforded to a foreigner cannot be claimed," is confirmed by the following statement at pp. 284 and 285 of Wheaton's "International Law": "If he is a citizen of the country to which he is sent, and that country has not renounced its authority over him, he remains still subject to its jurisdiction." In Mr. Verney's case, it does not appear that there has been any such renunciation on the part of this country. So also in Foote's "Private International Jurisprudence" (ed. 1878), p. 106, the exceptions from the general rule that a foreign Minister, his family and suite, are exempt from civil and criminal jurisdiction, are stated, on the authority of Wheaton, to be three, the second of which runs as follows: "Secondly, he continues subject to the jurisdiction if he is a citizen or subject of the country to which he is sent, and that country has not renounced its rights over him." The above stated views seem to place the case of Mr. Verney and his house in an *à fortiori* light, as he, for all that is known to the contrary, resided in the United Kingdom when the Legation arrived.

As already stated, Mr. Verney has, by Treasury order, been relieved from the duties which are chargeable only upon him personally. The liability incurred under Schedule (A), by reason of being an owner of property, is voluntarily assumed independently of any diplomatic position which he holds, and stands upon a different footing. He would be liable to bear the duty charged under Schedule (A) in respect of the property in his house, according to the universal practice which has prevailed since the passing of the Income Tax Acts, even if he were a native of Siam and resident in that country, income tax, Schedule (A), being chargeable in respect of all lands and tenements in the United Kingdom without regard to the residence or nationality of its owner. In the one or two cases of which the Board are aware, in which foreign Ministers or Attachés have purchased residences in this country, income tax has been charged in respect thereof.

The Board of Inland Revenue would be glad to have the opinion of the Attorney- and Solicitor-General on the following points:—

1. Whether income tax, Schedule (A), is chargeable in respect of the house in which Mr. Verney resides?

2. If the answer to the above question be in the affirmative, then whether there would be any difficulty in the way of the ordinary modes of procedure for the recovery of the tax?

3. Whether, if Mr. Verney were not a British subject, he could claim immunity by the law of nations from the tax for which payment was claimed of him?

A copy of Correspondence printed for the use of the Foreign Office (Confidential No. 5115) is annexed; attention is specially requested to Nos. 41, 42, and 43 therein.

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*Report.*

Mr. Verney is liable to income tax on his house, and cannot claim immunity even if not a British subject.

That income tax (Schedule A) is chargeable in respect of the house in which Mr. Verney resides, that any of the ordinary modes of procedure may be used for its recovery, and that even if Mr. Verney were not a British subject he could not claim immunity from this tax.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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Hawaii, transmitted therein, cannot be held to divest you of your British nationality so as to remove the obstacle to your holding a diplomatic post in this country.

I am to state, however, that by section 6 of the Naturalization Act of 1870, your status as a naturalized British subject would cease upon your voluntarily becoming naturalized in Hawaii, but that such assumption of Hawaiian nationality must be effected during actual residence in that State, and not in the United Kingdom.

Your letters of denization are returned herewith, and I am to inclose, for your information, a copy of "The Naturalization Act, 1870."

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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## Germany.

### No. 34.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.*—(*Received August* 4.)

My Lord, *Royal Courts of Justice, August* 3, 1886.

Embassy houses the property of foreign States; jurisdiction of Local Courts over.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 28th ultimo, stating that he was directed to transmit to us a Memorandum and a translation of a *pro-memoriâ*, received from the German Embassy, inquiring the views and practice of Her Majesty's Government in regard to the jurisdiction of Local Courts in regard to suits concerning Embassy houses which were the property of foreign States.

That a search in the archives of that office had resulted in the discovery of only two cases touching on that matter, and that Sir Julian Pauncefote was to inclose the papers relating to those, as marked in the margin.*

That Sir Julian Pauncefote was to request that we would take those papers into our consideration and favour your Lordship with our opinion as to the reply which should be made to the inquiry of the German Government, who had particularly requested an early answer.

In obedience to your Lordship's commands we have the honour to report—

Land belonging to a foreign Government; exemption from an action.

That we are not aware of any precedent in which a similar question to that raised by the *pro-memoriâ* of the German Government has arisen. We are of opinion, on principle, that the exemption of a foreign Sovereign and of his Diplomatic Representative from service of process should be held to extend to an action relating to land forming part of the public property of a foreign Government.

Action not maintainable. Claimant should invoke assistance of his own Government.

And we think that, owing to the difficulty of service of the initiatory process and of executing any Judgment, the action would not be maintainable. The remedy of the claimant would seem to be to invoke the good offices of the claimant's own Government to induce the foreign Government to have the claim investigated and to do justice thereon.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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Annex.

*Pro-memoriâ.*

(Translation.)

The Palace Caffarelli in the Capitol, which serves as a residence for the Imperial Ambassador at Rome, was purchased in the year 1854 by His Majesty the King of

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* Law Officers, June 26, 1874; Sir H. Rumbold, No. 79, Confidential, December 8, 1879; to Mr. Vivian, No. 6, February 3, 1880; Memorandum by Baron Plessen, July 13; Pro-memoriâ, July 13, 1886.

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Prussia, and stands since that time entered in the Roman Ground Book under the name of His Majesty. Recently an Italian, named Pozzonelli, as heir of the last Duchess of Caffarelli, has brought an action in the Roman Civil Court against the Royal Prussian Chamberlain ("Hausminister"), as Representative of His Majesty the King of Prussia, in order to establish his claim to a parcel of land belonging to the said landed estate as his property. The claim seems to be really baseless. The Government of His Majesty supposes that the question whether His Majesty can be obliged to plead before the Italian Court belongs to international law, and, therefore, cannot be decided alone by Italian Courts.

It is in general a recognized principle in the law of nations that a State cannot claim (judicial) jurisdiction over a foreign State and its Head, *Par in Parem non habet potestatem*. This principle is, indeed, so far limited by a number of writers on international law as not to extend to legal suits respecting immovable property. This limitation is, on the other hand, only admitted in a conditional way, as. *e.g.*, Fœlix, Vattel, Wheaton, Calvo recognize, indeed, for portions of land acquired by exterritorial persons in their private capacity, but not for the portions of land which serve for the residence of Ambassadors and their suites, which, accordingly, are acquired by the foreign Sovereign in his official capacity ("dans sa capacité publique ou politique"). Such is in the present instance undoubtedly the case, as shown at once by the entry in the Roman Ground Book, which refers not to the person of the Monarch by whom the acquisition was made, His late Majesty, King Frederick William IV, but without reference to a change of persons—quite generally to His Majesty the King of Prussia. Furthermore, it is pointed out in the literature of international law, that an intrinsic ground of difference between movable and immovable possession is in general wanting, as the limit between the two ideas is also differently drawn in different legislations, and from this standpoint, which is the most consequential, the exemption from native jurisdiction, deducible from the sovereignty of the foreign State and the Head of the State, avail as well in the case of claims referring to movable as to immovable property.

In the present case, moreover, it is a question not of a purely legal suit, but of a claim resting upon the right of obligation, as the claim is put forward by the legal successor of the vendor against His Majesty as purchaser of the ground, and, therefore, it can be really only a question of the interpretation of the deed of purchase, or, in other words, of the specification of the objects of the sale. That Native Courts are not competent to deal with obligatorial claims against a foreign Sovereign may be stated as a principle generally received in modern international law, and in Prussia the question whether a jurisdiction of the Prussian Courts is founded against a foreign State in contract suits, which is the category in question in the special present instance, has been within recent years decided in a negative sense by the Tribunal summoned to decide the question of conflicting competence in consequence of this question having been raised by the Royal Prussian Minister for Foreign Affairs.

So far, therefore, as it is a question in the present case of a claim resting upon obligatorial right, the matter will be treated on the side of Prussia as hardly giving any occasion to doubts from the point of view of international law. As, meanwhile, the action comes on as a legal suit, and the views, as above intimated, seem to differ as to what, in international law, should be valid in such claims, His Majesty's Government esteems it of value to learn the view of the Royal Government of Great Britain upon this point. It would, in particular, deem it important to learn whether the Royal Government of Great Britain in similar suits, if any, in which have been brought in foreign Courts respecting immovable property of the British State or of the British Sovereign abroad, the foreign jurisdiction has been actually recognized.

The Imperial Government would attach all the more importance to this point that the writers on international law who declare themselves opposed to ex-territoriality in legal suits bring no support for their view from the existing practice between States.

In the opinion of the Imperial Government the matter will exactly depend upon the attitude taken up in practice by States in the question, since, as a problem of international law, it can receive no solution either on the one side in the single State, nor even by a predominant opinion in the literature of international law, but only in the agreement of the States concerned.

As the judicial proceedings have already commenced in Rome, and the action is only delayed for a while, a prompt reply from the Royal Government of Great Britain at all events, at least, whether, on its side, a foreign jurisdiction in similar cases has already been recognized, would be received by the Imperial Government with particular gratitude.

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# Greece.

## No. 35.

*The Law Officers of the Crown and Sir J. Deane to Sir P. Currie.—(Received May 13.)*

*Royal Courts of Justice, May 13, 1886.*

Sir,

Blockade of Greek coasts.

WE have the honour to acknowledge the receipt of your letter of the 12th instant,* stating that Lord Rosebery desired that a Memorandum might be prepared for the guidance of the naval officers employed in the present measures for blockading the vessels under the Greek flag.

In obedience to his Lordship's commands, we have the honour to inclose a Memorandum to that effect:—

"*To the Commander-in-chief of Her Majesty's Naval Forces in the Mediterranean.*

"Sir,

Sending Memorandum for guidance of naval officers.

"Her Majesty's Government, in concert with the Governments of Germany, Austria-Hungary, Italy, and Russia, have established against vessels under the Greek flag a blockade of the coasts of Greece, extending from Cape Malea to Cape Colonna, and from thence to the northern frontier of Greece, including the Island of Eubœa, and also comprising, on the west coast, the entrance of the Gulf of Corinth.

"You will therefore give orders to all commanding officers of any of Her Majesty's ships under your command to detain every ship under the Greek flag which may attempt to come out from, or enter into, any of the ports or harbours, or communicate with any part of the coast within the above limits.

"Should, however, the cargo, or any part of the cargo, on board such ship belong to any subject or citizen of any foreign Power other than Greece and other than the blockading Powers, and should the same have been shipped before notification of the blockade, or after such notification but under a Charter made before the notification, such ship or vessel shall not be detained.

"The boarding officer will enter in the log of any ship allowed to proceed the fact of her having been visited and allowed to proceed.

"He will also enter the date and place where and when the visit was made.

"In order to secure, as far as possible, uniformity of action on the part of the foreign ships acting in concert with Her Majesty's ships, you will communicate these your instructions, to the Senior Officer in command of the ships acting in concert with you.

"In each case of detention all practicable steps must be taken to ensure the safety of ship and cargo."

May send copies to Her Majesty's Consuls

A copy of the above Memorandum may properly be sent to Her Majesty's Consuls.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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* List of Papers transmitted to the Law Officers in the Foreign Office letter of May 12, 1886:—Admiralty, May 11; Mr. Baring, No. 107, Telegraphic, May 11; Sir J. S. Lumley, No. 117, April 21, 1886; Inclosures Nos. 8, 10, 17, and 18 in Mr. Wyse's despatch of January 28, 1850.

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# Haïti.

## No. 36.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received April* 28.)

*Royal Courts of Justice, April* 28, 1886.

My Lord,

Imprisonment of Mr. Coles for fraud on National Bank.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th instant, stating that he was to transmit to us the papers relating to the case of Mr. Coles, a British subject, who had been sentenced by the Criminal Court of Haïti to a term of imprisonment for three years, on a trial for fraud on the National Bank of Haïti.

That Mr. Coles protested against the illegality of the proceedings, and appealed for redress. That a short history of the case would be found in the accompanying Memorandum of the 22nd February, 1886 (A).

That our attention was invited to the legal opinion on the case drawn up by a Haïtian Advocate, which was inclosed in Mr. Hunt's despatch No. 7 of the 2nd February, marked (B), and also to the two Reports of M. Treitt, the Legal Adviser to Her Majesty's Embassy in Paris, inclosed in Lord Lyons' despatch No. 124 and Mr. Egerton's No. 146 of the 19th and 31st ultimo (C and D).

That your Lordship desired to be favoured with our opinion as to whether the irregularities pointed out by the Haïtian Advocate and by M. Treitt were such as to justify Her Majesty's Government in demanding the release of Mr. Coles.

In obedience to your Lordship's commands we have the honour to report—

Irregularities pointed out justify demand for his release.

That we are of opinion that the irregularities pointed out by the Haïtian Advocate and by M. Treitt are such as to justify Her Majesty's Government in demanding the release of Mr. Coles.

We desire to call your Lordship's particular attention to the fact that by the Arrêt of the 21st December, 1885, the Court of Cassation has found a Government official and the Magistrate guilty of having corrupted the Jury, and induced them by threats and bribery to give a verdict against the accused.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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*List of Papers.*

Mr. Hunt, No. 4, September 24, 1885
Ditto, No. 7, October 20, 1885.
Mr. Coles, November 18, 1885.
Mr. Hunt, No. 15, December 30, 1885.
Ditto, No. 3, January 9, 1886.
Mr. Coles, January 18, 1886.

A. Memorandum, February 22, 1886.
B. Mr. Hunt, No. 7, February 2, 1886. Confidential No. 5298.
C. Viscount Lyons, No. 124, March 19, 1886. Confidential No. 5298.
D. Mr. Egerton, No. 146, March 31, 1886. Confidential No. 5298.

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## No. 37.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.—(Received August* 6.)

*Royal Courts of Justice, August* 5, 1886.

My Lord,

Arrest of Mr. A. C. Crosswell on charge of robbery.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 7th ultimo, stating that he was to transmit to us papers relating to the arrest of a British subject named A. C. Crosswell by the Haïtian

authorities, on a charge of being implicated in a robbery alleged to have been committed on the National Bank of Haïti.

That the facts were set forth in the précis which accompanied the papers, and that we were referred to Mr. Crosswell's statement at p. 4 of printed Petition, and to the letter of his advocates at p. 5.

That he was proceeded against, together with Mr. Coles, whose case formed the subject of our Report of the 28th April last. That Mr. Crosswell declared that he was arrested on the 16th March, 1885, without warrant and contrary to law; that he was served with a Bill of Indictment disclosing no criminal offence, and illegal in other respects. That he appealed to the Court of Cassation, which, after protracted delays, delivered such obscure and contradictory Judgments that his advocates retired from the case; that he was tried at last in September on a second Bill of Indictment, but that the prosecution failed to sustain the charge against him, and he was acquitted on the 18th September, after being in prison 186 days, during which time he was never examined, nor were any witnesses heard in support of the charge against him.

That the charge was alleged to have been trumped up by the Haïtian authorities, who were themselves said to be implicated in the bank frauds.

Claim for compensation for illegal imprisonment and delay and denial of justice.

That Mr. Crosswell now applied for compensation on the ground of illegal detention in prison, and delay and denial of justice.

That our opinion was requested as to whether, under the circumstances, Her Majesty's Government would be justified in demanding from the Haïtian Government compensation from Mr. Crosswell on the above grounds.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government justified in supporting claim.

That we are of opinion that, under the circumstances appearing in the papers before us, Her Majesty's Government *will* be justified in demanding from the Haïtian Government compensation for Mr. Crosswell, on the ground that neither his original arrest nor his subsequent detention in prison was in accordance with, or justified by, Haïtian law. At any rate, we think he should have been released after the first Judgment of the Court of Cassation.

Doubts as to good faith of prosecution.

It further appears to us that the Public Prosecutor had no real evidence against Mr. Crosswell, or reasonable grounds for bringing him to trial, and we think it is a case in which Her Majesty's Government may fairly question the good faith of the prosecution.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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*List of Papers.*

Mr. Crosswell, August 17, 1886.
Petition from British subjects in Haïti, received February 22, 1886, pp. 4, 5. Confidential No. 5259.
Captain Wyndham, No. 10, April 9; No. 28, July 30; No. 30, August 15, 1885.
Colonial Office, September 23, 1886.
Mr. Hunt, No. 22, May 11, 1886.
Précis, June 15, 1886.
Law Officers' Report, April 28, 1886 (case of Coles).

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## No. 38.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.—(Received September* 11.)

*Royal Courts of Justice, September* 10, 1886.

My Lord,

Claims of the Messrs. Maunder as to:—

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the claims of the Messrs. Maunder against the Haïtian Government.

1. Island of Tortuga.

That the first of those claims related to the Island of Tortuga.

That the precise position of that case appeared from the following documents in the Confidential Print of June 1885 (1860):—

1. Reference to the Law Officers of the 24th July, 1885, p. 16 (No. 21).
2. Report of the Law Officers thereon (p. 20, No. 26).

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3. Reference of the 16th September (p. 24, No. 29).
4. Report thereon of the 5th October (p. 25, No. 31).
5. Lord Salisbury's despatch to Consul Hunt of the 10th October, 1885 (p. 26, No. 32).

That the instructions in that despatch, founded on the Reports of the Law Officers, were carried out in a letter from Mr. Hunt to the Haïtian Minister (see Further Correspondence, Part V, June 1886 (329), p. 1, No. 1).

That the reply of the Haïtain Minister, refusing to entertain the claim, would be found on p. 2.

**2. Momance estate.**

That the second claim was that relating to a sugar estate occupied by Messrs. Maunder, called Momance.

**3. A distillery.**

That the Maunder family had another claim of more recent date respecting a distillery.

That Consul Hunt's correspondence with the Haïtian Minister on the subject would be found at p. 3 of the same print (despatch No. 10, with seventeen inclosures).

That the Minister again denied the British nationality of the Maunders, and the right of Her Majesty's Government to intervene on their behalf, and insisted that their remedy was in the public Tribunals.

That a long correspondence ensued as to the merits of the Momance case, and as to a reference to a Mixed Commission, but that no agreement was come to, owing to a difference as to the questions to be submitted to arbitration.

That Consul Hunt's proposals would be found at p. 10 (Inclosure No. 9), and the Haïtian Minister's at p. 10 (Inclosure No. 10).

That subsequently Mr. Hunt consented to the question of nationality being submitted to the arbitrators (p. 12, Inclosure No. 16). That he was not authorized to do this under his instructions, but that the arbitration went off on the other points in dispute.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and favour your Lordship with our opinion on the following points:—

First, whether the question of nationality could properly be referred to arbitration; or

Secondly, whether Her Majesty's Government should absolutely refuse to reopen that question, and insist on protecting the Maunders as British subjects.

Thirdly, whether, having regard to the maladministration of justice in Haïti, which was notorious, and had quite recently been revealed in the most flagrant manner by the Coles and Crosswell cases, Her Majesty's Government were justified in treating those claims diplomatically and declining to submit them to the local Tribunals.

Fourthly, whether, in case the Haïtian Government declined to refer those cases to arbitration, irrespectively of the question of nationality, Her Majesty's Government would be justified in resorting to force to obtain satisfaction for the Maunder family.

In obedience to your Lordship's commands we have the honour to report—

**Nationality not a question for arbitration.**

That the question of nationality cannot properly be referred to arbitration.

**Should refuse to reopen that question.**

Her Majesty's Government should absolutely refuse to reopen that question, and should protect the Maunders as British subjects.

**Should treat claims diplomatically only.**

Her Majesty's Government are justified in treating these claims diplomatically, and declining to submit them to the local Tribunals.

**Have right to resort to force.**

The question whether Her Majesty's Government should resort to force is scarcely for us, but we see no reason to doubt their right to do so.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
J. PARKER DEANE.

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*List of Papers.*

Confidential Print No. 5280, 1883–85.
Confidential Print No. , Part V.

## No. 39.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.—(Received September 27.)*

My Lord, *Temple, September* 25, 1886.

**Imprisonment of Mr. Coles on charge of fraud. Claim for compensation.**

WE were honoured with your Lordship's commands signified in Sir Julian's Pauncefote's letter of the 28th ultimo, in which he stated that by your Lordship's direction, he transmitted to us the papers noted in the accompanying list, which related to the case of Mr. Coles, a British subject, who was sentenced by the Criminal Court of Haïti to a term of imprisonment for three years on a charge of fraud on the National Bank of Haïti.

That in consequence of the opinion conveyed in the Law Officers' Report of the 28th April (see Paper B), Mr. Hill, a gentleman attached to the Foreign Office, was sent to Haïti to demand the release of Mr. Coles, and to investigate the complaints of other British subjects against the Haïtian authorities, as well as counter-charges preferred by the Haïtian Government against the British Consular officers in that Republic (see Papers, C, D).

That on the 6th July Mr. Hill reported by telegraph that Mr. Coles had been released unconditionally from prison (Papers G, K), and he then stated that Mr. Coles had raised the question of his claim to an indemnity (see Paper L).

That in the case of Mr. Crosswell, reported on by our predecessors on the 5th August (Paper M), who was charged with the same offence, there was a total absence of incriminatory evidence, and the proceedings against him were vexatious.

But that there was some evidence against Mr. Coles, and the jury before whom he were tried was equally divided on the first verdict.

That Mr. Hill demanded that the prerogative of pardon should be exercised in the case of Coles after conviction and sentence, owing to the misconduct of the jury and of certain officials of the Court in connection with the trial.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion whether Her Majesty's Government would be justified in demanding compensation for Mr. Coles, as well as in the case of Mr. Crosswell.

In obedience to your Lordship's commands we have the honour to report—

**Not justified in supporting claim.**

That, in view of all the circumstances, Her Majesty's Government would not be justified in demanding compensation for Mr. Coles.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
J. PARKER DEANE.

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*List of Papers.*

(A.) Papers sent to Law Officers, April 10, 1886.
    Mr. Hunt, No. 4, September 24, 1885.
    ,, ,, No. 7, October 20, 1885.
    Mr. Coles, November 18, 1885.
    Mr. Hunt, No. 15, December 30, 1885.
    ,, ,, No. 3, January 9, 1886.
    Mr. Coles, January 18, 1886.
  (*a.*) Memorandum, February 22, 1886.
  (*b.*) Mr. Hunt, No. 7, February 2, 1886 (Confidential No. 5349, p 3).
  (*c.*) Viscount Lyons, No. 124, March 19, 1886 (Confidential No. 5349, p. 7).
  (*d.*) Mr. Egerton, No. 146, March 31, 1886 (Confidential No. 5349, p. 9).

(B.) Law Officers, April 28, 1886.
(C.) To Mr. Hill, No. 1, May 21, 1886 (Confidential No. 5349, p. 1).
(D.) To Mr. St. Victor, May 31, 1886 (Confidential No. 5349, p. 2).
(E.) Viscount Lyons, No. 302, May , 1886.
(F.) Messrs. Love and others, May 12, 1886.
(G.) Mr. Hill, No. 6, July 6, 1886 (Confidential No. 5349, p. 69).
(H.) To Mr. Hill, No. 14, July 13, 1886 (Confidential No. 5349, p. 64).
(I.) Mr. Hunt, No. 32, June 26, 1886.
(J.) Mr. Hill, No. 3, July 2, 1886 (Confidential No. 5349, p. 66).
(K.) ,, ,, No. 5, July 5, 1886 (Confidential No. 5349, p. 67).
(L.) ,, ,, No. 13, August 3, 1886 (Confidential No. 5349, p. 78).
(M.) Law Officers, August 5, 1886 (Confidential No. 5349, p. 69*).

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## No. 40.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.*—(*Received September* 27.)

*Temple, September* 25, 1886.

My Lord,

Claim of Mr. M. Savage for losses caused by revolution.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, in which he stated that, by direction of your Lordship, he transmitted to us the papers noted in the accompanying list,* which related to the claim of Mr. Maxwell Savage against the Haïtian Government for 16,200 dollars.

That the claim had been examined by Mr. Hill, of the Foreign Office, who had been sent to Haïti specially to inquire into the grievances of British subjects against the Government of Haïti; and, after an inquiry held at the British Consulate, Mr. Hill had informed the Haïtian Government that he did not feel justified in pressing the claim.

That the facts were briefly as follows:—

A revolution broke out in Haïti in September 1883, and on the 22nd, 23rd, and 24th of that month the town of Port-au-Prince was exposed to the violence of the mob, and to incendiarism and pillage by the Government troops.

That on the restoration of order the Haïtian Government decided to compensate foreigners for the losses they had sustained from the outrages committed on that occasion, and they agreed to the appointment of Mixed Commissions to settle the amount of compensation payable to the claimants of each nationality. (See letter of President Salomon to the United States' Minister, as "Doyen," of the 9th December, 1883: Print (B), p. 4.)

That on the 22nd May, 1884, M. St. Victor, the Haïtian Minister, addressed a letter to Mr. McGuffie, Her Majesty's Acting Consul, proposing to fix the 22nd July following as the date within which all British claims should be presented; and on the 27th May Mr. McGuffie replied to that letter accepting that arrangement, provided it were also agreed to by the Representatives of other foreign Governments whose subjects had claims.

That that condition, however, was not fulfilled in the case of the United States' Minister, who only settled the claims of his countrymen in February 1885. (See, on that point, Acting Consul Wyndham's despatch No. 11 of the 15th April, 1885, Print (A), p. 11.)

That the nature of Mr. Maxwell Savage's claim was fully set out in the Print (A).

That he was a merchant residing at Liverpool, and in November 1882, while in Port-au-Prince, he had lodged with Messrs. Tweedy, Peters, and Co., merchants, of that city, two boxes of jewellery, of the value of 16,200 dollars, with instructions as to the disposal of the property.

Claim wrongly stated.

That Messrs. Tweedy, Peters, and Co., in execution of their instructions, handed the two boxes of jewellery to M. T. Duchatellier, of the same place, as agent for sale. That M. Duchatellier's house, with its contents, including the property in question, was destroyed by an incendiary fire on the 22nd September, 1883; and a claim for the value of Mr. Savage's jewellery was addressed to Her Majesty's Consul by Messrs. Tweedy, Peters, and Co., on behalf of Mr. Maxwell Savage, on the 20th May, 1884; but they inadvertently stated the value to be 6,200 dollars, instead of 16,000 dollars. (Print (A), p. 18.)

Claim disallowed by Mixed Commission.

That the claim for 6,200 dollars was duly presented to the Mixed Commission, and on the 19th July, three days before the date conditionally agreed to by Her Majesty's Acting Consul as the final date for the presentation of claims, the Commission made a declaration in its *procès-verbal* to the effect that the claim not being supported by any document, it could not be examined. (See precise words in French, Print (A), p. 11.)

That Mr. Tweedy (of the firm of Tweedy, Peters, and Co.) is the only surviving British member of the Mixed Commission, and he maintains that the above declaration was entered on the record of proceedings, on the understanding that the claim should be considered when the documents arrived.

Mr. Hill adverse to claim.

But the Haïtian Government insist that the 22nd July was the "terme fatal," after which no claim could be examined; and it would be seen, from Mr. Hill's despatch No. 10, that he came to the conclusion adverse to the claim on the ground that the word of the British Commissioner could not be treated as of greater value than that of the Haïtian Commissioner, M. Lallemand, who maintained that the claim had been absolutely rejected by the Commission.

That your Lordship, however, felt some doubt as to whether Mr. Hill's conclusion was altogether well founded.

That, in the first place, the condition on which Her Majesty's Acting Consul accepted the 22nd July as the final date was not fulfilled, certain claims of American citizens having been entertained and dealt with at a later date, and it was a notable fact that the date was never published in the papers for public information (Print (A), p. 12).

Secondly, assuming that Her Majesty's Government were bound by that date as the "délai après lequel aucune réclamation ne pourra être déposée et soumise à l'examen de nos Commissions," it might be contended that those words referred to the presentation of the claim, and were not intended to preclude the Commission from commencing or continuing the examination of claims after the 22nd July, provided the claims had been submitted before that date.

That the claim appeared to be a *bonâ fide* one, and its absolute rejection by the Haïtian Government on the grounds stated had given great dissatisfaction.

That Sir Julian Pauncefote was to request that we would take those papers into our consideration, and favour your Lordship with our opinion whether Mr. Hill was justified in refusing to support the claim; and, if not, whether, having regard to all the circumstances, Her Majesty's Government could properly demand that the claim be investigated and adjudicated upon without further delay, and that the error in the amount claimed should be corrected.

We were also honoured with Sir Julian Pauncefote's communication of the 7th instant.

In obedience to your Lordship's commands we have the honour to report—

Should demand immediate investigation of claim and correction of error.

That we are of opinion that, having regard to all the circumstances, Her Majesty's Government can properly demand that the claim shall be investigated without further delay, and that the error in the amount claimed shall be corrected.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
J. PARKER DEANE.

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* Mr. Hunt, No. 15, April 17, 1886; Foreign Office Memorandum (marked A), June 2, 1886, Confidential No. 5301; ditto (marked B), Confidential No. 5300; Mr. Hill, No. 10, July 24, 1886, Confidential No. 5349, p. 71.

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# Italy.

## No. 41.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received January* 15.)

*Royal Courts of Justice, January* 14, 1886.

My Lord,

Contracts for sale of animals.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 10th ultimo, stating that he was to transmit to us the papers relating to a question of law addressed to your Lordship by the Italian Chargé d'Affaires at this Court.

That a draft answer had been prepared, and that Sir J. Pauncefote was to inquire whether it met with our approval, and might, in our opinion, be addressed to M. Catalani.

That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion on the question submitted in that letter, and with any general observations which we might have to offer on the case.

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Rules of law which govern them. Amending reply to M. Catalani.

In obedience to your Lordship's commands we have the honour to report—

That we suggest that the draft answer to M. Catalani should be altered as follows:—

"I have the honour," &c., "and, in reply, I beg to state—

"Contracts for the sale of animals are governed by the same rules of law as other contracts for the sale of movable property.

"If a buyer has been induced to purchase by the fraud of the seller, he has a right to rescind the contract of sale, return the property if still in the condition in which it was when purchased, and recover from the seller the price paid to him for such property.

"In the absence of fraud, the principle *caveat emptor* prevails, and a buyer cannot return an animal or other property which he has purchased in consequence of the discovery of defects therein unknown to him at the time of sale.

"If, however, there be a warranty given expressly or implicitly on the sale of an animal or other property, and there should be a failure of the warranty, the purchaser may bring an action against the seller on the warranty, and recover damages for the loss sustained thereby."

We have, &c.

(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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*List of Papers.*

M. Catalani, November 21, 1885.
Proposed draft reply, December , 1885.

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Annexes.

*Draft of Letter to M. Catalani.*

*Foreign Office, December* , 1885.

M. le Chargé d'Affaires,

I have the honour to acknowledge the receipt of your note of the 21st instant, and, in reply, I beg to state that there is in this country no statutory enactment under which the seller of an animal can be compelled to take it back. Contracts for the sale of animals are governed by the same rules of the common law as other contracts for the sale of movable property, one of the most important maxims connected therewith being *caveat emptor*. If, however, there be a warranty given expressly or implicitly on the sale of an animal or other property, and there should be a failure of the warranty, the purchaser may bring an action against the seller on the warranty, and recover the purchase-money.

I have, &c.

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*Draft of Letter to M. Catalani, as modified by the Law Officers.*

*Foreign Office, January* 19, 1886.

M. le Chargé d'Affaires,

I have the honour to acknowledge the receipt of your note of the 21st ultimo, and, in reply, I beg to state that contracts for the sale of animals are governed by the same rules of law as other contracts for the sale of movable property.

If a buyer has been induced to purchase by the fraud of the seller, he has a right to rescind the contract of sale, return the property if still in the condition in which it was when purchased, and recover from the seller the price paid to him for such property.

In the absence of fraud, the principle *caveat emptor* prevails, and a buyer cannot return an animal or other property which he has purchased in consequence of the discovery of defects therein unknown to him at the time of sale.

If, however, there be a warranty given expressly or implicitly on the sale of an animal or other property, and there should be a failure of the warranty, the purchaser may bring an action against the seller on the warranty, and recover damages for the loss sustained thereby.

I have, &c.

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# Madagascar.

## No. 42.

*The Law Officers of the Crown to the Earl of Iddesleigh.*—(*Received October* 28.)

My Lord, *Royal Courts of Justice, October* 28, 1886.

Bank of Madagascar. Proposed establishment of.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us the accompanying letter which had been received from Mr. Abraham Kingdon,* who had recently secured from the Hova Government a Charter (of which a copy was inclosed in his letter) for the establishment of a Bank in Madagascar, the Bank to negotiate a loan for the Government on security of the customs dues at certain ports; and who was desirous of ascertaining whether, in the opinion of Her Majesty's Government, British subjects would be within their Treaty rights in carrying out the contract in question.

That previously to the Treaty, which was concluded between France and Madagascar on the 17th December last, there could have been no objection to the establishment of the proposed Bank, or to the provisions of its so-called Charter.

That it was important to consider how far the new Treaty might affect the question.

That Article I provided that the French Government should represent that of Madagascar in all its foreign relations; but that Article II laid down that the French Resident should not interfere in the internal administration of the country; and that the Circular which was issued by the French Government in communicating the new Treaty to foreign Governments declared that the Treaty which had just been concluded made no change in any of the existing Treaties between Madagascar and other foreign States, and that the French Government did not seek to interfere with "the free development of private interests which might be established in Madagascar to whatever nationality they might belong."

That, on the other hand, the French Government had quite recently objected officially to the raising of a loan by the Hova Government in this country, and that it was possible that, in the event of the Bank in question being started, such pressure might be brought to bear, by France, upon the Hova Government as would prove sufficient to bring about its ruin.

That Sir Julian Pauncefote was, accordingly, to request that we would take Mr. Kingdon's letter and its inclosure, together with the Treaties mentioned in the accompanying list,† into our consideration, and that we would favour your Lordship with our opinion as to whether any communication should be made to the French Government on the subject of the proposed Bank Charter, and, if not, as to the reply which should be returned to that gentleman's inquiry.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Need not communicate with French Government on subject. Suggest reply as to British Treaty rights; effect of French Treaty; and competence of Malagasy Government.

That no communication should be made to the French Government on the subject of the proposed Bank Charter; that the reply to Mr. Kingdon should state that Her Majesty's Government do not see in the Agreement anything which is in excess of the rights given to British subjects by the Treaty of 1883, which Treaty is unaffected by the recent Treaty between Madagascar and the French Republic; but that Her Majesty's Government are not prepared to give to the parties to this Agreement any opinion or advice as to the competence of the Government of Madagascar to make, or its power to carry out, such a contract.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Mr. Kingdon, August 30, 1886.

† Anglo-Malagasy Treaty, June 27, 1865. Treaty No. 494; "Africa No. 4 (1883)." Treaty No. 712; "Africa No. 2 (1886)." Treaty No. 3036.

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### No. 43.

*The Law Officers of the Crown to the Earl of Iddesleigh.—(Received November 19.)*

*Royal Courts of Justice, November* 18, 1886.

My Lord,

Wilkinson *v.* Pickersgill.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the case of Mr. Thomas Wilkinson, a British subject resident at Antananarivo, who had recently been compelled to leave Madagascar under the circumstances which were concisely set forth in the Judgment delivered on the 28th May last by the Supreme Court of Mauritius in the suit of "Wilkinson *v.* Pickersgill."

That Consular jurisdidiction as regarded British subjects in Madagascar was regulated by the Treaty between Her Britannic Majesty and the Queen of Madagascar of the 27th June, 1865, and by Her Britannic Majesty's Order in Council of the 4th February, 1869.

That Article XI of the Treaty ran as follows.—

"Her Majesty the Queen of Madagascar agrees that in all cases where a British subject shall be accused of any crime committed in any part of her dominions, the person so accused shall be exclusively tried and judged by the British Consul or other officer duly appointed for that purpose by Her Britannic Majesty. But any British subject whom the Consul or other officer shall find to have been guilty of having openly offended against the laws of Madagascar shall be liable to be banished from the country."

That sections 15 to 18 of the Order in Council dealt with the circumstances under which a British subject found guilty of crime might be deported, and with the manner in which such deportation was to be carried out.

Question as to jurisdiction of a Vice-Consul.

That it appeared to your Lordship to be open to grave doubts, notwithstanding the Judgment of the Supreme Court of Mauritius, whether a Vice-Consul had, equally with a Consul, jurisdiction under the terms of the Order in Council; and that with reference to that part of the case, Sir Julian Pauncefote was to call our particular attention to the Reports of the then Law Officers of the Crown and Dr. Deane, of the 18th May, 1877, and the 26th June, 1877, respectively, in a somewhat analogous matter.

That it was proposed, however, to remove the possibility of any similar difficulty arising in the future by the promulgation of a further Order in Council, conferring in express terms such jurisdiction on Vice-Consuls.

As to right of Malagasy Government to banish Mr. Wilkinson.

But that, assuming that the Vice-Consul had jurisdiction to try Mr. Wilkinson for the offence with which he was charged, the further question would seem to arise whether the Hova Government were justified in banishing him from Madagascar under the provisions of Article XI of the Treaty, inasmuch as Mr. Wilkinson, although he was tried by the Vice-Consul for an offence against the laws of Madagascar (viz., that of wounding with intent to kill), had been acquitted of that charge, and had been found guilty only of "unintentionally wounding," which, although justiciable in the case of a British subject in the Consular Court, was not an offence at all against the laws of Madagascar.

That it appeared that the Malagasy Government, in compelling Mr. Wilkinson to leave their country, were purporting to do so by virtue of their powers under Article XI of the Treaty, and that it had occurred to your Lordship that such action might, considering the grounds upon which it was based, have been *ultra vires* on their part.

and as to limitation of power of expulsion by Hova Government.

That as Mr. Wilkinson had now returned to Madagascar, and refused to leave that country except under compulsion, it might not improbably further be necessary for Her Majesty's Government to consider at an early date whether, if the Hova Government should propose to remove him on general grounds as being a person dangerous to the good order and safety of the State, it would be incumbent to protest against such a course being adopted. And that for that purpose it seemed important to consider whether the general right, which was conceived to be inherent in all Governments, to expel an individual on grounds of that kind, had been, in the case of the Malagasy Government, curtailed or limited, so far as British subjects were concerned, by Article XI of the Treaty.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the following questions:—

1. Whether Vice-Consul Pickersgill had jurisdiction to entertain the charges against Mr. Wilkinson?

2. Whether the action of the Malagasy Government in banishing Mr. Wilkinson, under the circumstances and for the grounds mentioned, was *ultra vires?*

3. Whether the right of the Malagasy Government to expel a particular British subject, on the general ground that he was a person dangerous to the good order and safety of the State, had been extinguished or curtailed by the provisions of Article XI of the Treaty of 1865, or whether it still existed concomitantly with those other powers which were conferred by that Article?

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Vice-Consul had jurisdiction.

1. That we are of opinion that Vice-Consul Pickersgill had jurisdiction to entertain the charges against Mr. Wilkinson.

Banishment of Wilkinson not justified.

2. That, under the circumstances, the Malagasy Government were not justified in banishing Mr. Wilkinson when and as they did.

Right of expulsion limited by Treaty.

3. That the general right of the Malagasy Government to expel a particular British subject is now limited by the provisions of the Treaty of 1865.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

Mr. Pickersgill, No. 12, June 25, 1886.
" " No. 16, August 12, 1886,
" " No. 17, August 19, 1886.
"Madagascar Times," June 19, 1886.
Mr. Wilkinson, August 2, 1886.
Mr. Jones Bayliss, No. 32, August 28, 1886.
Governor of Mauritius, No. 312, August 30, 1886.
Law Officers, May 24, 1877 (Confidential No. 4216, p. 102).
" " August 4, 1877 (Confidential No. 4216, p. 102).
Treaty with Madagascar, June 27, 1865 (Treaty No. 494).
Madagascar Order in Council, February 4, 1869 (Confidential No. 1624)

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## Mexico.

### No. 44.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received July* 15.)

*Royal Courts of Justice, July* 12, 1886.

My Lord,

Differential duties. Alleged infraction of the most-favoured-nation Article of the Preliminary Agreement of the 6th August, 1884.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 24th May last, stating that he was to transmit to us papers[*] relating to an alleged infraction by the Mexican Government of the IIIrd Article of the Preliminary Agreement for the renewal of relations between Great Britain and Mexico of the 6th August, 1884.

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[*] T. and J. Harrison, April 19; Royal Mail Steam-packet Company, April 19; R. Bulman and Co., April 19; to Sir S. St. John (Telegraphic), April 20; ditto, No. 2, Commercial, April 20; to T. and J. Harrison, &c., April 21; Sir S. St. John (Telegraphic), April 21; T. and J. Harrison, April 21; West India and Pacific Steam-ship Company, April 21; to Royal Mail Steam-packet Company, &c., April 24; T. and J. Harrison, April 27; Bulman and Co., April 27; to T. and J. Harrison, April 28; to West India and Pacific Steam-ship Company, April 28; West India and Pacific Steam-ship Company, April 29; to Sir S. St. John (Telegraphic), May 3; Sir S. St. John (Telegraphic), May 6; to T. and J. Harrison, &c., May 7; Sir S. St. John, No. 14, April 22; ditto, No. 16, April 24; ditto, No. 18, May 6; West India and Pacific Steam-ship Company, May 17, 1886; Preliminary Agreement for Renewal of Relations between Great Britain and Mexico, August 6, 1884 (Parliamentary No. 2886).

That Article III of that Agreement secured to Great Britain the most-favoured-nation treatment in all matters whatsoever.

**Remission of 2 per cent. of duties enjoyed by Mexican Transatlantic Company.**

That the Mexican Transatlantic Company (a Mexican line of steamers) enjoyed under their Government Concession, and in lieu of subsidy, the privilege of a remission of 2 per cent. of the duties payable on goods imported by their steamers into the Atlantic ports of Mexico.

**Mexican Company's Concession transferred to Spanish Transatlantic Company, who return the 2 per cent. to the shippers.**

That in consequence of those steamers having been arrested at Liverpool by creditors, the Concession had been temporarily transferred to the Spanish Transatlantic Company (a Spanish line), and that the Mexican Government had agreed to give to that foreign Company, in payment of the service performed by it, 2 per cent. of the duties payable on the goods imported by their steamers into the Atlantic ports. That the Company, in order to attract shippers, accepted the same freight as was charged by the Mexican line, and returned to the shippers the 2 per cent. which they received from the Mexican Government.

**Merchandize shipped on Spanish steamer pays less duty than that conveyed by British vessel.**

That representations were addressed to your Lordship last April from several Liverpool firms, drawing attention to the fact that merchandize shipped on a Spanish steamer bound from that port to Vera Cruz would be admitted into Mexico at a lower rate of duty than if it were conveyed by a British vessel.

That Her Majesty's Minister at Mexico was thereupon instructed to protest against the grant of any such privilege to a foreign Company, as being in contravention of the terms of Article III of the Preliminary Agreement.

That the Mexican Government, however, declined to admit that any violation of that engagement had occurred. That they stated that the shippers by the Spanish Company paid full duty to Government, that the Spanish Company received in cash from the Mexican Treasury a subvention equivalent to 2 per cent. of the duties on goods imported by their steamers, and that the Mexican Government had nothing to do with the return of the 2 per cent. of the duties to the shippers.

That, nevertheless, the fact remained that the Mexican Government were parties to an arrangement whereby shippers by a foreign line of steamers enjoyed fiscal advantages which the Government were precluded by the Agreement from extending to any but Mexican vessels.

That, in view of the circumstances, it seemed to constitute, at all events, a moral evasion of the most-favoured-nation clause; and that Sir J. Pauncefote was to request our opinion as to whether the case was one which might properly form the subject of a further representation from Her Majesty's Government to that of Mexico.

In obedience to your Lordship's commands we have the honour to report—

**Action of the Mexican Government is not an infraction of the most-favoured-nation Article.**

That we are of opinion that the action of the Mexican Government, as explained in Sir S. St. John's despatches, is not an infraction of Article III of the Preliminary Agreement between Her Majesty's Government and the Mexican Government; first, because there is no concession made to Spanish vessels generally; and, secondly, because the benefits given to the Spanish Company are in return, and by way of remuneration for, the specific service of carrying the Mexican mails.

We have, &c.  
(Signed) C. RUSSELL.  
HORACE DAVEY.  
J. PARKER DEANE.

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## Morocco.

### No. 45.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received January* 8.)

My Lord,  
*Royal Courts of Justice, January* 7, 1886.

**Enforcement in Morocco of Judgments of British Courts.**

WE are honoured with your Lordship's commands signified in Sir V. Lister's letter of the 17th ultimo, stating that he was to transmit to us the papers relating to an inquiry addressed to Her Majesty's Consul at Tangier by Mr. Gazzero, a British subject at Gibraltar, as to the power of the Consular Court at the former place to enforce "summarily" a Judgment obtained in one of the Courts of this country or in the Supreme Court of Gibraltar, in either case by a British subject, against another British subject living in Tangier.

That Her Majesty's Minister at Tangier solicited instructions as to the reply which should be returned to Mr. Gazzero.

That it was presumed that no such Judgment could be enforced summarily, but that we were referred to sections 10, 12, and 30 of the Order in Council of the 27th August, 1857, and that Sir V. Lister was to inquire whether it was competent to Her Majesty's Consul to entertain a suit founded on a Judgment obtained in England or in Gibraltar by one British subject against another, where the cause of action arose in Morocco. That our opinion was requested as to the answer which should be returned to Sir John Drummond Hay's despatch.

In obedience to your Lordship's commands we have the honour to report—

**Cannot be enforced "summarily," but only as result of suit in Consular Court.**

That, in our opinion, the answer which should be returned to Sir John Drummond Hay's despatch should be that neither of the Judgments specified in Mr. Gazzero's letter of the 20th November, 1885, can be enforced "summarily" by the Consular Court at Tangier.

An action founded upon such Judgment might be brought in the Consular Court, and if the plaintiff were successful, the Court might issue execution in such action.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
J. E. GORST.  
J. PARKER DEANE.

*List of Papers.*

Morocco Order in Council, August 27, 1857 (Confidential No. 1516).  
Sir J. Drummond Hay, No. 33, Consular, November 25, 1885.

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### No. 46.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.*—(*Received April* 8.)

My Lord,  
*Royal Courts of Justice, April* 7, 1886.

**Claim of R. C. Bowker and Co. to money paid into British Consulate at Mogador on behalf behalf of Mr. Curtis.**

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 17th ultimo, stating that he was to transmit to us the papers relating to the claim of Messrs. R. C. Bowker and Co., to receive a sum of money paid into Her Majesty's Consulate at Mogador by the Moorish authorities, under the following circumstances.

That in July last a sum of 702 dol. 66 c., equivalent to 140*l.* 10*s.* 8*d.*, was paid to Her Majesty's Consul at Mogador by the Moorish authorities in satisfaction of the claim of a Mr. Curtis, a British subject, in respect of a garden.

**Mr. Curtis reported to have died.**

That Mr. Curtis left Morocco in the summer of 1884, and was reported to have died in Egypt.

That in the meanwhile various creditors had endeavoured to attach, by written notice, the amount of compensation in the hands of Her Majesty's Consul, but that the latter had been instructed to inform those creditors that he could not accept such notices of attachment as having any legal force.

That among the creditors claiming the fund in the hands of Her Majesty's Consul were Messrs. R. C. Bowker and Co., who insisted that they had a preferential right to it under an assignment from Mr. Curtis, of which a copy was contained in Consul Payton's despatch No. 8, Consular, of the 10th February.

That subsequently to that date Messrs. R. C. Bowker and Co. became bankrupts, and whatever interest they had in the fund under that document passed to their trustee in bankruptcy, and from him to a Mr. G. S. Wood, who now authorized Messrs. R. C. Bowker and Co. to receive the money.

**His death not proved.**

That no proof had yet been obtained of Mr. Curtis' death, and that no creditor or relative had taken out administration to his estate and effects in Her Majesty's Consular Court in Morocco.

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That, in those circumstances, your Lordship desired to be favoured with our opinion as to whether the money could properly be paid to Messrs. R. C. Bowker by Her Majesty's Consul, or, if not, what course should be pursued with regard to the disposal of the money.

In obedience to your Lordship's commands we have the honour to report—

Money can only be paid to his legal representative.

That, in the absence of Mr. Curtis, if living, or some legal representative of his estate if he be dead, we cannot advise that the money can be properly paid by Her Majesty's Consul to Messrs. Bowker and Co.

It is obvious that their statement as to the existence of their debt, and the amount due in respect thereof, in the absence of the person or persons interested in contesting it, is *ex parte* only.

The only course we can suggest is to retain the fund until a legal personal representative of Curtis is constituted. One of the creditors claiming the fund adversely to Messrs. Bowker and Co. could probably be constituted the legal personal representative of Mr. Curtis.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

***List of Papers.***

Consul Payton, May 12, 1885.
Ditto, May 20, 1885.
Ditto, June 9, 1885.
Ditto, July 12, 1885.
Ditto, July 26, 1885.
Acting Consul Johnston, September 14, 1885.
Ditto, October 14, 1885.
Consul Payton, November 5, 1885.
Ditto, November 16, 1885.
To Sir J. Drummond Hay, No. 4, Consular, August 25, 1885
To Acting Consul Johnston, No. 2, August 25, 1885.
Ditto, No. 3, October 6, 1885.
Ditto, No. 4, November 9, 1885.
Ditto, No. 5, November 9, 1885.
To Consul Payton, November 12, 1885.
Mr. J. Grace, October 14, 1885.
Messrs. Bowker and Co., January 20, 1886
Ditto, February 10, 1886.
Ditto, February 23, 1886.
Ditto, March 2, 1886.
Ditto, March 4, 1886.
Mr. G. S. Wood, March 4, 1886.
Consul Payton, No. 8, Consular, February 10, 1886.
To Messrs. Bowker and Co., February 9, 1886.
Ditto, March 3, 1886.
Ditto, March 5, 1886.

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## No. 47.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.*—(*Received April* 8.)

My Lord, *Royal Courts of Justice, April* 7, 1886.

Fees due to Spanish Consular Court by Mr. Meakin. Question as to their recovery.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 27th ultimo, stating that he was to transmit to us a despatch received from Mr. White, Her Majesty's Consul at Tangier,[*] requesting instructions as to what steps he should take with regard to a demand made on him by the Spanish Consul for the recovery of certain fees due from a British subject named Meakin to the Spanish Consular Court.

That the circumstances under which the complainant brought his action in that Court, and the subsequent efforts to induce him to pay the costs that he had incurred by its unsuccessful result, were fully set forth in Consul White's despatch.

That, as it was desirable, in the interests of British claimants who might have to resort to the Spanish Court, that Mr. Meakin should be compelled, if possible, to pay the fees in question, Sir J. Pauncefote was to request our opinion as to whether there was any reason why the fees should not be recoverable by action brought by the Spanish Consul against the defaulter in the British Consular Court, and whether, the defaulter having submitted to the jurisdiction of the Spanish Court, was not liable to the ordinary process of that Court for the recovery of the fees due from him.

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[*] Consul White, No. 1, Consular, February 26, 1886.

That Sir J. Pauncefote was to request that we would favour your Lordship with our opinion thereon, and also with any other advice we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Meakin liable for fees.
Danger of admitting Spanish jurisdiction over British subjects.

That we are of opinion that, by commencing an action in the Spanish Court, Meakin submitted to the jurisdiction of that Court, at least to the extent of rendering himself liable for payment of the usual fees, but it might create a dangerous precedent to admit coercive jurisdiction in the Spanish Consul over a British subject.

Spanish Consul should sue Meakin in British Consular Court.

The British Consul clearly has no jurisdiction to compel payment of the Spanish Consul's fees, unless a Judgment be recovered in the British Consular Court. And we are of opinion that the proper course will be for the Spanish Consul to sue Meakin in the British Consular Court for his fees. And Mr. White may properly be instructed to inform the Spanish Consul to that effect.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## No. 48.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.*—(*Received July* 10.)

My Lord, *Royal Courts of Justice, July* 9, 1886.

(1) Libel on Consular Court at Tangier.

(2) Compelling obedience of fraudulent debtor Meakin to order of Court of Chancery.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 12th ultimo, stating that he was directed to transmit to us the papers[*] which related, firstly, to a libel on the administration of justice in the Consular Court at Tangier, published by three British subjects resident there, Messrs. Meakin, Lockhead, and Revie; and, secondly, to an inquiry addressed to the Foreign Office by a firm of London solicitors as to whether any process existed whereby Mr. Meakin, who was stated to be an absconding fraudulent solicitor, could be compelled to obey an order of the Court of Chancery for the payment of money, of which a copy was inclosed in their letter.

(1) Case of libel by three British subjects.

That, upon the first point, Consul White forwarded a cutting from a newspaper called the "Times of Morocco," containing two "protests," signed respectively by Mr. Lockhead and Mr. Revie, relating to two actions in the Consular Court (Fox and Co. *v.* Lockhead, and Lockhead *v.* Pearse), the former of which had been adjudicated on, the latter being, at the date of Sir J. Pauncefote's letter, still pending.

That those protests, which Mr. White characterizes as gross contempt of Court, had been reprinted by Mr. Meakin in the form of a handbill and publicly placarded and distributed.

That Consul White applied for instructions as to his legal powers to deal with the case.

Questions as to:
(1) Powers of Consul for punishing libel.

He pointed out that by section 17 of the Morocco Order in Council of 1857[†] the Consul cannot inflict a punishment exceeding one month's imprisonment or a fine of 200 dollars, unless sitting with Assessors; and as he considered such a punishment would be inadequate in the case, and believed that cases of contempt of Court are dealt with summarily by the Judge without Assessors or jury, he asked for information whether he would be justified in hearing the case summarily and inflicting a punishment of, say, six months' imprisonment; or, if not, whether he could appoint Assessors to sit with him, so as to be able to pass such a sentence; or, finally, whether it was advisable that, in accordance with section 28 of the Morocco Order in Council, the case should be sent to Gibraltar for trial in the Supreme Court.

That Consul White further inquired whether, should the case be heard by him and a sentence of imprisonment passed, he would be empowered by section 5 of the

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[*] Messrs. Watney, Tilleard, and Co., June 4; Consul White, No. 4, May 31, 1886.
[†] Confidential No. 1516.

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Foreign Jurisdiction Act of 1843 to send the prisoners to Gibraltar to undergo their punishment in that garrison.

That Sir J. Pauncefote observed that the Morocco Orders in Council contain a provision as to sending prisoners to Gibraltar for trial, but apparently none as to sending them there for punishment only.

(2) Compelling obedience of Meakin.

That the second question on which your Lordship desired our opinion was stated in the letter from Messrs. Watney and Co.

That our opinion was requested on the questions submitted in the letter of Sir J. Pauncefote.

We are also honoured with a further letter from Sir J. Pauncefote, dated the 22nd ultimo, transmitting a further despatch from Her Majesty's Consul at Tangier,* and requesting an early reply to the letter from the Foreign Office of the 12th ultimo.

In obedience to your Lordship's commands we have the honour to report—

(1) Doubt whether Consular Court is a Court of Record.

That the question whether the Judge of the Consular Court in Tangier can punish contempt of his Court by fine or imprisonment on a summary application depends on the question whether the Consular Court is a Court of Record.

Consul should not proceed against libellers summarily.

We have the gravest doubts whether the Consular Court is a Court of Record, and, consequently, whether Mr. Consul White can proceed against the parties in the manner proposed for contempt of Court. And we think that it would be most inexpedient for Mr. Consul White to attempt to exercise any such jurisdiction; and such an attempt might lead to serious complications.

Powers of Judge in case of libel on Court.

A libel on the administration of the law calculated to interfere with the course of justice is an indictable criminal offence, and such a libel may also be the subject of a civil action by the Judge against the offending party.

Consul has no power to send prisoners to Gibraltar.

We are of opinion that there is no power in the Ordinance establishing the Consular Court at Tangier for the Consul to send persons to Gibraltar for imprisonment, Her Majesty in Council not having made any Order for that purpose under section 5 of 6 & 7 Vict., cap. 94.

As to sale of partnership goods.

The point does not directly arise, but it may not be out of place to remind Mr. Consul White that the officers of the Court cannot sell the partnership goods of Lockhead and Revie in satisfaction of a Judgment against Lockhead alone.

(2) No means of enforcing at Tangier order of Court of Chancery.

On the other question, we are of opinion that there is no means by which the orders of the High Court of Justice in the suit of Ahloocoalia *v.* Meakin can be enforced against Meakin in Tangier. We think that an action could not even be brought on the Judgment, because the order of the 11th May, 1883, orders payment into Court, and not to any particular individual.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## No. 49.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.*—(*Received September* 18.)

*Royal Courts of Justice, September* 17, 1886.

My Lord,

Libels on Her Majesty's late Minister, Her Majesty's Consul and Consular Court at Tangier by Mr. Meakin.

WE were honoured with your Lordship's commands signified in Sir Villiers Lister's letter of the 28th ultimo, in which he stated that, by your Lordship's direction, he transmitted to us two series of papers (A and B), noted in the accompanying list, which related to the public press in Morocco.

That Mr. Ebenezer Meakin, a British subject, and editor of the "Morocco Times," had published a series of libels on Sir J. H. Drummond Hay, late Her Majesty's Minister at Tangier, and Mr. White, Her Majesty's Consul at that place, and on the administration of justice in Her Majesty's Consular Court at Tangier, for which there was great difficulty in bringing him to justice.

That Mr. Meakin is said to be an "absconding fraudulent solicitor," and Sir Villiers Lister was to invite our attention to the Report of the Law Officers on his case of the 9th July last.

That Her Majesty's Consul, having received instructions in conformity with that

Report, had now addressed two despatches to the Secretary of State (Nos. 7 and 8 of the 5th and 27th July).

As to power of Consul to entertain prosecution of Meakin for libel.

That in the first of those he asked for instructions as to his legal power to entertain a criminal prosecution instituted against Meakin for libel by a Captain Rolleston in the Consular Court, and stated the grounds on which he had felt it his duty not to proceed with the case pending the receipt of instructions.

That in the second despatch (No. 8) he reported the substance of private communications which had passed between him and the Chief Justice of Gibraltar respecting the difficulties attending criminal proceedings for libel.

That those difficulties were such that the Secretary of State had caused a new Order in Council for Morocco to be prepared, which would be shortly submitted to us, and which would remove the difficulties complained of.

That in the meanwhile Sir Villiers Lister was to request that we would be good enough to advise your Lordship as to the instructions which should be sent to Mr. White in reply to his two despatches above referred to (Nos. 7 and 8).

That the papers relating to the above question were comprised in Series (A).

But a further question arose on the papers comprised in Series (B).

Complaints as to attacks by British journalists on Moorish Government. Demand for suppression of foreign press.

That we would observe that the Moorish Government had officially complained to Mr. White of the attacks upon them by journals published by British subjects who enjoyed immunity from the native jurisdiction, and they had addressed a Circular to the foreign Representatives asking for the total suppression of the foreign press in Morocco.

Proposal to sanction expulsion of such journalists.

That although such a sweeping measure was not likely to be adopted, the question arose whether, in view of the fact that our Consul was unable to redress the grievance complained of, the Moorish Government should not be informed that Her Majesty's Government would not oppose the expulsion by the Sultan from his dominions of any British subject who was guilty of publishing defamatory articles against the Local Government calculated to disturb the peace and good order of the country, provided the grounds of such expulsion were first laid before Her Majesty's Representative, and deemed by him sufficient.

That on that point Sir Villiers Lister was to invite our attention to the Law Officers' Reports of the 16th May and 7th July, 1860, of the 25th April and 18th October, 1862, and of the 18th December, 1883.

That if that course could properly be adopted, the case of Mr. Meakin would probably be disposed of by his expulsion from Morocco by the Sultan.

That Sir Villiers Lister was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report that—

Consul has power to entertain prosecution for libel, but proper to send case to Gibraltar.

1. We are of opinion that Her Majesty's Consul has the *legal power* to entertain in his Court a criminal prosecution of Meakin by Captain Rolleston, but that it will be *proper* for him, under the circumstances of this case, to send the prisoner to Gibraltar for trial under section 28 of the Order in Council, which, we are of opinion, gives him power to do so. The Statute 44 & 45 Vict., cap. 60, does not apply to Morocco, therefore no fiat is necessary.

Consul should not yet initiate proceedings.

2. In our opinion, Her Majesty's Consul should not himself initiate any proceedings at present, but should wait till the result of the proceedings by Captain Rolleston is ascertained.

May sanction expulsion of British subjects, but should defer this notification.

3. We are of opinion that the Moorish Government may properly be informed that Her Majesty's Government will not oppose the expulsion of British subjects in cases of this nature, provided that the approval of Her Majesty's Representative is first obtained; but this notification should be deferred until the proceedings in the Gibraltar Court are concluded.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
J. PARKER DEANE.

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* Consul White, No. 5, June 14, 1886.

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*List of Papers.*

Series (A):—
  Sir J. Drummond Hay, No. 32, June 21, 1886.
  Ditto, No. , August , 1886.
  Consul White, No. 7, July 5, 1886.
  Ditto, No. 8, July 27, 1886.
  Law Officers, July 9, 1886.
  Morocco Order in Council, February 4, 1875 (Confidential No. 2573).
Series (B):—
  Sir J. Drummond Hay, No. 104, November 16, 1884.
  Law Officers' Reports thereon:—
    January 19, 1885 (Confidential No. 5246, p. 115), and January 7, 1886.
  To Sir J. Drummond Hay, No. 4, January 27, 1886.
  Sir J. Drummond Hay, No. 34, June 23, 1886.
  Consul White, No. 48, August 5, 1886.
  Law Officers' Reports on Expulsion of Foreigners:—
    May 16 and July 7, 1860.
    April 25 and October 18, 1862 (Confidential No 1301, pp. 96, 256)
    December 18, 1883 (Confidential No. 4974, p. 45).

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# Netherlands.

## No. 50.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received April 29.)*

*Royal Courts of Justice, April 28, 1886.*

My Lord,

Assessment of tax on the Santa Barbara Estate at Curaçao.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 23rd ultimo, stating that he was directed to transmit to us the papers* relating to the complaint of Mr. J. Godden against the rate of assessment of a tax on the Santa Barbara Estate in the Island of Curaçao.

That we should perceive from Mr. Godden's letters that he complained of the partiality of the members of the Assessment Committee. That it appeared, however, that the Ordinance, a translation of which would be found in Mr. Jesurun's despatch No. 4, Commercial, of the 21st December last, provided that the assessment was to be calculated on the value of the land, and not on the value of its products.

That the yearly value of the phosphate of lime extracted and exported from the Santa Barbara Estate in 1883 and 1884 was between 750,000 and 800,000 fl., that the valuation of that estate at 1,000,000 fl. would not, therefore, seem to be unreasonable, and that it appeared to your Lordship that unless it could be shown that in Mr. Godden's case the meaning of the Ordinance had been perverted, and that the law was unequally applied, there was no case for the further intervention of Her Majesty's Government.

That the inclosed draft of a letter to Mr. Godden had been prepared in the above sense, and that Sir J. Pauncefote was to request that we would be good enough to inform your Lordship whether it met with our concurrence.

In obedience to your Lordship's commands we have the honour to report—

Approve reply to Mr. Godden's complaint declining to interfere.

That we approve of the terms of the draft letter to Mr. Godden.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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* Mr. Godden, October 19; to ditto, October 23; to Consul Jesurun, No. 1, Commercial, October 24; Mr. Godden, December 29, 1885; to ditto, January 6; to Mr. Stuart, No. 2, Commercial, January 22, 1886; Consul Jesurun, No. 4, Commercial, December 21, 1885; Mr. Stuart, No. 17, Commercial, February 19; to Consul Jesurun, No. 1, Commercial, March 2 to Mr. Godden, March 2; Mr. Godden, March 12, 1886.

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### Annex.

*Draft of Letter to Mr. Godden.*

Sir, *Foreign Office,* 1886.

I am directed by the Earl of Rosebery to acknowledge the receipt of your letter of the 12th ultimo, on the assessment of the Santa Barbara Estate in Curaçao.

In reply, I am to observe that the Ordinance under which the assessment is made distinctly provides that the tax is to be calculated on the value of the land, and not on the value of its products. The Santa Barbara Estate has been valued at 1,000,000 fl., which does not seem unreasonable in view of the fact that the yearly value of the phosphate extracted and exported in 1883 and 1884 was between 750,000 and 800,000 fl.

His Lordship understands that you do not contest the valuation of the estate at a million of florins, but that, according to your construction of the Law, the assessment should be based, not on its marketable value, but on the value of the phosphate actually exported.

The question, therefore, is one of law, as to the proper construction of the Ordinance, and is not dependent on the views of interested jurors.

Looking at the terms of the Ordinance, Lord Rosebery is not prepared to hold that the interpretation placed on it by the Netherlands Government is incorrect. You are bound by the local Laws in regard to your estate, and unless it can be shown that there is any inequality in the application of the law, his Lordship is of opinion that the case affords no ground for the further intervention of Her Majesty's Government.

I am, &c.

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## No. 51.

*The Law Officers of the Crown to the Earl of Rosebery.—(Received July 10.)*

My Lord, *Royal Courts of Justice, July 9, 1886.*

Marriage Warrant for Captain Wyndham as Consul for French Guiana, but not resident there.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 5th ultimo, stating that he was to transmit to us papers* relating to a question which had arisen under section 19 of the Consular Marriages Act.

That Captain Wyndham had recently been appointed Her Majesty's Consul both for French Guiana and for Surinam (Dutch Guiana).

A Vice-Consul is resident in French Guiana.

That in neither of his commissions was he appointed to reside in the country for which he was appointed Consul. That Captain Wyndham had applied to be furnished with Marriage Warrants, under section 19 of the Act, to enable him to solemnize marriages in both countries. That it had been decided that the Consul should reside at Paramaribo, in Dutch Guiana, and occasionally visit French Guiana, for the purpose of discharging any Consular duties which might be required of him in that Colony. But a British Vice-Consul had been appointed to reside permanently in French Guiana.

That it was proposed to issue a Marriage Warrant to Captain Wyndham authorizing him to solemnize marriages in Dutch Guiana; but that, in view of the terms of section 19 of the Act, it seemed doubtful whether a Marriage Warrant could be issued authorizing him to solemnize marriages in French Guiana, as he was not a Consul "appointed to reside" in that country.

That if such warrant could not properly be issued to him, it was proposed to issue it to the Vice-Consul, as provided by section 19, in cases where there was no "British Consul resident."

That Sir J. Pauncefote was to request that we would take the papers transmitted into our consideration, and that we would favour your Lordship with our opinion as to whether a Marriage Warrant could legally be issued to Captain Wyndham authorizing him to solemnize marriages in French Guiana, though he was not appointed to reside in that country; and that, if not, whether such Warrant might be issued to the resident Vice-Consul.

In obedience to your Lordship's commands we have the honour to report—

Cannot be issued to Captain Wyndham, but may be issued to resident Vice-Consul.

That we are of opinion that a Warrant cannot legally be issued to Captain Wyndham authorizing him to solemnize marriages in French Guiana (he not being

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* Act 12 & 13 Vict., cap. 68; Consul Wyndham, No. 24, April 1, 1886; Commission as Consul in Surinam; ditto, for French Guiana; Ordinary Form of Marriage Warrant.

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appointed to reside, and not being, in fact, resident there), but that such Warrant may be legally issued to the resident Vice-Consul in that country.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.

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## Persia.

### No. 52.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received July 10.)*

*Royal Courts of Justice, July* 9, 1886.

My Lord,

Bankruptcy of Herapit and Aratoon. Claim of creditors to preferential treatment.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 28th April last, stating that he was directed to transmit to us the papers relating to the bankruptcy of the Persian firm of Herapit and Aratoon, and the claims arising of certain persons to be treated as preferential creditors in respect of the proceeds of the sale of tobacco, originally the property of the bankrupts (see former Reports of Law Officers inclosed).

That the facts of the case were succinctly set forth in the printed Memorandum drawn up at the Bushire Residency, and transmitted to us therewith.

That on the receipt of the last Report of the Law Officers (the 4th June, 1885), Sir R. Thomson was instructed to endeavour to procure further explanation and evidence on the points indicated therein, and that our attention was invited to the documents since received.

That it would be seen, on reference to those papers, and especially to Messrs. Sassoon's letter to Colonel Ross of the 6th November, 1885, that they defended their right to retain the proceeds of the whole 700 bags of tobacco (equal to 837*l.* 0*s.* 3*d.*) solely on an extract from a letter alleged to have been written by Mr. Herapit to Messrs. Malcolm on the 1st June, 1882, who now produce it for the first time, after having given a totally different account of the instructions under which the tobacco originally came to their hands.

That Messrs. Sassoon and Co. insisted that, by virtue of the instructions evidenced by that letter, they were entitled to retain the proceeds, irrespectively of any question as to whether the tobacco was shipped from Bushire to Beyrout before or after the date of bankruptcy.

That, furthermore, they stated that they were without information as to the exact date when the firm of Herapit and Aratoon suspended payment.

That the bankruptcy of the firm was declared on the 9th October, and the letter now adduced by Messrs. Malcolm and Co., and relied on by Messrs. Sassoon and Co., had been submitted to Mr. Tyler, the official liquidator at Tehran, who, as would be seen from Mr. Nicolson's despatch of the 7th January, expressed doubt as to its authenticity, or, at any rate, as to whether it was written on the date mentioned. He could find no allusion to it in the books or accounts which he had in his possession, nor had it ever been referred to in previous correspondence.

That the Law Officers, in their Report of the 12th December, 1884, advised that, as regarded the 100 bags shipped from Bushire in March 1883, Messrs. Sassoon's claim failed for the reasons therein stated, and that, as regarded the other 600 bags, that if they were shipped by Malcolm and Co., by direction of the bankrupts, to Sassoon and Co., to cover their account, and the goods, or documents of title to them, were in the hands of Sassoon and Co., or their agents, prior to the bankruptcy, the claim of the latter would be beyond question.

But that it now appeared that the shipment took place five days after the declaration of bankruptcy; that in those circumstances your Lordship presumed that the claim of Messrs. Sassoon to retain the proceeds of the tobacco could not be sustained.

That if we should be of that opinion, your Lordship proposed to inform Messrs. Sassoon and Co. that Her Majesty's Government, after consultation with the Law Officers, had arrived at that conclusion, on the grounds above stated, and to request them to remit the proceeds to Messrs. Malcolm at Bushire, and so enable Colonel Ross to forward the equivalent, which he now held as a deposit, to the Official Liquidator at Tehran, for distribution among the creditors of the bankrupt's estate.

That your Lordship desired to be favoured with our opinion on the claims of Messrs Sassoon and Co., and the course of action above suggested.

In obedience to your Lordship's commands we have the honour to report—

Messrs. Sassoon have not established any right to proceeds of tobacco.

That we are of opinion that Messrs. Sassoon have not established any legal right to retain the proceeds of the 700 bags of tobacco towards satisfaction of their claim against Messrs. Herapit and Aratoon, and that consequently there are no grounds upon which Messrs. Malcolm can properly ask for the return of the 837*l.* 0*s.* 3*d.*, in the hands of Colonel Ross, to them.

We think that the claim of Messrs. Sassoon is only to a right of set-off, which, not having arisen prior to the bankruptcy, cannot be maintained.

Even assuming the letter of the 1st June, 1882, to be genuine, it is not stated to have been communicated to Messrs. Sassoon, and their letter of the 8th February, 1884 (in our opinion), shows that it was not.

It would not, therefore, constitute a legal charge on the tobacco, or the proceeds of it, in favour of Messrs. Sassoon; and it is clear that both Messrs. Herapit and Aratoon and Messrs. Malcolm treated the tobacco (subject to any lien of Messrs. Malcolm) as having remained at the disposition of the former firm.

It now appears that the shipment of the 600 bags was not made until after the bankruptcy, when Messrs. Malcolm could not confer on Messrs. Sassoon any title to the proceeds as against the Liquidator.

Should instruct Colonel Ross to transmit them to the Liquidator,

As, therefore, Messrs. Sassoon have not made out any title prior to, and existing at, the date of the bankruptcy, and as they could not acquire any title subsequent to that date, we advise your Lordship, on these grounds, to instruct Colonel Ross to remit the sum of 873*l.* 0*s.* 3*d.* to the Liquidator for distribution amongst the creditors.

and inform Messrs. Sassoon.

Your Lordship will, no doubt, direct an intimation to be given to Messrs. Sassoon of any instructions to this effect you may give Colonel Ross, but we think that Messrs. Sassoon and Messrs. Malcolm should be left to adjust their rights in respect of the proceeds of the tobacco between themselves.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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*List of Papers to accompany Reference to Law Officers of April* 28, 1886.

HERAPIT AND ARATOON.

Earlier correspondence—
- Sir R. Thomson, No. 5, Consular, September 3, 1884.
- Sir E. Hertslet (Memorandum), October 15, 1884.
- Messrs. Sassoon and Co., November 3, 1884.
- Law Officers, December 12 and December 30, 1884. (Confidential No. 5121, pp. 83-85.)
- To Sir R. Thomson, No. 1, January 5, 1885.
- Sir R. Thomson, No. 4, April 17, 1885.
- Law Officers, June 23, 1885. (Confidential No. 5246, p. 123.)

Later correspondence—
- To Sir R. Thomson, No. 5, July 16, 1885.
- Colonel Ross, No. 14, September 22, 1885.
- Messrs. Sassoon and Co., November 6, 1885.
- Ditto, November 17, 1885.
- Ditto, January 20, 1886.
- Mr. Nicolson, No. 1, January 8, 1886.
- Mr. Maycock (Memorandum), February 17, 1886.
- Mr. Nicolson (Telegraphic), April 15, 1886.
- To ditto (Telegraphic), April 19, 1886.

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## Russia.

### No. 53.

*The Solicitor-General and Sir J. Deane to the Earl of Rosebery.*—(*Received June* 1.)

*Royal Courts of Justice, May* 31, 1886.

My Lord,

Colledge *v.* Armstrong.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 26th instant, stating that he had the honour to transmit to us the papers* relating to the case of Mr. Colledge, which formed the subject of a Report of the Law Officers of the 21st December, 1883.

Subpœna served on Mr. A. H. Oakes requiring production of papers.

That Mr. Colledge was bringing an action for libel arising out of the same case against Mr. Armstrong, and that Messrs. Lewis, who were engaged for the defendant, had served a subpœna upon Mr. Oakes, of the Librarian's Department of the Foreign Office, requiring him to produce in court the papers specified therein.

That all but the two papers inclosed therewith had already been produced in the former proceedings at Bow Street, and were still in the custody of the Police Magistrate.

That your Lordship did not consider that the production of the two papers in question (letter to Mr. Colledge of the 16th November, 1883, and his reply of the 29th November, 1883) would be injurious to the public service, but that your Lordship would be glad to be favoured with our opinion as to whether there was any objection to Mr. Oakes being authorized to produce them.

That it was understood that the trial was likely to take place in the first days of June.

In obedience to your Lordship's commands we have the honour to report—

No objection to production of specified papers.

That we see no objection to your Lordship's authorizing Mr. Oakes to produce the two letters in question.

We have, &c.  
(Signed) HORACE DAVEY.  
J. PARKER DEANE.

P.S.—The Attorney-General does not sign this opinion, as he is concerned as Counsel in the litigation.

H. D.  
J. P. D.

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### No. 54.

*The Solicitor-General and Sir J. Deane to the Earl of Rosebery.*—(*Received June* 5.)

*Royal Courts of Justice, June* 5, 1886.

My Lord,

Colledge *v.* Armstrong.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 4th instant, stating that with reference to his letter of the 26th ultimo, and to our Report of the 31st ultimo, he was directed by your Lordship to transmit to us a letter which had been received at the Foreign Office from Mr. Joseph King, asking for the production in Court of further papers in the forthcoming trial of Colledge *v.* Armstrong.

Production of further papers by Mr. Oakes.

That the papers referred to were sent therewith, and that Sir J. Pauncefote was to request that we would inform your Lordship whether there would be any objection to returning a reply to Mr. King, stating that Mr. Oakes, of that Department, would be authorized by your Lordship to produce the papers mentioned in his letter, on being subpænaed to do so, in the usual course.

That your Lordship was informed that the trial would take place on the 8th instant.

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* Subpœna: to Mr. Colledge, November 16; Mr. Colledge, November 29; Law Officers' Report December 21, 1883. Confidential No. 4974, p. 98.

In obedience to your Lordship's commands we have the honour to report—

Mr. Oakes may produce the papers except two, copies of which may be given without the Minutes thereon.

That we think that there would be no objection to your Lordship's returning a reply to Mr. King, stating that Mr. Oakes will be authorized to produce the papers mentioned in his letter, on being subpænaed to do so in the ordinary course, with the exception of the letters from Mr. Colledge dated the 16th November, 1883, and the 12th December, 1883.

As a matter of principle we think it undesirable that confidential notes of officers of the Foreign Office, such as those indorsed on the two letters we have mentioned, should be produced in Court.

But we see no objection, if either side desire it, to the production of copies of those letters without the notes indorsed thereon.

We have, &c.  
(Signed) HORACE DAVEY  
J. PARKER DEANE.

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*List of Papers.*

Mr. J. E. S. King, June 2, 1886.

Mr. Colledge, November 7, 1879.  
Ditto, October 29, 1883.  
Ditto, November 16, 1883.  
Ditto, November 29, 1883.  
Ditto, December 12, 1883.  
Ditto, May 31, 1884.  
Mr. J. E. S. King, September 7, 1885.  
Ditto, January 28, 1886.  
Ditto, February 2, 1886.  
Commercial Reports, in MS., as sent home by Mr. Colledge during the years 1878–1883, inclusive.

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## Siam.

### No. 55.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.*—(*Received February* 5.)

*Royal Courts of Justice, February* 4, 1886.

My Lord,

Taxation of British subjects in Chiengmai without sanction of the supreme authorities and British Consul.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 15th December last, transmitting to us the papers* relating to various points which had arisen in relation to the Treaties between Great Britain and Siam, and more especially to the right assumed by the Chief of Chiengmai to levy on British subjects whatever taxes he may think fit without the sanction of the supreme Siamese authorities and of the British Consul.

That the Treaties bearing on that subject were:—

1. Treaty of the 18th April, 1855, with the Supplementary Agreement thereto of the 13th May, 1856; and

2. Treaty of the 3rd September, 1883, by which the Treaty between the Government of India and the Government of Siam of the 14th January, 1874, was abrogated.

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* *List of Papers.*

A. Mr. Satow, No. 5, Treaty, June 12, 1885, with accompanying Memorandum.  
B. Ditto (Telegraphic), November 3, 1885.  
C. India Office, November 24, 1885.  
D. Treaty with Siam, April 18, 1855, with Supplementary Agreement, May 13, 1856, Treaty No. 411.  
E. Treaty with Siam, September 3, 1883, Treaty No. 731.  
F. Treaty between the Government of India and the Government of Siam, January 14, 1874 (see Confidential No. 2963**), abrogated by Treaty of 1883 (Article I), Treaty No. 731.

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That Chiengmai, one of the Laos States, was a border province of Siam contiguous to British Burmah, and Her Majesty's Minister at Bangkok had contended, on behalf of Her Majesty's Government, that the Chief of Chiengmai had no right to levy any taxes on British subjects other than those prescribed by the above-mentioned Treaties; and that, in accordance with Article IV of the Supplementary Agreement of the 13th May, 1856, no new taxation could be imposed, without the consent of Her Majesty's Government, on British subjects in any part of the Siamese dominions.

That the Secretary of State for India, to whom the question was referred, agreed with Her Majesty's Minister in thinking the claim put forward by the Chief of Chiengmai to be untenable.

That Article IV of the Supplementary Agreement of the 13th May, 1856, prohibits the imposition of any new tax or charge without the sanction of the Siamese Government and the British Consul. That the Supplementary Agreement of 1856 was, by Article XII, "incorporated in the Treaty of 1855." That, by Article IX of the Supplementary Agreement, it is provided that the Siamese Government, whenever they might deem it beneficial for the country, might impose a "single tax or duty on any *article* not now subject to a public charge of any kind," provided it be just and reasonable. That it was contended that Articles IV and IX of the Supplementary Agreement of 1856 must be read together, and that Article IX did not dispense with the sanction of the British Consul to the imposition of a new tax, as provided by Article IV, but that the Consul must approve of such tax as being "just and reasonable."

Proposed tax on sale of fire-arms.

That, moreover, the new taxes proposed to be levied are not "taxes on articles," but on the "sale" of fire-arms.

That, whatever might be the true construction of the above Treaty clauses, it was conceived that unless any new taxation be equally imposed on the subjects of other Treaty Powers, Her Majesty's Government had a right to resist such taxation as against British subjects, under the most-favoured-nation clause of the Treaty of 1855 (Article X).

That that privilege was expressly maintained by Article XIII of the Treaty of 1883; but that Article IV of that Treaty was invoked by the Chief of Chiengmai as an authority for levying other duties than those prescribed by the previous Treaties. That it was presumed, however, as regarded Article IV of the Treaty of 1883, that the duties lawfully prescribed to be paid according to the custom and regulations of the country meant the duties lawfully claimable under the Treaties between Great Britain and Siam, of which the Laos States form an integral portion.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion on the points above submitted, and as to the instructions which should be sent to Her Majesty's Minister at Bangkok in reply to his despatch.

In obedience to your Lordship's commands we have the honour to report—

That it is by no means easy to reconcile Articles IV and IX of the Supplementary Agreement of the 13th May, 1856.

In the case of a proposal to impose any additional tax or charge upon a British subject in respect of his person, labour, dwelling, trade, or property, it is clear that Article IX does not dispense with the sanction of the British Consul required by Article IV.

But if a case can be conceived, not within the above category, in which a proposal is made to impose a single tax or duty on an article not subject to any public charge at the date of the Supplementary Agreement, it is not so clear that if the tax is just and reasonable the consent of the British Consul is necessary.

Proposed tax not reasonable and just.

The proposed tax on guns does not fall within the above description for two reasons:—

First, because such a tax would be an additional tax imposed on a British subject in respect of his trade or property; and, secondly, because guns are already liable to a 3 per cent. import duty under Article VIII of the Treaty of 1855.

It may, in our opinion, be, in any case, reasonably contended that Article IX amounts to an engagement on the part of Her Majesty's Government that the British Consul shall not withhold the consent provided for in Article IV if the tax be "just and reasonable."

Under Article X of the Treaty of 1855 Her Majesty's Government have a right to object to any taxation, as against British subjects, which the Siamese Government have debarred themselves by Treaties with other Powers from imposing as against the subjects of such Powers.

In Article IV of the Treaty of 1883 the duties to be paid, "according to custom and the regulations of the country," by "British subjects entering Siamese territory from British Burmah," mean the import duties lawfully claimable under the Treaties between Great Britain and Siam.

Should object to right claimed by Chief of Chiengmai.

We think that instructions should be sent to Her Majesty's Minister at Bangkok to object to the right assumed by the Chief of Chiengmai to levy taxes on British subjects on the grounds above stated.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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# Spain.

## No. 56.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received February 5.)*

*Royal Courts of Justice, February 4*, 1886.

My Lord,

Case of the hulk "Hans Gude" towed out of Spanish waters by "Hercules"; claim for its restitution.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 5th ultimo, stating that he had the honour to transmit to us the papers[*] relating to a claim made by the Spanish Government for the restitution of the hulk of a Norwegian vessel, the "Hans Gude," which was found floating keel uppermost in Spanish waters by the British steamer "Hercules," and towed by her into Gibraltar, where the hulk was adjudicated upon by the Vice-Admiralty Court as a derelict, and sold, by order of that Court, on the 10th July last.

That it appeared that on the 30th April the Spanish Consul informed the Government of Gibraltar of the circumstances under which the hulk had been towed into Gibraltar by the "Hercules," and protested against the action of the Vice-Admiralty Court.[†]

That the Spanish Consul, in his letter, stated that the hull of the wrecked ship was in Tarifa waters and $1\frac{1}{2}$ miles from the shore, and was removed by the "Hercules" without the necessary permission of the Spanish authorities, and that his communication was to serve as a protest. That the letter was acknowledged, but that no further action was taken.

That on the 19th June, the Spanish Consul addressed a further letter to the Government of Gibraltar, inclosing a Report by the Law Adviser of the Commander-in-chief at Cadiz, in which the Spanish account of the facts of the case was given at length. That in that Report, it was stated that the hull of the "Hans Gude" was at the time in the possession and custody of the Spanish authorities, and that she was forcibly removed by the "Hercules" and another British vessel, not only without the necessary permission, but in the face of the remonstrances of the Spanish officers sent to prevent the act, under the false pretence that it was done by order of the British authorities. That, further, that the Swedish and Norwegian Consul had protested against the act.

That, in reply to that communication, the Spanish Consul was informed that the hulk was in the possession of the Vice-Admiralty Court, and that it was open to him to apply to that Court for such order as the justice of the case might require.

That that reply was not deemed satisfactory, and an interview took place between the Governor of Gibraltar and the Spanish Consul on the 30th June, and further explanations took place, in the course of which the Consul was again urged to take

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[*] The Marquis de Casa Laiglesia, October 30; Colonial Office, November 18; ditto, December 17, 1885.

[†] Report of Attorney-General of Gibraltar. Governor's despatch No. 185, in Colonial Office of December 17, Inclosure 1.

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steps in the Vice-Admiralty Court. That the Consul, however, abstained from doing so, and on the 10th July the hulk was sold by order of the Court, and realized only 50*l*.

That on the 21st September the Governor of Algeciras transmitted to the Governor of Gibraltar a copy of the proceedings instituted by the Naval Jurisdiction at Algeciras, from which it appeared that it had been decided to make the claim direct to the Vice-Admiralty Court, and the Government of Gibraltar accordingly handed the proceedings to the Spanish Consul for that purpose.

That the Consul, however, made no application to the Court.

That on the 30th October last, the Spanish Minister in London addressed a note to your Lordship, by instructions from his Government, demanding the restitution of the hulk, and that the Reports on the case contained in the Colonial Office letters of the 18th November and the 17th December were thereupon obtained from Gibraltar.

That the Governor of Gibraltar, in his despatch No. 185 (Colonial Office, the 17th December), pointed out that his Government "can in no way be held responsible or liable for acts committed by a private individual in foreign waters." But that a question would seem to arise whether, on receipt of the protest of the Spanish Consul, and on being made acquainted officially with the circumstances under which the hulk had been illegally removed out of the custody of the Spanish authorities, it was not the duty of the Governor to have brought the facts to the knowledge of the Vice-Admiralty Court through the proper Crown officer.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion on the Spanish claim, and as to the reply which should be returned to the Spanish Minister's note of the 30th October.

In obedience to your Lordship's commands we have the honour to report—

Facts now stated would have warranted restitution of hulk.

That, in our judgment, if the facts of the case as now submitted to us had been brought before the Vice-Admiralty Court at Gibraltar and established by satisfactory proofs, that Court would have ordered the restoration of the hulk to the Spanish authorities.

Decision of Court proper, but notice of Spanish protest should have been given to it.

The decision of the Court upon the facts before it appears to have been right and proper; but as the proceedings for the sale of the hulk were instituted on behalf of the British Crown, it is to be regretted that, in the absence of any action on the part of the Spanish Consul, notice was not given to the Court of the circumstances under which a protest had been made by the Spanish authorities.

Should express regret at case and at impossibility of restitution.

The Spanish Minister should, in our opinion, be informed that Her Majesty's Government regret that the alleged wrongful act by which the hulk was taken out of the jurisdiction of the Spanish authorities was not brought to the notice of the Vice-Admiralty Court at Gibraltar; and further regret that it is no longer possible for the British Government to obtain legal possession of the hulk (which is probably no longer in existence), with the view of handing it over to the Spanish authorities.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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### No. 57.

*The Law Officers of the Crown to the Earl of Iddesleigh.—(Received November* 15.)

My Lord, *Royal Courts of Justice, November* 13, 1886.

Use of British waters as base for patrol by Spanish war-vessel.

WE were honoured with your Lordship's commands, signified in Sir Julian Pauncefote's letter of the 8th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* relating to the proceedings of the Commander of the Spanish war-vessel "Almandarez" off the shores of Jamaica.

That it would be seen from the despatch from the Spanish Consul at Kingston to the Colonial Secretary, dated the 19th July (a copy of which was inclosed in the letter from the Colonial Office of the 20th instant), that the Commander of the Spanish vessel claimed the right of dispatching armed boats from a man-of-war stationed in British territorial waters, to the nearest point beyond the territorial limit, in order to patrol there, without thereby infringing the privilege of those waters.

* Colonial Office, August 30; to Sir C. Ford, No. 87, September 20; to Colonial Office, September 20; Colonial Office, September 20, 1886.

Letter of Governor of Colony.

That the Governor of the Colony, however, in the reply which he caused to be addressed, on the 16th August, to that communication, stated that "it is considered a breach of international law, and an irregular use of territorial waters, that boats should pass from a man-of-war within our territorial limits, or from the shore, with a view to aggressive action outside the limits."

That your Lordship entertained some doubt as to whether that statement was not too broadly expressed, apart from the particular circumstances of the present case, in which there might be just grounds of complaint of the action of the Spanish Commander, and that your Lordship would be glad to be favoured with our opinion as to whether the Governor's letter should be approved in its entirety.

In obedience to your Lordship's commands we have the honour to report—

Passage of letter not applicable.

That in our opinion the language of the passage quoted from the letter of the Colonial Secretary of the 16th August is not applicable to the circumstances of the present case.

Such use of territorial waters irregular and inconvenient.

Although it is the undoubted right of every nation to patrol the high seas for the purpose of guarding its national and commercial interests, the stationing a vessel of war in the territorial waters of a foreign State, and making that vessel the base of operations of an armed patrol along the limits of those territorial waters, is an irregular and inconvenient use of those waters, and a practice which would justify the withdrawal of the permission by virtue of which the vessel of war is allowed to remain in such territorial waters.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## Switzerland.

### No. 58.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.—(Received September* 29.)

My Lord, *Royal Courts of Justice, September* 28, 1886.

Suits for divorce before Swiss Courts by British subjects domiciled in Switzerland.

WE are honoured with your Lordship's commands signified in Sir P. Currie's letter of the 14th instant, stating that he was directed to transmit to us a despatch* relative to a question which had been raised by Professor Koenig, Legal Adviser to Her Majesty's Legation at Berne, with regard to suits for divorce brought by British subjects domiciled in Switzerland, before Swiss Tribunals.

Proposed issue of certificates as to their legality.

That Professor Koenig recommended, upon the grounds set forth at length in the Memorandum annexed, that Her Majesty's Minister at Berne should be authorized, on application, to give an official declaration to the effect that a divorce of British subjects domiciled in Switzerland, and having no domicile in Great Britain, if granted by a competent Swiss Tribunal upon grounds recognized by British law, would be valid in Great Britain.

That it was not the practice of Her Majesty's Government to give certificates as to the law of this country, unless such certificates were indispensable to the ends of justice, and that your Lordship was therefore disposed to think that in lieu of granting the general authority proposed, it would be better that Her Majesty's Government should confine their action in the matter to the grant of a certificate, on application, to the above effect, whenever a case arose in which the Law Officers of the Crown advised that it might properly be given in furtherance of the ends of justice, and that it was required by the procedure of the Swiss Tribunals.

That Sir P. Currie was to add that no Convention had yet been entered into between

* Sir F. Adams, No. 45, September 1, 1886.

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Great Britain and any foreign Power under paragraph 3 of the Act 24 & 25 Vict., cap. 11, for ascertaining the law in foreign countries, and *vice versâ*.

That your Lordship desired to be informed whether we concurred in that view, and, if not, that we would favour your Lordship with our opinion as to the answer which should be returned to Sir F. Adams' despatch.

In obedience to your Lordship's commands we have the honour to report—

General authority to issue such certificates not desirable. They should be issued only when really necessary.

That we entirely concur with your Lordship in the opinion that it is not desirable to grant the general authority proposed, but that any case which may arise should be considered upon its merits, and the issue of a certificate be authorized only under circumstances in which such certificate is really necessary.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
J. PARKER DEANE.

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## Tripoli.

### No. 59.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received January 27.)*

My Lord, *Royal Courts of Justice, January* 26, 1886.

Trial of Maltese, now in Tunis, who is guilty of fraud, in Tripoli, against Messrs. Hough.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 9th ultimo, stating that he was to transmit to us the papers* relating to the case of a fugitive offender, a Maltese, who, having committed a fraud against his employers at Tripoli, had fled to Tunis.

That his employers desired to bring him to justice, and had applied to your Lordship for information as to the proper steps to be taken to procure his apprehension and conveyance to Tripoli for that purpose.

That "The Fugitive Offenders Act, 1881" (except Part II, relating to the intercolonial backing of warrants), was applied to the Ottoman dominions, and expressly to Tunis, by the Ottoman Order in Council, 1882, section 10.

That, since the date of that Order, France had assumed the Protectorate of Tunis, and Her Majesty the Queen had waived her civil and criminal jurisdiction over British subjects in that Regency "as regards all such matters and cases as come within the jurisdiction of the French Tribunals" established there (see Order in Council of the 31st December, 1883).

That having regard to the terms of that Order, it would seem that Her Majesty's Consul in Tunis has still power to deal with a fugitive offender under the Ottoman Order in Council, 1882, the French Tribunals having no jurisdiction in the matter.

That it was presumed, however, that under "The Fugitive Offenders Act, 1881," as applied by the Order of 1882 (which excepted Part II of the Act), a fugitive offender could not be sent from one part of the Ottoman dominions to another, but could only be sent out of the Ottoman dominions to that part of the British dominions where the offence was committed, and that therefore the Act did not apply in the present case.

That if that be a correct view of the effect of the Act as applied by the Order of 1882, the question arose as to whether, having regard to the terms of the Order in Council of the 31st December, 1883, and to the fact that the present case could not come within the jurisdiction of the French Tribunals in Tunis, the offence having been committed by a British subject in Tripoli, it was not competent to Her Majesty's Consul in Tunis to deal with the fugitive under section 263 of the Levant Order in Council of the 12th December, 1873, and to send him back in custody to Tripoli, there to take his trial.

That our opinion was requested on the questions submitted in that letter, together with any general observations we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

That "The Fugitive Offenders Act, 1881," does not apply in the present case.

If it is not under French jurisdiction, British Consul can deal with case, and send offender to Tripoli for trial.

Whether the case comes within the jurisdiction of the French Tribunals at Tunis is a question of French law, upon which the materials for forming an opinion are not before us. Assuming that it does not, it is competent to Her Majesty's Consul in Tunis to deal with the case under section 263 of the Levant Order in Council of the 12th December, 1873, and send the offender back in custody to Tripoli, there to take his trial.

Should communicate with French.

Such procedure should not, however, be adopted without communication with the French authorities at Tunis.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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## Turkey.

### No. 60.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received February 9.)*

My Lord, *Royal Courts of Justice, February* 8, 1886.

G. Mercieca. Petition for the remission of his sentence.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, stating that he was to transmit to us, by your Lordship's direction, the papers noted in the accompanying list,* which related to a Petition of Giuseppe Mercieca, a prisoner in the Corradino civil prison in Malta, praying for some mitigation of his sentence.

That the Petition, together with the particulars of the prison history of the prisoner, were inclosed in the Colonial Office letter of the 2nd December last; and that a Report of the case and the Judge's notes of the evidence were respectively in the despatch from Consul-General Fawcett No. 59 of the 25th August, 1884, and in the inclosure to his further despatch No. 104, Judicial, of the 31st December last.

That in 1884 the prisoner petitioned for a remission of a part of his sentence, and that his Petition was referred to the Law Officers of the Crown, a copy of whose Report of the 20th October, 1884,† was annexed, from which it would be seen that they concurred in the opinion of the Secretary of State, that the prisoner's Petition should not be acceded to.

That your Lordship saw no reason now to depart from the opinion then expressed by Earl Granville, but that your Lordship would be glad to be favoured with our opinion as to whether, under the circumstances of the case, any remission of the prisoner's sentence should be granted.

In obedience to your Lordship's commands we have the honour to report—

No reason for acceding to request.

That we do not, under the circumstances of the case, see any reason for granting any remission of the prisoner, Giuseppe Mercieca's, sentence.

We have, &c.
(Signed) RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

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* Messrs. Hough, November 6; ditto, November 13; to Messrs. Hough, November 12, 1885; "Fugitive Offenders Act, 1881," 44 & 45 Vict., cap. 69; Ottoman Order in Council, December 12, 1873, Confidential No. 2873; Ottoman Order in Council, May 3, 1882, Confidential No. 2873; Tunis Order in Council, December 31, 1883, Confidential No. 4905*.

* List of Inclosures in Foreign Office letter of February 2, 1886:—Mr. Fawcett, No. 59, August 25; Law Officers, October 20, 1884, Confidential No. 5121, p. 128; Colonial Office, December 2; Mr. Fawcett, No. 104, December 31, 1885.

† Confidential No. 5121, p. 128

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### No. 61.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received March* 25.)

My Lord,
*Royal Courts of Justice, March* 25, 1886.

Claims of British subjects on the Porte. Failure to obtain satisfaction of.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a despatch from Sir W. White, Her Majesty's Representative at Constantinople, reporting the ineffectual efforts made by Her Majesty's Embassy to obtain satisfaction by the Porte of certain long-standing and acknowledged claims of British subjects.

Proposal to apply surplus revenue of Cyprus to their payment.

That Sir W. White proposed that the balance of the surplus revenues of Cyprus, payable to the Sultan under the Convention and Annex of the 4th June, 1878, should be applied to the payment of those claims, after deduction of the sums required to complete the payment of the interest on the Turkish Loan of 1855, guaranteed by France and England.

Case of Mr. Cuppa.

That a letter was also inclosed from Mr. Cuppa, representing the extreme hardship and urgency of the case of the firm of that name, whose claim was specially mentioned by Sir W. White, and urging the adoption of the proposed measure.

That a letter to the Treasury of the 19th October last (of which a copy was inclosed) stated the position of affairs as regarded the payment of those surplus revenues.

That, in addition to the deduction above-mentioned on account of interest on the loan of 1855, the amount paid by Her Majesty's Government for the ransom of Messrs. Synge and Suter, when captured by brigands in Turkey, had been recovered out of the fund; and that an intention was announced of retaining the balance in future for the formation of a sinking fund to the loan of 1855, in the absence of any attempt by the Porte to fulfil its engagement in that respect.

That Lord Salisbury proposed to abandon that intention, and to remit the balance to the Porte as it accrued, but that no answer was returned by the Treasury to that proposal, and that no communication on the subject had been made to the Turkish Government.

That Sir Julian Pauncefote was to call our attention to the inclosed Reports of the Law Officers, and especially to those of the 6th January, 1881, to the draft to them of the 22nd December, 1881, and to their further Report of the 14th January, 1882, as to the right of Her Majesty's Government to retain the surplus revenue of Cyprus for payment of the interest on the guaranteed loan; and that Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion, whether Her Majesty's Government could properly apply any portion of that surplus revenue to the satisfaction of the private claims of British creditors, bearing in mind the fact that it had also been pledged by the Sultan's Iradé of the 20th December, 1882, as one of the securities for the interest on the general Ottoman Debt.

In obedience to your Lordship's commands we have the honour to report—

Surplus revenue of Cyprus cannot be applied to the payment of such claims.

**That we are of opinion that Her Majesty's Government cannot properly apply any portion of the surplus revenue from Cyprus to the satisfaction of the private claims of British creditors, having regard to the fact that by the Iradé of the 20th December, 1882 (of which Her Majesty's Government had notice, and in which they appear to have acquiesced), such surplus revenue has been specially pledged as one of the securities for the interest of the general Ottoman Debt.**

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

*List of Papers.*

Sir W. White, No. 81, February 18, 1886.
Mr. Cuppa, March 5, 1886.
To Treasury, October 19, 1885.
Law Officers, January 6, 1881. Confidential No. 4637, p. 121.
Ditto, June 30, 1881. Confidential No. 4637, p. 85.
Ditto, August 1, 1881. Confidential No. 4637, p. 89.
To ditto, December 22, 1881.
Law Officers, January 14, 1882. Confidential No. 4783, p. 88.
"Turkey No. 2 (1882)," p. 77. Foreign Office No. 2546.
Convention, June 4, 1878, and Annex. "Turkey No. 36 (1878)." Foreign Office No 2054.
Convention of June 27, 1855. Turkish Guaranteed Loan. Foreign Office No. 392.

### No. 62.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received May* 12.)

My Lord,
*Royal Courts of Justice, May* 12, 1886.

Claims of British subjects on the Porte. Application of surplus revenue of Cyprus to their payment.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 12th ultimo, stating that with reference to our Report of the 25th March as to the right of Her Majesty's Government to apply any portion of the surplus revenue of Cyprus to the satisfaction of the private claims of British subjects against the Porte, and referring especially to the statement that Her Majesty's Government had notice of and appeared to have acquiesced in the Sultan's Iradé of the 20th December, 1881, by which the revenues of Cyprus were pledged as one of the securities for the service of the general Ottoman Debt, he was directed to forward to us a Memorandum* which had been drawn up at the Foreign Office as to the extent to which Her Majesty's Government could be said to have had formal notice of the Iradé, or to have acquiesced in it.

That our attention was called to a despatch to Sir H. Layard of the 23rd December, 1879,† and to one to Lord Dufferin of the 14th July, 1881,‡ refusing to recognize the assignment of the surplus revenue of Cyprus to other parties.

That Sir J. Pauncefote was to request that we would inform your Lordship whether those papers cause us in any way to modify our opinion on the question submitted to us in the letter of the 6th March as to the right of Her Majesty's Government to apply the surplus revenue of Cyprus, or a sufficient part thereof, in satisfaction of the admitted claims of British subjects against the Sultan.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government may have right to so use the surplus revenue.

That, in view of the documents and despatches to which our attention is now drawn, it seems clear that although there was no protest against the Iradé of the 20th December, 1881, by Her Majesty's Government, Her Majesty's Government was no party to the arrangement thereby made. It may therefore be that, in strictness, Her Majesty's Government has the paramount right to retain the surplus revenue in discharge, not only of liabilities of the Porte to Her Majesty's Government itself, but also of debts due to British subjects for the payment of which (as in the present case) the Porte has entered into engagements with Her Majesty's Representatives.

But adhere to opinion as to its inexpediency.

But we venture to recall your Lordship's attention to the views as to expediency expressed by our predecessors (in which we concur) in the concluding paragraph of their Report of the 6th January, 1881,§ and in the concluding paragraph of their Report of the 14th January, 1882,‖ and we adhere to the substance of the advice tendered by us to your Lordship in our previous Report¶ on this subject.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## United States.

### No. 63.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received February* 6.)

My Lord,
*Royal Courts of Justice, February* 6, 1886.

British subjects of Chinese origin in the United States.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th December last, stating that he had the honour to transmit to

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* March 30, 1886.
† Confidential No. 4250, p. 109.
‡ Confidential No. 4607, p. 109.
§ Confidential No. 4637, p. 21.
‖ Confidential No. 4783, p. 88.
¶ March 25, 1886.

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us, by direction of the Secretary of State, the accompanying despatch[*] from Her Majesty's Minister at Washington, which related to the request of Her Majesty's Consul at San Francisco to be furnished with instructions with regard to persons of Chinese origin arriving in the United States who are British subjects, and as to the application to such persons of the Act of Congress known as "The Chinese Restriction Act," of which a copy would be found at the foot of p. 4 of the printed Report, inclosed in Sir L. West's despatch, of a case in which their landing had been refused.

That Sir Julian Pauncefote was to request that we would take Sir L. West's despatch into our consideration, as well as the draft reply[†] which it was proposed to return to it, also sent therewith; and that we would favour your Lordship with our opinion as to whether the terms of the latter were right and proper under the circumstances.

That the despatches referred to by Sir L. West were likewise transmitted.[‡]

In obedience to your Lordship's commands we have the honour to report—

That instead of the reply which it is proposed to return to Sir L. West's despatch, we are of opinion that Sir L. West should be informed:—

They cannot claim free admission or exemption from "Restriction Act" under Treaty of 1815.

1. That the Treaty right of British subjects to "free" admission in the United States' territory is based on Article I of the Convention of Commerce between Great Britain and the United States of the 3rd July, 1815.

It is confined to the inhabitants of the territories of Her Britannic Majesty in Europe, and is subject always to the laws and statutes of the United States. It cannot, therefore, be properly invoked by Her Majesty's Government in support of the claim of British subjects of Chinese origin to exemption from the Chinese Restriction Act and to free admission to the United States' territories.

"Restriction Act" applies to Chinese not subjects of China.

2. That the doubts which were raised by the conflicting decisions of the United States' Circuit Courts in Massachusetts and California as to whether the Chinese Restriction Act applied to persons not subjects of the Emperor of China related to the Act of 1882, and have been set at rest by the amended Act of 1884. In the 15th section of the latter Act it is expressly enacted that the provisions of the Act shall apply to all subjects of China and Chinese, whether subjects of China or any other foreign Power.

Cannot now obtain exemption.

Her Majesty's Government are therefore of opinion that it could not now be successfully contended before the United States' Courts that the Chinese Restriction Act does not apply to British subjects of Chinese origin.

We have, &c.

(Signed) RICHARD E. WEBSTER.  
J. E. GORST.  
J. PARKER DEANE.

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## No. 64.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.—(Received August 7.)*

My Lord, *Royal Courts of Justice, August* 5, 1886.

Fishery question between Canada, &c., and the United States.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th June last, stating that he was to transmit to us a despatch from Her Majesty's Minister at Washington,[§] inclosing a copy of a note from Mr. Bayard, the United States' Minister for Foreign Affairs, relative to the Fishery question between Canada and Newfoundland and the United States.

Revival of Convention of 1818.

That the Fishery Articles of the Treaty of Washington[||] had now expired in consequence of the denunciation of them by the United States' Government, and that it was contended by Her Majesty's Government that the provisions of the Convention of the 20th October, 1818,[¶] had now revived in their integrity.

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[*] Sir L. West, No. 305, November 13, 1885.

[†] Not printed; for draft amended in terms of this Report, see to Sir L. West, No. 51, February 26, 1886.

[‡] Sir L. West, No. 94, Commercial, May 18, 1882; ditto, No. 262, August 4; ditto, No. 271, August 19; ditto, No. 11, Telegraphic, September 28; ditto, No. 292, September 28; ditto, No. 322, October 18; to ditto, No. 231, November 6; Sir L. West, No. 304, November 13, 1883.

[§] Sir L. West, No. 28, Treaty, May 11, 1886, Confidential No. 5307, p. 124.

[||] Treaty, No. 529.

[¶] Ditto, No. 197.

That our especial attention was called to the terms of Article I of that Convention.

As to interpretation of Article I respecting purchase of bait, &c.

That with regard to the question now immediately at issue, viz., the right of United States' fishing-vessels to frequent Canadian ports for the purpose of buying bait, ice, or supplies, the literal interpretation of Article I seems scarcely to be questioned by Mr. Bayard, but that the argument relied on appeared to be that the expansion given to trade between the United States and Canada by a series of Laws and Regulations adopted by both countries had effected by independent yet concurrent "action" a gradual enlargement of the provisions of the Convention of Commerce between Great Britain and the United States of the 3rd July, 1815,[*] which was limited to Her Majesty's dominions in Europe, so as practically to extend its operation to the British North American territories, and thus to override, as it were, the prohibition in Article I of the Convention of 1818 against United States' fishing-vessels entering the bays and harbours of Canada for any purpose except the four purposes therein specified.

That your Lordship had asked to be furnished with the observations of the Canadian Government on Mr. Bayard's note, but that, in the meanwhile, Sir J. Pauncefote was to request our opinion as to the validity of Mr. Bayard's contention, that Article I of the Convention of 1818 could not be deemed to have revived in its integrity by reason of the existing conditions of the commercial relations between the two countries which had been brought about by concurrent and reciprocal legislation, and were inconsistent with the restrictions still sought to be imposed, under the terms of that Article, on United States' fishing-vessels.[†]

We are also honoured with a further letter from Sir J. Pauncefote,[‡] dated the 14th June last, stating that, with reference to his letter of the 5th June, he was to transmit to us a copy of a note from the United States' Minister at this Court, containing representations respecting recent seizures of American fishing-vessels in Canadian ports.

That, in connection with the arguments contained in that note, Sir J. Pauncefote inclosed the printed Records of the Halifax Fishery Commission.

That, in Appendix I, pp. 1539 to 1588, would be found the arguments of Counsel on the question of purchasing bait, &c., and in Appendix P, pp. 3381 to 3398, a collection of Judgments in Canadian Vice-Admiralty Courts respecting vessels seized for infractions of the Convention of 1818 to No. I (the "White Fawn") and No. 5 (the "J. H. Nickerson"), to which our especial attention was directed.

That inclosed was a volume[§] respecting the negotiations leading to the Convention of 1818, from the draft Articles at pp. 95 and 96, of which it appeared that the United States' proposal to include the obtaining of bait within the provisions of the Convention was refused.

That Sir J. Pauncefote was to request that we would favour your Lordship with any observations we might have to make on Mr. Phelps' note in connection with that of Mr. Bayard, already submitted to us, it being understood that the case which was expected to contain a full presentment of Canadian views had not yet reached this country, but that it would be submitted to us as soon as it arrived.

That in connection with Mr. Bayard's note, Sir Julian Pauncefote was to transmit therewith a despatch since received from Her Majesty's Minister at Washington, inclosing observations by Mr. Calderon Carlisle, the Counsel of the British Legation, on the arguments in that note, which were founded on the reciprocal legislation of the two countries.

We have also the honour to acknowledge the receipt of a further letter from Sir Julian Pauncefote, dated the 21st June last, stating that, with reference to the letters of the 5th and 14th June, he was to transmit to us a letter from the Colonial Office,[||] inclosing a copy of a Report by the Canadian Minister of Justice upon Mr. Bayard's notes of the 10th and 20th May last, relative to the North American Fisheries question.

That a copy of the latter note was inclosed.[¶]

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[*] Treaty, No. 162

[†] "Correspondence as to alteration of the British Navigation Laws," Parliamentary Nos. 183, 211, and 213, also sent.

[‡] List of Papers (A) Mr. Phelps, June 2, 1886, Confidential No. 5307, p. 165; (B) "Records of Halifax Fishery Commission, vol. i; (C) ditto, vol. ii; (D) ditto, vol. iii; (E) Confidential Print, No. 2285, 1803-51; (F) Sir L. West, No. 48, Treaty, May 30, 1886, Confidential Print, No. 5307, p. 178.

[§] Confidential Print, No. 2285.

[||] Colonial Office, June 14, 1816, Confidential Print, No. 5307, p. 184.

[¶] Inclosure in Sir L. West's No. 36, Treaty, May 21, 1886, Confidential Print, No. 5307, p. 140.

That we should observe that that Report dealt only with the question of the construction to be placed upon the words of the Convention of 1818, taken in connection with the subsequent amendments in the Navigation Act, and that Sir Julian Pauncefote was to request, in the first instance, that we would furnish your Lordship with any suggestions we might have to make as to the nature of the reply which should be made by Her Majesty's Government to Mr. Bayard on that point, leaving for further consideration the other question as to whether the seizure of the "D. J. Adams" was legally justified under the existing legislation (whether Imperial or Colonial) passed to enforce the observance of Article I of the Convention of 1818, or was warranted under any other laws relating to the Customs or otherwise.

As to legality of seizure of the "D. J. Adams."

That Sir J. Pauncefote was to add that the Canadian Government had been pressed for a Report on the latter point.

We have also the honour to acknowledge the receipt of a further Memorandum of Sir Julian Pauncefote, bearing date the 28th June, inclosing two further letters from the Colonial Office on the subject of the North American fisheries.

We are also honoured with a further letter from Sir Julian Pauncefote, dated the 5th ultimo, stating that, with reference to his former letters, he was to transmit to us two letters from the Colonial Office on the subject of the North American fisheries, and requesting that, in taking those papers into consideration in connection with those upon the same subject already before us, we would furnish any suggestions we might have to offer as to the reply which should be made to the communications received from Mr. Bayard and Mr. Phelps, dated respectively the 20th May and 2nd June last, and transmitted to us in Sir J. Pauncefote's letters of the 5th and 14th June last.

What reply to American communications?

That the principal points raised in those communications were:—

Points raised by America.

1. The strict interpretation of the Convention of 1818.

2. Whether that Convention can in anywise be held to be modified by subsequent legislation as regarded commercial facilities granted reciprocally in United States' and Canadian ports.

3. As to the sufficiency of existing Imperial or Colonial Acts to carry out the stipulations of the Convention, and as to the penalties which could be legally enforced thereunder against United States' fishing-vessels, especially in the particular cases to which attention was called in the correspondence.

That the first point was dealt with in Mr. Bayard's note of the 20th May and Mr. Phelps' note of the 2nd June.

That the second point was dealt with in Mr. Bayard's note of the 20th May.

And that the third point was dealt with in Mr. Phelps' note of the 2nd June, and turned on the construction of the Imperial Act 59 Geo. III, cap. 38, and on the Canadian Acts referred to in Lord Lansdowne's despatch transmitting the new Canadian Bill reserved, which formed an inclosure to Sir Julian Pauncefote's letter of the 29th June.

That on that point Sir Julian Pauncefote was to call our attention to the conflicting decisions of the Canadian Admiralty Courts in the cases of the "White Fawn" and the "J. H. Nickerson" (Appendix P), Halifax Commission proceedings.

In obedience to your Lordship's commands we have the honour to report—

Strict interpretation of Convention.

1. That we are of opinion that, according to the strict interpretation of the Convention of 1818, Article I, American fishermen are prohibited from entering the British bays and harbours therein mentioned for any purpose other than that of shelter and of repairing damages, of purchasing wood, or of obtaining water; and that therefore the entry of an American fishing-vessel for the purpose of buying bait (although for the purpose of being used in the deep-sea fisheries) was a breach of the Convention.

Convention not modified by subsequent legislation.

2. We do not think that the Convention of 1818 can in anywise be held to have been modified by the subsequent legislation as regards commercial facilities granted reciprocally in United States' and Canadian ports referred to in Mr. Bayard's despatch of the 10th May, 1886.

Indeed, we regard his arguments as directed more to the spirit in which the Convention should be administered under existing circumstances than to its construction, and to point to the expediency of a revision of its provisions.

Statutes relating to case.

3. The only Statutes which appear to relate to the question are the Imperial Statute of 1819 and the Dominion Statute of 1868, which seem to be correctly quoted by Mr. Phelps.

By each of these Statutes a vessel is liable to forfeiture "if found fishing or preparing to fish, or to have been fishing," in British waters, but not for purchasing bait, or any other infraction of the Convention.

The real question, as it seems to us, is—What is the proper construction of the words "preparing to fish," and whether the purchase of bait is a preparing to fish within the meaning of these Statutes?

We are of opinion that the words quoted do not include making preparations in British waters to fish outside, but mean only making preparations for illegal fishing in British waters.

We think that the purchase of bait may be evidence of such preparation for illegal fishing, but, taken by itself, is only slight evidence, particularly if (as is stated) bait is now used exclusively, or almost exclusively, in the deep-sea fisheries. We think that the Judgment of Judge Hazen, in the case of the "White Fawn," proceeded on a substantially correct construction of the Statute, although his illustrations of what would be "preparing to fish" are not, in our opinion, exhaustive.

As to sufficiency of legislation.

Your Lordship's reference includes the question of the sufficiency of present legislation to carry out the stipulations of the Convention.

The Imperial Act imposes a fine of 200*l.* on persons refusing to conform with regulations or otherwise offending against the Act, and the Colonial Act imposes a penalty of 400 dollars on a master refusing to answer certain questions.

Measures for enforcing Convention.

It is a question of policy what measures should be taken by municipal legislation in order to enforce the observance of the stipulations of the Convention, but we venture to suggest, for your Lordship's consideration, that such an offence as purchasing bait (if not by way of preparation for illegal fishing) would be adequately dealt with by a fine.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## Venezuela.

### No. 65.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Rosebery.—(Received August* 4.)

My Lord, *Royal Courts of Justice, August* 3, 1886.

Seizure of the "Henrietta" and "Josephine."

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 17th ultimo, stating that, with reference to our letters of the 23rd June and the 6th August of last year,[*] in regard to the claims arising out of the acts of the Venezuelan authorities in connection with the British vessels "Josephine" and "Henrietta," he was to transmit to us a further despatch from Her Majesty's Minister at Carácas,[†] inclosing translation of a note from the Venezuelan Government practically refusing to entertain the claim of the owners of those vessels to compensation.

Refusal of Venezuela to entertain claims.

That Sir J. Pauncefote was to request that we would favour your Lordship with any observations we might have to offer upon the papers transmitted therewith.[‡]

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[*] Confidential No. 5246, pp. 178, 179.

[†] Mr. F. St. John, No. 45, June 6, 1886.

[‡] Colonel Mansfield, No. 42, July 14; Mr. Anderson, M.P., November 24, 1883; Colonel Mansfield, No. 2, Commercial, January 7; ditto, No. 4, Commercial, January 15; to ditto, No. 11, March 3; to Colonial Office, March 4; Colonel Mansfield, No. 19, March 29; ditto, No. 26, April 8; to Colonial Office, May 6; Colonial Office, May 13; Colonel Mansfield, No. 28, April 14; Colonial Office, May 26; to Colonel Mansfield, No. 19, May 30; Colonial Office, August 21; to ditto, August 28; Colonial Office, September 2; to Colonel Mansfield, No. 35, September 5; Colonel Mansfield, No. 74, October 26; to Colonial Office, November 27; Colonial Office, December 8; to Colonel Mansfield, No. 51, December 22, 1884; Colonel Mansfield, No. 13, February 8; to Colonial Office, March 13; ditto, April 29; Colonel Mansfield, No. 16, March 9; Memorandum by Sir E. Hertslet, April 17, 1885; Treaty between Great Britain and Colombia, 1825; Hertslet's Treaties, vol. iii, p. 56; Law Officers, June 23, 1885. Confidential Print No. 5246, p. 178; Confidential Print No.

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In obedience to your Lordship's commands we have the honour to report—

That the case with respect to the "Henrietta" remains in the same position as it was at the date of the Report of our predecessors of the 21st [? 6th] August, 1885.

No excuse in case of "Henrietta."

We can see no justification for the action of the Venezuelan Government with respect to that vessel, and we think the claim for compensation should be pressed.

But with regard to the "Josephine" the case is somewhat different.

Some excuse in case of "Josephine."

It does appear that, although an order for her release was made by the Tribunal of Second Instance on the 3rd August, 1883, a subsequent Decree was made by the Tribunal of Third Instance directing (in effect) the suit to be recommenced before the Court of First Instance on new charges.

There is therefore some excuse for saying that proceedings are still pending with respect to this vessel.

Claims in both cases should be pressed.

But, having regard to the unreasonable delay in formulating and prosecuting these fresh charges (for which the absence of the captain does not appear to us an adequate excuse), and to the fact that the vessel was lost whilst in the custody of the Venezuelan Government, on a charge which has been rejected by the Tribunals, and which was not supported by any evidence, we think Her Majesty's Government may properly press for compensation to the owners and crew in this case also.

We have, &c.
(Signed) C. RUSSELL.
HORACE DAVEY.
J. PARKER DEANE.

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## No. 66.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.—(Received October 2.)*

My Lord, *Royal Courts of Justice, October* 2, 1886.

Seizure of the "Henrietta" and "Josephine."

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 17th ultimo, stating that he was to transmit to us the papers* relating to the claims of the owners of two British vessels, the "Henrietta" and the "Josephine," arising out of the arbitrary and illegal proceedings of the Venezuelan Customs authorities.

That those claims had been rejected by the Venezuelan Government on the grounds stated in the note of the Foreign Minister (p. 52 of Parliamentary Paper), and that we should observe from the Report of our predecessors on the 3rd August, on that note, that they were of opinion that the answer of the Venezuelan Government was unsatisfactory, and that Her Majesty's Government would be justified in continuing to press for compensation in both cases.

That their former Reports on those cases were at pp. 42 and 44 of the Confidential Print, inclosed.

Proposed instructions to British Minister as to renewal of demand for compensation.

That a draft despatch had accordingly been prepared, addressed to Her Majesty's Minister at Carácas, instructing him to renew the demand of Her Majesty's Government for compensation in both cases.

That with reference to the observations contained in Colonel Mansfield's despatch No. 2 of the 7th January, 1884, as to the large powers supposed to be conferred by the Law of Venezuela on the Customs authorities, in regard to the seizure of vessels suspected of smuggling, Sir J. Pauncefote was to state that no such laws had been appealed to by the Venezuelan Government, and it would seem improbable that any law exists in Venezuela which could justify such a departure from the ordinary principles of justice, and the usages of civilized nations, as the high-handed proceedings of the Venezuelan officials in the present cases had disclosed.

That the hopelessness of obtaining justice from the Venezuelan Tribunals, and their subserviency to the Government, had frequently been reported upon by Her Majesty's Representatives at Carácas, and that a remarkable instance was given in Mr. St. John's despatch No. 53 of the 3rd July of the despotic action of the Executive, namely, the suppression of the copy of the official Gazette containing the Judgment of the Court of Second Instance acquitting the "Josephine." That that Judgment, however, could not be concealed, and was referred to in the note of the Venezuelan Minister at p. 52 of the Parliamentary Paper.

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* "Venezuela No. 1 (1886)," Parliamentary No. 3080; Confidential Print, No : Law Officers' Report, August 3, 1886; draft of proposed despatch to Mr. F. R. St. John.

That Sir J. Pauncefote was to request that we would inform your Lordship whether the draft of the proposed despatch to Her Majesty's Minister at Carácas met with our concurrence and approval, and that we would favour your Lordship with any observations which might suggest themselves to us on any part of the case.

In obedience to your Lordship's commands we have the honour to report—

Approve proposed instructions.

That we entirely approve the draft despatch submitted to us, and do not think it necessary to add any observations upon the cases to which it refers.

We have, &c.
(Signed) R. E. WEBSTER.
E. CLARKE.
J. PARKER DEANE.

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### Annex.

*Draft of Despatch from the Earl of Iddesleigh to Mr. F. R. St. John.*

(No. .)

Sir, *Foreign Office,* , 1886.

Her Majesty's Government have given their careful consideration to the note of the Venezuelan Minister for Foreign Affairs of the 27th May last, of which a copy was transmitted in your despatch No. 45 of the 6th June, and they regret to learn that the Venezuelan Government refuse to give to the owners of the British vessels "Henrietta" and "Josephine" and their crews any compensation or redress for the injuries inflicted upon them by the arbitrary and illegal action of the Customs officials at Maturin.

Her Majesty's Government cannot accept the reply of the Venezuelan Government as disposing of these claims, and I have to instruct you to lay the following observations before the Venezuelan Government in the hope that, on further consideration, they may be disposed to do justice to such well-founded demands.

The circumstances under which the "Henrietta" and "Josephine" were seized, and the proceedings of the Venezuelan Customs authorities at Maturin and Guïria, which have given rise to these claims, are detailed with great precision in the depositions on oath of the owners, masters, and crews of those vessels, and nothing has since transpired to throw any doubt on the veracity of their narrative. Indeed, the dismissal from his post of General Marco Silva Gandolphi, Inspector of Custons at Guïria, who was the official principally inculpated and responsible for the outrages complained of, is an indication of the view taken of his conduct by the Venezuelan Government itself. There is too much ground to believe that, for the reasons stated in the course of the correspondence, Señor Gandolphi was animated by personal hostility towards Mr. Tripp, of Trinidad, whom he supposed to be the owner of both vessels, though at the date of their seizure they had passed into other hands. It is difficult otherwise to understand how an official of his position could have committed such an extraordinary abuse of authority.

I inclose a copy of the papers laid before Parliament in relation to these claims, and I have to instruct you, in the first place, to recall the attention of the Minister for Foreign Affairs to the facts, by submitting to him the depositions on oath of the complainants, and of their witnesses, which are published in those papers.

As regards the case of the "Henrietta," the statement and affidavit of José Cueba, the owner and master of that vessel, will be found at p. 10 of the print, and the letter of his agent at Trinidad, Mr. Schaeffer, to the Colonial Secretary, and its inclosures, will be found at pp. 18-21.

It appears from these documents that the "Henrietta" was seized on the 12th May, 1883, by direction of Señor Gandolphi, for no particular offence, but on the pretext that the owner was suspected of having smuggled on previous occasions.

Three of the crew were imprisoned and treated as criminals, and deprived of all means of communication with their friends. No charge was made against the vessel or the owner, José Cueba, who, indeed, actually obtained from the Prefect of the district a certificate that he had at no time been charged with illicit trading. Nevertheless, he was detained, and his men were imprisoned for two months, while the vessel was laid up at Caño, Colorado, Señor Gandolphi having ordered the removal of her halyards, rudder, and sails.

José Cueba states that a Commissioner arrived from Carácas to inquire into the

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case, and offered to release him and his vessel if he would renounce all claims against the Government, which he refused to do.

In October of the same year, five months after the seizure, a Judge of the Court at Maturin, in passing sentence in a suit against the firm of Lara Nuñez and Co., for smuggling, declared that there were grounds for instituting proceedings against the "Henrietta." But José Cueba was no party to the suit against Lara Nuñez and Co., and had no opportunity of rebutting such an imputation. His agent, Señor F. L. Mendez, appealed against that part of the sentence.

On the 9th November, 1883, an order was made by the Minister of Commerce at Carácas to send the "Henrietta" to La Guayra, and after some delay caused by the necessity of repairing her, she was dispatched to that port on the 25th December in charge of several Venezuelan Customs officers, but owing to her leaky state she could not be kept afloat, and she was run ashore at Mapire, where she became a total wreck.

In the meanwhile, a further order had been issued by the Minister of Commerce for the absolute and unconditional release of the "Henrietta." But before that order reached Maturin she had sailed for La Guayra, and by her loss on the voyage the owner has been reduced to extreme poverty.

It does not appear that any legal proceedings were ever instituted against the vessel or against José Cueba, and after such grave accusations, and the extreme measures resorted to by the Customs officials, the abandonment of all proceedings, and the dismissal from his post of Señor Gandolphi, his accuser, are facts which speak for themselves.

Her Majesty's Government have therefore received with surprise the statement of the Venezuelan Government, that the action of their officials was justified, and that the release of the vessel was an act of grace in consideration only of her long detention.

I will now proceed to the case of the "Josephine," which reveals a still greater disregard of law and justice, and even of common humanity, on the part of the Customs officials implicated.

You will draw the attention of the Foreign Minister to the sworn deposition of Joseph Montout (the owner of the cargo) at p. 29 of the Parliamentary Papers, and of Abraham David, the master of the vessel, at p. 31.

These documents contain, it is believed, a substantially correct statement of the facts, and of the action of Señor Gandolphi in this case.

The "Josephine" was arrested on the 12th May, 1883, in the most arbitrary and violent manner, and her master and crew, and the carpenters and wood-cutters on board, were seized and placed under arrest.

Up to the present time not a vestige of evidence has been produced, so far as Her Majesty's Government are aware, which could afford the slightest justification for such an extraordinary proceeding. These unfortunate men were not supplied with food for fourteen days, and existed on the charity of strangers. They slept under galleries watched by soldiers. Many of them were kept under restraint for forty-two days, during which time they suffered great privations, and even violence, as in the instance of the seaman Davies. Señor Gandolphi refused them food when appealed to by Joseph Montout. The local authorities refused to have the vessel baled out, though urged to do so when she was sinking, owing to their neglect during heavy rains. She consequently sank with all her cargo on board.

A charge of smuggling brought against the "Josephine" by Señor Gandolphi was first tried before the Judge at Guïria, who condemned the vessel (adjudicating her to Señor Gandolphi), and fined the master 10,000 bolivars and all costs of suit, not for smuggling, but for anchoring at a place not appointed as a legal port of entry, a charge which turned out to be entirely frivolous.

This unjust decision was carried on appeal to the High Federal Court, whose Judgment, dated the 18th July, 1883, was published in the official Gazette of the 3rd August, 1883. It is given at p. 55 of the Parliamentary Paper.

It will be seen that the Judgment of the Appeal Court entirely quashed the decision of the Judge at Guïria, both as regards the confiscation and the fine, and not only established the innocence of the master, but commented severely on the affidavits of the landing waiters, which are stigmatized as being false.

But, according to the Venezuelan Minister, that Judgment was not final, being pronounced by one Judge only, who differed from the Judge of First Instance, and, therefore, the case was carried to the full Court of Appeal.

The full Court, on the 13th November, 1883, directed the suit to be restored to its original position, in order that certain new charges should be brought against the master, Abraham David, before the National Judge of Finance of La Guayra, who was specially selected to hear them.

In the meantime, the "Josephine," as above stated, had sunk at her moorings owing to the negligence of the Customs authorities, who were responsible for her safe keeping.

Nearly three years have since elapsed, and yet the new charges against the "Josephine" have not been preferred.

It is urged by the Venezuelan Minister that the delay in preferring those charges is due to the non-appearance of the master; but he resides in Trinidad, and it is not stated that any attempt has been made to cite him to appear, nor to acquaint him with the nature of the new charges; nor is it explained how the evidence justifying measures of such extreme rigour and severity as the seizure of the vessel and the imprisonment of the crew should only have been discovered six months later, when the case reached the Court of Third Instance, and after the Court of Second Instance had declared that there was no evidence of guilt whatever, but, on the contrary, evidence of tampering with justice on the part of the accusers.

Looking at all the circumstances of these cases, and at the history of the proceedings in relation to them, it can hardly be expected that Her Majesty's Government should be satisfied with the explanations of the Venezuelan Minister, or should place much confidence in the administration of justice in Venezuela.

It is abundantly clear not only that the British subjects concerned have suffered great wrongs and injuries at the hands of Venezuelan officials, but that there has been such delay and denial of justice on the part of the Venezuelan Tribunals as justifies Her Majesty's Government in declining to leave the owners of the "Henrietta" and "Josephine" to seek their remedy in the Venezuelan Courts, as suggested by the Venezuelan Minister.

Her Majesty's Government feel bound to insist on treating these claims directly through the diplomatic channel, notwithstanding the legislation of Venezuela, to which his Excellency appeals, but which cannot in such cases as these affect the rights of foreign Governments under the Law of Nations.

I have to instruct you, therefore, to repeat the demand of Her Majesty's Government for compensation to the injured parties, the amount of which, if the liability be admitted in principle, can be adjusted on a special inquiry.

Should the Venezuelan Government refuse to recognize their liability, and to accede to this renewed demand, you will report their decision without delay, in order that Her Majesty's Government may consider what further action it will behove them to take under the circumstances.

You are instructed to speak to the Venezuelan Minister in the sense of this despatch, and you are authorized to leave a copy of it with his Excellency should he desire it.

I am, &c.

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X

1887

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**CONFIDENTIAL.**

(5597.)

# REPORTS

BY THE

# LAW OFFICERS OF THE CROWN, &c.

1887.

1887

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CONFIDENTIAL.

# REPORTS BY THE LAW OFFICERS OF THE CROWN, &c.

## Africa.

### No. 1.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received August 6.)*

[In reply to the following reference, the Law Officers reported as below, August 5, 1887:—]*

*Sir J Pauncefote to the Law Officers of the Crown.*

Gentlemen,

*Foreign Office, July 25, 1887.*

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the accompanying draft of an Order in Council, to be known as the "Africa Order, 1887," which has been prepared by Mr. R. S. Wright for the purpose of extending the scope of the "West Africa Order, 1885," and in certain respects modifying and amending its provisions, in order to meet the increasing development of British power in Africa, and the more extended judicial requirements consequent thereupon.

"African Order, 1887." Draft extending Order of 1885.

The details of the Order in Council have been carefully considered in this Office, and have also been examined and approved by the Colonial Office.

In submitting this draft to you for your observations, I am particularly to invite your attention to Articles 9 and 10, which contain provisions of a somewhat more stringent kind than have hitherto been embodied in similar Orders in Council with respect to contempts of Court and to offences endangering public order.

More stringent provisions as to contempts of Court, &c.

It has been found in practice very desirable, and in some cases even necessary, that Consular Courts in semi-civilized countries should possess extended powers of this kind, and Mr. Wright has accordingly prepared these articles with that view.

The provision in Article 11, whereby a Consular Court is given jurisdiction to make an order requiring a person to contribute to the support of his wife or to the support of his or her child, if under the age of 16 years, is also novel, and has been inserted in order to supply a deficiency of jurisdiction which has made itself practically felt from time to time in Consular Courts.

Novel provisions as to support of wives and children.

I am to request that you will take the draft Order, together with the papers accompanying it, into your consideration, and that you will favour Lord Salisbury with your opinion as to whether it may, in its present form, be approved, and that you will, at the same time, be good enough to add such general observations, or suggestions, if any, as may occur to you in connection with the matter.

His Lordship is anxious, should you see no objection to the provisions of the Order, that it should be submitted to the next meeting of Her Majesty's Privy Council,

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* This original Law Officers' Report was not forthcoming when the present collection was made, and it was therefore necessary to obtain the draft and Foreign Office letter from the Law Officers.

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and he will, therefore, be obliged if you will favour him with your opinion at your earliest convenience.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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*Report.*

**Approve Draft Order as amended.**

That we approve the draft Order in Council as amended in red ink.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, August* 5, 1887.

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## No. 2.

*The Law Officers of the Crown to the Colonial Office.—(Communicated to the Foreign Office in Letter of September* 16.)

Sir, *Royal Courts of Justice, September* 8, 1887.

Ceded mile on the Gambia River.

WE were honoured with Mr. Bramston's letter of the 29th ultimo, stating that he was directed by you to transmit to us copies of a correspondence* with the Governor of the West African Settlements and the Foreign Office respecting the interpretation of the clause in the Treaty of 1826† under which the district known as the "ceded mile" at the Gambia was ceded to Her Majesty.

That Mr. Bramston was to request that we would be good enough to favour you with our opinion on the points raised in the correspondence, more especially as to the effect of the cession of the branches, creeks, &c., of the river, and as to what was included in it; whether it included the banks—and, if so, how far back from the water's edge, and up to what distance from the mouths of such branches, creeks, &c.

In compliance with the request contained in Mr. Bramston's letter, we have the honour to report—

Extent of cessions under Treaties of 1826 and 1827. Effect with regard to creeks, &c., and tributaries.

That, in our opinion, the territory ceded by the Conventions of 1826 and 1827 includes one mile inland from the high-water mark of the northern bank of the River Gambia as distinguished from its tributaries between Jocardo Creek and the Atlantic Ocean.

Where the waters of the river flow in a creek, bay, or bend the ceded territory will follow the line of the shore or bank of the creek, bay, or bend a mile inland at every point, but where a tributary stream joins the Gambia a line must be drawn from point to point across the mouth of the tributary stream, and the ceded territory will extend one mile up the tributary from that imaginary line.

Map of 1826 correct.

The Map of 1826, though it cannot of course construe the Conventions, shows in our opinion correctly their true construction.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Colonial Office, July 8, with Inclosure from Sir S. Rowe of May 23; to Colonial Office, July 18; Colonial Office, August 3; and to Colonial Office, August 10, 1887.

† For Treaties, see Inclosure in Colonial Office letter of July 8, 1887.

# Brazil.

## No. 3.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November* 1.)

[In answer to the following reference the Law Officers reported as under, October 31, 1887:—]

*Sir J. Pauncefote to the Law Officers of the Crown.*

Gentlemen, *Foreign Office, October* 7, 1887.

**R. Squire. Arrest and ill-treatment by the Pelotas police.**

I HAVE the honour, by direction of the Secretary of State, to forward to you papers noted in the accompanying list relative to the case of a British subject named Richard Squire, who was arrested illegally and ill-treated by the Pelotas police on the 25th February, 1886, and released the next morning without being afforded any explanation of the cause of his arrest.

Squire's arrest is said to have been ordered by the Sub-Delegate of Police, at the instigation of one Luis Anastacio Soveral, with whom Squire had had disputes as to the boundaries of their respective plots of land, which adjoined each other.

A full statement of the circumstances is given in Mr. Macdonell's note to the Brazilian Government of the 29th November, 1886 (Inclosure 1 in his No. 79 of 15th December, 1886).

According to the deposition of Squire (Inclosure in Consul Bennett's No. 1, Political, of the 27th February, 1886) he was at work in his orchard, when two policemen, one of whom was in plain clothes, rushed in with drawn swords and loaded pistols, and stated that he was to be imprisoned by order of his Consul, for which statement there was no foundation. Under threat by the policeman in plain clothes of being shot if he did not go quietly, Squire proceeded to his house in order to change his clothes, and with the intention of accompanying the policemen. They followed him in, threw him down, bound his arms by the elbows with a leathern thong, and then proceeded to ill-treat him, striking him with the flats and hilts of their swords and with their fists, while the plain clothes policeman bit him on the shoulder. They then tied the end of the leathern thong to the saddle of a horse, and dragged him along to gaol, a distance of 4½ miles. He was there placed in a cell with two other men, and the next morning was hustled out of the prison, by order of the Captain of Police, without any explanation being given to him of the cause of his arrest.

Squire's wife, a German by birth, who had protested against his arrest, and accompanied him on the road, was kicked by one of the policemen and struck with a sword by the other; and, moreover, the police refused to lock up Squire's house, which was consequently left exposed to robbery, and Squire alleges (Inclosure 7 in Consul Bennett's No. 2, Political, of the 13th March, 1886) that 160*l.* in paper money, besides some small quantities of goods, were abstracted during his absence.

One Michael Sinnott, born in Brazil of Irish parents, deposes (Inclosure 2 in Consul Bennett's No. 1, Political, of the 27th February, 1886) to his having seen Squire being led along the road, and to having been present when he was driven out of the prison, and to having heard the Captain of the Police say that Squire had been brought there by order of the British Consul.

In substance, the facts, as above stated, are not controverted by the Brazilian authorities, but the medical testimony produced by them differs from that given on behalf of Squire as to the character of the injuries suffered by him; Her Majesty's Consul (Mr. Bennett, No. 1, Political, of the 27th February, 1886) and three medical men maintaining, on Squire's side, that they were serious (Inclosure 6 in Consul Bennett's No. 2, Political, of the 13th March, 1886), while it is stated in the official Police Report that they were only slight (Inclosure 5 in Consul Bennett's despatch No. 2, Political, of the 13th March, 1886; and Inclosure 6 in Mr. Macdonell's No. 33 of the 27th April, 1887).

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The Brazilian authorities imply, but produce no proof, that Squire is a drunkard and a bad character, and has previously given cause for the interference of the police (Inclosure 4 in Consul Bennett's No. 3, Political, of the 22nd April, 1886).

These insinuations Squire himself denies (Inclosure 1 in Consul Bennett's No. 8, Political, of the 29th June, 1886), and the information gathered by Her Majesty's Consul at Rio Grande do Sul is that he is a quiet, inoffensive man (Consul Bennett's No. 1, Political, of the 27th February, and No. 2 of the 13th March, 1886).

**Punishment of the offenders.**

The only satisfaction given by the Brazilian authorities has been the removal from office of the Sub-Delegate of Police, who, it appears, was only holding the post temporarily, and the dismissal of the policeman in plain clothes for exceeding his instructions.

**Brazilian law as to case.**

In reply to the representations made by Her Majesty's Minister at Rio on the 29th November last (Inclosure in Mr. Macdonell's No. 79 of the 15th December, 1886), the Brazilian Minister for Foreign Affairs stated (Inclosure 3 in ditto) that he had called for a full Report of all the circumstances, but that no responsibility attached to the Brazilian Government, inasmuch as by the laws of Brazil, to which foreigners are subject as well as Brazilians, the Government is not responsible for the acts of its functionaries, who, with their heirs, are personally amenable for the losses sustained by an offended party, and that Squire's remedy for illegal restraint lay in an application to the Judiciary for an Order of *habeas corpus* under the Brazilian Law (No. 2033) of the 20th September, 1871, Article 18, section 3, which states (Inclosure 4 in Mr. Macdonell's No. 79 of the 15th December, 1886) :—

"In all cases in which the authority who grants the Order of *habeas corpus* recognizes that abuse of authority or flagrant violation of the law has been committed by whomsoever authorized the illegal restraint, the said authority shall, in accordance with its competency, render effective order, or require that all responsibility shall be borne by the party who perpetrated the abuse."

In a further note, dated the 30th March of the present year (Inclosure 2 in Mr. Macdonell's No. 33 of the 27th April, 1887), the Brazilian Minister states that the fuller explanations furnished by the local authorities (Inclosures 4 and 6 in Mr. Macdonell's No. 33 of the 27th April, 1887) do not alter the legal aspect of the case as previously set forth by him; that all possible satisfaction was given by the Provincial Government, viz., the removal of the Sub-Delegate of Police, and the expulsion from the force of the private, Kohlberg; that the physical injuries of Squire being slight, a personal action by him is the only remedy; and that, "had the Sub-Delegate been submitted to a process for responsibility, and from this criminal action his condemnation have resulted, he would not have incurred a penalty more severe than that imposed officially, inasmuch that the fact alleged against him of having exceeded his powers, with a view to deciding a question outside of his jurisdiction, subjected him at the maximum to the simple penalty of a year's suspension from his post;" and that "nothing prevented the said subject of Her Britannic Majesty from entering a criminal action against the Sub-Delegate, presenting his complaint within a year and a day, in accordance with legal formalities, and which he can still bring against the soldier who injured him, in case he considers unsatisfactory, as respects the penalty, the repressive measure so severely adopted by the Provincial Administration. By the criminal legislation of Brazil he is on the same footing as a Brazilian citizen, either as regards presenting his complaint with due legal formalities to the 'Juge de Droit' against an authority for any responsible offence, or in bringing an action through a lawyer in the Public Courts for the punishment of the soldier who physically ill-treated him."

With this view of the Law of Brazil the Legal Adviser to Her Majesty's Legation does not agree (Inclosure 8 in Mr. Macdonell's No. 33 of the 27th April, 1887). He admits that, "as far as indemnification for losses caused to Richard Squire by the offenders, they alone are responsible for the same, their personal and real property being liable, the said liability attaching to their heirs, and the said indemnification can only be demanded judicially by civil action filed by Squire against the authors of the said prejudices, in accordance with the definitions of Articles 27 and 32 of the Criminal Code, 68 of the Law of the 3rd December, 1841, and 18, section 6, of the Law (2033) of the 20th September, 1871." But he maintains that "Article 145 of the Criminal Code, besides the penalty of loss of office, subjects the offenders to further penalties, which they incur in consequence of violence used." That the violence and arrest illegally exercised constitute the offences anticipated by Articles 180 and 181 of the Criminal Code, to which the Sub-Delegate and officials are subject in virtue of the last portion of the said Article 145 of the Criminal Code, and that the Government, General or Provincial, are bound to institute criminal proceedings as regards their said Agents.

I am directed by the Marquis of Salisbury to say that the course indicated by the Brazilian Minister for Foreign Affairs as proper for Squire to take is not now open to him, the limit of time (viz., a year and a day) within which legal proceedings should have been instituted being past, and that such a remedy was in his case illusory, owing to his want of pecuniary means.

I am to transmit to you, as bearing upon the general question of the liability of Governments for wrongs done to foreigners by their Agents, two opinions of Mr. Calderon Carlisle (the Legal Adviser to Her Majesty's Legation at Washington), and also the various Reports of the Law Officers of the Crown which are noted in the margin.*

The present case, however, appears to differ somewhat materially from those dealt with in the various Reports above alluded to, in that the Brazilian Government has openly and in explicit terms declared through its Municipal Law that it is not responsible for the wrongful acts of its servants, while it has at the same time imposed upon those servants a special personal liability, at the suit of the aggrieved party, in respect of such acts.

In these circumstances, it seems clear that the injured person must, at all events in the first instance, seek his remedy before the Brazilian Tribunals; but the question arises whether the present case is not one where (to adopt the language of the Law Officers in their Report of the 26th August, 1879), "no adequate remedy is provided by the Municipal Law;" that is to say, that no adequate compensation could be obtained by resort to the Tribunals; and further, whether, assuming that their Municipal Law protects the Brazilian Government from all responsibility for the illegal acts of its officers, Her Majesty's Government is debarred by the existence of such a Municipal Law from pressing the claim of Squire diplomatically.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion as to whether, under all the circumstances, Her Majesty's Government would be justified in further pressing the claim, and with any general observations which you may have to offer on the case.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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In obedience to your Lordship's commands signified in Sir Julian Pauncefote's letter of the 7th October, we have the honour to report—

**Demands for compensation not justified.**

That, in our opinion, Her Majesty's Government would not be justified in making a claim upon the Brazilian Government for the payment of pecuniary compensation to Richard Squire unless there were no means open to him whereby he could have enforced his claim by proceedings in the Brazilian Courts. If, owing to his want of pecuniary means, the time within which such proceedings should have been instituted has been allowed to elapse, Her Majesty's Government would not be, under those circumstances, entitled to contend that no adequate remedy is afforded by the Municipal Law.

**nor for prosecution of offenders.**

Having regard to the facts that the Sub-Delegate of Police and the soldier Kohlberg have both been dismissed in consequence of the representations of Her Majesty's Consul, and that the Brazilian Minister denies that a criminal prosecution would result in any further punishment to them, we do not think it advisable for Her Majesty's Government to press the Brazilian Government to prosecute them.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, October* 31, 1887.

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* Queen's Advocate, February 17, 1872; Law Officers and Dr. Deane, September 12, 1876; ditto, August 26, 1879; ditto, January 8, 1886; Mr. Calderon Carlisle, June 20; ditto, June 27, 1885.

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*List of Papers sent to the Law Officers, October 7, 1887.*

Consul Bennett, No. 1, Political, February 27, 1886.
" " No. 2, " March 13, 1886.
Inclosure 1 in Consul Bennett's No. 1, Political, February 27, 1886.
" 2 " " No. 1, " February 27, 1886.
" 5 " " No. 2, " February 27, 1886
" 6 " " No. 2, " March 13, 1886.
" 7 " " No. 2, " March 13, 1886.
" 4 " " No. 3, " April 22, 1886.
" 2 " " No. 7, " June 22, 1886.
" 1 " " No. 8, " June 29, 1886.
" 2 " " No. 8, " June 29, 1886.
" 1 in Mr. Macdonell's No. 79, December 15, 1886.
" 3 " " No. 79, December 15, 1886.
" 4 " " No. 79, December 15, 1886.
" 2 " " No. 33, April 27, 1887.
" 4 " " No. 33, April 27, 1887.
" 6 " " No. 33, April 27, 1887.
" 8 " " No. 33, April 27, 1887.

*Legal Opinions.*

Mr. Calderon Carlisle, June 20, 1885.
" " " June 27, 1885. Confidential No. 5175, p. 98.
Queen's Advocate, February 17, 1872. Confidential No. 4098, p. 9.
Law Officers and Dr. Deane, September 12, 1876. Confidential No. 4028, p. 73.
" " August 26, 1879. Confidential No. 4328, p. 30.
" " January 8, 1886. Confidential No. 5440, p. 4.

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# Chile.

## No. 4.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 30.)*

My Lord, *Royal Courts of Justice, March 29, 1887.*

**British claims for losses during the Chileo-Peruvian war.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch No. 86 of the 27th October, 1886, from Mr. Fraser, Her Majesty's Minister Resident and Consul-General at Santiago, together with the other papers noted in the inclosed list, relative to certain decisions of the Mixed Commission of Arbitration appointed to adjudicate upon the claims of British subjects against the Government of Chile in respect of losses arising out of the acts and operations of the forces of that Republic in the territories and coasts of Peru and Bolivia during the recent hostilities.

That it would be observed that the four decisions to which reference was made in the early part of Mr. Fraser's despatch, *i.e.*, those in the cases of Messrs. James Noble (No. 2), Minhinnick (No. 17), Simpson (No. 18), and Bishop (No. 19) had already, on the 12th May last, formed (with others) the subject of an exhaustive Report by our predecessors in office; and that instructions based upon that Report were, by direction of the late Earl of Iddesleigh, the then Secretary of State for Foreign Affairs, forwarded to Mr. Fraser on the 1st September last.

**As to reconsideration of certain cases after decision of Mixed Court of Arbitration.**

That with respect to the first of those cases (that of James Noble, No. 2), Mr. Fraser had already addressed to the Chilean Government a note founded on the instructions above alluded to, and that no question, at present, arose thereon; but that with regard to the other three cases (those of Minhinnick, No. 17; Simpson, No. 18; and Bishop, No. 19), he had, for the reasons stated in his despatch, and to which our most particular attention was invited, thought it advisable to defer carrying out his instructions until they could be further considered by the light of the additional observations he had forwarded to the Secretary of State upon them.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether we agreed with the views expressed by our predecessors in office with regard to the decisions in those three cases, and with the instructions already transmitted to Mr. Fraser with respect to them, or whether, under all the circumstances, and in view more especially of the observations contained in Mr. Fraser's despatch, we considered that those instructions might be, with advantage, modified, and, if so, to what extent in all or any of the cases to which our attention had been directed.

In obedience to your Lordship's commands we have taken the papers transmitted with Sir Julian Pauncefote's letter into our consideration, and have the honour to report—

That this case is, in our judgment, one of very great difficulty. There seems to be no doubt that the Tribunal was legally constituted, and that it decided matters within its jurisdiction.

We observe that the former Law Officers, in their Report, used the following words: "If it be the fact that the house was situate a mile, or a mile and a-half, from the battle-ground, and that the Peruvians made no real resistance at Miraflores (as stated by Mr. Fraser in his despatch of the 11th November, 1885), we agree in his contention that 'there is no real question here of injury in regular military operations.'" Having regard to the statements in Mr. Fraser's despatch of the 1st September, 1886, it appears to us that the question whether Miraflores was within the area of actual military operations was a question of fact upon which the Commission was competent to decide, and upon which its decision was final.

Under these circumstances, we feel extreme difficulty in advising that Mr. Fraser should be instructed to insist upon the reopening of either case. The arguments used in his despatch of the 27th October are of very considerable weight, and should Her Majesty's Government insist upon these particular cases being reopened, they may, we think, be placed in great difficulty with regard to other claimants. The decision of the Commission, a Tribunal competent to decide, will be an answer to any request for interference made by the claimants themselves.

**Not desirable to reopen these cases, or to press them diplomatically.**

If Her Majesty's Government claim to reopen those decisions, it would be difficult to find grounds upon which they can subsequently withdraw their claims. In our opinion, it is not desirable to endeavour to reopen the cases before the Commission, or to press them diplomatically.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers sent to the Law Officers, February 12, 1887.*

(A.) Mr. Fraser, No. 86, October 27, 1886.
(B.) Convention of January 4, 1883. Parliamentary No. 2663.
(C.) Law Officers' Report of May 12, 1886. Confidential No. 5440, p. 8.
(D.) To Mr. Fraser, No. 56, September 1, 1886.
(E.) Documents mentioned on pp. 14 and 15 of the Law Officers' Report (marked C), May 12, 1886, under the headings, viz.:—

### 2.—*Minhinnick's Case.*

See Mr. Fraser's No. 48 of the 8th September, 1885 (Appendix A, p. 3 A), and Mr. Drummond Hay's No. 8 of the 25th September, 1885 (Appendix A, p. 1). (Tabular Statement No. 17, Appendix A, p. 3.)

No award, but *procès-verbal* substituted.

See explanation in Mr. Fraser's No. 48 and Inclosure 3 (Appendix A, p. 3 A).

### 3.—*Simpson's Case.*

See Mr. Fraser's No. 48 of the 8th September, 1885, and award in Inclosure 2 (Appendix A, p. 3 A). Also Mr. Drummond's Hay's No. 8 of the 25th September, 1885 (Appendix A, p. 1). (Tabular Statement No. 18, Appendix A, p. 3.)

### 7.—*Bishop's Case.*

See Mr. Fraser's No. 71 of the 11th November, 1885 (Appendix A, p. 21), containing the award, and Mr. Drummond Hay's No. 11 of the 27th November, 1885 (Tabular Statement No. 19). (Appendix A, pp. 4 and 5.)

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### No. 5.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received April* 21.)

My Lord, *Royal Courts of Justice, April* 21, 1887.

British claims for losses during the Chileo-Peruvian war.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanping list relative to those cases which were still pending before the Anglo-Chilean Mixed Commission of Arbitration for the settlement of the claims of British subjects in respect of losses sustained by them during the war between Chile and Peru.

Delays in proceedings of Commission.

That the Commission had, as we were aware, already heard and determined a considerable number of cases submitted to it, but that a large proportion of the claims which had been brought forward were still undecided, while the repeated and unnecessary delays in the work of the Commission made it difficult to believe that the Chilean Government was in earnest in desiring that the Commission should complete its labours in regular course, and in accordance with the conditions laid down in the Convention of the 4th January, 1883, between Great Britain and Chile, by which it was instituted.

Chilean offer to pay lump sum to satisfy outstanding claims.

That the Chilean Government had, however, offered to pay a certain sum down in satisfaction of all outstanding demands upon them, and that Her Majesty's Minister Resident and Consul-General at Santiago had recommended the acceptance of that offer as being, under all the circumstances, the most satisfactory method available for arriving at a prompt and final settlement of those remaining cases.

That it appeared to your Lordship that, if the consent of the claimants themselves could be obtained to that course, it would be advisable to endeavour to compromise all the British claims then outstanding, including those heard but awaiting judgment, for a sum down; but that at the same time, your Lordship conceived that Her Majesty's Government would not be justified in coming to any such agreement with the Chilean Government without the previous assent of the claimants concerned.

That it would probably be thought requisite also, in the event of the offer of the Chilean Government being accepted, that some previous agreement should be arrived at between the various claimants with respect to the ultimate distribution amongst them of the lump sum thus obtained.

That it was thought, however, that that latter question would not present serious practical difficulties, and that the claimants might be willing to agree to the appointment of an Arbitrator who should have power to reject or to admit claims, and in the latter case to assess the damages, and to divide the money *pro ratâ* amongst the respective claimants in accordance with his assessment in each individual case.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether Her Majesty's Government were entitled to accept the offer of the Chilean Government, and to withdraw the remaining claims from the consideration of the Commission without the previous assent of the respective claimants having been obtained, and also with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Should obtain consent of claimants as to acceptance of Chilean offer, and as to distribution of money.

That without expressing an opinion whether Her Majesty's Government have the right to enter into the proposed compromise without the assent of the claimants, it would not, in our judgment, be proper, under the circumstances of this case, for Her Majesty's Government to accept from the Chilean Government a sum in satisfaction of the claims which have not been adjudicated upon by the Commission unless the claimants authorize the acceptance of such a sum, and agree as to the process by which its distribution is to be arranged.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

(A.) Convention between Great Britain and Chile for settlement of claims of British subjects, January 4, 1883 ("Chile No. 1 (1883)," Foreign Office, No. 2663).
(B.) Mr. Fraser, No. 10, January 24, 1887.
(C.) To Mr. Fraser, No. 1 A, January 22, 1887.
(D.) Mr. Fraser, Telegraphic, March 2, 1887.
(E.) To Mr. Fraser, No. 13, March 4, 1887.
(F.) Mr. Fraser, Telegraphic, March 5, 1887.
(G.) To Mr. Fraser, No. 14, March 16, 1887.
(H.) Treasury, March 22, 1887.
(I.) To Treasury, March 28, 1887.

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## Colombia.

### No. 6.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received February* 18.)

My Lord, *Royal Courts of Justice, February* 18, 1887.

Claims for losses during Revolution.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to the claims of foreigners against the Government of Colombia for losses sustained by the former during the recent revolution in that country.

That we should observe that Mr. Dickson, Her Majesty's Minister at Bogotá, had been authorized to place British claimants, in the first instance, in communication with the Colombian Government, reserving the right of interference where he might consider that such a mode of proceeding would be advantageous. (See Mr. Dickson's No. 71, and to Mr. Dickson No. 41: Print, pp. 47 and 48.)

Colombian Act;

That a translation of an Act passed by the Legislative Council of Colombia. determining the mode in which the claims of foreigners should be dealt with, accompanied Mr. Dickson's despatch No. 78 (Paper B), and that the criticisms of Her Majesty's Government on that Act would be found in Lord Iddesleigh's despatch to Mr. Dickson No. 55 (Paper C).

and Decree.

That on the 15th October a Decree was published in the official Gazette at Bogotá relative to those claims (a translation of which was inclosed with Mr. Dickson's No. 91).

That exception had been taken both by the British and German Representatives to some of the terms of that Decree, and that it would seem that the French and Spanish Legations had also addressed representations against it to the Colombian Government.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and favour your Lordship with our opinion as to whether Mr. Dickson's views should be supported, and, if so, to what extent Her Majesty's Government would be justified in taking exception to the application of the Decree to British claimants.

In obedience to your Lordship's commands we have the honour to report—

Should formally refuse to accept terms of Decree, and reserve right to support British claimant who cannot comply with those terms.

That we are of opinion that a formal communication should be made to the Government of Colombia to the same effect as the oral representation made by Mr. Dickson and M. Lueder in October last; and that the Government of Colombia should be informed that while Her Majesty's Government will desire to offer any assistance in the settlement of claims by British subjects to the Board appointed under the Act of August and the Decree of October, and notes with satisfaction the assurance given by Señor Restrepo on behalf of the Government of Colombia that, in considering and deciding upon the foreign claims, the Colombian Government would be guided by the rules of international usage, that the prescribed formalities would not be strictly enforced, and that the claims would be dealt with in a liberal spirit, it is unable to admit the limitations and requirements laid down in the Decree, and reserves to itself the right of supporting, by direct diplomatic action, any claims of British subjects

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which the claimants may be unable to establish by reason of such limitations or conditions.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

(A.) Confidential Print, Part I (1885), Confidential No. 5217; and Part II (1886), Confidential No. 5419.
(B.) Mr. Dickson, No. 78, September 16, 1886, Confidential No. 5419, p. 55.
(C.) To ditto, No. 55, December 14, 1886, Confidential No. 5419, p. 62.
(D.) Mr. Dickson, No. 91, November 25, 1886, Confidential No. 5419, p. 63.

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## No. 7.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received April* 8.)

*Royal Courts of Justice, April* 7, 1887.

My Lord,

British claims on account of burning of Colon by rebels in 1885

WE were honoured with Sir Julian Pauncefote's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the liability of the Colombian Government to compensate British subjects for the loss of their property, which occurred through the burning of the city of Colon by the rebels during the revolutionary outbreak of 1885.

That the circumstances under which the conflagration took place were detailed in the accompanying Memorandum by Mr. A. St. John, now Her Majesty's Consul for Haïti and its dependencies, and then Vice-Consul at Bogotá.

That it was not disputed that the insurgents had obtained complete possession of, and mastery over, the city, nor that the Colombian Government were powerless to prevent the conflagration at the time when it actually took place; but that it was contended, on the other hand, that the destruction of Colon was due to, and directly consequent upon, the negligence of the Government in improperly withdrawing from the city for service elsewhere a body of police who, had they been suffered to remain at their proper posts, would have proved adequate for its protection. That whether their temporary withdrawal was justified by military necessity was a question on which there appeared to be no information sufficient to found any opinion.

That, in those circumstances, your Lordship desired to be favoured with our opinion as to whether the Colombian Government were liable to compensate the subjects of foreign States in respect of any property destroyed by the conflagration.

In obedience to your Lordship's commands we have the honour to report—

Proof of negligence insufficient as ground for claim.

That the papers laid before us do not, in our judgment, afford sufficient ground for contending that the destruction of Colon was due to negligence on the part of the Colombian Government, upon which a claim for compensation might properly be founded.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

(A.) Mr. Mallet, No. 7, April 20, 1885. Print, Confidential No. 5217, p. 17.
(B.) Royal Mail Steam Packet Company, May 6, 1885. Print, Confidential No. 5217, p. 15.
(C.) Mr. Mallet, No. 11, May 11, 1885. Print, Confidential No. 5217, p. 20*.
(D.) To ditto, No. 13, May 20, 1885. Print, Confidential No. 5217, p. 18.
(E.) Mr. Mallet, No. 21, October 1, 1885. Print, Confidential No. 5217, p. 54.
(F.) Royal Mail Steam Packet Company, November 18, 1885. Print, Confidential No. 5217, p. 72.
(G.) Mr. O'Leary, No. 69, October 3, 1885. Print, Confidential No. 5217, p. 73.
(H.) Mr. A. St. John, No. 34, April 22, 1886. Print, Confidential No. 5419, Part II, p. 31.
(J.) Ditto, No. 51, June 10, 1886. Print, Confidential No. 5419, p. 43.
(K.) Mr. Dixon, No. 71, August 7, 1886. Print, Confidential No. 5419, p. 47.
(L.) Ditto, No. 89, October 22, 1886. Print, Confidential No. 5419, p. 59.
(M.) Ditto, No. 2, January 3, 1887.
(N.) To ditto (Telegraphic), February 25, 1887.
(O.) Mr. Dixon (Telegraphic), March 4, 1887.
(P.) Précis by Mr. A. St. John, March 12, 1887.

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# Egypt.

## No. 8.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received February* 25.)

*Royal Courts of Justice, February* 25, 1887.

My Lord,

Expulsion of Greeks from Assouan for selling spirits to British troops.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to us the inclosed correspondence with Her Majesty's Agent and Consul-General at Cairo relative to claims made by certain Greeks who were carrying on business at Assouan, and were ordered to leave that place on account of their having sold spirits to the British troops, in contravention of the Military Regulations.

That the orders for their expulsion were given by the British officers in command, but were carried into effect by the local Egyptian authorities.

Claims against Egyptian Government.

That the claimants had now commenced suits against the Egyptian Government in the International Tribunals, and that the British Commander-in-chief had been authorized to employ legal assistance for the defence.

That Sir Julian Pauncefote was to request our attention to an article in the "Journal du Droit International" for 1882 on the jurisdiction of Armies of Occupation in cases of offences committed by foreigners against the soldiers of such armies, and to an opinion given in August 1883 by the then Law Officers of the Crown in regard to the jurisdiction of the French Military Courts in Tunis; and that Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion whether it might properly be contended that the suits instituted in the present case should be dismissed by the Mixed Courts as beyond their competence, inasmuch as the offences committed by the claimants were against the security and discipline of the British troops, and were cognizable exclusively by the British military authorities, under whose commands the Egyptian officials had acted for the enforcement of the Military Regulations.

In obedience to your Lordship's commands we have the honour to report—

Mixed Courts can entertain suits. Defence to be adopted.

That, in our opinion, the Mixed Courts are competent to entertain the suits.

The defence may be that the action taken by the Egyptian authorities was taken under the direction, or upon the request, of the British military authorities who were then in occupation of Assouan, and that no action would lie under the circumstances.

It can also be shown that the claimants suffered no damage by reason of the action of the local authorities, as, if those authorities had not acted, the British military authorities would themselves have carried out the expulsion.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

Sir E. Baring, No. 12, Telegraphic, January 11, 1887, Confidential No. 5493, p. 13.
Ditto, No. 17, Telegraphic, January 16, 1887, Confidential No. 5493, p. 16.
Ditto, No. 66, Telegraphic, February 15, 1887, Confidential No. 5493, p. 59.
Ditto, No. 47, January 20, 1887, Confidential No. 5493, p. 28.
To Sir E. Baring, No. 10, Telegraphic, January 15, 1887, Confidential No. 5493, p. 16.
Ditto, No. 14, Telegraphic, January 17, 1887, Confidential No. 5493, p. 22.
Ditto, No. 43, Telegraphic, February 16, 1887, Confidential No. 5493, p. 61.
"Journal du Droit International (1882)," p. 511. 8vo. No. 5365.
Law Officers, August 16, 1883, Confidential No. 4974, p. 116.

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## No. 9.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 15.)

*Royal Courts of Justice, March* 14, 1887.

My Lord,

Claims of the ex-Khedive on the Egyptian Government.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to certain claims

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which had been advanced by His Highness Ismaïl Pasha, ex-Khedive of Egypt, against the Egyptian Government, and for the purpose of procuring a reference of which to arbitration he had been for some time past pressing Her Majesty's Government to intervene on his behalf.

That the history of the monetary relations between His Highness and the Egyptian Government, which had been already before us under a slightly different aspect, would be found concisely stated in the accompanying Foreign Office Memorandum of the 28th May, and were to be gathered in more detail from a perusal of the two Confidential Prints inclosed therewith, in which those passages to which it was conceived we might desire our attention more particularly to be called, in connection with the present reference, had been, for our convenience, indicated in red ink.

Views of Her Majesty's Government.

That Her Majesty's Government had throughout maintained that whatever rights His Highness might have acquired against the Egyptian Government arising out of transactions anterior to 1880, those rights were extinguished by the general settlement of the finances of Egypt effected by the Commission of Liquidation, by the 86th Article of which it would be seen that all claims founded on rights acquired against the State prior to the 1st January, 1880, were expressly barred; and that it had further appeared to Her Majesty's Government that, inasmuch as that settlement of the finances of Egypt was adopted by the Powers who were parties to the Commission, and were enforced by a Law to which they all recorded their formal assent, it had thereby become an International Act; and that to entertain a claim against the Egyptian Government in respect of transactions which arose before 1880 would be, in effect, to reopen the settlement effected by it, a proceeding which no single one of those Powers who were parties to that settlement would have any authority to undertake *ex mero motu*, and without the concurrence of the remainder of those Powers.

That, with respect to the views thus maintained by Her Majesty's Government, Sir Julian Pauncefote was particularly to direct our attention to the letter to the ex-Lord Chancellor (Lord Herschell) of the 12th June, 1886, and to his Lordship's Memorandum of the 15th June, 1886, in reply thereto.

That Her Majesty's Government therefore considered themselves precluded on those grounds from intervening on behalf of the ex-Khedive in the manner suggested, and that they had conveyed to His Highness their decision in the two letters of the 2nd October, 1886, and the 20th November, 1886, respectively.

Further letter from Khedive and views thereon.

That His Highness had, however, once more approached your Lordship upon the subject, by letter of the 14th February last, but that it was conceived that that letter raised no new points of substance, and adduced no fresh arguments of weight in support of his contention.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would be good enough to inform your Lordship—

1. Whether we concurred in the views which had been indicated with respect to His Highness' letter of the 14th February;

2. Whether we considered the terms of the letters to His Highness dated the 2nd October, 1886, and the 20th November, 1886, respectively, such as were, under the circumstances, right and proper; and

3. Whether, if so, we were of opinion that His Highness' last communication to your Lordship might properly be answered in the sense of those two previous replies.

That Sir Julian Pauncefote was to add that your Lordship would, at the same time, be glad to be favoured with any general observations which we might desire to offer upon the matter.

In obedience to your Lordship's commands we have the honour to report—

Approve views on further letter, and answers to previous applications.

That we concur in the views which have been indicated with respect to His Highness' letter of the 14th ultimo;

That we consider the terms of the letters to His Highness of the 2nd October, 1886, and the 20th November, 1886, respectively, such as were, under the circumstances, right and proper; and

Should answer last letter in same sense.

That we are of opinion that His Highness' last communication to your Lordship may properly be answered in the sense of the two previous replies.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Inclosures in Foreign Office Letter of February* 25, 1887, *to the Law Officers of the Crown.*

"Egypt No. 4 (1880)" (Parliamentary No. 2322), and "Egypt No. 10 (1884)" (Parliamentary No. 2822).
Printed Papers. Khedivial Claims. April 1886, Confidential No. 5220; January 1887, Confidential No. 5404.
Egypt. Khedivial Claims. Memorandum, May 14, 1886, Confidential No. 5276.
Law Officers, September 2, 1886, Confidential No. 5440, p. 35.
Ismaïl Pasha, September 18, 1886, Confidential No. 5404, p. 35*.
To Ismaïl Pasha, October 2, 1886, Confidential No. 5404, p. 48*.
Ismaïl Pasha, November 10, 1886, Confidential No. 5404, p. 75.
To Ismaïl Pasha, November 20, 1886, Confidential No. 5404, p. 76.
Ismaïl Pasha, February 14, 1887, Confidential No. 5538, p. 1.

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## No. 10.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received May* 18.)

My Lord, *Royal Courts of Justice, March* 17, 1887.

Yacoob Sami exile in Ceylon. Proposed reduction of his allowance.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the case of Yacoob Sami, one of the seven Egyptian exiles at present undergoing exile in Ceylon.

That the circumstances of that case, which would be found more fully set forth in the Memorial of the 4th December, 1886, addressed by Yacoob Sami to the Secretary of State for the Colonies, were shortly as follows.

That under an arrangement between the Egyptian Government and that of Her Majesty, the former agreed to allow Yacoob Sami a monthly subsistence allowance calculated originally at the rate of 30*l.* per month; but that subsequently, on the representations of Her Majesty's Government, that that sum was quite inadequate to the reasonable wants of himself and his family, the rate was increased to 37*l.* 4*s.* 8*d.* per month, which sum was regularly paid up to October 1886.

Insufficiency of his property to pay his creditors.

That Sami's movable and immovable property in Egypt, which had been confiscated by virtue of a Judicial Decree, dated the 14th December, 1882, had proved quite insufficient to meet the claims of his creditors, amongst whom were Messrs. Cathavi, Fils, et Cie., of Cairo. That on the application of that firm, who had obtained a Judgment against Yacoob Sami in respect of a debt of 2,000,000 piastres (about 2,000*l.*), the Egyptian Government, purporting to act under the provisions of Article 496 of the "Code Mixte de Procédure Civile et Commerciale," had issued directions to the Imperial Ottoman Bank to retain monthly one-fifth part of Sami's subsistence allowance, and that in pursuance of that direction the sum of 7*l.* 9*s.* 0½*d.* per month had lately been deducted from his allowance, and that the balance remaining over after such deduction had been made had alone been paid to him.

Sami's protest.

That Yacoob Sami had protested against that proceeding as being altogether illegal, and petitioned Her Majesty's Government for interposition on his behalf in the matter.

Grounds for Egyptian action.

That section 496 of the "Code Mixte" provided that in certain cases of insolvency, after the other property of the debtor had been exhausted, resort might be had to "les salaires et gages des gens de service, les appointements d'employés et les traitements et pensions," and that it was contended that under those latter words the allowance paid to Yacoob Sami was liable to attachment.

But that it would appear to your Lordship that, granting that under Article 496 "traitements et pensions" of Government employés and others could be attached in the hands of the Government in the manner and to the extent mentioned, the exiles did not come within the purview of that section at all. That they were State prisoners, for whose support the Egyptian Government had agreed with Her Majesty's Government to pay monthly allowances, which, with the consent of Her Majesty's Government, could be discontinued at any moment, and which did not therefore appear to fall properly within the designation either of "traitements" or "pensions," such as were contemplated by the language of section 496.

That, under those circumstances, your Lordship would be glad to be favoured with our opinion as to whether Her Majesty's Government could properly object to the subsistence money of those exiles being reduced from any cause; and whether in Yacoob Sami's case the deduction from the allowance should be resisted on the ground that the payment to him was an act of State in pursuance of an International

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Agreement, and that as such it did not come within the purview of section 496 of the "Code Mixte," or on any other ground.

In obedience to your Lordship's commands we have the honour to report—

Deduction should be resisted.

That, in our opinion, the deduction from Yacoob Sami's allowance should be resisted, on the ground that the payment to him was an act of State in pursuance of an International Agreement, and that, as such, it does not come within the purview of section 496 of the "Code Mixte de Procédure Civile et Commerciale."

Section of "Code Mixte" not applicable.

We are of opinion that upon the true construction of that section it cannot be held to include the payments agreed to be made as subsistence allowance for Yacoob Sami and his family.

Referring to the "Code Indigène."

We may mention that in the event of any further question being raised, it may, we think, be worth considering section 436 of the "Code Indigène,"* which will, we believe, confirm our view.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

"Egypt No. 5 (1883)" (Foreign Office No. 2655).
"Egypt No. 8 (1883)" ( „ „ No. 2691).
"Egypt No. 21 (1883)" ( „ „ No. 2758).
"Egypt No. 37 (1884)" ( „ „ No. 2919).
Colonial Office, January 8, 1887.
„ „ January 27, 1887.
Sir E. Baring, No. 102, February 10, 1887.

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## No. 11.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 28.)*

My Lord, *Royal Courts of Justice, March 28, 1887.*

Free navigation of the Suez Canal. Proposed Convention.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a copy of an article by Sir Travers Twiss, published in the "Revue de Droit International," on the proceedings of the International Commission which was assembled in Paris in 1885 to draw up an Act to secure the free navigation of the Suez Canal.

That Sir Julian Pauncefote was also to inclose a Memorandum giving a brief account of the discussion, and a Parliamentary Paper containing the whole of the Protocols, *procès-verbaux*, and other correspondence, for reference in case of need.

That the draft Treaty voted by the majority of the Commission would be found in Appendix (F) of the Memorandum, and as an Annex to Protocol 6 of the Commission (p. 309 of the Blue Book).

Question as to limitation of belligerent rights in Red Sea.

That the point to which your Lordship wished to draw our attention was the statement made by Sir Travers Twiss, at p. 622, and again at p. 629 of his paper, that Article I of the draft Treaty voted by the majority of the Commission, which contains a provision that "the Canal shall never be subjected to the exercise of the right of blockade," must be interpreted as prohibiting a belligerent from stationing a line of cruizers in any part of the Red Sea, or even in the Straits of Bab-el-Mandeb, for the purpose of seizing vessels intending to pass through the Canal, "quite as much as if all acts of hostility had been interdicted in those waters;" and that, consequently, the proposal of the Russian Delegate at the Paris Conference for the neutralization of the Red Sea would seem to be superfluous.

That it was presumed that a blockade of the Straits of Bab-el-Mandeb would be equivalent in law to a blockade of the Suez Canal, by reason of the geographical conditions of the Red Sea. (See "Blockade of Coast of Courland." Deane's "Law of Blockade," p. 95).

But that the language used by Sir Travers Twiss was very large, and seemed open to the construction that, in the opinion of the learned writer, enemy's ships bound for the Canal from the south would, by reason of the interdiction of a blockade of the Canal in Article I of the draft Convention, be entitled to immunity from capture in the Red Sea, "quite as much as if all acts of hostility had been interdicted in these waters."

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* This section is identical with section 498 of the Mixed Courts Code, which might be more appositely quoted.

That the words of Article I were: "Le Canal ne sera jamais assujetti à l'exercice du droit de blocus." That that referred, no doubt, to blockade *jure gentium*, that was to say, to the right of any Power at war with Turkey to establish an effective blockade of the Canal as against vessels of all nations.

But that it was conceived that such prohibition could not affect the ordinary belligerent right of capture to which enemy's ships remained liable in the Red Sea as elsewhere.

That it was for the purpose of protecting enemy's ships against such capture in the Red Sea that the Russian Delegate advocated its neutralization in the sense of prohibiting acts of war in its waters.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion as to whether the provisions of Article I of the draft Convention interfered with the belligerent right of capture of enemy's vessels on their passage to or from the Canal, in the Red Sea or elsewhere, and, if so, to what extent.

In obedience to your Lordship's commands we have the honour to report—

Effects of Convention as to :—
(1) Right of blockade of Canal.

That, in our judgment, the effect of the proposed Convention would be threefold :—

1. All nations abandon the right of blockade so far as the Suez Canal is concerned, that is, they abandon the right to close the entrances of that Canal against neutral vessels. They do not abandon the right incidental to a state of war, viz., of capturing an enemy's ships wherever they may be found out of the territorial waters of a neutral State.

(2) Neutralization of Canal.

2. They engage that no acts of war shall take place in the Canal or its approaches.

(3) Turkish territorial rights.

3. Turkey abandons her territorial rights so far as those rights might be exercised to close the Canal, or to engage in hostile operations against vessels using it.

Limitations confined to immediate approaches to the Canal.

There is no implied or consequential cession by any Power of its right to seize an enemy's ships anywhere outside the immediate approaches to the Canal.

We are of opinion that, under the original terms of Article V,* the Gulf of Suez would be protected from being the scene of any hostile operations, but, under either form of words proposed, we are of opinion that there is no limitation of belligerent rights so far as the Red Sea is concerned.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

"Revue de Droit International." Tome xvii, No. 6, p. 615.
Memorandum (Sir J. Pauncefote), June 23, 1885. Confidential No. 5135.
"Egypt No. 19 (1885)." Parliamentary No. 3068.

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## No. 12.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 13.)*

My Lord, *Royal Courts of Justice, May 12, 1887.*

Capture of the "Zarafa," with Italian colours, by Her Majesty's ship "Albacore," and her condemnation for contraband trade.

WE were honoured with your Lordship's commands signified in Sir P. Currie's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us the correspondence marked in the margin† relative to the capture by Her Majesty's ship "Albacore" of a sambouk, or native boat, which was sailing from

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* The French Government have agreed to a modification of the original terms of the Article in the manner proposed by the British Plenipotentiaries

† *List of Papers.*

Telegraphic correspondence with Sir E. Baring, April 19–28, 1887. See Confidential Nos. 5467 and 5493.
Sir E. Baring, No. 137, Telegraphic, May 4, 1887, Confidential No. 5467, p. 159.
„ „ No. 253, April 23, 1887, Confidential No. 5493, p. 112 A.
To Mr. Kennedy, No. 129, April 21, 1887, Confidential No. 5493, p. 112.
Admiralty, June 28, 1886, Confidential No. 5322, p. 162.
Law Officers, January 21 and January 23, 1886 (Confidential No. 5440, p. 21).

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Massowah bound for Rarat (Taklai), on the African coast of the Red Sea to the south of Suakin.

That the information which had been received as regarded the capture and condemnation of that vessel was somewhat defective, being principally contained in telegrams from Her Majesty's Agent and Consul-General at Cairo, but that the following appeared to be the principal facts.

That the boat was captured at a distance of 10 miles from the coast upon suspicion of being engaged in Slave Trade.

That she hoisted Italian colours, and had an Italian bill of health from Massowah. But that in that document she was described as being under the Turkish flag.

That her original voyage had been from Suakin to Massowah, whence she was returning to Taklai, and that she was entirely manned by Egyptian subjects.

That the Court-martial before which she was brought did not find sufficient evidence of slave-trading, but that she was condemned, apparently by the same Court, for contraband trade, being freighted with a cargo of Manchester goods, and of rice, beans, dates, &c.

Ground of condemnation.

That it was presumed, though it was not specifically stated, that the ground of condemnation was that she was openly bound for a port on the coast over which the Egyptian authorities claimed jurisdiction, but which had not yet been opened by them as a port of entry.

Objects of closing coast to trade.

That the object of keeping that part of the coast still closed to trade was not merely to protect the Egyptian Customs revenue, but also to prevent the receipt of supplies by certain tribes which still maintained an unfriendly attitude towards the Egyptian authorities, though no active hostilities were now taking place.

That the instructions under which Her Majesty's cruizers in the Red Sea were acting were contained in a letter from the Admiralty of the 28th June, 1886, which was inclosed for reference.

That copies were also inclosed of opinions given by the Law Officers as to the nature of those instructions.

Instructions to cruizers.

That it would be seen that the instructions authorized the seizure of provisions fit for military use on the coasts adjoining the territory occupied by the insurgents, whether such provisions belonged to the insurgents or not, but that "this service should be performed within the territorial waters on the coast of Egypt in the Red Sea, including the Eastern Soudan, within such limits as might be prescribed from time to time, by warning of grain dhows, and, if necessary, by seizing them;" and in the latter case by subsequently "handing the dhows over to the Egyptian authorities at either of the ports of entry, and by giving such information as may lead to their condemnation for breach of Egyptian Customs Regulations."

Italian protest.

That the Italian Government had protested against the capture and condemnation of the boat, which they understood to have been sentenced on suspicion of trading with the insurgent tribes.

That they contended that so long as there was no blockade or equivalent notification any captures were, according to the law of nations, both arbitrary and inadmissible.

That Colonel Kitchener, on the other hand, asked for a confirmation of the sentence, and advised confiscation of the boat, but release of half the cargo on account of extenuating circumstances.

That Sir E. Baring urged a speedy decision, as a considerable number of prisoners remained in custody until the question was settled.

Questions as to irregularity of capture and answer to Italian protest.

That Sir P. Currie was to request that we would take the papers into our consideration, and would favour your Lordship, at our earliest convenience, with our opinion whether the information in the possession of Her Majesty's Government was sufficient to justify a confirmation of the sentence of condemnation pronounced against the vessel, or whether there was such evidence of irregularity in the capture and mode of procedure as would make it proper that she should be liberated. And further, as to the nature of the reply which should be returned to the Italian Government. That your Lordship would also be glad to be favoured with any further observations which might occur to us in regard to the questions raised in the papers.

We were also honoured with a letter from Sir Julian Pauncefote, dated the 9th instant, stating that with reference to Sir P. Currie's letter of the 7th May relative to the capture of a boat by Her Majesty's ship "Albacore" in the Red Sea near Suakin, he was directed by your Lordship to transmit to us a despatch[*] and its inclosures from Her Majesty's Agent and Consul-General at Cairo, containing some additional details as to the circumstances of the capture.

That Sir Julian Pauncefote was to request that we would take those papers into consideration with those already forwarded to us.

In obedience to your Lordship's commands we have taken all the papers into our consideration, and have the honour to report—

Proceedings irregular, should release dhow and crew, and inform Italians of wrong use of their flag.

That, in our opinion, the proceedings which have taken place in respect of the seizure and condemnation of the dhow "Zarafa" are irregular, and that the vessel and the persons seized thereon should be released.

In communicating this decision to the Italian Government, the attention of that Government should be called to the fact that the dhow, when seized, was wrongfully carrying the Italian flag.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 13.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received May* 17.)

*Royal Courts of Justice, May* 16, 1887.

My Lord,

Blockade of African coast near Massowah by Italians.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us the accompanying note[*] from the Italian Ambassador at this Court, announcing that, in consequence of the state of war existing between Italy and Abyssinia, the Commander of the Italian forces at Massowah had established a blockade on the African coast from Hanfila as far as the point opposite the Island of Difnan, and that the Prize Court in connection with such blockade would eventually be held at Massowah.

That Sir Julian Pauncefote was also to inclose a decypher of a telegram[†] from Her Majesty's Agent and Consul-General in Egypt, reporting the objections raised by Colonel Kitchener, the Governor of Suakin, to the blockade of that portion of the coast situated between Difnan Island and Ras Harb as being Egyptian territory.

Coast not Abyssinian. Objections to blockade.

That Sir Julian Pauncefote was to observe that no portion of the coast placed under blockade belonged to Abyssinia, and that, nominally at least, it must be assumed, together with Massowah, to form a portion of the Ottoman dominions, for which the Egyptian Government still paid tribute to the Porte. That on that account, when a proposal was made some months ago by the authorities at Suakin that the limits respectively of Egyptian and Italian influence should be fixed at Ras Harb, it was decided that Her Majesty's Government could not enter into any arrangement that would commit them to a formal sanction of the Italian occupation of Massowah, and that in any understanding as to the limits of Italian influence they must carefully abstain from any express admission of that kind.

That the Italian Government had recently proposed that the limit of their authority should be fixed at Ras Kasar, considerably to the north of Difnan Island, but that the Egyptian authorities objected strongly to such a division.

That it must, at the same time, be admitted to be doubtful whether Egyptian authority could be said to be established on the coast now placed under blockade, or whether importation on the part lying between Difnan Island and Ras Harb could be controlled otherwise than by naval measures.

That, under those circumstances, Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion—

Whether the notification of the blockade should be inserted in the "London Gazette";

Whether Sir E. Baring's advice to Colonel Kitchener might properly be approved; and that we would also offer any further observations which might occur to us on the questions raised in the papers.

In obedience to your Lordship's commands we have the honour to report—

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[*] Sir E. Baring, No. 273, May 1, 1887.

[*] Count Corti, May 6, 1887.

[†] Sir E. Baring, Telegraphic, No. 142, May 6, 1887, Confidential No. 5467, p. 161.

Notification should not be gazetted. Approve Sir E. Baring's advice to Colonel Kitchener.

1. That, in our opinion, no notification of the blockade should be inserted in the "London Gazette."

2. That Sir E. Baring's advice to Colonel Kitchener may properly be approved.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## Annex.

*Sir E. Baring to the Marquis of Salisbury.—(Received May 6, 3·30 P.M.)*

(No. 142.)
(Telegraphic.) *Cairo, May* 6, 1887, 2·10 P.M.

ITALIAN Consul informed Kitchener officially of blockade. Kitchener told him verbally that he considered from Ras Harb to Difnan Egyptian waters. He suggests protest, and asks for instructions. I have approved his language, but have added that as question of assigning limit to Italian right of surveillance is now under discussion in London, he need make no further official communication to Italian Consul.

He thinks that no notification is necessary. I have approved.

Italian Consul-General tells me that blockade has been notified to Porte. I have informed Nubar Pasha.

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## No. 14.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 28.)*

My Lord, *Royal Courts of Justice, May* 26, 1887.

Petition of Mr. B. H. Clere for remission of sentence for libel.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the case of Mr. B. H. Clere, a British subject, who was by profession a journalist, and was until lately the editor of a newspaper entitled the "Times of Egypt."

That Mr. Clere was tried in Her Majesty's Consular Court at Cairo before Mr. Consul Cookson, the Judge of the Supreme Court for Egypt, and a jury of five persons, on a criminal indictment for libel.

That he was found guilty of the charge, and was, on the 19th March last, sentenced by the Judge to six months' imprisonment.

That immediately after his conviction he forwarded to the Foreign Office a Petition praying for remission of that sentence, and that he had since transmitted a further Petition to Her Majesty to the same effect from the Corradino Prison at Malta, where he was now confined.

That the various grounds which he put forward in support of his release would be found fully set forth in those two documents.

That the libel itself, which consisted of a pamphlet, appeared to have been of a very gross and scandalous character, and was originally published anonymously, although the prisoner subsequently acknowledged its authorship.

That he, moreover, justified the whole of the statements contained in that pamphlet on the ground that they were true in substance and in fact, and were also published for the public good; but that both those pleas were negatived by the verdict of the jury, and were in fact not supported at the trial by any serious evidence.

That the Judge who tried the case did not consider it one in which Her Majesty's clemency should be extended to the prisoner, and that Her Majesty's Agent and Consul-General in Egypt concurred in that opinion.

That your Lordship was also at present inclined to think that the case was not one in which your Lordship would be justified in advising Her Majesty to remit any portion of the sentence passed upon Mr. Clere, but that before coming to a final decision upon that point your Lordship wished to be favoured, for your Lordship's guidance, with our opinion on the subject.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the question submitted in his letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

No good cause for acceding to Petition.

That, in our opinion, no good cause has been shown for a remission of the sentence passed upon Mr. B. H. Clere by Her Majesty's Consular Court at Cairo.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

Mr. B. H. Clere's letter of March 26, 1887 (marked A).
Mr. Clere's Petition to the Queen, April 14, 1887 (marked B).
Pamphlet: "Colonel" "the Honourable" John Colborne (marked C).
Sir E. Baring's No. 16, Consular, May 2, 1887.
Inclosures 2 and 3 in Mr. Cookson's No. 23 of April 30, 1887 (notes of the trial and charge to the jury).
Particulars of Prison History of Mr. Clere (Inclosure 2 in Colonial Office, May 7, 1887).

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## No. 15.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 7.)*

My Lord, *Royal Courts of Justice, November* 7, 1887.

Action against Osman Pasha Fanzi for breach of contract for purchase of camels.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to an action which had been brought by Colonel Clerk, the Senior Commissariat Officer of the British forces in Egypt, acting on behalf of the Secretary of State for the War Department, against one Osman Pasha Fanzi, for breach of contract in declining to carry out an Agreement signed by him for the purchase of the surplus camels which remained after the breaking up of the Suakin field force in 1885.

Incompetency of International Court.

That the matter came in the first instance before the Cairo International Tribunal, which declared itself incompetent to adjudicate on the case as being one in which the plaintiff was not suing in his private capacity, but as the official representative of a Department of the British Government.

That the exact grounds on which the Court based its Judgment were not specifically stated, but that it was believed that the Judgment proceeded on the assumption that the Mixed Courts in Egypt could only admit any person—even a foreign Sovereign—to sue therein "à titre de réciprocité," and that, as a foreign Sovereign could not be sued as of right by a private individual in those Courts, he was, therefore, not entitled, either directly or by representative, to sue a private individual therein.

Appeal to higher Court.

That an appeal lay from the decision of the Cairo International Tribunal to the Court of Appeal for Egypt, and that notice of such appeal had been given on behalf of Colonel Clerk.

That the appeal could not, however, be limited to the question of the competence of the Court below to entertain the case, and that if that point be decided in favour of the appellant, the Appeal Court would proceed to adjudicate upon the merits of the action itself.

As to limited submission to the Courts.

That it would be seen from the War Office letter of the 17th August last that, in Colonel Clerk's "acte d'appel," the appellant had submitted to the jurisdiction of the Tribunals "for the purposes of the present action only," and that, in reply to the last-mentioned letter, your Lordship had caused the War Office to be informed (Foreign Office to War Office of the 24th August, 1887) that, in your Lordship's opinion, there would be no objection to proceeding with the appeal; but that if the Court should decide that Her Majesty's Government could not limit their submission to that particular action, and would render themselves liable generally to be sued, the action should be dropped.

That the War Office thereupon took legal advice on that point at Cairo, and that Sir Julian Pauncefote was to refer us to the joint opinion of Mr. Royle and Dr. Mifsud, which was inclosed in the War Office letter of the 27th October, as well as to their previous opinions, viz., Mr. Royle and Dr. Mifsud, War Office, of the 11th January, 1887, Inclosure 2, Mr. Royle, War Office, of the 17th August, 1887, Inclosure 2.

That we should observe that, in the opinion of Mr. Royle and Dr. Mifsud (in War Office of the 27th October), it was not possible to say what view the Court of Appeal

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might take as to the effect of the submission by Her Majesty's Government to the jurisdiction in that particular action, but that it was difficult to see how the Court could hold consistently with the principles and practice of jurisprudence and international law, that such submission would render Her Majesty's Government subject to the jurisdiction of the Mixed Tribunals in all other cases.

That it would also be seen that Consul-General Cookson,* while disagreeing with the decision of the Court of First Instance, and considering that it ought certainly to be carried to the Court of Appeal, appeared also to share in the view that there might be some reason to apprehend that the Court of Appeal might decide, not merely that Her Majesty's Government was entitled to sue "à titre de réciprocité," but that such reciprocity was not to be confined to any counter-claim which the defendant might possess with regard to the particular suit. but extended generally to other matters.

**Objection to general submission to Courts.**

That, in view of the peculiar conditions existing judicially and politically in Egypt at the present time, your Lordship considered that it would be injudicious to permit Her Majesty's Government to be rendered amenable generally to the jurisdiction of the Mixed Courts, and that it seemed to your Lordship that were such a decision as that above indicated as possible to be given by that Court, it would be by diplomatic action alone, which might, moreover, possibly prove ineffectual that such a result could be prevented.

That the "Règlement d'Organisation Judiciaire" was altogether silent on the subject of the immunity of a foreign Government from the civil and criminal jurisdiction of the Tribunals established under its provisions, while it was contended that, according to the general principles of international law, such immunity was well recognized.

**Limitation of reciprocity.**

And that it was suggested that any decision of the Mixed Tribunals granting a reciprocity more extensive than that which, in similar circumstances, would be recognized by the Courts of this country (where it was understood to be confined to matters raised in the particular action, and not to extend beyond all such cross actions, counter-claims, and steps of procedure to which it would be competent for a defendant to resort in a suit between private individuals) might, in the circumstances, be successfully resisted as being contrary to the established principles of international law and the general usage of European nations.

**Importance of case.**

That in view of the large number of contracts made in Egypt for army service, many of which were still outstanding, it was important that the right of suing, before the Mixed Tribunals, for breaches thereof, should be maintained on behalf of Her Majesty's Government, unless such a contention would, if successfully urged, indirectly entail upon them reciprocal obligations and legal liabilities more than counterbalancing the advantage immediately gained from a favourable decision.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion as to whether, having regard to the various considerations above indicated and to the general circumstances of the case, the appeal now pending might properly be allowed to proceed.

That your Lordship would also be glad to be favoured, at the same time, with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

**No materials for opinion as to appeal.**

That we have not before us the materials necessary for forming an opinion as to the probability of the suit succeeding upon its merits, nor as to any technical question affecting the appeal, such as the period of time within which an appeal must be brought.

**Appeal may proceed.**

**General submission objectionable.**

Apart from these considerations, however, we are of opinion that the appeal may properly be allowed to proceed. It is obviously impossible, as Mr. Cookson has pointed out, to predict what Judgment the Court of Appeal will pronounce, but in any event, we are clearly of opinion that a decision declaring "à titre de réciprocité" that the British Government would, on future occasions, be liable to be sued in the International Tribunals, would be contrary to the fundamental principles of international law, and would be properly regarded by Her Majesty's Government as wholly ineffective.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* See Mr. Cookson's letter of December 10, 1886 (in Sir E. Baring's No. 54).

*List of Papers.*

War Office, January 11. 1887.
To Sir E. Baring, No. 19, January 14, 1887.
Sir E. Baring, No. 54, January 23, 1887.
To War Office, February 4, 1887.
War Office, February 15, 1887.
Sir E. Baring, No. 240, April 18, 1887.
Ditto, No. 116, Telegraphic, April 22, 1887.
Ditto, No. 251, April 22, 1887.
War Office, May 3, 1887.
To ditto, May 4, 1887.
To ditto. May 9, 1887.
War Office, August 17, 1887.
To ditto, August 24, 1887.
War Office, October 27, 1887.

Règlement d'Organisation Judiciaire. (Confidential No. 4682.)

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## France.

### No. 16.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received January* 18.)

My Lord,

*Royal Courts of Justice, January* 17, 1887.

**Land claim in Tunis of British protected subject, General Ben Ayad.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th instant, stating that he was directed to transmit to us the papers noted in the accompanying list, relative to the questions (1) whether a certain General Ben Ayad, who enjoyed British protection in Tunis, was, under the circumstances stated, bound to take steps to defend his rights before the French Tribunals in Tunis; and (2) whether, in the event of his failing to do so, he must nevertheless abide by its decisions.

That Mr. Consul Sandwith's despatch No. 20, Commercial, of the 28th October last, stated that a French subject had recently applied, under the provisions of Land Registry Law (copy of which was inclosed in Mr. Sandwith's despatch No. 13, Commercial, of the 22nd July last), for the registration of certain property, in which was, however, included a piece of land claimed by the above-mentioned General Ben Ayad. That by reason of General Ben Ayad being under British protection he must for the present purposes be considered as a British subject. That the right of British subjects to hold land in Tunis was founded on the Convention of the 10th October, 1863; that that Convention was, however, silent as to the Tribunal to determine disputes relating to land which might arise between a British subject and a foreigner. But that the Convention of 1875 was general in its terms, and provided in Article XXIV that all civil differences between a British subject and any other foreigner (a definition that would therefore include the case now under consideration) should be settled solely in the Tribunals of the foreign Consuls. That that opinion would be found in the Report of the Law Officers of the Crown of the 3rd March, 1881, respecting the Enfida estate.

That formerly, therefore, the present case between the French subject and General Ben Ayad would have been decided in the British or in the French Consular Court.

That the French Memorandum as to the jurisdiction of the French Courts in Tunis, which would be found at p. 26 of the Parliamentary Paper No. 1 (1884) stated, under the head of "General Observations," that no modification was made in the system of real property, the French Tribunals being merely substituted for the Consular Courts. That the French Tribunal would therefore appear to have, in the present case, the jurisdiction which formerly belonged to the French Consular Court.

That with regard to the jurisdiction in the present case which would formerly have been vested in the British Consular Court, the Order in Council of the 31st December, 1883 (which would be found at p. 31 of the Parliamentary Paper No. 1

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(1884), recited the Decree of the Bey of Tunis of the 3rd March, 1883; and stated that it was therein declared that the subjects of foreign Powers whose Consular Courts in the Regency should be abolished, should be justiciable by the French Tribunals under the same conditions as French subjects; and that Her Majesty the Queen had consented to abandon her Consular jurisdiction with a view to British subjects becoming justiciable by the said French Tribunals under the same conditions as French subjects, and to the extent of the jurisdiction vested by law in the said Tribunals.

That the Order then proceeded to declare that (except as to judicial matters pending) Her Majesty's Orders in Council regulating Her Majesty's jurisdiction in Tunis should cease to be in force in Tunis as regarded all such matters and cases as came within the jurisdiction of the French Tribunals. That it was presumed, therefore, that as title to land for purposes of registration was now brought within the jurisdiction of those Tribunals as regarded French subjects, British subjects "become justiciable under the same conditions" in respect of their lands as French subjects.

That thus it would appear that the jurisdiction which would formerly have belonged in the present case to the British Consular Courts now belonged to the French Tribunal, as was also the case with the former jurisdiction of the French Consular Court; and that General Ben Ayad was bound to appear before the French Tribunal, and would be bound by its decisions.

That Sir Julian Pauncefote was to observe that in his despatch No. 20, Commercial, of the 28th October last, Mr. Sandwith stated that the application to register the land of which General Ben Ayad claimed a part had at that time been already made, and that any third party claiming land advertised as about to be registered, must defend his claim before the French Tribunal within three months from the date of the advertisement, or run the risk of seeing the other claimant enter into possession. That Mr. Sandwith did not say whether the advertisement had in the present case already appeared; but that it was possible that the period in question might expire before the 28th instant, in which case it would be necessary to ask us to be so good as to consider our Report at our earliest convenience. That Mr. Sandwith had been requested by telegraph to state when the delay expired, and that his answer would be communicated to us.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour the Secretary of State with our opinion on the questions submitted at the beginning of his letter, and with any general observations which we might have to offer on the case.

We were also honoured with a Memorandum from Sir Julian Pauncefote, dated the 15th instant, stating that, with reference to his letter of the 11th January, he had the honour to inclose a telegram from Her Majesty's Consul at Tunis in reply to the inquiry addressed to him as to when the time would expire for parties, in the particular case of General Ben Ayad, to appear before the French Tribunal, from which it appeared that notice was given to all British subjects that the time would expire on the 16th December last.

In obedience to your Lordship's commands, signified in Sir Julian Pauncefote's letter of the 11th instant, we have taken the papers transmitted therewith into our consideration, and have the honour to report—

French Court has jurisdiction and its decision is binding.

That in our opinion it is quite clear that General Ben Ayad was, under the circumstances stated, bound to take steps to defend his rights before the French Tribunal in Tunis, and that, in the event of his having failed to do so, he will nevertheless be bound by the decision of that Tribunal.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

1. Convention between Great Britain and Tunis, October 10, 1863. Treaty, No. 474.
2. " " " July 19, 1875. Treaty, No. 586.
3. "Tunis No. 1 (1884)," No. 2767, Parliamentary.
4. "Tunis No. 4 (1881)," No. 2410 "
5. "Tunis No. 6 (1881)," No. 2415 "
6. Mr. Sandwith, No. 13, Commercial, July 22, 1886.
7. Mr. Sandwith, No. 20, Commercial, October 28, 1886.
8. Law Officers and Dr. Deane, Q.C., March 3, 1881. Confidential 4637, p. 66.
9. Consul Sandwith, Telegraphic, January 11, 1887.

## No. 17.

*M. Clunet to Viscount Lyons.*

M. l'Ambassadeur, 1, *Place Boïeldieu* (*Opéra Comique*), *Paris, le* 26 *Mars*, 1887.

Certificates of denationalization in France.

VOUS me faites l'honneur, par votre dépêche du 23 Mars, 1887,* de me demander: "Quelles sont les formalités qu'un citoyen Français doit accomplir pour obtenir un certificat de dénationalisation ?"

Voici ma réponse:

No formalities necessary for throwing off French nationality. Causes of its loss.

Dans notre droit, il n'est pas nécessaire de remplir aucune formalité administrative ou judiciaire en France pour dépouiller la nationalité Française.

L'Article 17 du Code Civil dit que: La qualité de Français se perd (1) par la naturalisation acquise en pays étranger; (2) par l'acceptation non autorisée par le Président de la République de fonctions publiques conférées par un Gouvernement étranger; (3) enfin, par tout établissement fait en pays étranger, sans esprit de retour.

L'accomplissement d'un de ces faits suffit pour que le Français perde sa qualité d'origine.

Decree of 1811 as to naturalization abroad.

Cependant Napoléon I<sup>er</sup> a rendu un Décret le 26 Août, 1811, dans lequel il a déclaré: Article 1<sup>er</sup>, qu'aucun Français ne pouvait être naturalisé sans son autorisation et a frappé de certaines peines, notamment de la confiscation des biens, le Français qui se faisait naturaliser sans autorisation.

On a discuté, et on discute encore, la constitutionnalité de ce Décret, et la question de savoir s'il est encore en vigueur. Des décisions se sont prononcées pour l'affirmative. Le Ministère de la Guerre et le Ministère de la Justice sont également de cet avis.

Penalties for its non-observance.

Toutefois, tout le monde est d'accord sur deux points: (1) la peine de la confiscation des biens n'est plus applicable; (2) le Décret de 1811 n'édicte que des peines contre le Français qui se fait naturaliser à l'étranger sans autorisation: mais, l'effet de la dénationalisation se produit tout de même; au point de vue du droit civil aucune autorisation n'est nécessaire pour la perte juridique de la qualité de Français.

Conséquemment, si une autorisation de se dénationaliser est demandée par le Français, qui entend acquérir une nationalité étrangère, c'est uniquement pour ne pas être exposé aux pénalités du Décret de 1811.

Formalities for obtaining authority for naturalization of French citizens abroad.

Les formalités pour obtenir une autorisation du Gouvernement de se faire naturaliser en pays étranger sont les suivantes:—

1. L'impétrant doit adresser une requête tendant à obtenir cette autorisation à M. le Garde des Sceaux.

2. Il devra y joindre les pièces suivantes:—
(*a*.) Son extrait de naissance.
(*b*.) Son certificat de service militaire délivré par le Ministre de la Guerre.

3. Il prendra, dans sa requête, l'engagement de payer les droits de sceaux qui sont de 625 fr. 75 c., ou s'il est indigent, expliquera les motifs avec pièces à l'appui, pour solliciter une remise du droit.

Pour gagner du temps, l'impétrant remettra le dossier composé des pièces ci-dessus indiquées à l'Ambassadeur de France, s'il y a un Ambassadeur dans la ville étrangère où il réside, ou au Consul de France, à défaut d'Ambassadeur.

Cette remise à l'Agent Diplomatique ou Consulaire Français a pour but de permettre à ce dernier de faire une enquête qui le mettra à même de donner des renseignements au Ministère des Affaires Étrangères Français.

Le dossier est ensuite transmis au Ministère de la Justice, qui ne statue qu'après avoir pris l'avis du Ministère de la Guerre.

Si l'impétrant fait encore partie de l'armée active ou de la réserve de cette armée, l'avis du Ministère de la Guerre est souvent défavorable. Il est favorable au contraire si le Français a atteint sa 30<sup>e</sup> année.

Veuillez, &c.
(Signé) ED. CLUNET,
*Avocat à la Cour de Paris.*

P.S.—Ci-joint les pièces communiquées.†

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* See Lord Lyons' No. 131 of March 28, 1887.
† See Inclosures in Lord Lyons' No. 131 of 1887.

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## No. 18.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received May* 14.)

My Lord, *Royal Courts of Justice, May* 12, 1887.

Paolo Lia, British subject, arrested in Tunis and removed to Algeria for trial for crime committed in Algeria.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us the accompanying draft of a despatch which it was proposed to address to Her Majesty's Ambassador at Paris on the subject of the attitude at present taken up by the French Government with respect to the case of Paolo Lia, a British subject of Maltese origin.

That the case had already formed the subject of a reference to us, and that the circumstances under which Her Majesty's Government protested against the action of the French authorities with respect to Lia, as well as the grounds upon which that protest was based, would probably still be within our recollection.

That they were, however, fully set forth in the reference from the Foreign Office of the 24th November, 1886, and in our own Report thereon, dated the 29th of the same month, which were sent therewith.

French refusal to admit British protest.

That the French Minister for Foreign Affairs had now informed Her Majesty's Ambassador at Paris that the case of Paolo Lia had again been carefully and impartially examined into by the French Government, but that they had arrived at the conclusion that the protest of Her Majesty's Government against his removal to Algiers for trial, and against the exercise of any jurisdiction over him at Tunis in respect of an offence committed by him out of the Regency, was totally inadmissible.

But prosecution withdrawn.

That M. Flourens further stated that although his Government could not, if it were put forward as a matter of right, admit the demand of Her Majesty's Government on Lia's behalf, yet that they had instructed the judicial authorities in Algeria and Tunis to desist from the prosecution instituted against him, on the ground that certain considerations operated in his favour, and also out of courtesy to Her Majesty's Government.

That he added that the French Government had also been moved, in arriving at that decision, by the desire to promote the friendly intercourse existing between the foreign colonists established in Tunis, and that they hoped that gracious act on their part would be fully appreciated by Her Majesty's Government.

Dissent from French views.

That it appeared to your Lordship that the position taken up by the French Government in the matter was not tenable, as it seemed to be based on the assumption that Her Majesty's Government had waived the rights of this country under the Capitulations and Treaties with Tunis unconditionally, whilst it was directly laid down in Lord Granville's note of the 20th June, 1883, to the French Ambassador at this Court, that Her Majesty's Government were only disposed to surrender those rights in so far as it might be necessary to give full scope to the exercise of civil and criminal jurisdiction over British subjects by the then new French Tribunals.

That, moreover, Her Majesty's Government certainly did not agree to give the French Tribunals a *retrospective* jurisdiction, nor to allow them to try a British subject, as in the present case they were proposing to do, for an offence committed years ago.

That your Lordship considered it desirable to put formally upon record the dissent of Her Majesty's Government from the views advanced upon those points by that of the French Republic, and, with that object, proposed to address the inclosed despatch to Lord Lyons upon the subject.

That before doing so, however, your Lordship would be glad to be favoured with our opinion as to whether its terms were such as, in the circumstances, were right and proper; and also with any general observations and suggestions which we might have to offer on the case.

Approve draft dissenting from French views as to surrender of British rights in Tunis.

In obedience to your Lordship's commands we have the honour to report—

That we approve the terms of the draft despatch submitted to us.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

To Viscount Lyons, No. 22, May 19, 1886.
" " No. 23, May 19, 1886.
" " No. 25, May 22, 1886.
" " No. 26, June 1, 1886.
" " No. 49, October 27, 1886.
" " No. 51, November 2, 1886.
" " No. 54, November 19, 1886.
Viscount Lyons, No. 19, May 20, 1886.
" " No. 21, May 25, 1886.
" " No. 23, May 26, 1886.
" " No. 24, June 2, 1886.
" " No. 25, June 14, 1886.
Mr. Egerton, No. 46, October 18, 1886.
Viscount Lyons, No. 50, November 6, 1886.
" " No. 52, November 7, 1886.
" " No. 53, November 7, 1886.
" " No. 54, November 9, 1886.
" " No. 59, November 22, 1886.
To Consul-General Playfair, No. 9, May 12, 1886.
" " Telegraphic, May 18, 1886.
" " Telegraphic, November 2, 1886
Consul-General Playfair, No. 31, May 14, 1886.
" " Telegraphic, May 22, 1886.
" " No. 35, May 19, 1886.
" " No. 37, May 22, 1886.
" " No. 71, October 23, 1886.
" " No. 74, November 4, 1886.
" " No. 75, November 13, 1886.
" " Telegraphic, November 21, 1886.
To Consul Sandwith, Telegraphic, May 26, 1886.
" " Telegraphic, November 1, 1886.
Consul Sandwith, Telegraphic, May 14, 1886.
" " No. 24, Political, May 17, 1886.
" " No. 26, Political, May 27, 1886.
" " No. 31, November 3, 1886.
" " No. 33, November 8, 1886.
" " Telegraphic, November 20, 1886.
Law Officers' Report, April 28, 1886 (Confidential No. 5440, p. 40).
Parliamentary Paper, "Tunis No. 1 (1876)" (Treaty No. 586).
" " "Tunis No. 6 (1881)" (Foreign Office No. 2429).
" " "Tunis No. 1 (1884)" (Foreign Office No. 2767).
Draft to Law Officers, November 24, 1886.
Viscount Lyons, No. 17, February 25, 1887.
" " No. 20, March 11, 1887.
Law Officers' Report, November 29, 1886. Confidential No. 5440, p. 43.

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### Annex.

*Draft of Despatch to Viscount Lyons.*

(No. . Consular.)

My Lord, *Foreign Office, May* , 1887.

I HAVE carefully considered your Excellency's despatch No. 20, Consular, of the 11th ultimo, and its inclosure, relative to the case of Paolo Lia, a British subject of Maltese birth.

M. Flourens, in the note he addressed to your Excellency on the 9th ultimo, a copy of which formed the inclosure above referred to, stated that the case of Paolo Lia has again been carefully and impartially examined into by the French Government, and that they have arrived at the conclusion that the protest of Her Majesty's Government against the removal of this British subject to Algiers for trial, and against the exercise of any jurisdiction over him at Tunis, is totally inadmissible. M. Flourens further stated that, although the Government of the French Republic could not, if it were put forward as a matter of right, comply with the demand of Her Majesty's Government on Lia's behalf, yet they had instructed the judicial authorities in Algeria and Tunis to desist from the prosecution instituted against him, both on the ground that certain considerations operated in his favour and also out of courtesy to Her Majesty's Government. He added that the French Government had also been influenced in arriving at this decision by a desire to promote the friendly intercourse existing between the foreign colonists established in Tunis and the French authorities, and that they hoped this gracious act on their part would be fully appreciated by Her Majesty's Government.

The action of the French Government is apparently based on the assumption, that

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Her Majesty's Government have waived the rights of this country under the Capitulations and Treaties with Tunis unconditionally. This view of the French Government is, however, entirely at variance with facts. It was distinctly laid down in Lord Granville's note to the French Ambassador at this Court of the 20th June, 1883, that Her Majesty's Government were only disposed to surrender these rights in so far as it might be necessary to give full scope to the exercise of civil and criminal jurisdiction over British subjects by the then new French Tribunals. Moreover, Her Majesty's Government did not agree to give the French Tribunals the right of exercising criminal jurisdiction over a British subject retrospectively, as in the present case, in respect of an offence committed many years ago.

Her Majesty's Government contend that they were justified in representing the case of Paolo Lia to the French Government under the arrangements agreed to between them in 1883, and they consider that in the present condition of things in Tunis it would be inexpedient to alter such arrangements.

I have to request your Excellency again to draw the attention of the French Government to this subject, and to point out to them that Her Majesty's Government duly appreciate the expression of friendly feelings towards them conveyed in M. Flourens' note, but that they are not prepared to accept, further than to the limited extent indicated in Lord Granville's note to M. Tissot above referred to, the view which the French Government appear to entertain, that Her Majesty's Government have consented to surrender the rights which have been secured to this country under the Treaties and Capitulations with Tunis, and that they adhere to the opinion that the recent proceedings of the French authorities in Tunis against Paolo Lia were not warranted by law or by Treaty.

I am, &c.

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## No. 19.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received August 24.)*

My Lord, *Royal Courts of Justice, August 24, 1887.*

Jurisdiction over British fugitive criminals in Tunis.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the mode of dealing with such British fugitives from justice as might take refuge within the limits of the French Protectorate of Tunis, a question which, under a somewhat less general aspect than it had now assumed, had already formed the subject of a reference to us on the 9th December of last year in connection with the case of a fugitive offender of Maltese origin, who, having committed a fraud against his employers at Tripoli, had fled to Tunis.

That it would be remembered that at the date of the assumption of the Protectorate of Tunis by the Government of the French Republic the British Consular Courts within that Regency had jurisdiction under the combined operation of "The Fugitive Offenders Act, 1881," and the Ottoman Order in Council, 1882, section 10, by which that Act was (with the exception of Part II thereof, relating to the inter-colonial backing of warrants) applied to the Ottoman dominions, and expressly to Tunis, to apprehend British fugitives from justice who had escaped from any part of the British dominions, and to cause them to be returned to the place from which they had escaped.

That so also, under section 263 of the Levant Order in Council of the 12th December, 1873, the British Consular Court had power to arrest British fugitives from any part of the Ottoman dominions, and to return them to the place whence they had escaped.

Abandonment of British jurisdiction does not apply to extradition cases.

That on the establishment, however, of the French Protectorate at Tunis, and the institution consequent thereupon of French Judicial Tribunals within the Regency, Her Majesty's Government, while in no respect abandoning, except to that extent, any rights of this country under the existing Capitulations and Treaties, consented to waive British Consular jurisdiction, both civil and criminal, over British subjects in that Regency as regarded all such matters and cases as came within the jurisdiction of those French Tribunals.

That the precise limits within which Her Majesty's Government agreed to waive such jurisdiction were to be gathered from Earl Granville's explanatory note to the French Ambassador of the 20th June, 1883, and from the Order in Council with regard to its abandonment, which, after having been privately submitted in draft to the French Government before its publication, and approved by them, was promulgated on the 31st December of the same year.

That that latter Order in Council provided, as would be seen, not for the absolute cesser of British Consular jurisdiction, but only for its waiver to such extent as it might be practically now exercisable by the new French Tribunals, and that it was conceived that no British fugitive, whether from Her Majesty's or from the Ottoman dominions, was justiciable by those Tribunals, inasmuch as in every such case the alleged crime or offence had been committed out of the Regency. Nor could such a fugitive be surrendered by the French Government under the Extradition Treaty in force between France and Great Britain, since that Treaty had no application in Tunis.

That it would therefore appear that the arrest of such fugitives and their conveyance out of the Regency was one of those "matters and cases" which still remain within British Consular jurisdiction.

Proposed despatch to Lord Lyons.

That a draft of a despatch embodying the conclusion above indicated, and the considerations upon which it was based, had been prepared for transmission to Lord Lyons to be by him communicated to the Government of the French Republic; and that Sir Julian Pauncefote was to request that we would be good enough to take that draft into our consideration, in connection with the other papers transmitted therewith, and that we would favour your Lordship with our opinion as to whether its terms were such as in the circumstances were right and proper.

That your Lordship would be glad, at the same time, to be favoured with any general observations which we might desire to offer upon the question.

In obedience to your Lordship's commands we have the honour to report—

Approve despatch.

That, in our opinion, the terms of the despatch are in the circumstances right and proper.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

Colonial Office, June 11, 1887.
To Colonial Office, July 5, 1887.
Law Officers, January 26, 1886 (Confidential No. 5440, p. 80).
Order in Council (Tunis), December 31, 1883 (Confidential No. 4905*).
Law Officers (Paolo Lia's Case), November 29, 1886 (Confidential No. 5440, p. 43).
" " " " " May 12, 1887 (see *ante*).
Levant Order in Council, December 12, 1873 (Confidential No. 2873).
Ottoman Order in Council, May 3, 1882 (Confidential No. 2873).
Fugitive Offenders Act, 44 & 45 Vict., cap. 69.
Printed Correspondence respecting establishment of French Tribunals in Tunis, 1882–83 (Confidential No. 4853).

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### Annex.

*Draft of Despatch to Mr. Egerton.*

(No. . Treaty.)
Sir, *Foreign Office, August , 1887.*

I TRANSMIT to you herewith a copy of a letter from the Colonial Office, and of my reply thereto,* with reference to the mode of dealing with British fugitives from justice who may take refuge in Tunis, and I have to invite your attention to the following observations on this subject.

The precise limits within which Her Majesty's Government agreed to abandon British Consular jurisdiction in Tunis were explained in Earl Granville's note to the French Ambassador of the 20th June, 1883, of which a copy was transmitted to Lord Lyons in a Foreign Office despatch dated the day following.

In that note Lord Granville informed M. Tissot that Her Majesty's Government were quite disposed to waive the rights of this country under the Capitulations and Treaties to the extent which might be necessary to give full scope to the exercise of civil and criminal jurisdiction over British subjects by the new French Tribunals, but they did not believe that it would be expedient to extend the change beyond what was required by the circumstances of the case.

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* Colonial Office, June 11: to ditto, July 5, 1887.

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The Order in Council of the 31st December, 1883, whereby British Consular jurisdiction was made to cease to the extent of the jurisdiction vested by law in the new French Tribunals, was privately submitted in draft to the French Government before its publication and approved by them.

The Order (of which a copy is inclosed) follows the terms of the Order in Council of the 5th February, 1876, whereby British Consular jurisdiction in Egypt was partially abolished on the opening of the Tribunals of the Reform.

Accordingly, the Order provides for the cesser of British Consular jurisdiction in Tunis, not absolutely, but only "as regards all such matters and cases as come within the jurisdiction of the French Tribunals" established in the Regency.

At the date of the Order the British Consular Court in the Regency had power (under "The Fugitive Offenders Act, 1881," and the Ottoman Order in Council, 1882) to apprehend British fugitives from justice who had escaped from any part of the British dominions, and to cause them to be returned to the place from which they had escaped.

Similarly, under section 263 of the Levant Order in Council of the 12th December, 1873, the British Consular Court had power to arrest British fugitives from any part of the Ottoman dominions, and to return them to the place from which they had escaped.

It is conceived that none of these fugitives, whether from the British or Ottoman dominions, could be dealt with by the new French Tribunals in Tunis, their alleged crimes or offences having been committed out of the Regency.

Nor could they be surrendered by the French Government under the Extradition Treaty between Great Britain and France, that Treaty having no application in Tunis.

It appears, therefore, that the arrest of such fugitives, and their conveyance out of the Regency, is one of those "matters and cases" which do not come within the jurisdiction of the French Tribunals, and which remain within the original British Consular jurisdiction.

Her Majesty's Government have no desire to revive in any degree the exercise of British Consular jurisdiction in Tunis, but they are anxious to provide against a failure of justice, and in the present case it is manifest that the Regency would become a refuge for British fugitive criminals unless some method be adopted to secure their speedy return to the place from which they may have escaped.

I have to request you to lay these facts before the French Government, and to inquire whether the French Tribunals in Tunis are now empowered by law to exercise the jurisdiction which was, at the date of the Order in Council of the 31st December, 1883, vested in the British Consular Courts with respect to British fugitive offenders taking refuge in the Regency, and, if not, whether the French Government are prepared to take measures to secure the apprehension and return of such fugitives to the place from which they have escaped.

If such powers are not vested in the French Tribunals, or cannot be conferred on them, the consequence would seem to be that Her Majesty's Government are entitled to claim the right for British Consuls in Tunis to continue to exercise the jurisdiction in question.

I am, &c.

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## General.

### No. 20.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received January* 12.)

My Lord,
*Royal Courts of Justice, January* 11, 1887.

Mixed marriages by Consuls. Proposed Circular to Consuls.

WE were honoured with the commands of the Secretary of State signified in Sir Julian Pauncefote's letter of the 7th ultimo, stating that he was directed to transmit to us the papers noted in the accompanying list, relative to the celebration of mixed marriages by Her Majesty's Consular officers, under the provisions of the Consular

Marriages Act (12 & 13 Vict., cap. 68), a matter in respect to which questions causing considerable embarrassment and difficulty had from time to time arisen.

Circular to Embassies, &c., as to requiring marriage by "*lex loci*," and certificate of its validity.

That in the analogous case of mixed marriages celebrated at Her Majesty's Embassies and Legations under the provisions of the Diplomatic Marriages Act (4 Geo. IV, cap. 91), it had lately been found necessary, by reason of the disastrous consequences which had in some instances ensued, owing to the fact that marriages so solemnized, unless preceded by a marriage valid by the "*lex loci contractûs*," were not in themselves necessarily valid out of Her Majesty's dominions, to issue a Circular (a copy of which was inclosed), requesting Her Majesty's Ambassadors and Ministers, before authorizing any mixed marriage at their respective Embassies and Legations, to require that a previous marriage should take place according to the "*lex loci*," and that a certificate should be produced under the hand of the Representative of the nation to which the foreigner belonged that such marriage was recognized as binding by the laws of his country.

Propose to send similar Circular to Consuls.

That the same principles appeared to apply with equal force to mixed marriages celebrated by Her Majesty's Consular Officers, whose powers, under the "Consular Marriages Act," were merely facultative, and that it would accordingly seem advisable that they also should be instructed to decline to celebrate mixed marriages, except on the conditions laid down in the Circular already issued to Her Majesty's Diplomatic Representatives with respect to mixed marriages at Embassies and Legations.

That Sir Julian Pauncefote was to request that we would favour the Secretary of State with our opinion as to whether it was advisable to issue to Consular officers a Circular similar in its terms to that which had already been forwarded to Her Majesty's Diplomatic Representatives, and with any general observations which we might have to offer on the question.

In obedience to the commands of the Secretary of State, we have the honour to report—

Not advisable to send proposed Circular to Consuls.

That in our opinion it is not advisable to issue to the Consular Officers the proposed Circular letter.

The Act of 1849 (12 & 13 Vict., cap. 68) prescribes the forms which are to be observed in Consular marriages, and the conditions which are to be fulfilled by persons desiring to avail themselves of its provisions.

We are of opinion that a Consul could not lawfully require the fulfilment of other conditions than those mentioned in the Act, and that the Secretary of State has no authority to vary those conditions.

Consuls should warn the parties, and advise previous marriage according to the "*lex loci*."

Having regard, however, to the questions which have been raised, and the circumstances referred to in the first paragraph of the proposed Circular, it is most important in cases of mixed marriages that the Consuls should point out to the parties the possible risk of the marriage being held invalid in other countries, and the desirability of a marriage taking place according to the "*lex loci contractûs*.'

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Inclosures in Foreign Office Letter of December* 7, 1886, *to Her Majesty's Law Officers.*

Marriage Act, 4 Geo. IV, cap. 91, July 18, 1823.
Ditto, 12 & 13 Vict., cap. 68, July 28, 1849.
Circular to Consuls, November 23, 1872. No. 1016.
Circular to Ministers, July 31, 1886. No. 1877.
Law Officers' Reports:—
  No. 104 of February 1, 1873 (Confidential No. 4529, p. 61); and
  No. 124 of October 22, 1872 (Confidential No. 4098, p. 82).

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### No. 21.

*Memorandum by Mr. H. Jenkyns on Marriages abroad.*—(*Sent to Sir J. Pauncefote privately.*)

Marriages of British subjects abroad.

THE Law respecting marriages of British subjects out of the kingdom is stated generally in the Report in 1868 of the Marriage Commission. (See Parliamentary Papers, 1868, vol. xxxii. Foreign Office, No. 1469.)

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English common law prior to 1753.

Before the Marriage Act of 1753, commonly known as Lord Hardwicke's Act (26 Geo. II, cap. 33), the English common law was that a marriage contracted *per verba de presenti* in the presence of a minister in Holy Orders, whether of the Church of England or the Church of Rome, was a valid marriage.

The effect of a contract of marriage *per verba de presenti* not in the presence of a minister in Holy Orders was open to some doubt. For some purposes it was legal, for some purposes not.

Common law applies to marriages abroad.

The Marriage Act of 1753 contained a provision that it should not apply to marriages beyond the seas, and the existing Act (4 Geo. IV, cap. 76) is limited to England. Consequently, a domiciled Englishman leaving England carries with him not that Act, but the English common law as to marriage unaffected by that Act, and unless precluded by the *lex loci*, can marry in accordance with that common law. Therefore, he can so marry on board one of Her Majesty's ships when not prevented by the *lex loci*.

Law as to marriages on ships of war in foreign waters.

But as a ship of war maintains its territorial character in a foreign port the *lex loci* would not apply, and the marriage on board the ship, whether in such port or on the high seas at the time of solemnization, would be valid if solemnized in accordance with the old common law between British subjects. But if the ship were in a port of a foreign country, some doubt would arise if one of the parties were a subject of that foreign country.

The Consular Marriage Act (12 & 13 Vict., cap. 68) enables marriages to be solemnized before British Consuls in accordance with that Act, but does not exclude any other form of valid marriage, such as a marriage on board a Queen's ship, or a marriage in an Embassy house.

Consular marriages more desirable.

Legally, therefore, there seems nothing to prevent a marriage being duly solemnized between British subjects on board one of Her Majesty's ships in a foreign port at which there is a Consul capable of solemnizing marriages. But no doubt it would be more regular in such a case that a marriage should be solemnized before the Consul instead of on board ship. And as there is no statutory provision in the case of marriages on board ship for the proper notices and other preliminaries of marriage being observed, nor for the proper registration of them,* it seems desirable that in such cases the marriages should be solemnized by the Consul, and not on board Her Majesty's ship; and this view has been adopted in the Queen's Regulations.

Opinion as to validity of such marriages by—

In 1878, the opinion of the then Law Officers, Sir J. Holker and Sir Hardinge Giffard, together with the Admiralty Counsel, Mr. Staveley Hill, was taken on the above subjects, and they reported as follows:—

(1) Clergymen.

"We are of opinion that marriages solemnized on board Her Majesty's ships by ministers in Holy Orders, according to the rites of the Church of England or Scotland, whether there is a Consul authorized to act under 12 & 13 Vict., cap. 68, or no, are valid.

(2) Roman priests and dissenters.

"Secondly, we are of opinion that such marriages would be valid in cases where such marriages were solemnized by priests of the Roman Catholic Church, but not where celebrated by ministers of any Nonconformist body.

(3) Captains of Queen's ships.

"Thirdly, such marriages would not, in our opinion, in any case be valid if solemnized by the Captain of a Queen's ship."

In consequence of that opinion, the Act of 42 & 43 Vict., cap. 29, was passed.

Their invalidity uncertain.

From what has been stated above, it will be seen that the invalidity of a marriage solemnized in the presence of the Commanding Officer of one of Her Majesty's ships, or on board a merchant-vessel, is not quite so certain as stated in the above opinion. It partly depends on the still unsettled question as to the validity of a marriage contracted before 1753 *per verba de presenti* without the presence of a minister in Holy Orders, and partly on the extent to which a marriage by habit and repute may be proved.

Above opinion does not apply in the United Kingdom or British Colony.

The above opinion of the Law Officers was, as the documents accompanying the case show, evidently intended to apply only to Her Majesty's ships when at sea or in a foreign port. It does not decide whether marriages solemnized on board one of Her Majesty's ships when in a British port, whether in the United Kingdom or a Colony, are valid without compliance with the *lex loci* of the port. I think the *lex loci* must exclude the English common law, especially if one of the parties is domiciled in the place.

Nationality of parties;

The above opinion of the Law Officers does not refer to the nationality of the parties between whom marriages are solemnized; and although there can be no doubt as to their opinion applying where both the parties are English, great doubt must arise where one of the parties is a subject of the foreign country in the port of which the ship is lying, or where the husband is not an Englishman. For as the validity of the marriage depends upon the doctrine that an Englishman carries with him the English common law with respect to marriage, that doctrine could not apply where the husband is not an Englishman, and perhaps also where the wife is not an Englishwoman.

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* See Report of Commission as to record of these marriages in the Registry of the Bishop of London.

and their domicile affects validity.

Also, where the husband is domiciled in some part of the Queen's dominions in which the common law is not the English common law, further doubt must arise as to the validity of the marriage.

Probability of difficulties in event of marriage of a foreigner on board ship of war.

Where Her Majesty's ship is lying in a port of a foreign country, a difficulty might easily arise with that foreign country if one of the subjects of that country were married on board that ship. I need hardly point out that under the Consular Marriages Act, great care has to be taken as to the marrying of persons of foreign nationality.

Scotch law different.

I have referred only to English law and Englishmen. The Irish law is, I believe, much the same as the English. But the Scotch law is different.

Marriages by Scotch ministers.

It may be doubted whether a minister of the Church of Scotland is a minister in Holy Orders for the purpose of English common law. By Scotch law a valid marriage may, in certain cases, be effected by consent signified in the presence of witnesses. A Scotchman presumably carries this law with him.

Domicile affects validity.

The validity of a marriage, at any rate so far as respects the personal capacity of the parties to contract a marriage, often depends on the domicile of the parties. The validity therefore of a marriage on board ship may depend on whether the parties are domiciled in England or Scotland, or in a Colony, or possibly in a foreign country.

Regulations in need of revision.

It appears to me that the Queen's Regulations for the navy require revision with reference to the above points.

(Signed) H. JENKYNS.

*March* 31, 1887.

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## No. 22.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 20.)*

My Lord,

*Royal Courts of Justice, June* 18, 1887.

Proposed Circular respecting mixed marriages at Embassies and Legations in Mahommedan and heathen countries.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to us two alternative drafts, marked respectively (B) and (C), for an instruction to Her Majesty's Diplomatic Representatives in Mahommedan and heathen countries, with reference to the celebration of mixed marriages at their respective Embassies and Legations, which it was proposed should be substituted for the Circular (A) of the 31st July, 1886, which had been already addressed to them upon the same subject.

That when the Circular (A) was issued generally to all Her Majesty's Diplomatic Representatives abroad, the difficulty which would arise in its application to Mahommedan and other non-Christian States had escaped attention.

Difficulty in carrying out proviso in Circular of July 1886 as to previous marriage according to the *lex loci*. Submits draft Circulars (B) and (C) for approval.

That it had, however, been found impossible in practice to carry out, with respect to mixed marriages at Her Majesty's Embassies or Legations in such States, the proviso contained in the last paragraph thereof, which required as a condition precedent to the celebration of a marriage at the particular Embassy or Legation, that a previous marriage should have already taken place according to the *lex loci contractus*.

That it appeared, therefore, desirable to withdraw the Circular (A) in the case of the particular Embassies and Legations mentioned above, and to substitute therefor a Circular in the terms either of the draft (B) or of the draft (C), inclosed, or in such other form (if any) as might appear to us better adapted to meet the circumstances of the case.

That drafts (B) and (C) differed from Circular (A) only as regarded the last paragraphs of each respectively.

That it had been suggested that the words "if practicable" which occurred in the last paragraph of draft (B) might possibly be open to objection, as giving a somewhat unnecessarily wide discretion to Her Majesty's Representatives, in the exercise of which they might find themselves occasionally embarrassed, and that inasmuch as a benefit was conferred upon foreigners by allowing them to be married at British

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Embassies and Legations, it might fairly be insisted that every possible precaution should be taken to secure the recognition of the mixed marriage.

That an alternative draft (C) of a somewhat stricter character had therefore been prepared, and that your Lordship would be glad to be informed whether we considered that latter draft, or any modification of it, preferable to the draft (B) in the case of the particular Embassies and Legations above mentioned.

That Sir T. V. Lister was to request that we would take the two draft instructions (B) and (C) into our consideration, together with the other papers transmitted therewith, and that we would favour your Lordship with our opinion as to the form best adapted to meet the requirements of the case.

In obedience to your Lordship's commands we have the honour to report—

Draft (C) preferable.

That in our opinion draft (C) will best fulfil the purpose desired.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## Annex (A).

*Circular addressed by the Earl of Rosebery to Her Majesty's Representatives abroad.*

My Lord,
Sir,

*Foreign Office, July* 31, 1886.

THE attention of Her Majesty's Government has been recently called to two cases of mixed marriages between British subjects and Swiss citizens, which, although duly celebrated at Her Majesty's Embassy at Paris under the Act 4 Geo. IV, cap. 91, have been declared null and void in Switzerland, under Article 54, paragraph 3, of the Federal Constitution, it having been ascertained that the validity of mixed marriages celebrated at the British Embassy at Paris is not recognized by French law.

It has hitherto been the practice at Paris, in the case of mixed marriages, to obtain from the Representative of the nation to which the foreigner belongs a certificate that the marriage at the British Embassy will be deemed valid by the laws of his country; and it appears that such certificate had been procured on the occasion of the two marriages above referred to.

In order to obviate, as far as possible, the risk of the validity of such marriages being disputed in future, it is important that they should be celebrated not only under the British Statute, but also, so far as circumstances will admit, in a manner which will satisfy the laws of the nation to which the foreigner belongs.

I have therefore to request that, before authorizing any mixed marriage at your
, will require that a previous marriage shall take place according to the *lex loci*, and that a certificate be produced under the hand of the Representative of the nation to which the foreigner belongs, that such marriage is recognized as legal and binding by the laws of his country.

I am, &c.
(For the Earl of Rosebery)—

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## Annexes (B) and (C).

*Alternative Drafts of Circular to Her Majesty's Representatives abroad.*

### (B.)

My Lord,
Sir,

*Foreign Office,* , 1887.

THE attention of Her Majesty's Government has been recently called to two cases of mixed marriages between British subjects and Swiss citizens, which, although duly celebrated at Her Majesty's Embassy at Paris under the Act 4 Geo. IV, cap. 91, have been declared null and void in Switzerland, under Article 54, paragraph 3, of the Federal Constitution, it having been ascertained that the validity of mixed marriages celebrated at the British Embassy at Paris is not recognized by French law.

It has hitherto been the practice at Paris, in the case of mixed marriages, to obtain from the Representative of the nation to which the foreigner belongs a certificate that the marriage at the British Embassy will be deemed valid by the laws of his country; and it appears that such certificate had been procured on the occasion of the two marriages above referred to.

In order to obviate, as far as possible, the risk of the validity of such marriages being disputed in future, it is important that they should be celebrated not only under the British Statute, but also, as far as circumstances will admit, in a manner which will satisfy the laws of the nation to which the foreigner belongs.

I have therefore to request that before authorizing any mixed marriage at your
Embassy your Excellency
Legation you
will require that, if practicable, a previous marriage shall have taken place which is recognized as legal by the law of the nation to which the foreigner belongs, and that in every such case a certificate to that effect under the hand of the Representative of such nation shall, if possible, be produced.

I am, &c.

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### (C.)

My Lord,
Sir,

*Foreign Office,* , 1887.

THE attention of Her Majesty's Government has been recently called to two cases of mixed marriages between British subjects and Swiss citizens, which, although duly celebrated at Her Majesty's Embassy at Paris under the Act 4 Geo. IV, cap. 91, have been declared null and void in Switzerland, under Article 54, paragraph 3, of the Federal Constitution, it having been ascertained that the validity of mixed marriages celebrated at the British Embassy at Paris is not recognized by French law.

It has hitherto been the practice at Paris in the case of mixed marriages to obtain from the Representative of the nation to which the foreigner belongs a certificate that the marriage at the British Embassy will be deemed valid by the laws of his country, and it appears that such certificate had been procured on the occasion of the two marriages above referred to.

In order to obviate, as far as possible, the risk of the validity of such marriages being disputed in future, it is important that they should be celebrated not only under the British Statute but also, so far as circumstances will admit, in a manner which will satisfy the laws of the nation to which the foreigner belongs.

I have therefore to request that before authorizing any mixed marriages at your
Embassy your Excellency
Legation you
will require that a previous marriage which is recognized as legal by the law of the nation to which the foreigner belongs shall have taken place, and that a certificate to that effect under the hand of the Representative of such nation shall, if possible, be produced.

In any case, however, in which you are satisfied that such previous marriage is in the circumstances impracticable, you may at your discretion dispense with it on being furnished with a certificate under the hand of the Representative of the nation to which the foreigner belongs at the Court to which
your Excellency is
you are
accredited (or, should there be no such Representative at that Court, under the hand of some such Representative elsewhere) that the mixed marriage which it is proposed to solemnize at your
Embassy
Legation
will itself and without any preliminary or other ceremony be recognized as legal by the law of such nation.

I am, &c.

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### No. 23.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received July* 22.)

My Lord, *Royal Courts of Justice, July* 22, 1887.

Proposed instructions to Governors, &c., of Colonies for communication to Commanders-in-chief in event of war.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 11th ultimo, stating that he was directed by your Lordship to transmit to us a copy (marked A) of an instruction which it was proposed at once to issue to the Governors and Administrators of Her Majesty's Colonies and dependencies, and which, in the event of certain contingencies therein indicated, would be by them forthwith communicated to Her Majesty's Commanders-in-chief on the various foreign stations for their direction and guidance.

That Sir P. Currie was to request that we would take that instruction, and the papers bearing upon it,[*] which were also transmitted therewith, into our consideration, and that we would favour your Lordship with our opinion as to whether its terms were such as were, in the circumstances, right and proper.

In obedience to your Lordship's commands we have the honour to report—

Approve instructions A, B, and C, as altered.

That, as altered, we approve the proposed instructions marked A, B, and C. As regards D, it would be necessary to respect Treaty obligations, if any, with neutral nations, upon whose vessels such goods might be, or to whom such goods might belong.

Opinion on right to prohibit export of warlike articles enumerated in D.

In our opinion, the export of the articles named ought not to be interfered with unless such articles are required for our own naval purposes, or for purposes of defence, or are intended for the service of the enemy, or destined for enemy's ports, or unless there is reasonable apprehension that they may fall into the hands of the enemy, or be ultimately used for his service.

The Customs Act of 1876 (39 & 40 Vict., cap. 36, sec. 138) and the Act of 1879 (42 & 43 Vict., cap. 21, sec. 8) give power to prohibit the export of classes of goods which cover all those in clause D.

List in D not exhaustive.

This prohibition, however, must be by Proclamation or Order in Council, and the statutable power does not extend (see section 151 of the Act of 1876) to British possessions abroad which have made entire provision for the management and regulation of the Customs of such possessions. The list in D is not exhaustive.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Opinion of Solicitor-General on right to prohibit exports.

I wish to add that, in my opinion, the right to prohibit exports exists without reference to the conditions as to destination, &c., which we have mentioned above, and exists independently of the Customs Acts.

(Signed) EDWARD CLARKE.

### Annex.

*Instructions to be issued as proposed in Paragraph* 4.

(As amended by the Law Officers.)

(A.) No ships or vessels belonging to any of Her Majesty's subjects are to be permitted to enter and clear out for any of the ports of the enemy after the date when this Order is put into force[†] until further order. The utmost care is, however, to be taken for the preservation of all and every part of the cargoes on board any of the said ships or vessels, so that no loss, damage, or injury whatever be sustained thereby.

*Embargo.*

(B.) A general embargo or stop is to be put upon all public ships and vessels whatsoever belonging to the enemy which may be within any of the ports, harbours, or roads within any of Her Majesty's dominions at the date when this Order is ordered to be put into force,[*] or which shall thereafter come into them, together with all persons and effects on board the said ships or vessels. The utmost care is, however, to be taken for the preservation of all and every part of the cargoes on board any of the said ships or vessels, so that no loss, damage, or injury whatsoever be sustained thereby.

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[*] Admiralty, March 15; Memorandum (Foreign Office), March 28; to Admiralty, April 4; ditto, May 31, 1887.

[†] This date will be communicated by telegram if possible.

(C.) Enemy's merchant-vessels in any ports or places within Her Majesty's dominions shall be allowed until the[†] for loading their cargoes and departing from such ports or places; and such vessels, if met at sea by any of Her Majesty's ships, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the term named; provided that nothing herein contained shall extend, or be taken to extend, to enemy's vessels having on board any officers in the military or naval services of the enemy, or any article prohibited or contraband of war, or any despatch of or to the enemy's Government.

Further, any enemy's vessel which, prior to the date when this order is put into force, shall have sailed from any foreign port, bound for any port or place in Her Majesty's dominions, shall be permitted to enter such port or place and to discharge her cargo, and afterwards forthwith to depart without molestation; and any such vessel, if met at sea by any of Her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

*Prohibiting Export of certain Warlike Articles.*

(D.) The export of the following articles is to be prohibited from the[*] until further order:—

1. All arms.
2. Ammunition.
3. Explosives.
3A. Ingredients used in the manufacture of explosives.
4. Military and naval stores.
5. Marine engines.
6. Screw propellers.
7. Paddle-wheels.
8. Cylinders.
9. Cranks.
10. Shafts.
11. Boilers.
12. Tubes for boilers.
13. Boiler plates.
14. Fire bars.
15. Every article, or any other component part of an engine or boiler, or any article whatsoever which is, can, or may become applicable for the manufacture of marine machinery.
16. Torpedoes.
17. Torpedo-boats.
18. Boats fitted with apparatus to be used for torpedoes.
19. All apparatus for projecting inflammable materials or firing torpedoes.
20. Pumps or other machinery intended to be used for projecting inflammable materials.
21. Machinery intended to be used in the construction of torpedoes or torpedo-boats.

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[*] This date will be communicated by telegram if possible.

[†] The date when this order is to take effect, and the term of exemption from capture to be allowed, will be made known by telegram if possible.

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## No. 24.

*The Law Officers of the Crown to Mr. Matthews.—(Received from Home Office, August 27.)*

[In reply to the following Home Office letter, the Law Officers gave, on the 27th July, 1887, their opinion as below:—]

*Mr. Pemberton to the Solicitor to the Treasury.*

Sir, *Whitehall, July 6, 1887.*

I AM directed by the Secretary of State to transmit to you herewith the inclosed case which has been prepared for the opinion of the Law Officers of the Crown as to the status of the children of an alien, naturalized under the Act of 1870, born abroad at a date subsequent to that of their father's naturalization; and I am to request that you will lay the same before the Attorney- and Solicitor- General, and favour the Secretary of State with their opinion thereon.

I am, &c.
(Signed) E. LEIGH PEMBERTON.

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*Case for the Law Officers.*

Status of children born abroad after the naturalization of their father.

The Law Officers are requested to advise the Secretary of State as to the status of children born outside the United Kingdom of an alien naturalized under the Act of 1870 in Great Britain, such children being born after the naturalization of their father.

Act of 1870 on the subject.

The enactment to be referred to is 33 & 34 Vict., cap. 14, section 7, paragraph 3, describing the effect of a certificate of naturalization:—

"An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a Treaty to that effect."

This paragraph appears to be defectively worded, since if the rights conferred on the person naturalized are limited to such rights as a natural-born British subject is entitled to *in the United Kingdom*, it is useless to append a qualification that the rights shall not operate in some place not in the United Kingdom. It is believed that the words "in the United Kingdom" were inserted by inadvertence.

Section 10 (5) relates to the status of the children of a naturalized person, and provides that:—

"Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom shall be deemed to be a naturalized British subject."

It is to be observed that, under the circumstances specified, the child has the status not of a natural-born British subject, but of a naturalized British subject.

It applies only to children born before naturalization.

The enactment, however, it seems probable (regard being had to the two previous paragraphs), relates only to children who were born before the naturalization of the naturalized person, not to those who were born subsequent to the naturalization.

Law as to children born after naturalization.

If this view is correct the question then arises, what is the status of children born outside the United Kingdom after the naturalization of their father? The answer would seem to depend on the conjoint effect of paragraph 3 (already set out) of section 7 of "The Naturalization Act, 1870," declaring the naturalized person to be entitled to all the political and other rights to which a natural-born British subject is entitled in the United Kingdom, and 4 Geo. II, cap. 21, which deals with the status of children of natural-born British subjects, enacting that:—

"All children born out of the legiance that is out of the domain of the Crown of England or which shall hereafter be born out of such legiance, whose fathers were or shall be natural-born subjects of the Crown of England or of Great Britain at the time of the birth of such children respectively, shall and may, by virtue of the said recited clause in the Act of the seventh year of the reign of her said late Majesty and of this present Act, be adjudged and taken to be, and all such children are hereby declared to be, natural-born subjects of the Crown of Great Britain to all intents, constructions, and purposes whatsoever."

Previous case in 1860.

In the year 1860, the question arose as to the status of a child born in a foreign country of an alien naturalized under the earlier Act 7 & 8 Vict., cap. 66—such child being born after naturalization, and the parent being abroad at the time,* and the Law Officers advised the Secretary of State that such child would not answer the description of a child of a natural-born British subject, and therefore would be an alien, and not a natural-born British subject.†

Questions to be decided.

The questions for the Law Officers to determine are:—

1. Whether 33 Vict., cap. 14, section 10 (5) applies to children of a naturalized alien born after the date of such naturalization? If not,

2. Whether the children born out of British dominions of an alien naturalized under the Act of 1870, such children being born after the naturalization, are natural-born British subjects, naturalized British subjects, or aliens?

The cases and opinions of the Law Officers of the 13th August, 1860, and 13th May, 1884,‡ above referred to, are left herewith.

A copy of Report of the Royal Commission on Naturalization is also left herewith.

The Attorney- and Solicitor- General are requested to favour the Secretary of State with their opinion on the case above set out.

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*Opinion.*

Act of 1870 applies to children born both before and after naturalization. Their status depends on their residence in the United Kingdom.

In our opinion, the language of 33 & 34 Vict., cap. 14, section 10, subsection 5, although not free from obscurity, is large enough to cover, and should be held to apply to, the case of children born after, as well as those born before, naturalization. Such children if, during infancy, they become resident with the naturalized father or mother in the United Kingdom, are to be deemed naturalized British subjects. If they do not become so resident they remain aliens.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, July 27, 1887.*

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### Annex.

*The Law Officers of the Crown to Sir G. Lewis.—(Received from Home Office, August 27.)*

[In reply to the following Home Office letter, the Law Officers gave, on the 13th August, 1860, their opinion as below:—]

*Mr. Waddington to Mr. Greenwood.*

Sir, *Whitehall, June 8, 1860.*

Status of son, born abroad, of a naturalized alien:

REFERRING to the case which you laid before the Attorney- and Solicitor-General, and their opinion thereon, dated the 25th November, 1859, as to the rights of the son of an alien who has received a certificate of naturalization, I am directed by Secretary Sir George Lewis to request that you will move the Attorney- and Solicitor-General to advise further—

before naturalization;

1. Whether the children of an alien to whom a certificate of naturalization has been granted under the Act 7 & 8 Vict., cap. 66, born out of the Queen's dominions before the granting of the certificate, and under 21 years of age at the time it bears date, are entitled to the rights and capacities of a natural-born British subject, either without the exceptions set forth in the above-named Statute and in the certificate of naturalization, or with such exceptions.

after naturalization.

2. What is the condition of a child born out of Her Majesty's dominions after its father has obtained a certificate of naturalization under the above-mentioned Act? If

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* See p. 9 of Report of Royal Commission on Naturalization (Parliamentary Paper 1869, C. [4109]), and see opinion of Law Officers on April 1, 1884, No. 732.

† See Law Officers' Report, August 13, 1860, annexed.

‡ Not sent to the Foreign Office.

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a British subject, is it so to all intents and purposes, or do the exceptions contained in the Act of Parliament and certificate still adhere to it?

I am, &c.
(Signed) H. WADDINGTON.

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The Attorney- and Solicitor General are requested to advise Sir George Lewis upon the questions asked in Mr. Waddington's letter.

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*Opinion.*

Children of aliens born before naturalization of their father are aliens.

1. By the Act 7 & 8 Vict., cap. 66, section 6, it is enacted that on obtaining the certificate and taking the oath prescribed, and an alien residing, &c., in Great Britain, shall enjoy all the rights and capacities which a natural-born subject of the United Kingdom can enjoy,—or transmit, words which are prospective only and may give to the children of an alien born in the United Kingdom after naturalization the status of natural-born subjects; but there is nothing in the Statute or in the Law which can alter or affect the status of the children of an alien born out of the Queen's dominions and before the naturalization of the parent. Such children, although infants at the date of the naturalization, are still aliens, and must obtain certificates of naturalization to entitle them to the rights and capacities of a natural-born British subject.

Child, born abroad, of a naturalized alien is an alien.

2. With respect to the second question, by the terms of the certificate of naturalization a naturalized alien does not carry with him into foreign countries the rights and capacities of a natural-born British subject (except the benefit of a British passport), and, consequently, the child of such naturalized alien born in a foreign country, the parent being abroad, would not answer the description of the child of a natural-born British subject.

Such child therefore is, in our opinion, an alien, and not a natural-born British subject.

(Signed) RICHARD BETHELL.
WM. ATHERTON.

*Lincoln's Inn, August* 13, 1860.

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## No. 25.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received August* 20.)

*Royal Courts of Justice, August* 20, 1887.

My Lord,

Consular Fees.

Proposed Order in Council.

(A.) General.
B.) For China, Japan and Corea.

WE were honoured with Sir Julian Pauncefote's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, with reference to two proposed Orders in Council establishing new Tables of Consular Fees.

That that marked (A) was for the General Consular Service, and was in substitution for the Orders in Council dated the 26th March, 1885, and marked (B), while the draft Order marked (C) was for China, Japan, and Corea, and was in substitution for the Order in Council of the 26th March, 1885, marked (D).

That Sir Julian Pauncefote also inclosed a copy of the Act 6 Geo. IV, cap. 87, (marked E), under the authority of which, and of the other Acts referred to in the preamble thereto, those Orders were proposed to be issued.

That the draft Orders had been already submitted to and approved by the Treasury; and that Sir Julian Pauncefote was to request that we would take the same into our consideration, and favour your Lordship with our opinion whether they were right and proper to be submitted for ratification to the Queen in Council.

In obedience to your Lordship's commands we have the honour to report—

Paragraphs as to power of diminishing fees,

That, in our opinion, paragraph 8 of the proposed Orders should be struck out.

Section 4 of the Act 6 Geo. IV, cap. 87, is distinct as to the mode in which fees are to be diminished or wholly abolished, or the payment of any smaller fee established and authorized. Paragraph 8 proposes that this power of diminishing the fees shall be carried out by Consular Regulations, or the instructions of a Secretary of State. This is, in our judgment, contrary to the express provisions of the Act, and paragraph 8 should therefore be omitted.

and approval of Treasury, should be omitted.

We think the recital of the approval of the fees by the Commissioners of the Treasury unnecessary and undesirable.

As to effect on existing Orders.

We presume that the effect of the present Orders upon other existing Orders in Council which are left unrepealed has been considered. See Hertslet's Treaties, vols. xi to xiv, and probably others.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers inclosed in Foreign Office Letter, August* 2, 1887.

(A.) Draft of proposed Order in Council establishing new Tables of Fees for the General Consular Service.
(B.) Consular Fees Order in Council, 1885 (Confidential No. 5093*).
(C.) Draft of proposed Order in Council establishing new Tables of Fees for China, Japan, and Corea Consular Service.
(D.) The China, Japan, and Corea (Consular Fees) Order in Council, 1885 (Confidential No. 5093**).
(E.) Act 6 Geo. IV, cap. 87.

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## No. 26.

*The Law Officers of the Crown to Mr. Matthews.—(Received from Home Office, August* 27.)

[In reply to the following Home Office letter, the Law Officers gave, on the 20th August, 1887, their opinion as below:—]

*Mr. Lushington to the Solicitor to the Treasury.*

Sir, *Whitehall, August* 6, 1887.

I AM directed by the Secretary of State to transmit to you herewith a case which has been prepared for the opinion of the Law Officers of the Crown under "The Naturalization Act, 1870," and I am to request that you will be so good as to lay the same before the Secretary of State, with their opinion thereon.

I am, &c.
(Signed) GODFREY LUSHINGTON.

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*Case for the Law Officers.*

Children of naturalized aliens.

The Law Officers are referred to the opinion* they have recently given on the operation of section 10 (5) of "The Naturalization Act, 1870," 33 Vict., cap. 14.

In connection with this subject a further question has arisen, on which the Secretary of State desires to be advised by the Law Officers.

They are considered as naturalized British subjects.

(*a.*) Under section 10 (5) it is not disputed that every child who, being an infant at the date of the naturalization of the father, has become resident with the father in the United Kingdom, is to be deemed a naturalized British subject, and the practice of the Home Office has been to insert his name in the father's certificate, and no subsequent question has ever been raised as to the naturalization of the child, although, after the naturalization of the father, the child while still an infant might cease to be a resident with the father in the United Kingdom. In fact, the naturalization of the child dated from a fixed point of time (the father's naturalization), and was, so to speak, final.

(*b.*) The recent opinion of the Law Officers decides that the same subsection 10 (5) applies to children born after the date of the naturalization of the father, although it may be difficult to fix the precise moment from which the naturalization of the child commences.

As to loss of such status by non-residence in the United Kingdom.

The question now raised applies to both classes (*a*) and (*b*), viz., whether the naturalization so acquired by a child (whether born before or after the naturalization of the father) can, subsequently to its acquisition, be lost by the child ceasing, whilst still an infant, to be resident with his father in the United Kingdom.

For present purposes, it is assumed that temporary absences would not constitute a cesser of residence.

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* See No. 24.

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It may be pointed out that the words of the Statute are, "Every child who during infancy has become resident;" the Statute does not go on to say, and who during infancy continues to be resident.

The question for the Law Officers is whether the naturalization acquired by a child under section 10 (5) (whether the child has been born before or after the father's naturalization) can, subsequently to its acquisition, be lost by the child ceasing, whilst still an infant, to be resident with his father in the United Kingdom.

The Attorney- and Solicitor- General are requested to favour the Secretary of State with their opinion, as asked in Mr. Lushington's letter.

*Opinion.*

Status of British subject not lost by cessation of residence.

In our opinion, a child having once acquired the status of a naturalized British subject does not lose that status by ceasing to be resident in the United Kingdom.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, August* 20, 1887.

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## No. 27.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August* 24.)

My Lord, *Royal Courts of Justice, August* 24, 1887.

Power of an Acting Vice-Consul to celebrate marriages under the Vice-Consul's Warrant.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 12th instant, stating that he had the honour to transmit to us, by direction of your Lordship, the papers noted in the accompanying list, with reference to the question of the competency of a person acting for a Vice-Consul furnished with a Marriage Warrant to celebrate marriages under the Warrant of the Vice-Consul whom he is temporarily replacing, although he be not himself provided with any Warrant from the Secretary of State entitling him personally to celebrate marriages.

That the question appeared to depend entirely upon the construction to be placed on section 19 of "The Consular Marriages Act, 1849" (12 & 13 Vict., cap. 68), as modified or explained by section 3 of "The Consular Marriage Act, 1868" (31 & 32 Vict., cap. 61).

Opinions of Law Officers.

That in 1873 the then Law Officers reported that, having considered "The Consular Marriages Act, 1849," and particularly the 19th section, they were of opinion that "a person acting for a Vice-Consul is not a person who can legally solemnize marriages under 'The Consular Marriages Act, 1849,' though the Consul in whose place he is acting may hold a Warrant authorizing such Vice-Consul to solemnize marriages."

That in 1874 again, a change of Government having meanwhile taken place, the Law Officers to the new Administration were consulted on the same question, and reported that, in their opinion, "a person acting for a British Vice-Consul furnished with a Marriage Warrant, but such person himself not being furnished with a Marriage Warrant, cannot legally celebrate marriages under the provisions of 'The Consular Marriage Act' (12 & 13 Vict., cap. 68);" and that successive Secretaries of State had hitherto guided their action in accordance with the views expressed in those Reports.

That it would, however, be seen that on each of those occasions the opinion of the Law Officers was entirely based upon the construction of the Act of 1849, and that their attention did not appear to have been directed to the subsequent enactment of 1868, section 3 of which might, as was thought, have a sufficiently important bearing on the matter to justify, on the supposition that it was not before our predecessors in 1874, a further reference of the question to us.

As to meaning of Marriage Acts.

That it seemed hardly probable that the Legislature could have intended (whatever they might in fact have done) to make any distinction between a person acting for a Consul furnished with a Marriage Warrant and a person acting for a Vice-Consul also similarly provided; while in actual working the insistance on that distinction caused serious practical inconvenience.

That section 3 of "The Consular Marriage Act, 1868," provides that "every person acting, or legally authorized to act, in the place of a British Consul, such Consul being duly authorized to solemnize and register marriages between persons, . . . . . shall be deemed to be a British Consul duly authorized for all the purposes of the said recited Act" (*i.e.*, 12 & 13 Vict., cap. 68).

That the term "Consul" was not made the subject of definition in "The Consular Marriage Act, 1868," and would appear, therefore, to have the same meaning and extent as when employed in the principal Act recited and referred to therein.

That by section 19 of that Act (12 & 13 Vict., cap. 68) it is provided that . . . . . "in any foreign place where there is no British Consul resident, any Vice-Consul or Consular Agent who shall be directed or authorized . . . . . by one of Her Majesty's Principal Secretaries of State to solemnize and register marriages in such place shall, in the country or place in which he is so appointed to reside, or in which he is directed or authorized to solemnize and register marriages as aforesaid, by a Consul duly authorized for the purposes of this Act; and in the construction of this Act the term 'Consul' shall . . . . . be construed to mean a Consul so authorized."

That it would, therefore, appear to your Lordship to be at any rate open to some doubt whether, if section 19 of 12 & 13 Vict., cap. 68, and section 3 of 31 & 32 Vict., cap. 61, be construed together, a person acting in the place of a Vice-Consul or Consular Agent in any foreign place where there is no British Consul was not to be deemed, for all the purposes of "The Consular Marriage Act, 1849," while so acting, to be a British Consul duly authorized to solemnize and register marriages.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the question submitted in his letter, and with any special observations which we might have to offer on the matter.

In obedience to your Lordship's commands we have the honour to report—

Agree with previous Law Officers as to inability of Acting Vice-Consul.

That we concur in the Reports of our predecessors in 1873 and 1874.

We see no reason for supposing that they overlooked the provisions of the Act of 1868 (31 & 32 Vict., cap. 61), as, in our opinion, the words of section 3 of that Act do not cure the defect, if defect it be, in the earlier Statute upon the terms of which their advice was founded.

We do not, however, think it unreasonable to suppose that Parliament intended to confine this very important function to the persons actually named in the 19th section of the principal Act.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers accompanying Sir T. Villiers Lister's Letter of August* 12, 1887, *to the Law Officers of the Crown.*

1. 12 & 13 Vict., cap. 68: Consular Marriage Act, 1849.
2. 31 & 32 Vict., cap. 61: Consular Marriage Act, 1868.
3. Law Officers' Report, France, No. 98, November 25, 1873 (Confidential No. 4259, p. 58).
4. ,, ,, ,, Chile, No. 31, August 9, 1872 (Confidential No. 4098, p. 18).
5. ,, ,, ,, France, No. 54, March 7, 1874 (Confidential No. 4331, p. 37).
6. ,, ,, ,, China, No. 36, December 19, 1867 (Confidential No. 1745, p. 29).

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## No. 28.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August* 31.)

My Lord, *Royal Courts of Justice, August* 31, 1887.

Consular Fees. Proposed Orders in Council.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 25th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to two proposed Orders in Council establishing new Tables of Consular Fees.

That in our letter of the 20th instant we reported that, in our opinion, paragraph 8 of the proposed Orders should be struck out.

That we pointed out that section 4 of the Act of George IV, cap. 87, was distinct as to the mode in which fees were to be diminished, or wholly abolished, or the payment of any smaller fee established and authorized; and that as paragraph 8 proposed that the power of diminishing the fees should be carried out by Consular

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Regulations or the instructions of a Secretary of State, it was, in our judgment, contrary to the express provisions of the Act, and should therefore be struck out.

Proposed insertions as to dispensing with payment of fees.

That Sir T. V. Lister was directed by your Lordship to submit to us that, although the Orders might not confer any power of remitting fees, the Lords Commissioners of Her Majesty's Treasury thought it of great importance, and so did your Lordship, that the Orders should in some way recognize the existence of such a power, and accordingly proposed the following substitute for paragraph 8, viz.: "Nothing in this Order shall limit Her Majesty's prerogative to dispense with the payment of fees in any case in which it may seem meet so to do."

That Sir T. V. Lister was to explain that, in your Lordship's opinion, it was undesirable that any special reference to the power of dispensing with the payment of fees in certain cases should appear in the Tables themselves which had to be exhibited in the public office of all Consuls and in other places.

and concurrence of the Treasury.

That, looking to the terms of paragraph 7 and to the above proposed new paragraph 8, Sir T. V. Lister was to submit whether the words "with the concurrence of the Commissioners of Her Majesty's Treasury" might not properly be inserted after the word "State" in the last line but one of each Order.

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration; and that, as it was important that the Orders in Council should be issued at once, your Lordship would be much obliged if we would favour your Lordship with our opinion on the two questions submitted in that letter, and with any general observations which we might have to offer on the case, at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

Disapprove of proposed insertions.

That we are unable to approve of the insertion of the proposed words saving Her Majesty's prerogative to dispense with the payment of fees, as, in our opinion, the right to levy and dispense with such fees does not depend upon the prerogative of the Crown.

The question whether, in special cases, the payment of the fees should not be insisted upon is a practical matter, and should be made the subject of confidential instructions to the Consuls. It is, in our opinion, undesirable that any reference to such non-payment should appear upon the face of the Order.

We do not see any reason for the insertion of the proposed words in the last line but one of each Order. The Secretary of State will have to give directions under clauses 2 and 7. Clause 7 already provides that the directions shall be given with the concurrence of the Commissioners of the Treasury, and their concurrence cannot be required for the directions under clause 2 as to the date when the Orders shall come into operation.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers inclosed in Foreign Office Letter of August 25, 1887.*

(A.) Draft of proposed Order in Council establishing new Table of Fees for the General Consular Service (For Order in Council as issued, see Confidential No. 5526**.)
(B.) Consular Fees Order in Council, 1885. Confidential No. 5093*.
(C.) Draft of proposed Order in Council establishing new Tables of Fees for China, Japan, and Corea Consular Service. (For Order in Council as issued, see Confidential No. 5526*.)
(D.) The China, Japan, and Corea (Consular Fees) Order in Council, 1885. Confidential No. 5093**.
(E.) Act 6 Geo. IV, cap. 87.

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## No. 29.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received September 17.)*

My Lord, *Temple, September* 15, 1887.

New Tables of Consular Fees. Proposed Orders in Council.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 12th instant, stating that he had to transmit to us, together with the previous papers, a further letter from the Treasury respecting the two proposed new Orders in Council establishing new Tables of Consular Fees.

That it might be convenient that Sir Julian Pauncefote should recapitulate that it was submitted to us in Sir Villiers Lister's letter of the 25th ultimo that although the Orders might not confer any power of remitting fees, the Lords Commissioners of Her Majesty's Treasury thought it of great importance that the Orders should in some way recognize the existence of such a power, and accordingly they proposed the following substitute for paragraph 8, viz.: "Nothing in this Order shall limit Her Majesty's prerogative to dispense with the payment of fees in any case in which it may seem meet so to do."

That in our letter of the 31st ultimo we reported to his Lordship that we were unable to approve of the insertion of the proposed words saving Her Majesty's prerogative to dispense with the payment of fees, as, in our opinion, the right to levy and dispense with such fees did not depend upon the prerogative of the Crown. That we pointed out that the question whether, in special cases, the payment of the fees should not be insisted upon was a practical matter, and should be made the subject of confidential instructions to the Consuls; and it was, in our opinion, undesirable that any reference to such non-payment should appear upon the face of the Order.

That we further reported that we did not see any reason for the insertion of the words, "with the concurrence of the Commissioners of Her Majesty's Treasury," after the word "State" in the last line but one of each Order.

New clause as to dispensing power proposed by Treasury.

That your Lordship caused our Report to be communicated to the Lords Commissioners of Her Majesty's Treasury, and we would see in their Lordships' reply, dated the 10th instant, the reasons why, although they no longer pressed for the insertion of the words, "with the concurrence of the Commissioners of Her Majesty's Treasury," in the last line but one of the Order, if we retained our objection to them, they considered it desirable that the Orders in Council prescribing the Consular fees should in some way recognize the power of dispensing with their payment in certain cases, and suggesting whether paragraph 8 might not be worded as follows: "8. Nothing in this Order shall limit any right or power of dispensing with the payment of fees in any case in which one of Her Majesty's Principal Secretaries of State, with the concurrence of the Commissioners of Her Majesty's Treasury, may, on behalf of Her Majesty, authorize such dispensation."

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and as it was most important that the Orders in Council should, if possible, be submitted for ratification to the Queen in Council to be held at Balmoral on the 15th instant, your Lordship would be much obliged if we would favour your Lordship at our earliest convenience with our opinion as to whether the words suggested by the Lords of Her Majesty's Treasury might properly be used as a substitute for paragraph 8.

In obedience to your Lordship's commands we have the honour to report—

Adhere to previous opinion.

Clause now proposed not objectionable.

Object to words as to concurrence of Treasury.

That we retain the opinion that it is undesirable to insert any clause as to dispensing with fees in particular instances, and that it would be better to deal with this matter by confidential instructions to the Consuls, as suggested in our previous Report. The clause in its present form is not, however, open to the same objections as those previously suggested, and we should not be disposed to insist on its rejection. We retain our objection to the words, "with the concurrence of the Commissioners of Her Majesty's Treasury."

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers inclosed in Foreign Office Letter of September 12, 1887.*

(A.) Draft of proposed Order in Council establishing new Table of Fees for the General Consular Service. (For Order in Council as issued, see Confidential No. 5526**.)
(B.) Consular Fees Order in Council, 1885. Confidential No. 5093*.
(C.) Draft of proposed Order in Council establishing new Tables of Fees for China, Japan, and Corea Consular Service. (For Order in Council as issued, see Confidential No. 5526*.)
(D.) The China, Japan, and Corea (Consular Fees) Order in Council, 1885. Confidential No. 5093**.
(E.) Act 6 Geo. IV, cap. 87.

Treasury, September 10, 1887.

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## No. 30.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received December* 10.)

My Lord, *Royal Courts of Justice, December* 10, 1887.

**Sugar Conference. As to proposal for imposition of surtax on bountied sugar.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to a question which it was anticipated might shortly occupy the attention of the International Conference now sitting in London upon the subject of sugar bounties.

That it was considered probable that proposals would be laid before the Conference by the Representatives of one or more of the Powers who were parties thereto for the inclusion, amongst other terms of a Convention to be entered into by the Powers now in Conference, of a provision empowering the Contracting Parties to such a Convention, in the event of bounties being granted in countries not parties thereto upon the exportation of raw or refined sugars, to impose a surtax or countervailing duty on the importation of such sugars of and from those countries.

That the Convention of Paris, which was entered into on the 8th November, 1864, between Belgium, France, the Netherlands, and Great Britain for the purpose of regulating the drawbacks on sugar, contained a proviso (Article XIX) to the following effect:—

"The High Contracting Powers reserve to themselves to agree as to the steps to be taken for obtaining the adhesion of the Governments of other countries to the arrangements of the present Convention.

"In the event of bounties being granted in the said countries on the exportation of refined sugars, the High Contracting Parties will be at liberty to come to an understanding as to the surtax to be imposed on the importation of refined sugars of and from the said countries."

That the Convention, however (the duration of which was fixed at ten years by Article XXI thereof), expired by effluxion of time without any attempt having been made to impose such a surtax; and that the question whether its imposition by Great Britain would or would not be a contravention of her Treaty engagements under most-favoured-nation Articles entered into with countries not parties to the Convention, having thus never arisen in any practical form, appeared not to have been made the subject of careful consideration in its purely legal aspect.

That it would be observed that the provision in Article XIX of the now expired Convention of 1864 apparently made the imposition of the surtax contemplated therein contingent on an understanding or settlement to be previously arrived at by the High Contracting Parties conjointly, and also left it apparently competent for any one of the Signatories to the Convention, by refusing to come to an understanding with the remaining co-signatories, to prevent the imposition of the surtax by any one or more of the other Contracting Parties.

That it was thought that the terms of any Article which might be laid before the present Conference for consideration would probably be of a more stringent character, and that it might be proposed to include raw as well as refined sugar within the scope of its operation, and to provide that in the event of bounties being granted in any country on the exportation of raw or refined sugars any one of the High Contracting Parties should be at liberty to impose a corresponding surtax on the importation of such sugars of and from such country, or even to *prohibit* the importation of such sugar.

That it was moreover possible that the proposal might assume a compulsory form, and provide that, in the circumstances indicated above, each of the High Contracting Parties should be respectively bound to impose a corresponding surtax on sugar imported from such country, or to prohibit its importation.

**Are inclosed drafts contrary to Treaty engagements?**

**or should they be modified?**

That, in those circumstances, your Lordship would wish to be advised, for the information and assistance of the British Delegates to the Conference, whether proposals in any of the four forms (A), (B), (C), and (D), inclosed with Sir Julian Pauncefote's letter, or following their general lines, could, having regard to the existing Treaty engagements of this country, safely be accepted by the Delegates; and, if not, to what extent and in what respects it would, in our opinion, be necessary to modify them in order to bring them into accord with those engagements.

That a statement of the most-favoured-nation Articles now binding Great Britain would be found collected in a form convenient for reference in the Parliamentary Paper (E).

That the following Treaties had been concluded between Great Britain and foreign Powers since the expiry of the Convention of Paris of 1864, viz.:—

| EUROPE. | |
|---|---|
| Austria-Hungary | Dec. 5, 1876 |
| France | Feb. 28, 1882 |
| Greece | Nov. 10, 1886 |
| Italy | June 15, 1883 |
| Montenegro | Jan. 21, 1882 |
| Portugal | May 22, 1882 |
| Roumania | April 5, 1880 |
| ,, | Nov. 26, 1886 |
| Servia | Feb. 7, 1880 |
| Spain | April 26, 1886 |

| ASIA. | |
|---|---|
| Corea | Nov. 26, 1883 |
| **AFRICA.** | |
| Egypt | Mar. 3, 1884 |
| Tunis | July 19, 1875 |
| Zanzibar | April 30, 1886 |
| **AMERICA.** | |
| Equator | Oct. 18, 1880 |
| Paraguay | Oct. 16, 1884 |
| Salvador | June 23, 1886 |
| Uruguay | Nov. 13, 1885 |

while, of the various most-favoured-nation Articles which were actually in force at the time when the Convention of Paris expired, Sir Julian Pauncefote was particularly to direct our attention to those contained in the Commercial Treaties between Great Britain and Russia of the 12th January, 1859 (Articles II, III, and X), and between Great Britain and Austria of the 5th December, 1876 (Articles II, III, and V).

That Sir Julian Pauncefote was also to call our special attention to Article III of the Treaty of the 28th February, 1882, between Great Britain and France, relating to prohibitions, which was as follows:—

"The High Contracting Parties engage not to enforce one against the other any prohibition of importation or exportation which shall not, at the same time, be applicable to all other nations."

That the bearing of those particular Articles on the question now under consideration seemed especially important, inasmuch as their stipulations had formed the subject of actual discussion in relation to it, although such discussion had been followed as yet by no tangible or practical result.

That Sir Julian Pauncefote was also to direct our attention to the two Foreign Office Memoranda of the 19th May, 1879, and the 31st May, 1880, respectively; and with respect to the latter Memorandum (which was prepared by Mr. C. M. Kennedy, the Head of the Commercial Department of the Foreign Office, who was one of the British Delegates to the Conference now sitting) he was to ask us to be good enough to inform your Lordship whether we agreed with the meaning attributed to the phrase "under like circumstances" on p. 6, and to the phrase "like goods" on p. 7 thereof.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship, at our early convenience, with our opinion on the question submitted in that letter, and with any general observations which we might have to offer on the matter.

We were also honoured with a further letter from Sir Julian Pauncefote, dated the 8th December, stating that, with reference to his letter of the 3rd instant, he was directed to inform us that your Lordship had learnt from Baron Henry de Worms that the question which was referred to in that letter would probably be brought before the Conference on Sugar Bounties at its meeting on the 12th instant. That it would, therefore, be a matter of considerable importance that your Lordship should be able to instruct the British Delegates as to the precise position which they could properly take on the points involved—as the negotiations in which Her Majesty's Government were engaged would be placed in a position of much embarrassment in the absence of such definite instructions.

That Sir Julian Pauncefote was accordingly to request that we would be so good as to take into our earliest consideration the papers referred to us in his abovementioned letter, and that we would report, as soon as we could conveniently do so, on the points therein raised.

**Proposed enactment.**

That Sir Julian Pauncefote was further directed to state that there was another point which might, with advantage, be considered in connection with the questions now before us, namely, whether Her Majesty's Government were precluded by the most-favoured-nation clauses in the Commercial Treaties, which had been referred to us, from declaring by a legislative enactment—general in its terms and applicable alike to all notions—that foreign sugar should only be allowed to be imported into the United Kingdom under the conditions (or such modifications, if any, of their terms as we might suggest) set forth in the form which accompanied Sir Julian Pauncefote's letter.

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In obedience to your Lordship's commands we have the honour to report—

That we have considered the papers (A), (B), (C), and (D) submitted to us, containing the drafts which may be proposed for acceptance by the Conference, and also the various Treaties mentioned in Sir Julian Pauncefote's letter.

(C) inconsistent with m.-f.-n. clauses.

In our opinion, as long as Treaties remain in force containing clauses such as those to which our attention has been particularly called, namely, Russia, 12th January, 1859 (Articles II, III, and X), and Austria, 5th December, 1876, Italy, 15th June, 1883 (Articles II and XI), and some other of the Treaties to which our attention is called, and which contain similar clauses, Draft (C) would be inconsistent with the obligations of such Treaties. Drafts (A), (B), and (D), though not inconsistent, as they only provide for "liberty to come to an understanding," "liberty to impose a surtax," and "liberty to prohibit," could not produce any practical result as long as such Treaties remain in force.

(A), (B), and (D) useless during existence of such Treaties.

No objection to (B) and (D) if Powers will consent.

If the Powers represented at the Conference are prepared to consent to the obligations embodied in the drafts (B) and (D), and to agree to the necessary variation of their respective Treaties or Conventions to the extent therein provided, we see no objection to the Representatives of this country being authorized to agree thereto, subject to the formal assent of the respective Powers.

Proposed legislation inconsistent with Treaties.

As long as the Treaties to which we have referred remain in force, Her Majesty's Government would not be justified in consenting to such a legislative provision as that suggested in the draft inclosed in the letter of Sir Julian Pauncefote of the 8th December, 1887.

Explanation of terms.

In our opinion the words "under like circumstances" refer to circumstances connected with exportation or importation, and "like goods" refer to the quality, nature, and description of the article. Neither expression has, we think, any reference to the conditions of manufacture.

Grant of bounties an argument for terminating m.-f.-n. Treaties.

While expressing the views hereinbefore contained, we think it right to add that, although, as long as the Treaties to which we have referred are binding, it is not open to this country to impose retaliatory duties on goods bountied by countries with which those Treaties are in force, such bounties may produce an effect so clearly contrary to the object of the most-favoured-nation clauses that the grant of bounties gives to Her Majesty's Government the strongest argument for putting an end to such Treaties in cases in which it is considered desirable so to do.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Article V of Austrian Treaty consistent with prohibition of bountied goods.

P.S.—I desire to add that, in my opinion, if Article V of the Treaty with Austria of the 5th December, 1876, stood alone, this country would be entitled to prohibit the importation of articles on which bounties are given.

E. C.

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(A.)—*Article XIX of the Convention of Paris of November* 8, 1864 :—

The High Contracting Powers reserve to themselves to agree as to the steps to be taken for obtaining the adhesion of the Governments of other countries to the arrangements of the present Convention.

In the event of bounties being granted in the said countries on the exportation of refined sugars, the High Contracting Parties will be at liberty to come to an understanding as to the surtax to be imposed on the importation of refined sugars of and from the said countries.

(B.)—*Article XIX of the Convention of Paris* (*see Form* (A.) ), *modified as follows* :—

In the event of a bounty (bounties) being granted in any country . . . . sugars, each of the High Contracting Parties shall be at liberty to impose a corresponding surtax or countervailing duty on the importation of raw or refined sugars of and from such country.

(C.)—*Article XIX, modified as follows* :—

In the event of a bounty being granted in any country . . . . sugars, each of the High Contracting Parties shall, within its own limits respectively, impose a corresponding surtax . . . . from such country.

(D.)—*Article XIX, modified as follows* :—

In the event of a bounty (bounties) being granted in any country on the exportation of raw or refined sugars, each of the High Contracting Parties will be at liberty to prohibit the importation of raw or refined sugar of and from the said countries.

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*Submitted to the Law Officers in Foreign Office letter of December* 8, 1887.

From and after the passing of this Act, and except as hereinafter provided, no foreign sugar shall be imported into the United Kingdom. Provided always, that where the Government of any foreign country shall enter into an Agreement with Her Majesty's Government not to allow any bounties on the exportation of sugar, it shall be lawful for Her Majesty, by Order in Council, to declare that sugar the produce of, and exported from, such foreign country shall be admitted into the United Kingdom during the continuance of such Agreement.

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***List of Papers sent to Law Officers, December*** 3, 1887.

(A.), (B.), (C.), (D.) Forms (M.S.)
(E.) List of Commercial Treaties, Parliamentary Paper, No. 30, Commercial (1883). Foreign Office No. 2757.
(F.) Treaties concluded since those mentioned in (E.). *Qy.* see List in Confidential No. 5523.
(G.) Convention of Paris, November 8, 1864. No. 489.
(H.) Treaty with Russia, January 12, 1859. No. 427.
(K.) Treaty with Austria, December 5, 1876. No. 608.
(L.) Foreign Office Memorandum, May 19, 1879. Confidential No. 3911.
(M.) " " May 31, 1880. Confidential No. 4223.
(N.) Law Officers' Report, July 12, 1880. Confidential No. 4539, p. 52.

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## Germany.

### No. 31.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received January* 18.)

My Lord, *Royal Courts of Justice, January* 17, 1887.

Administration of oaths by Consuls. Proposed Anglo-German Convention.

WE were honoured with the commands of your Lordship's predecessor signified in Sir Julian Pauncefote's letter of the 18th ultimo, stating that he was directed to transmit to us the papers noted in the accompanying list with reference to the subject of a proposed Convention between the German Empire and Great Britain respecting the competence of the respective Consuls of either Contracting Party to administer oaths within the dominions of the other.

That Sir Julian Pauncefote was to inclose a draft of a despatch which it was proposed to address to Sir E. Malet, Her Majesty's Ambassador at the Court of Berlin, for communication to the German Imperial Government, but that Sir Julian Pauncefote was to add that the Secretary of State would first be glad to be favoured with our opinion as to whether the instructions therein contained were such as might properly be sent to Sir Edward Malet in the circumstances.

That it would be seen that the substitution which it was considered desirable to make of the words "for the purpose of transactions pending or to be conducted" for the words "in cases which are to be determined," which occurred in Article 1 of the draft proposed to Germany, was based upon the terms of the Report of the then Law Officers of the Crown, dated the 6th May, 1884.

That the Secretary of State would further be glad to know whether we considered that the words which it was proposed to substitute would include evidence required for the purpose of suits pending before Courts of Law.

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That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour the Secretary of State with our opinion on the questions submitted in his letter, and with any general observations which we might also desire to offer as bearing upon the subject.

In obedience to the commands of the Secretary of State we have the honour to report—

**Disapprove proposed instructions to Sir E. Malet.**

That, in our opinion, the proposed instructions are not such as should be sent to Sir E. Malet.

The concluding words of section 13 of 5 & 6 Wm. IV, cap. 62, do not create any power to administer an oath; those words only exempt from the prohibition of the section "any oath, affidavit, or affirmation which may be required by the laws of any foreign country to give validity to instruments in writing designed to be used in such foreign countries respectively."

**No legal authority for Consuls in England to administer oaths.**

We are of opinion that in England, as in Germany, there is no legal authority for the Consuls of foreign States to administer oaths; and, whatever may be the case with regard to Germany, an Act of Parliament would be required to give such authority to foreign Consuls here.

**Treaty nugatory without Act.**

It may be advisable to pass an Act enabling Her Majesty in Council to give such privilege to the Consuls of countries in which a similar power is given to our Consular Representatives; but we think there would be little advantage, if any, in making a Treaty with Germany, which, until such legislation were passed, would be entirely nugatory, so far at least as this country is concerned.

**Disapprove counter-draft of Article I.**

We need only add that, in our opinion, the phrase in Article I, "in cases which are to be determined," is preferable to that suggested in the counter-draft.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers to accompany Foreign Office reference to the Law Officers of the Crown, December* 18, 1886.

1. Law Officers' Report, May 6, 1884 (Confidential No. 5121, p. 57).
2. Memorandum by Mr. Bergne, March 11, 1886.
3. Draft Convention with Germany.
4. Draft despatch to Sir E. Malet, Her Majesty's Ambassador at Berlin.

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## Annex 1.

*Draft of Despatch to Sir E. Malet.*

(No. . Treaty.)

Sir,
*Foreign Office, December* , 1886.

HER Majesty's Government have had under their consideration the draft Convention respecting the administration of oaths by Consuls of the one party in the territory of the other, which was inclosed in your Excellency's despatch No. 4, Consular, of the 6th March last.

The subject, as you are aware, is not free from difficulty in this country, and in view of the conditions of existing British law, Her Majesty's Government have felt themselves obliged to suggest certain amendments in the proposed text, as will be seen from the inclosed counter-draft.

They are advised that the terms of the existing Act 5 & 6 Wm. IV, cap. 62, sec. 13 (of which I inclose a copy for communication to the German Government), empowers a foreign Consul to administer oaths to a person of any nationality in the United Kingdom for the purpose of transactions pending, or to be conducted, in the country such Consul represents.

The first paragraph of Article I of the German draft can therefore be accepted with the slight verbal amendment shown in the British counter-draft, which is designed to bring it, without question, within the terms of the above-mentioned Act.

In regard to the second paragraph of Article I, which imposes the penalty of perjury in respect of oaths so taken, it should be explained that no British law at present exists sufficient to carry this provision into effect; but in view of the real importance attaching to this point, Her Majesty's Government would be prepared to sign the Convention in these terms, on the distinct understanding that the second paragraph of Article I shall not come into effect until the necessary legislation has been passed in this country.

In regard to Article II, difficulties exist in some British Colonies as to the necessity of special legislation in such matters, and Her Majesty's Government, therefore, feel themselves compelled to propose an alternative Article providing for the adhesion of any Colonies if or when they are in a position to give legal effect to the Convention, and are prepared to accept its terms.

I have to request that your Excellency will submit these observations to the German Government, adding, that if the modifications now proposed in the German draft are accepted, you will receive authority to sign the Convention forthwith on the understanding as to the second paragraph of Article I mentioned in this despatch.

I am, &c.

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## Annex 2.

*Draft of a Convention between the German Empire and Great Britain respecting the Competence of their respective Consuls to administer Oaths.*

| *German Draft.* | *British Counter-Draft.* |
|---|---|
| ARTICLE I. | |
| IN the territory of either of the High Contracting Parties the Consuls-General, Consuls, and Vice-Consuls of the other party, as well as their acting Representatives, shall be authorized to administer oaths *in cases which are to be determined* in the territory of the party which has appointed such Consuls, &c., provided that they be empowered by the latter to administer such oaths. | *for the purpose of transactions pending or to be conducted.* |
| The oaths thus tendered shall, as regards the penalties attaching to perjury in the country in which they are tendered, be regarded as if they were tendered before the authorities of that country empowered to administer oaths. | |
| ARTICLE II. | ARTICLE II. |
| The provisions of the present Convention shall apply to the Colonies, foreign possessions, and Protectorates of the High Contracting Parties. | The provisions of the present Convention shall only be operative in such of the Colonies and foreign possessions of either of the High Contracting Parties on whose behalf notice of adhesion shall have been given to each other by the British and German Governments respectively. |
| ARTICLE III. | |
| The present Convention shall be ratified, and the ratifications exchanged as soon as possible at . It shall come into force thirty days after the exchange of ratifications. It may be denounced at will by either of the High Contracting Parties, but shall remain in force for three months after such notice to terminate. | |

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## No. 32.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 5.)

My Lord, *Royal Courts of Justice, March* 4, 1887.

Marriages at Embassies and Legations.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch (Mr. Jocelyn's No. 10 of the 11th February, 1887) from Her Majesty's Chargé d'Affaires at Darmstadt, in which he requested to be informed whether the provisions of "The Marriage Act, 1886" (49 & 50 Vict., cap. 14), applied to marriages celebrated at Her Majesty's Embassies and Legations abroad.

That it was conceived that the particular Act in question (a copy of which was inclosed), being confined in its terms to England and Wales, could have no application to marriages celebrated beyond those limits, and that the various previous English Marriages Acts did not extend beyond this country (see Dr. Tristram's letter to the Archbishop of Canterbury of the 9th February, 1877);* and that it was stated in the Report of the Royal Commission on the Laws of Marriage† (1868, p. 4: "Marriages of British Subjects in Foreign Countries"), that a marriage of a British subject solemnized in the hotel of an Ambassador, "according to the law of England as it existed before Lord Hardwicke's Act,‡ has always been upheld by English Courts as a valid marriage."

That your Lordship would therefore propose to inform Mr. Jocelyn that it was not necessary to the validity of marriages celebrated at the British Legation that they should have been solemnized between the hours prescribed by English Statute Law; but that, before doing so, your Lordship would be glad to be favoured with our opinion as to whether that view was correct or not, and also with any further observations which we might be good enough to add upon the matter.

In obedience to your Lordship's commands we have the honour to report—

Not necessary to celebrate them within the hours prescribed by Statutes.

That, in our opinion, it is not necessary to the validity of marriages celebrated at the British Legation that they should have been solemnized between the hours prescribed by English Statutes in respect of marriages solemnized in England.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 33.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received June* 30.)

My Lord, *Royal Courts of Justice, June* 29, 1887.

German claim to jurisdiction over foreigners in Protectorates.

WE were honoured with the commands of the Secretary of State signified in Sir Julian Pauncefote's letter of the 18th December last, stating that he was directed by the Earl of Iddesleigh to transmit to us the papers noted in the accompanying list relative to the legal position of the German Protectorates in South and West Africa, the South Seas, and elsewhere, a question which had lately formed the subject of discussion between the Imperial German Government and that of Her Majesty.

Character of Protectorate proclaimed.

That we should observe from Count Hatzfeldt's *note verbale* of the 29th August of last year that a Protectorate proclaimed in the name of His Majesty the Emperor of Germany was not in its terms limited to the persons residing or sojourning in the protected territory, but extended to the district itself, and accordingly had a territorial character.

That all persons, moreover, being within such a Protectorate were, irrespectively of their nationality, subject to German jurisdiction, side by side with which the jurisdiction of any other State could not be exercised.

Ground of claim.

That in the opinion of the Imperial German Government the right of exercising jurisdiction in the Protectorates was based upon the fact that the protected territories were placed under the German suzerainty, and the exercise of supreme justice was not dependent upon the territories being declared parts of the German Empire, nor was the German supreme jurisdiction derived from the native Chiefs existing in the Protectorates.

That at the same time, on grounds of expediency, jurisdiction over the natives had, in some cases, been left by Treaty in the hands of their Chiefs.

Consequent rights of the Reichstag.

That the practical convenience of the view to which legislative sanction, as far as Germany was concerned, had been given by the German Imperial Law of the 17th April, 1886, that a country which submitted to German protection, or to which, being an uncivilized place, German protection was extended without any submission, became *ipso facto* subject to the Reichstag, and to the laws made by that body, was evident; and that the Secretary of State would be glad to be favoured with our opinion as to whether or not the British Parliament also possessed, in analogous circumstances, a similar power to legislate for countries placed under British protection.

Does Parliament possess similar rights?

Difference between German view and that of former Law Officers.

That the view taken by the German Imperial Government that all persons within a German Protectorate were, *irrespective of nationality*, subject to German jurisdiction, indicated a conception of the rights and powers assumed by the establishment of a Protectorate which seemed to differ from that taken by the former Law Officers of the Crown, in advising Her Majesty's Government with reference to the extent of the jurisdiction exercisable by Her Majesty over the subjects of foreign civilized nations within British Protectorates.

That Sir Julian Pauncefote was specially to call our attention, as bearing upon the subject, to the various opinions of past Law Officers of the Crown which were sent therewith, and in which it would be observed that questions relating to the Foreign Jurisdiction Acts, which did not arise on the present reference, were to some extent also involved; and that he was to request our opinion as to whether the views expressed by the German Imperial Government might be accepted in their entirety; and if not, in what respects, and to what extent, we considered that they were open to objection.

That while requesting that we would take the papers transmitted therewith into our consideration, and that we would favour the Secretary of State with our opinion on the questions submitted in his letter, Sir Julian Pauncefote was also to ask that we would be good enough to add any general observations which we might have to offer on the case.

In obedience to the commands of the Secretary of State we have the honour to report—

That, having regard to the great importance of the questions raised in the papers to which our attention has been called, we have thought it right to delay our answer to those questions until we were in a position to submit to Her Majesty's Government a complete Memorandum upon the subject.

The particular form of Protectorate with regard to which our opinion is now asked is somewhat new to international relations, and no discussion of any such form of government can be found in the earlier writers upon international law. But the main principles which must be regarded are, in our opinion, well settled; one of these is that the right of jurisdiction over the persons found in any territory belongs only to the Power which is entitled to rights of territorial sovereignty. Those rights may be acquired by conquest, by cession, or by settlement, and where they exist, the Power which possesses them is clearly entitled to exercise jurisdiction over all persons coming within the limits of the territory, whether they be natives of such territory, or the subjects (other than Diplomatic Representatives) of a foreign Power.

Jurisdiction over foreigners exists only where there are rights of territorial sovereignty.

But no Power has any right, according to international law, to exercise jurisdiction over the subjects of another Power, unless they are residing within its own territorial limits.

Municipal laws do not affect international law.

The municipal laws of any country cannot affect or enlarge its rights under international law, and it is not material, therefore, to refer, in a discussion of this question, either to the terms of the Foreign Jurisdiction Acts of this country, or to the provisions of the German Imperial Decrees.

The English Acts show that it is doubtful whether, but for the authority given by them, Her Majesty would have any effective jurisdiction even over her own subjects in foreign countries, and it is clear that no provision in those Acts could operate to subject to English law any subject of a foreign State. The proposition now contended for by the German Imperial Government is that it is competent to that Government to establish what may be properly called a Consular Protectorate in a foreign country, that is to say, a Protectorate in virtue of which the German Government does not claim the rights, or accept the liabilities, of territorial sovereignty. And it is claimed that, upon the establishment of that Consular Protectorate, the subjects of all other

Germans claim power to establish a Consular Protectorate with jurisdiction over foreigners.

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* Dr. Tristram's letter of February 9, 1877, with Law Officers' Reports, vol. 1877 (Persia), p. 42. Confidential Paper No. 4216.

† Foreign Office, No. 1469.

‡ Lord Hardwicke's Act, 26 Geo. II, cap. 33.

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Powers become amenable to the jurisdiction of the officer appointed to administer such Protectorate, and to the Tribunal of the Protectorate by which the Consular Court is replaced.

It is curious to note, in regard to this claim, the opinion given by Dr. Krauel to the German Government, and confidentially communicated to Mr. Scott (Memorandum, 10th March, 1886) that, "in those islands and places to be assigned to German influence by the declaration of demarcation, but not yet notified as placed under the German flag, Her Majesty's High Commissioner could certainly continue to exercise civil and criminal jurisdiction over British subjects, but that it would be almost impossible to permit this in regard to places where German sovereignty or Protectorates had already been established, as it would be a clear infringement of the rights of territorial sovereignty." It will be observed that the claim to exercise an exclusive jurisdiction is put upon the ground which we conceive to be right in law, but which does not exist in the case of the Protectorate in question.

Claim not justified. Concur in opinions of former Law Officers.

We are of opinion that the claim above stated is not justified by the accepted principles of international law. Substantially the same question has been on four occasions considered by our predecessors in office. In August 1880 the Attorney- and Solicitor-General expressed their opinion that Her Majesty could by Treaty with a native Chief obtain jurisdiction within his territories over subjects of foreign civilized States resident within such territories, but the exercise of any such jurisdiction might be made the ground of diplomatic objection by the civilized State to whose subject it was extended, and it should not, as a rule, be exercised without the concurrence of that State given generally or in the particular case.

Again, in December 1884, the same Law Officers advised that legal jurisdiction over persons other than British subjects could not, under the circumstances (there being no native Power capable of ceding to the Queen jurisdiction over the natives, or, in fact, over any one), be acquired within the protected area in question unless it became British soil. In August 1885 the then Attorney- and Solicitor-General (Sir Richard Webster and Sir John Gorst) used the following words: "That, in our opinion, neither the native African Chiefs nor any of the bodies of freebooters settled in Bechuanaland could, either by Treaty or sufferance, confer upon Her Majesty jurisdiction over the subjects of any civilized Power other than Great Britain." . . . "The effect of the duly promulgated Order in Council of the 27th January, 1885, is to enable the High Commissioner to constitute Tribunals in Bechuanaland having jurisdiction over British subjects and protected natives, but not over the subjects of other civilized States." . . . "The Bestuur, or any other establishments in Stellaland which Sir Charles Warren has created or sanctioned, so far as they are consistent with the Order in Council, may be regarded as the particular methods by which he has thought fit to exercise his jurisdiction over British subjects and protected natives in Stellaland. In this sense, but in no other, they have a legal status. The subjects of the other civilized States who are in Stellaland cannot be interfered with by the Bestuur, or any Tribunals that may be instituted under its authority, without the consent of their own Governments."

And, finally, in April 1886, other Law Officers (Sir Charles Russell and Sir Horace Davey) expressed their opinion that "as against the Chiefs (assuming that they have sovereign territorial authority, and do not merely exercise tribal personal authority as Chiefs) Her Majesty can lawfully acquire by Treaty with them the right to exercise civil and criminal jurisdiction over subjects of civilized Powers other than Great Britain within the territories of the Chiefs; but as against the subjects of other civilized Powers, we think that the jurisdiction (whatever may be its theoretical limits) should be exercised with, and cannot safely be exercised without, the assent of the Power concerned, given generally or in the particular case."

Should refuse to admit German claim to jurisdiction over British subjects in a Consular Protectorate.

We entirely concur in the advice which has been given to Her Majesty's Government by our predecessors in office for the guidance in its action in reference to territories over which this Government exercises a Protectorate, and we are of opinion that the German Government should be notified that the claim to exclusive jurisdiction over British subjects in territories with respect to which it only exercises a Consular Protectorate is not one which Her Majesty's Government can admit.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
EDWARD CLARKE.

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*List of Papers.*

1. Memorandum (Sir E. Hertslet), October 30, 1882. Confidential No. 4689.
2. Colonial Office, January 8, 1886.
3. Sir E. Malet, No. 142, March 13, 1886.
4. Count Hatzfeldt, May 11, 1886.
5. Sir E. Malet, No. 270, June 26, 1886.
6. Count Hatzfeldt, June 28, 1886.
7. Mr. Scott, No. 315, August 10, 1886.
8. Count Hatzfeldt, August 29, 1886.
9. Sir E. Malet, No. 432, October 23, 1886.
10. Ditto, No. 445, November 6, 1886.

11. Law Officers to Colonial Office, August 3, 1880. Confidential No. 4539, p. 55 A.
12. Ditto, November 15, 1884. Confidential No. 5121, p. 2 A.
13. Ditto, December 11, 1884. Confidential No. 5121, p. 56 A.
14. Ditto, July 20, 1885. Confidential No. 5246, p. 104*.
15. Ditto, August 10, 1885. Confidential No. 5246, p. 14 A.
16. Ditto, April 21, 1886. Confidential No. 5440, p. 47.

17. To Sir E. Malet, No. 63 A, January 26, 1886.
18. To Mr. Scott, No. 370, July 31, 1886.

Viscount Lyons, No. 87, Africa, July 27, 1886. Confidential No. 5459, p. 212.

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## No. 34.

*Legal Opinion by Dr. Hirsch, inclosed in Mr. Scott's No. 22, Treaty, of July 14, 1887.*

Goods bearing English trade-marks counterfeited in Europe, consigned to a German subject in Siam.

THE case, as submitted by the English Embassy to the undersigned barrister, for his opinion, is as follows:—

The trade-marks of an English subject, which have been registered in England, have been counterfeited in Europe, and goods provided with these counterfeit marks have been introduced into Siam for the purpose of sale.

The goods so introduced were consigned to a German subject in Bangkok.

The questions put are:—

1. What steps can be taken by the aggrieved English manufacturer in order to get his losses made good?

2. Can a claim be brought before the Consular Court in Siam, and what are the provisions of German law under which proceedings can be instituted?

3. Whether in this case appeal can be made from the decision of the Consular Court at Siam, and to what Tribunal?

Steps to be taken by the English manufacturer to obtain redress.

German law respecting protection of trade-marks.

In reply to No. 1, the Law respecting the protection of trade-marks of the 30th November, 1874, lays down in section 20: "The present Law applies to trade-marks of traders who have no trade establishment in Germany. And also to the names or firms of foreign producers or traders, provided that, according to a notice inserted in the Imperial Gazette, German trade-marks, names, and firms are protected in the State where the foreigners in question have their trade establishment, but, in regard to the trade-mark, subject to the following conditions:—

1. The trade-mark must be entered at the Commercial Court at Leipzig, with a certificate that the person entering it submits to the jurisdiction of the said Court in all actions founded upon this Law.

2. The entry must be accompanied by a proof that the enterer has fulfilled the conditions necessary to entitle him to protection in his own country for his trade-mark.

3. This registration gives a legal right of ownership in the trade-mark only in so far, and as long, as the person entering it is protected in the use of the mark in question in the foreign State.

By the declaration of Article VI of the Treaty of Commerce between the Zollverein and Great Britain of the 30th May, 1865, and the 14th April, 1875 ("Reichsgesetz Blatt" of 1875, p. 199), a system of reciprocal protection, in the meaning of No. 2, has been introduced, and applies to the whole territory of the German Empire.

By the Law respecting Consular jurisdiction of the 10th July, 1879 ("Reichsgesetz Blatt," 1879, p. 197, &c.), it is laid down (Par. I) that Consular jurisdiction is to be exercised in those countries in which it is permitted by tradition or Treaty, and that the subjects of the Empire, both native and protected, settled or residing in those Consular districts, are subjected to such jurisdiction.

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There is at Bangkok a German Consulate for the Kingdom of Siam (*vide* p. 54 "Reichsgesetz Blatt," 1872).

According to section 3 of the Consular Jurisdiction Law in regard to civil law, it is to be assumed that in the Consular districts of jurisdiction the Imperial laws, the Prussian general law, and the general laws of those Prussian territories in which the general law has legal force, having reference to civil law, are in force.

In commercial matters, the law immediately applicable is the law of commercial usage in force in the Consular jurisdiction district.

It depends accordingly on whether a law of commercial usage relating to the protection of trade has been instituted for the Kingdom of Siam. This must be proved by the manufacturer. If this is not the case, the provisions of the Imperial Law of the 30th November, 1874, relating to protection of trade-marks, would come into application. The protection of the English manufacturer depends, therefore, on whether he has registered the trade-mark at the Commercial Court at Leipzig, in accordance with the above-mentioned section 20, No. 1. If this is not the case, then the use of the trade-mark by Germans is not forbidden, and, therefore, cannot be protected by the German Consul in favour of the English manufacturer. But if the proper registration has taken place at the Commercial Court at Leipzig, then section 13 of the Law relating to protection of trade-marks is applicable, according to which every German producer or trader (and, according to section 20, also foreign traders) can proceed against the person who designates, illegally, goods or their packing with a trade-mark which, according to this Law, is to be protected for the former, or with the name or the firm, and demand that he be declared not entitled by law to use this mark. Likewise, the producer or trader can proceed against the person who brings into the market or sells goods thus illegally designated, and demand that he be declared not entitled by law to bring goods thus designated into the market, or sell them; and section 14 of the same enacts: "Whoever, knowingly, illegally designates goods or their packing with a trade-mark which is to be protected according to this Law, or with the name, or with the firm of an inland (or, as in the present case, of a foreign) producer or trader, or whoever knowingly brings into the market or sells goods thus illegally designated, will be punished by a fine of 150 to 3,000 marks, or by imprisonment not exceeding six months, and will be bound to compensate the party injured."

Prosecution can only be initiated by suit. Further, the following paragraphs of the Law concerning protection of trade-marks must be taken into consideration.

Section 15. Instead of any compensation founded on this Law the person injured can demand that, in addition to the punishment, a fine also may be paid to him, not exceeding 5,000 marks. Persons sentenced to such a fine are liable as joint debtors. A fine once adjudged excludes any further claim to compensation.

Section 16. The question whether damage has been sustained and to what amount is settled by the Court, after weighing all the circumstances, and on its own responsibility.

Section 17. If sentence has been pronounced on the ground of section 14, then, with regard to the goods in the possession of the condemned party, if the injured party should demand it, judgment is to be given for the destruction of the marks upon the packing or the goods, or if the removal of the marks be otherwise impossible, for the destruction of the packing or of the goods themselves.

If a sentence is given in penal procedure, the injured party is entitled to publish openly the sentence at the expense of the person sentenced. The manner of publication, as also the limit of time, is to be determined in the sentence.

The injured party accordingly is free to proceed in the Consular Court against the party to whom the goods in question were consigned, if it can be proved that the latter knew that the goods were illegally marked, and that he brought them into the market and sold them, and demand—

(1.) That the same be punished, and that the sentence be published.

(2.) That he pay the compensation to be fixed according to section 16, or, instead of this, that he pay a fine not exceeding 5,000 marks. If a fine is demanded, no further compensation can be demanded.

(3.) That the marks on the goods introduced be destroyed.

Course of procedure before German Consular Courts.

2. In regard to the procedure, this is regulated, if compensation is claimed, by the Consular Court, in accordance with the provisions of the law of civil procedure for cases before the Amtsgericht (section 15 of the Law on Consular Jurisdiction of the 10th July, 1879), that is to say, the complaint can be handed into the Consul in writing, or entered as a Protocol. An attorney's services are not required. The

parties, however, can be represented by any persons competent to conduct an action ("processfähig"), that is to say, by a person who can bind himself by contract. The Representative must produce and hand in a written power of attorney.

If punishment and also a fine is claimed, a demand to that effect must be handed to the Consul.

Course of procedure in event of appeal.

3. There is no appeal against the decisions of the Consul or Consular Court in civil cases, unless the value of the object in dispute exceeds 300 marks. If the value exceeds that amount the plaintiff, in actions of civil law, conducted before the Consul or Consular Court, can appeal to the Imperial Court ("Reichsgericht") to deal with and decide on the legal remedy. Against the decisions of the Imperial Court ("Reichsgesetz") there is no further legal remedy (section 18, Consular Jurisdiction Law). The notice of appeal must be lodged with the Consul within a month from the service of the sentence. This is to be done by handing in a written appeal. In a penal action the decision can be appealed against (section 34 of the Consular Jurisdiction Law).

The Consular Court decides complaints against the decisions of the Consul (this refers to decisions not sentences) (paragraph 35 of the same).

The Imperial Court ("Reichsgericht") is the competent authority to deal with and to decide on the legal remedy of complaints against decisions of the Consular Court, and also on the legal remedy of appeal.

Against the decisions of the Imperial Court there is no further legal remedy.

The time for lodging the appeal in penal actions is two weeks, and if the sentence has been pronounced in the presence of the defendant, it is to be reckoned from the day of its publication, but if not, from the date on which notice of it was served on him.

*Berlin, July* 7, 1887.

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## No. 35.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received August* 30.)

My Lord,

*Royal Courts of Justice, August* 27, 1887.

Request of Madame Triebel, wife of a German subject, for passports for her sons, born in England, now residing in Germany.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the accompanying papers* with reference to an application which had lately been made to Her Majesty's Consul-General at Hamburgh by a lady named Triebel for the issue of British passports to her two sons, neither of whom was of full age, under the following somewhat exceptional circumstances:

That Mrs. Triebel was a natural-born British subject, but had married a husband of German nationality.

That subsequently to their marriage they resided in the United Kingdom for some years, and that the two sons in question were born in England during that period.

That when the sons were 6 and 5 years old respectively, their father resumed residence at his native place, Bremen, taking his family with him.

That he deserted his wife now some eight years since, but that she had not obtained a divorce from him, and had continued, with her sons, to reside at Bremen up to the present time.

That the father, though resident in England for some time, never became a naturalized British subject, nor had he obtained papers of denationalization from the German Government, and that it would be seen, therefore, that, though the sons were natural-born British subjects, both father and mother had throughout their married life continued to be, and now were, of German nationality.

That in those circumstances, Mrs. Triebel had asked that passports should be issued to her sons with a view, as was presumed by the Consul-General, of enabling them to evade military service in Germany, to which they would otherwise almost immediately become liable.

Wishes of the sons and father not known.

That it did not, however, appear whether the children themselves wished to be regarded as British subjects, nor was it at all clear that their father desired them to be so regarded, and that your Lordship conceived that, until the wishes of the father and of the children themselves were more clearly established, the Consul-General might, in the particular case now under consideration, well hesitate to grant such passports on the unsupported application of the mother alone.

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* Consul-General Dundas, No. 3, Treaty, June 16, 1887; Law Officers' Report, November 13, 1886 (Ehrensperger case). (Confidential No. 5440, p. 43.)

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But that the further and more general question remained as to whether, even in cases where both parents were foreigners, whose presence in the United Kingdom at the time was of the most temporary and transient kind, the fact of birth on British soil entitled a person becoming a natural-born British subject by virtue thereof, to demand under all circumstances on that sole ground alone, as well from the proper British authorities within his country of origin as from such authorities within the United Kingdom, that a British passport should be issued to him.

Question as to limiting grant of passports;

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether any, and if so what, limits might fairly be placed upon the issue of passports by Her Majesty's Ministers or Consuls abroad to persons claiming them as natural-born British subjects under such circumstances as are indicated above; and especially as to whether any distinction should be observed in the treatment of applications for passports which were made to the British authorities in the applicant's country of origin, and those which were made by such applicants when within some foreign country other than his country of origin.

and as to their wishes, and those of their father.

But that should, in our judgment, the two Messrs. Triebel be persons entitled, after proper demand made, to be furnished with passports, your Lordship would also be obliged if in their particular case we would further inform your Lordship whether we considered the issue of such passports to them might be temporarily suspended pending the receipt by the Consul-General of some more definite information as to their own and their father's wishes on the subject.

In obedience to your Lordship's commands we have the honour to report—

Persons born on British soil are British subjects without distinction.

That there is no doubt that, by the law of this country, all persons born on British soil are natural-born British subjects, unless the father is an alien enemy. The nationality of the parents is quite immaterial, nor can any question arise as to the length or objects of their stay on British soil. And there is no distinction between different classes of natural-born British subjects; however that character has been obtained, all such subjects are alike in respect of the duty of allegiance and the rights of recognition and protection.

This nationality can only be divested by a declaration of alienage under the Act 33 and 34 Vict., cap. 14, sec. 4, or by voluntary naturalization in a foreign State. Any natural-born British subject, unless he has so divested himself of that character, is entitled to have his nationality recognized and national protection given him by the issue of a passport, in whatever part of the world he may claim it, from the Representative of the Crown.

Should grant the passports asked for.

In this case, if the sons were of full age, we should advise, as in the case of Mr. Ehrensperger, upon which our opinion was taken in November 1886, that passports should be issued to them upon their satisfying the authorities that they had not made a declaration of alienage under the Act quoted, nor voluntarily become naturalized in any foreign State. As they are under age, they could not make a declaration of alienage, nor could they have obtained for themselves the character of naturalized citizens in Germany, although no doubt they are German subjects, as being the sons of a German father, although they were born in Great Britain. The application in this case is made by the mother, and ought, in our opinion, to be granted. The fact that the father does not concur in that application appears to us immaterial.

They are not exempt from their duties as foreigners.

We think it right to add the expression of our opinion that, in cases of double nationality, Her Majesty's Government would not be entitled to assert for persons being or deemed to be natural-born British subjects exemption from their obligations as subjects of a foreign State; and that if the sons of Madame Triebel should use the passport as a ground for contending that they are exempt from the obligations of military service in Germany, that contention ought not to be supported by Her Majesty's Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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# Haïti.

## No. 36.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.*—(*Received January* 1.)

My Lord, *Royal Courts of Justice, January* 1, 1887.

Claim of Mrs. Allen for losses sustained during an insurrection.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th November, stating that he had the honour to transmit to us the paper* relating to the claim of Mrs. Allen, a coloured British subject, domiciled in Haïti, against the Government of that island, in respect of pillage and destruction done (as was alleged), wantonly and without military necessity, to her house and goods at Coraïl in 1883 by the Government troops whilst they were engaged in suppressing an insurrection in the neighbourhood.

That similar claims for compensation in respect of injury to property committed under analogous circumstances during the suppression of the riots at Port-au-Prince had been in several instances put forward by Haïtain subjects, and that it was also believed by subjects of foreign nations other than Great Britain, but that the Haïtian Government had in every case, as far as was known, refused to entertain them, and that they now maintained that Mrs. Allen had, in the circumstances mentioned, no greater title to compensation at their hands than a Haïtian subject would have in the like event.

That it was conceived, however, that, although the general principle governing such cases undoubtedly was that foreign subjects suffering from the results of an insurrection had no greater claim to compensation than the natives of the country in which the insurrection occurred, yet, if the injury resulted from acts of private plunder or wanton and unnecessary destruction of property not justified by military necessity, and encouraged by lax and inefficient discipline, a neutral Government might have a special claim to compensation on behalf of its subjects; and that Sir J. Pauncefote was specially to bring to our attention, as bearing particularly upon that point, the accompanying Foreign Office Memorandum* of the 23rd October, 1883, the views put forward in which had the general approval of the then Law Officers of the Crown.

That Sir J. Pauncefote was to mention that Mrs. Allen did not put forward any claim for compensation in respect of the alleged damage done to her house and goods (the amount of which she now assessed at 15,000 dollars) until a period of rather more than two years had elapsed from the date of the occurrence of which she complained.

That in explanation of this long delay she, however, pointed out that there was at the time the damage was inflicted nobody but herself to look after her affairs, which had been thrown into a deplorable state, and that she was obliged to put the safety of her three children, whose lives were in danger, before every other consideration.

That she was afterwards, moreover, for eight months continually ill with ague and unable to make the necessary preparations for a journey. That she also pointed out that she lived very far from the capital town of Haïti, that it was difficult to know what was passing there, and that, if it be a fact that the Government had called on all claimants to present their claims, every one was aware of the fact.

That she did not, however, say, in so many words, that she brought forward her claim at the earliest moment possible to her, nor had she at present explained, further than was above stated, the long delay which undoubtedly took place before it was presented.

That Sir Julian Pauncefote requested that we would favour your Lordship with our opinion as to whether Mrs. Allen's claim, if sustained by reasonable *primâ facie* evidence, should, notwithstanding her delay in bringing it forward, receive the support of Her Majesty's Government on the grounds indicated above or on any others, and also with any general observations which we might have to offer on the case.

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* Memorandum dated October 20, 1883 (Confidential No. 5015).

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In obedience to your Lordship's commands we have the honour to report—

Hostile invasion.

That the Memorandum of the Foreign Office of October 1883 does not apply to the present case, as it deals only with the case of a hostile invasion, and the rights of subjects of a neutral State resident in a country during such invasion.

Insurrection.

In the case of an insurrection, where the subjects of a neutral State are wantonly injured through the misconduct of the officers or soldiers of the State, the Government of such neutral State is in some cases entitled to intervene and claim compensation. It is not sufficient that a *primâ facie* case should be made, but very clear and strong evidence should be required by the Government invited so to intervene.

Claim cannot be supported.

In the present case, having regard to the long delay in making the claim, which will render it difficult for the Haïtian Government to ascertain and establish the exact facts of the case, we do not advise that Mrs. Allen's claim should receive the support of Her Majesty's Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
J. PARKER DEANE.

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### No. 37.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received February* 15.)

Imprisonment of Mr. Coles for fraud on National Bank of Haïti.

My Lord, *Royal Courts of Justice, February* 15, 1887.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the case of Mr. Coles, a British subject, who was sentenced by the Criminal Court of Haïti to a term of imprisonment on a charge of fraud, but in whose favour, in consequence of the representations of Her Majesty's Government that there had been misconduct both on the part of the jury and also on that of certain officials of the Court in connection with his trial, the Haïtian Government subsequently exercised the prerogative of pardon.

That Sir Julian Pauncefote was to recall to our recollection that that case, which had been already before us, was in the first instance considered by the late Law Officers of the Crown and by Sir James Deane, Q.C., who reported on the 28th April last year that the irregularities which had been pointed out in connection with Mr. Coles' trial were such as to justify Her Majesty's Government in demanding his release; but that when at a later stage of the case the further question as to whether Her Majesty's Government would be justified in demanding compensation for Mr. Coles was referred to us by direction of the then Secretary of State, we were of opinion that, in view of all the circumstances, Her Majesty's Government would not be justified in demanding such compensation.

That Mr. Coles was accordingly informed that Lord Iddesleigh regretted to be unable, as at that time advised, to interfere further in his behalf, whereupon a correspondence, to which Sir Julian Pauncefote was to direct our more particular attention, took place between the Foreign Office on the one hand, and Mr. Coles and Messrs. King and Hammond (his solicitors) on the other.

That Sir Julian Pauncefote was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to—

1. Whether the terms of the two despatches already sent on the 11th January in reply to Mr. Coles' letter of the 22nd November, 1886, and to Messrs. King and Hammond's letter of the 29th December, 1886, respectively, were such as, in our opinion, were right and proper, and
2. Whether any (and if so what) grounds other than those already pointed out to them in the despatch of the 11th January might, in reply to their letter of the 19th January, with advantage be stated to Messrs. King and Hammond, as comprised within those special circumstances under which Her Majesty's Government were of opinion that the case was not one in which they would be justified in claiming compensation for Mr. Coles.

In obedience to your Lordship's commands we have the honour to report—

That we approve the despatches sent on the 11th January, and that we do not think it necessary or advisable that any further statement should be made to Mr. Coles of the grounds upon which his application has been refused.

Approve previous despatches. Further statement of grounds of refusal to interfere not advisable.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

1. Correspondence respecting Mr. Hill's Mission, Part I (Confidential No. 5349).
2. Correspondence respecting Mr. Hill's Mission, Part II (Confidential No. ).
3. Law Officers, April 28, 1886 (Confidential No. 5349, p. 10).
4. Law Officers, September 25, 1886 (Confidential No. 5349, p. 110 A).
5. Messrs. King and Hammond, December 29, 1886.
6. To Messrs. King and Hammond, January 11, 1887.
7. To Mr. Coles, January 11, 1887.
8. Messrs. King and Hammond, January 19, 1887.

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## Honduras.

### No. 38.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received January* 25.)

My Lord, *Royal Courts of Justice, January* 24, 1887.

Riot in Island of Bonacca.

Claims arising out of.

WE were honoured with the commands of your Lordship's predecessor signified in Sir Julian Pauncefote's letter of the 10th instant, stating that he was directed to transmit to us the papers noted in the accompanying list, relative to the claims of British subjects against the Government of Honduras, arising out of a riot in the Island of Bonacca, one of the Bay Islands, which were ceded to Honduras by Great Britain under a Convention dated the 28th November, 1859,* of which a copy was inclosed.

That questions having arisen in some of the despatches from Her Majesty's Representative accredited to the Republic of Honduras as to the status of certain residents in the Bay Islands of British origin, the Earl of Iddesleigh addressed to Mr. Gastrell the instructions of the 4th instant (No. 1), which we should find amongst the accompanying papers.

Conditions of cession of Bay Islands by Great Britain.

That in these instructions it was remarked that under the Convention of 1859 the Bay Islands had been ceded to Honduras, subject to certain conditions, one of which was that if any of the inhabitants should wish to withdraw from the islands, they should be at full liberty to do so, to dispose of their fixed or other property as they might think fit, and to take with them the proceeds thereof; and that a further condition was that the inhabitants should not be disturbed in the enjoyment of any property which they might have acquired thereon, and should retain perfect freedom of religious belief and worship, public and private, but remaining in all other respects subject to the laws of the Republic.

Their effect on nationality and rights of the inhabitants.

That Lord Iddesleigh pointed out to Mr. Gastrell that it was clear from the conditions recited that the allegiance of those inhabitants who did not within a reasonable period avail themselves of the permission to sell their property and withdraw from the islands passed to the Republic of Honduras, and that neither they nor their descendants could claim to be British subjects; but that that fact did not affect the right of Her Majesty's Government to require that they should remain in the free enjoyment of their property and the exercise of their religion; and that any infringement of those privileges by the authorities of Honduras would form a proper subject of remonstrance on the part of Her Majesty's Representative accredited to the Republic.

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* Treaty No. 439.

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Position of British subjects.

That Mr. Gastrell was further instructed that the position of British subjects generally, whether resorting to or resident in the Bay Islands or other parts of Honduras, was in no way affected by the Convention of 1859, and that they were to continue to receive from him the protection to which they were justly entitled.

That the facts attending the riot at Bonacca, as far as they could be gathered from Mr. Gastrell's despatch, inclosed (No. 72 of the 15th July, 1886), were as follows:—

Account of riot.

That some Honduranian soldiers who had been paid off, and were intoxicated, began disputing on a cay belonging to a Mr. Kirkconnell; that his wife warned them off, was insulted by them, and eventually knocked off the cay into the sea by a soldier named Medina. That the Commandante, who was owner of the grog-shop on the cay, and was appealed to by Mrs. Kirkconnell, was powerless to interfere, owing to age and inefficiency. That several persons resident in an adjacent cay, and claiming to be British subjects, came to her assistance, amongst them being Mr. Coe Wood (a native of Grand Cayman, one of the dependencies of Jamaica), and Bonner, a coloured man, describing himself as a British subject.

That the riot became general, and that Mr. Coe Wood, who had a revolver in his hand, was attacked by a soldier named Mangina, armed with a machete, or wood-knife. That Mr. Wood, having ineffectually warned him to stand aside, shot him, it was stated, in self-defence, wounding him in the chest; whereupon another soldier, Pedro Ramos by name, who appeared to have been the leader in the riot, cut Wood down, and would have killed him had not Bonner picked up Wood's revolver and shot Ramos dead in defence of Wood.

That the attacking party consisted of from thirty-five to fifty Honduranian soldiers and labourers armed with knives. That the party attacked, numbering nine, armed with one revolver, managed to escape to a neighbouring cay, and thence to an American schooner. That the Honduranians then proceeded to pillage and destroy the property of the persons who now asked for the support of Her Majesty's Government.

Proceedings of authorities.

That the authorities of the neighbouring Island of Ruatran, on learning of the disturbances, acted with promptitude. That they arrested nine Honduranians and Wood and Bonner, and that they restored such of the pillaged property as was recoverable. That three of the Honduranians were sentenced respectively to terms of eight years', four months', and one day's imprisonment. That Wood was imprisoned for fourteen days, and was then released on entering into recognizances, and had since left the island for Grand Cayman. That Bonner was acquitted by the Judge of First Instance, but had been kept in custody ever since (between two and three years) on the plea that his acquittal had not been confirmed by the Supreme Court at Tegucigalpa, to which it was intimated that an appeal might be made; but that no steps had as yet been taken by any one with that view.

That under the circumstances above recited, and which were described in the accompanying papers, the Earl of Iddesleigh presumed that Her Majesty's Government would be justified in demanding from the Government of Honduras the immediate release of Bonner, assuming him to be a British subject, and compensation to him for his long detention in prison without trial; but that the Secretary of State would be glad to be favoured with our opinion with regard to the cases of the other claimants.

Firstly, whether Mr. Coe Wood and any other persons establishing their British nationality were entitled to compensation from the Government of Honduras for damage to their property during the riots.

Secondly, whether Mr. Coe Wood's claim for compensation on account of imprisonment and loss of time should be supported, having regard to the part he took in the riot, and the fact that after fourteen days' imprisonment he was released on his own recognizances and escaped to Grand Cayman.

Thirdly, whether persons who, being the holders of property in the Bay Islands, acquired before the date of the Convention of 1859, or their descendants, who had under its terms become citizens of Honduras, were entitled to the support of Her Majesty's Government in cases of injury to their property, and, if so, to what extent.

That we should observe that some of the claimants whose losses were scheduled in Inclosure 8 of Mr. Gastrell's despatch, were also signatories of the Petition (Inclosure 11) in which they described themselves as "British subjects of the Island of Bonacca, holding grants under British Crown," but who could not now be considered, under the Convention with Honduras, to have claim to British nationality.

In obedience to the commands of the Secretary of State we have the honour to report—

Extent of British support to which holders of property, acquired before 1859, are entitled.

That persons who, being the holders of property in the Bay Islands, acquired before the date of the Convention of 1859, or their descendants, who have under its terms become citizens of Honduras, are entitled to the support of Her Majesty's Government against any violation by the Government of Honduras of the rights reserved to them by the Convention of 1859, but are not entitled to that support for claims in respect of injury for which the Government of Honduras is not responsible.

Claims of Mr. Coe Wood and others not entitled to support.

We are of opinion that Mr. Coe Wood and the other persons mentioned in the questions are not entitled to the support of Her Majesty's Government for their claims in respect of damage done during the riot mentioned, nor is Mr. Coe Wood entitled to that support for his claim for compensation for imprisonment and loss of time.

Should merely apply for Bonner's release.

With regard to Bonner, we would advise, in his interests, that an application should be made simply for his release, on the ground that he was acquitted by the Judge of First Instance, and that no appeal was brought from that decision within a reasonable period.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

To Mr. Harriss-Gastrell, No. 1, January 4, 1887.
Ditto. No. 72; July 15, 1886.
Memorandum by Sir E. Hertslet, Foreign Office, October 25, 1886.
Memorandum by the Legal Assistant, December 17, 1886.

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# Italy.

## No. 39.

*The Law Officers of the Crown and Sir J. Deane to the Earl of Iddesleigh.—(Received January 11.)*

My Lord, *Royal Courts of Justice, January 10, 1887.*

Disposition of unentailed property according to English law.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 29th ultimo, stating that he was to transmit to us the papers* relating to a request addressed to Her Majesty's Ambassador at Rome by the Rev. M. A. Costello, Rector of the Irish Dominican College of San Clementi in that city, that his Excellency should procure from Her Majesty's Government a declaration that, according to English law, a son, disposing by will of an unentailed property, was not bound to leave any portion thereof to his mother, should the latter survive him, as was the case by Italian law.

Italian law.

That our opinion was requested on the question submitted in the Rev. M. A. Costello's Memorandum, and as to the answer which Sir J. S. Lumley should be directed to return to him.

In obedience to your Lordship's commands we have the honour to report—

Son not bound to leave any portion to mother.

That, in our opinion, Sir J. S. Lumley may properly be directed to state that, according to the law of England, a son, disposing by will of unentailed property, is not bound to leave any portion thereof to his mother, should she survive him.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
J. PARKER DEANE.

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* Sir J. S. Lumley, No. 349, December 17, 1886.

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## No. 40.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 29.)*

(Confidential.)
*Law Officers' Department, Royal Courts of Justice,*
*November* 28, 1887.

My Lord,

Passage of "Duke of Sutherland" through the Suez Canal with Cossacks for Abyssinia.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th instant, stating that he was directed by your Lordship to transmit to us the accompanying telegrams, (A), (B), and (C), with reference to certain suspicious proceedings on the part of the British steamer "Duke of Sutherland," which were urgently brought to your Lordship's notice by the Italian Chargé d'Affaires at this Court on the 24th instant.

That, after consultation with the India Office, the telegram (A) was forthwith dispatched to Her Majesty's Resident at Aden, from whom, late on the evening of the 25th, the telegram (B) was received in reply.

That, as it appeared necessary from the terms of the latter document to furnish the Resident with some immediate instructions for his guidance, the telegram (C) was, after further consultation with the Foreign Office, dispatched to him by the Secretary of State for India on Saturday afternoon.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the instructions embodied in the telegram (C) were such as, in the circumstances, were right and proper to be dispatched to Her Majesty's Resident, and that we would, at the same time, be good enough to inform your Lordship whether any, and, if so, what supplementary instructions should be forwarded to him on the subject.

In obedience to your Lordship's commands we have the honour to report—

Approving instructions to Aden.

That we approve the instructions that have been sent, and are not of opinion, upon the facts before us, that any further or more specific directions can be given.

Cannot give opinion as to breach of Foreign Enlistment Act.

Upon the statements now before us we cannot express any opinion whether any breach of the Foreign Enlistment Act has been committed.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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### Annex (A).

*Viscount Cross to the Resident at Aden.*

(Secret.)
(Telegraphic.)

ITALIAN Government state vessel under British flag, bound to Aden, passed Suez Canal yesterday morning with Cossacks on board, believed to be for the military service of the Abyssinians. The case may possibly come within the Foreign Enlistment Act.

Please report at your earliest.

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### Annex (B).

*The Resident at Aden to Viscount Cross.*

(Telegraphic.)
*November* 25, 1887.

BELIEVED that Cossacks on board the British steamer "Duke of Sutherland" arrive to-morrow. If on board, or landed, or transhipped to French man-of-war now here, what should be done? Two Italian men-of-war here and Her Majesty's ship 'Griffin.'

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### Annex (C).

*Viscount Cross to the Resident at Aden.*

(Telegraphic.)
*November* 26, 1887.

IN the absence of evidence and particulars we can give you no positive instructions.

If you have good reason to suppose that "Duke of Sutherland" or any other merchant-vessel under any flag is leaving British waters with a force on board, with hostile intentions against Italy or any other friendly State, so as to constitute a military or naval expedition, you have power, under sections 11 and 24 of the Foreign Enlistment Act, to detain her pending further inquiries.

You cannot, of course, interfere with the French man-of-war under any circumstances.

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# Japan.

## No. 41.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 9.)*

My Lord,
*Royal Courts of Justice, February* 8, 1887.

Administration of Japanese law by Consular Courts under Article IX of draft Convention.

WE were honoured with the commands of your Lordship's predecessor signified in Sir Julian Pauncefote's letter of the 5th ultimo, stating that he was directed by the Secretary of State to transmit to us the papers noted in the accompanying list relative to negotiations for the revision of Treaties in force between Japan and foreign Powers.

That for some time past negotiations had been in progress for the revision of those Treaties.

That Conferences had been held at Tôkiô, attended, on the one hand, by the Representatives of the foreign Powers in Japan, and, on the other, by Delegates to represent the Japanese Government.

That one of the ultimate objects which the Japanese Government had in view was to secure for Japan complete judicial autonomy, after a probationary period of seventeen years, during which a large proportion of European Judges would be employed, and the entire abandonment by foreign Powers of exterritorial jurisdiction.

That in order to obtain that concession they were prepared to grant to foreigners important privileges in other respects.

That the result of the Conferences had been that a draft Jurisdiction Convention had been framed, which was inclosed in the accompanying despatch from Her Majesty's Minister in Japan, and which had been accepted by Her Majesty's Government as the basis of negotiations, subject to certain observations which were stated in the instruction to Sir Francis Plunkett of the 2nd October last.

That amongst the observations contained in the latter despatch was one as to Article IX of the draft Convention with regard to a stipulation that Japanese police and administrative laws should be enforced by foreign Consular Courts for the period of three years, during which it was proposed that they should continue to exercise their existing jurisdiction.

That the Secretary of State pointed out in that despatch that British Consular Courts had no power to administer any but British laws, and that they could not therefore be made auxiliary to the new Japanese Courts for the purpose of administering Japanese police law; and that the Secretary of State went on to say that the only mode of meeting that difficulty would be for Her Majesty's Minister to issue Police Regulations identical with the Japanese Police Laws in question.

That, on that point, Sir Julian Pauncefote was to refer us to the Reports of the Law Officers of the Crown of the 22nd September, 1879, the 3rd October, 1879 (Japan), and the 17th December, 1885 (Siam).

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That Sir Francis Plunkett had consulted with the Judge of Her Majesty's Court for Japan (Mr. Hannen), who was disposed to think, as we should see stated in Sir Francis Plunkett's despatch No. 192 of the 23rd November, 1886, that inasmuch as, by section 84 of the China and Japan Order in Council of 1865, it was enacted that "if any British subject in China or Japan violates or fails to observe any stipulation of any Treaty between Her Majesty, her heirs or successors, and the Emperor of China, or the Tycoon of Japan, for the time being in force, in respect of the violation whereof any penalty is stipulated for in the Treaty, he shall be deemed guilty of an offence against the Treaty, and on conviction thereof, under this Order, shall be liable to a penalty not exceeding the penalty stipulated for in the Treaty," it might be possible to introduce into the proposed Jurisdiction Convention a clause to the effect that "every British subject coming to Japan shall observe the Japanese administrative Laws and Regulations *hereinafter enumerated*, and if he infringe them shall be liable to the penalty by such administrative Laws and Regulations attached to their infringement."

That Sir Julian Pauncefote was to request that we would take into our consideration the particular point thus raised, and that we would favour the Earl of Iddesleigh with our opinion as to the best means of meeting the difficulty; and that we would also furnish the Secretary of State with any observations that we might have to offer on the draft Convention and the instructions to Her Majesty's Minister of the 2nd October last.

In obedience to the commands of the Secretary of State we have taken the papers into our consideration and have the honour to report—

Her Majesty's Minister should issue Police Regulations identical with Japanese.

That, in our opinion, the best course to be adopted will be for Her Majesty's Minister to issue Police Regulations identical with the Japanese Police Laws in question.

The Order in Council of the 25th October, 1881, clause 13, limits the penalties which can be imposed under such Regulations, and if it is desired to subject British subjects to Police Rules imposing larger penalties, this object could be effected by making an Order in Council repealing, so far as relates to Japan, section 13 of the Order in Council of the 25th October, 1881. This being done, Her Majesty's Minister in Japan may, if he thinks fit, make Regulations imposing the same penalties as those provided by the Japanese Police Regulations. We think this course simpler than by dealing with the matter by Treaty or Convention.

And penalties equal to Japanese should be authorized by new Order in Council.

We, however, advise that the new Order in Council should not be a simple repeal of section 13, but should give authority to Her Majesty's Minister in Japan to make Regulations and to impose penalties not exceeding those to which Japanese subjects are liable.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
EDWARD CLARKE.

*List of Papers.*

Sir F. Plunkett, No. 118, July 10, 1886 (Confidential No. , p. 193).  
To Sir F. Plunkett, No. 61, October 2, 1886 (Confidential No. , p. 252).  
Sir F. Plunkett, No. 192, November 23, 1886 (Confidential No. , p. ).  
Law Officers, September 22, 1879 (Confidential No. 4328, p. 43).  
Law Officers, October 3, 1879 (Confidential No. 4328, p. 44).  
Law Officers, December 17, 1885 (Confidential No. 5246, p. 153).  
China and Japan Order in Council of March 9, 1865 (Confidential No. 1354)

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# Madagascar.

## No. 42.

*The Law Officers of the Crown to Her Majesty's Secretary of State, Foreign Office.—(Received January 12.)*

My Lord, *Royal Courts of Justice, January* 12, 1887.

Order in Council applying part of "The Fugitive Offenders Act, 1881," to Madagascar.

WE were honoured with the commands of your Lordship's predecessor signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was directed to transmit to us the papers noted in the margin* relative to the terms of an Order in Council applying certain parts of "The Fugitive Offenders Act, 1881," to Madagascar.

That the Memorandum† inclosed in the letter to Mr. Wright of the 29th November last showed the suggestions made by the Foreign Office in regard to the draft Order in Council prepared by him, which formed Inclosure No. 1 to the same letter; and that the marginal notes to the Memorandum contained Mr. Wright's opinion upon those suggestions.

That Sir Julian Pauncefote was to request that we would inform the Secretary of State whether we approved of the draft Order in Council, with the amendments concurred in by Mr. Wright, or whether we were of opinion that it required any addition or modification.

That Sir Julian Pauncefote was to add that it was proposed to embody the draft when finally settled in a new Order in Council in course of preparation for the purpose of extending the West African Order in Council to Madagascar.

In obedience to the commands of the Secretary of State, we have the honour to report—

Approve draft Order in Council.

That we approve the draft Order in Council, with the amendments concurred in by Mr. Wright.

We are of opinion that the words "as relates to *habeas corpus* and" should be retained in subsection 4 of Article II.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
EDWARD CLARKE.

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## No. 43.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received April 26.)*

My Lord, *Royal Courts of Justice, April* 23, 1887.

Appointment of British Consul at Tamatave. His recognition by Hovas direct. French complaint.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was directed to transmit to us the papers noted in the accompanying list with reference to a complaint which had been made to Her Majesty's Government by that of the French Republic, that Mr. Haggard, who was appointed in January of last year Her Majesty's Consul for Madagascar, to reside at Tamatave, not only neglected, on taking up his appointment to that post, to address himself to the French Minister Resident in Madagascar for the purpose of obtaining through him the usual official recognition accorded to Consuls on appointment by the Government to which they were accredited, but further demanded his exequatur (which had since been furnished to him by them) from the Hova Government direct.

That it was contended by the French Government that that proceeding was a violation of the stipulations of the Franco-Malagasy Treaty of the 17th December, 1885, by which it was provided (Article I) that—

"The Government of the French Republic will represent Madagascar in all its foreign relations;" and (Article II) that "a resident representing the Government of the Republic will preside over the foreign relations of Madagascar without interfering in the internal administration of Her Majesty the Queen" (of that island).

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* To Colonial Office, October 7; to Mr. Wright, November 29; to Colonial Office, December 8; Colonial Office, December 14; to Mrt Wright, December 17; Mr. Wright, December 18, 1886.

† *Qy.* date.

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That it was, moreover, asserted by the French Government that, upon that Treaty being communicated to the Earl of Rosebery, Her Majesty's then Principal Secretary of State for Foreign Affairs, by the French Ambassador to the Court at St. James', his Lordship did not hesitate to admit that, by the terms of it, France became the necessary intermediary in the relations between the Malagasy and the British Governments.

Disputed interpretation of Treaty.

That that assertion, however, was, as would be seen, founded on an entire misapprehension, for which there was no foundation.

That in consequence of doubts which were expressed by the Malagasy Government as to the interpretation to be placed upon certain phrases in the text of the Treaty of the 17th December, 1885, Admiral Miot, the Rear-Admiral Commanding-in-chief upon the station, and then French Minister Plenipotentiary to Madagascar, addressed, on the 9th January, 1886, an explanatory note to the Malagasy Minister, and that that note seemed to have an important bearing upon, amongst other things, the language of Article II and the character and extent of the powers of interference in the foreign relations between Madagascar and Powers other than France, which were thereby intended to be secured to him.

That upon the subject of that note, however, the French and Hova Governments were at present at issue, the latter maintaining that it formed an integral part of the arrangement under which peace was concluded between themselves and France, while the French Government were contending for the opposite view.

That it might, therefore, be argued that the acceptance of the French contention on that particular point by Her Majesty's Government would amount on their part to a prejudging of a question in dispute between Madagascar and France.

Appointment of previous Consul.

That it might not be unimportant to mention that, upon the last previous occasion when a Consul for Madagascar was appointed by Her Majesty (which occurred however so long ago as 1862), the fullest and most direct recognition of his official position was accorded to him by order of the King, although the usual method of effecting this amongst civilized nations, viz., the grant of an "exequatur," was not then apparently followed.

Anglo-Malagasy Treaty arrangements.

That at that time there were no Treaty engagements with reference to the appointment of Consuls existing between Great Britain and Madagascar, but that three years later, on the 24th June, 1865, the "Treaty of Peace, Friendship, Commerce, and Slave Trade," which was at present in force between the two countries, was ratified. That by Article IV of that Treaty, the Queen of Madagascar engaged to receive a British Agent at her capital, and Her Britannic Majesty in like manner engaged to receive at the Mauritius or in London an Agent of the Queen of Madagascar.

That it was also by the same Article provided that "each Contracting Party may appoint Consuls for the protection of trade to reside in the dominions of the other," and that "such Agents and Consuls shall enjoy in the respective dominions the same rights and privileges which are or may be there granted to Agents of the same rank of the most-favoured-nation."

French assurance as to foreign Treaty rights.

That Sir Julian Pauncefote was desired, in connection with those provisions, to call our particular attention to the language of M. de Freycinet's Circular telegram of the 27th December, 1886, communicating the Treaty to the various foreign Powers (see print correspondence respecting Treaty of the 17th December, 1885, No. 2, p. 7), wherein he pointed out that "this Treaty, if ratified by the two Governments, changes nothing in the Treaties already existing between the Hova Government and other States."

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to:—

(1.) Whether, under all the circumstances, the Government of the French Republic was entitled to claim that Her Majesty's Consul should apply for his exequatur from the Hova Government through the French Minister Resident in Madagascar.

(2.) If not, on what grounds could such claim be most advantageously resisted by Her Majesty's Government; and

(3.) With any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

French claim to be channel for obtaining exequatur inconsistent with their assurances.

That, in our opinion, this question, so far as it relates to the rights of Great Britain, is covered by the assurance given by M. de Freycinet on the 27th December, 1885. Prior to that month the two Governments of Great Britain and Madagascar were, under the provisions of the Treaty of 1865, in direct Consular relations one

with the other. Any provision in a Treaty made by Madagascar which required that British Consular Agents in that country should obtain authority to act there from the Representative of another Power would have been a serious alteration of the rights and relations between the Governments of Madagascar and Great Britain; and M. de Freycinet offered the assurance, which has been accepted by Great Britain and other Powers, that the new Treaty changed nothing in those already existing between the Hova Government and other States.

Admiral Miot's note justifies French assurances as to foreign Treaties.

In reference to the question now in debate between the Hova Government and that of France it is not necessary to express a final opinion, but, having regard to the terms of the letter of the 9th January, 1886, it seems clear that that letter was intended as, at the least, an official statement of the interpretation put by the French Government upon the provisions of the Treaty, and it appears that this letter was delivered to the Hova Government before the ratification of that Treaty, and probably as an inducement to such ratification. Assuming the contention of the Hova Government upon this point to be correct, the language of the letter, and especially of the postcript with reference to Treaties of Commerce, shows that, upon the question of Consular relations, M. de Freycinet was justified in saying that no change was made in the operation of the existing Treaties between Madagascar and foreign Powers.

No action necessary, except in case of further French interference.

We do not advise that any further communication should be made to the French Government upon this subject unless and until the French Resident at Madagascar should interfere with the action of the British Consul under the exequatur already obtained; and in that event we advise that the right of the French Resident to interfere should be resisted, and the attention of the French Government should be called to the positive assurance given by M. de Freycinet and to the Memorandum of M. Miot.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

Consul Haggard, No. 6, January 11, 1887.
Vice-Consul Pickersgill, No. 4, February 2, 1886.
Consul Haggard, No. 21, February 2, 1887.
„ „ No. 24, February 4, 1887.
„ „ No. 26, February 8, 1887.
Viscount Lyons, No. 7, Africa, February 9, 1887.
To Viscount Lyons, No. 31, Africa, February 17, 1887.
Viscount Lyons, No. 10, Africa, February 23, 1887.
„ „ No. 12, Africa, March 9, 1887.
To Viscount Lyons, No. 45 A, Africa, March 12, 1887
„ „ No. 68 A, Africa, March 17, 1887.
„ „ No. 48, Africa, March 19, 1887
To Sir E. Malet, No. 78, Africa, March 19, 1887.
Parliamentary "Africa No. 2 (1886)." Foreign Office No. 3036.
„ "Africa No. 4 (1883)." Treaty No. 712.

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## Mexico.

### No. 44.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received February* 18.)

My Lord, *Royal Courts of Justice, February* 17, 1887.

Proposed Anglo-Mexican Commercial Treaty. Limits of Maritime jurisdiction.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the text of an Article which the Government of Mexico had suggested for insertion in the proposed Commercial Treaty between Great Britain and Mexico, together with a Memorandum which had been furnished thereon by Her Majesty's Board of Customs.

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That it would appear to your Lordship to be in any case necessary to add at the end of the Article the words, "or of civil or criminal jurisdiction." But that before deciding whether the Article, in any form, should be accepted, your Lordship would be glad to be favoured with our opinion as to whether it was consistent with the Customs Laws at present in force in this country, and generally whether we considered that the proposed stipulation was open to any objection.

That Sir Julian Pauncefote was therefore to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in his letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

**No objection to Mexican Article as amended, or to alternative Article as to enlargement.**

That we see no objection to the acceptance either of the original draft Article, with the addition of the words, "or of civil or criminal jurisdiction," or of the alternative draft submitted by the Foreign Office.

The fact that, according to the Customs Laws of this country, jurisdiction cannot be exercised in respect of foreign ships found beyond 1 league from the coast does not, in our judgment, make it improper to accept an Article by which the Mexican Government gives consent to an enlargement of that jurisdiction, in case such enlargement may hereafter be thought advisable.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

1. Article IV *b* proposed by the Mexican Government.
2. Alternative Article IV *b* proposed by Great Britain.
3. Memorandum (Board of Customs), December 24, 1886. Inclosure in Treasury letter of January 3, 1887.
4. Draft Commercial Treaty with Mexico of November 1885, with amendment proposed by Mexican Government.

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### Annex 1.

*Article IV b.*

The two Contracting Parties agree to consider, as a limit of their territorial waters on their respective coasts, the distance of 3 marine leagues, reckoned from the line of low-water mark. Nevertheless, this stipulation shall have no effect excepting in what may relate to the coastguard, and the application of the Custom-house Regulations, and the measures for preventing smuggling, and cannot be extended to other questions of international maritime law.

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### Annex 2.

*Alternative Article to Article IV b proposed by the Mexican Government.*

In all that relates to the coastguard, Customs Regulations, and measures for preventing smuggling, the two High Contracting Parties agree that their maritime jurisdiction on their respective coasts shall extend to the distance of 3 marine miles, reckoned from the line of low-water mark.

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### No. 45.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August* 20.)

My Lord, *Royal Courts of Justice, August* 20, 1887.

**British claims on Mexico. As to interpretation of Mexican Decree of 1885.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, with reference to a question which had arisen as to the interpretation to be placed upon clause 5 of the 17th Article of the Decree or Law of the Mexican Republic of the 22nd June, 1885, in so far as it applied to the liquidation of certain pecuniary claims on the part of British subjects against the Government of Mexico which arose in respect of the acts of the Federal Government of that Republic anterior to the 27th October, 1884.

That by Article I of the Preliminary Agreement for the renewal of relations between Great Britain and Mexico, which was signed on the 6th August, 1884, and the ratifications of which were exchanged on the 27th October of the same year, the Mexican Government bound themselves to order "an impartial investigation to be made with respect to all the pecuniary claims of British subjects based on acts of the Federal Government of Mexico anterior to the exchange of the ratifications of the Preliminaries, and to provide for the liquidation of the amounts."

That the ratification of the Preliminaries took place on the 27th October, 1884, as already stated.

That on the 22nd June, 1885, a Decree was issued by the Mexican Government relative to the consolidation and conversion of the Mexican National Debt, and that it was provided by Article 17—sub-Article 5 of section 2 of that Decree (which section dealt with "debts to be included in the conversion")—that claims which referred to damages should not form a part of the Public Debt, and consequently should not be included in the operations embraced by the Decree.

That it had also been agreed between the two Governments that the claims referred to in Article I of the Preliminary Agreement should not include the bondholders' debt (see Confidential Print, pp. 31, 41, and 45).

That in consequence of doubts which were entertained by General Berriozabal, the Commissioner appointed on behalf of the Mexican Republic to examine into the claims in conjunction with Mr. Carden, the Representative of Great Britain, as to whether the Mixed Commission was authorized to investigate such of the claims as came within Article 17 of the Law of the 22nd June, 1885, he applied to the Mexican Government for further instructions on the subject.

**Instructions sent to Mexican Commissioner.**

That those instructions had been furnished to him in a despatch dated the 1st April, 1887, and addressed to him by the Mexican Secretary of State for Foreign Affairs, and that they had been communicated by him to the British Commissioner, who desired to be informed whether the views expressed by M. Mariscal on the different points of international law treated of in his communication were shared by Her Majesty's Government, and, if not, what course he should pursue when such claims came up for discussion.

That it appeared to your Lordship that those portions of the instructions which limit the extent of the liability of the Federal Government of the Mexican Republic for the acts of its constituent States raise matter for grave consideration, and were opposed to the doctrines hitherto maintained by Her Majesty's Government with reference to the responsibility of the Supreme Government of a Federation in so far as its external relations with foreign nations were concerned for the acts of the Governments of its component States; and that, in connection with that question, to which your Lordship desired more particularly to call our attention, Sir Julian Pauncefote was to inclose a Memorandum which had been prepared in the Foreign Office on the subject of the liability of Federal Governments in such circumstances.

**For opinion as to Mexican views.**

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the views expressed by M. Mariscal on the various points of international law involved might be accepted by Her Majesty's Government without remark, or, if not, in what respects they were open to criticism, and should form the subject of protest.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

**Federal Government responsible for acts of State authorities.**

That, in our opinion, the limitation placed upon the Ist Article of the Preliminary Agreement by the paragraph numbered 1 of the Mexican Foreign Minister's despatch cannot be admitted by Her Majesty's Government.

The true doctrine is that which has been asserted on previous occasions, especially by Lord John Russell in his instructions to Sir Charles Wyke in 1861, and by the Lord Chancellor and the Law Officers in their Memorandum and opinion of May 1881, that the British Government must deal with the Federal Government, and with that alone, and must insist upon the responsibility of the Federal Government for the acts of State authorities with which the British Government can have no direct relation, and which must be treated as subordinate parts of the Federal Government itself.

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Mexican Government liable for acts of former *de facto* Governments.

Nor can Her Majesty's Government admit the claim of non-liability in respect of losses arising from the acts of the so-called *de facto* Governments which are stated by the Mexican Foreign Minister to have ruled in Mexico from the 17th December, 1857, to the 24th December, 1860, and from the 1st June, 1863, to the 21st June, 1867.

It is not for Her Majesty's Government to inquire whether such Governments are rightly termed *de facto* Governments. They must be presumed to have been Governments accepted and obeyed by the people of Mexico, and by the public forces of that State, and Her Majesty's Government must insist that, under the terms of the 1st paragraph of the Preliminary Agreement, British subjects are entitled to the examination and satisfaction of their claims for the acts of any Government which, whether *de facto* or *de jure*, has ruled in Mexico.

As to injuries by armed bands.

With regard to paragraph 3, a question of fact appears to arise, with which the Commission will have to deal. If the armed bands spoken of were in any sense employed by, or recognized by, the Federal Government, or if it was through any act, neglect, or default of the Federal Government that such bands were enabled to exist, and to commit the injuries in respect of which compensation is now claimed, it is clear that such injuries would be within the meaning of the 1st paragraph of the Agreement.

Government responsible for acts of its agents who are not private persons.

Paragraph 4 must be admitted, subject to the observation that persons in the service of the Federal Government cannot be considered as private individuals, although the acts complained of may constitute an offence against the common law.

The State is clearly responsible for the excesses and wrongful acts of its agents and servants, whether civil or military.

Explanations to be added to principles on which the Commissioners are to act.

In regard to the observations made by the Mexican Foreign Minister as to the principles by which the Commissioners are to be guided in dealing with the claims which are admitted for discussion, we do not think it necessary to make any observation beyond this: that the general principle expressed in the words, "that in all those cases in which a loss has been sustained in consequence of the exercise of sovereign right, or of an authority intrusted to the Government," the claim would be inadmissible, must be read as if the word "legitimate" were inserted before "exercised," and as if the words, "and lawfully exercised in circumstances constituting a reasonable necessity for such exercise," were inserted after the word "Government."

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers sent to the Law Officers, August* 3, 1887.

1. Print, 1884 (Confidential No. 5109).
2. Ditto, 1885 (Confidential No. 5321).
3. Ditto, 1886 (Confidential No. 5479).
4. Ditto, 1887 (Confidential No. ).
5. Mr. Carden, No. 5, Claims, April 27, 1887.
6. Memorandum by Sir P. Currie, October 9, 1885 (Confidential No. 5321, p. 12).
7. Memorandum by Sir E. Hertslet, May 27, 1887.
8. Ditto, October 21, 1884.
9. Ditto, December 6, 1884.
10. "North America No. 2 (1874)" (Parliamentary No. 1631).
11. Memorandum by Sir E. Hertslet, February 8, 1877 (Confidential No. 3279).
12. Law Officers, May 9, 1881 (Confidential No. 4637, p. 109); and Lord Chancellor, May 21 and 23, 1881 (Confidential No. 4637, pp. 110, 111).

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# Morocco.

## No. 46.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received October* 31.)

My Lord, *Royal Courts of Justice, October* 31, 1887.

Prosecution of Messrs. Perdicaris and Rolleston by Mr. E. Meakin for conspiracy.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to the course which should be adopted by your Lordship in the following circumstances:—

That Mr. Ebenezer Meakin, the nature of whose previous relations with Her Majesty's Consular officials in Morocco would be gathered from the inclosed Reports from ourselves and our predecessors in office, was now prosecuting Messrs. Jon Perdicaris and C. F. Rolleston on a charge of unlawfully conspiring to hurt and damage him, and that in connection with that charge, which was to be heard at Bow Street Police Court on the 2nd November next, he had subpœnaed Mr. White, Her Majesty's Consul at Tangier, to give evidence on his behalf on that occasion.

Consul White subpœnaed as witness.

That the subpœna was served upon Mr. White by Mr. Meakin in person on the evening of Tuesday last (25th October), when, as would be seen from the inclosed letter, Mr. White was on the point of leaving for his post, having taken his passage in the Peninsular and Oriental Company's steamer which subsequently left on the 27th instant, and all his baggage being already on board.

That it was believed that Mr. White was not in a position to offer any useful or material evidence in the matter, and that the service of the subpœna on him, on the eve of his departure, was simply vexatious.

That we should perceive from Messrs. Watney, Tilliard, and Co's. letter of the 23rd ultimo that Mr. Meakin had only recently been let out of prison (to which he had been committed for contempt of Court) on plea of ill-health.

That in the present state of affairs in Morocco Mr. White's immediate presence at Tangier was urgently required.

Mr. White ordered to repair to his post.

That your Lordship, therefore, to whom Mr. White applied for instructions, had felt it to be your Lordship's duty, in the public interest, to direct him not to postpone his return thereto on account of the subpœna thus served on him.

That it now became necessary, however, to consider generally Mr. White's position with regard to the Court, and also more particularly what steps (if any) should be taken, either previously or at the hearing, on behalf of your Lordship, as well as of Mr. White, to inform the Court of the circumstances under which Mr. White had been compelled to disobey their summons.

That Sir Julian Pauncefote was to add that your Lordship, having been compelled by the exigencies of the public service to order Mr. White to return forthwith to his post, notwithstanding the order of the Court, was particularly anxious that all possible deference and respect should be paid to the Court in regard to any explanation which we might think it advisable that your Lordship should afford them.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might have to offer on the case, at our earliest possible convenience.

In obedience to our Lordship's commands we have the honour to report—

Explanatory letter should be sent to the Court.

That, in our opinion, it would be advisable that a clerk from the Foreign Office should attend at Bow Street on the 2nd November, and hand to the magistrate a letter from the Under-Secretary of State for Foreign Affairs, stating that prior to being served with the subpœna on the 25th October Mr. White had engaged to leave for Morocco on the morning of the 27th, and that it being in the judgment of Her Majesty's Government of urgent public importance that Mr. White should at once return to his post, he was directed so to do, and accordingly left by the vessel in which

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his passage was taken. A copy of Mr. White's letter of the 26th October may also be handed to the magistrate.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

To Watney, Tilliard, and Co., September 22, 1887.
Watney, Tilliard, and Co., September 23, 1887.
Consul White, October 26, 1887.
Law Officers, January 19, 1885. Confidential No. 5246, p. 115.
Ditto, November 20, 1885. Confidential No. 5246, p. 117.
Ditto, April 7, 1886. Confidential No. 5440, p. 66.
Ditto, July 9, 1886. Confidential No. 5440, p. 67.
Ditto, September 17, 1886. Confidential No. 5440, p. 68.

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## No. 47.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received December* 16.)

My Lord,
*Royal Courts of Justice, December* 15, 1887.

Claim of R. C. Bowker and Co. to money paid into Consulate at Mogador on behalf of Mr. Curtis.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the claim of Messrs. R. C. Bowker and Co. to be paid a sum of 138*l.* 9*s.* 10*d.* (net), which had been deposited by the Moorish authorities in Her Majesty's Consulate at Mogador, and was now lying there to the credit of the unadministered estate of the late Mr. Curtis, a British subject, deceased, and to which that firm alleged themselves to be entitled as preferential creditors under a deed of assignment from that gentleman.

That the circumstances under which Messrs. Bowker's claim had arisen were shortly set out in a Report upon its subject furnished in April of last year to the then Secretary of State for Foreign Affairs by our immediate predecessors in office, and that further details respecting its present aspect and position were to be found in Consul Payton's despatch No. 24 of the 14th October last, to which Sir Julian Pauncefote was to direct our especial attention.

Death of Mr. Curtis beyond doubt.

That the death of Mr. Curtis in the Soudan in 1885 appeared to be established beyond the range of reasonable doubt, and that it would also seem improbable that his legal personal representative, who had been ascertained to be his widow, had any intention of applying for probate or letters of administration in respect of his estate, which, so far as was known, consisted solely of the sum of 138*l.* odd already alluded to.

That by Article 34 of the Morocco Order in Council of the 27th August, 1857, Her Majesty's Consul was empowered "to grant probate of will or letters of administration to the intestate estate of any British subject . . . . who shall die and leave property within the dominions of the Sultan of Morocco; and if such probate or letters of administration shall not be applied for within thirty days after the death of the deceased person, it shall be lawful for the Consul to administer to the estate of such person, and for so doing to reserve to himself, out of the proceeds of such estate, a commission not exceeding 2½ per cent. on the amount thereof."

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether, having regard to all the circumstances of the case, Her Majesty's Consul might now properly be instructed to proceed with the administration of the late Mr. Curtis' estate in accordance with the provision of the Order in Council.

In obedience to your Lordship's commands we have the honour to report—

Consul may administer his estate. He should give notice of his intention.

That, in our opinion, it is undoubtedly competent for Her Majesty's Consul at Mogador to take upon himself the administration of Mr. Curtis' estate; but, having regard to the circumstances disclosed in Mr. Payton's despatch, we do not think it would be desirable for him to do so without giving notice to the widow, whose

address is known, and to Mr. Grace, and any other creditor whose name is known, to bring in claims.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

Law Officers, April 7, 1886. Confidential No. 5440, p. 65.
Consul Payton, No. 24, October 14, 1887.
Morocco Order in Council of August 27, 1857. Confidential No. 1516.

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# Netherlands.

## No. 48.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 31.)

My Lord,
*Royal Courts of Justice, March* 29, 1887.

Pilotage certificates.

Bill for limiting grant to British subjects.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the issue of certificates of pilotage under the provisions of "The Merchant Shipping Act, 1854," sections 340, 342, and 355, to the masters and mates of foreign ships.

That a Bill for the purpose of amending those sections in the manner therein mentioned had been lately introduced into Parliament, and that should that measure eventually pass into law, it was conceived that it might become necessary to modify the practice which had, with a short interval, continuously obtained since the year 1852, of granting such certificates to the masters and mates of foreign ships, as well as to those of British vessels; and that it was possible that any such alteration of the existing practice might be resisted by foreign Governments, on the ground that it was inconsistent with certain of the Treaty obligations existing between this country and themselves.

That the Netherlands Government had already protested against the action of Her Majesty's Government in declining, on the ground of the inability, according to Dutch law, of the Netherlands to grant reciprocal treatment to the masters and mates of British ships when in Dutch waters, to issue certificates of pilotage to the masters and mates of Dutch vessels in English waters, and had based their protest, in the first place, upon the wording of Article II of the Treaty of Commerce and Navigation of the 27th October, 1837, between Great Britain and the Netherlands, which they contended entitled the masters and mates of Dutch vessels in British waters to the same privileges as were extended to the masters and mates of our own national ships therein; and, secondly, upon Article I of the Anglo-Dutch Convention of the 27th March, 1851, which contained a provision of somewhat similar purport.

That it was to the bearing and effect upon the measure now before Parliament of Article II and of Article I respectively of the Treaty and Convention above alluded to that your Lordship desired to draw our attention with a view to our favouring your Lordship, at our earliest convenience, with our opinion as to whether the provisions of that Bill were in any, and, if so, to what extent, inconsistent with the stipulations of those Articles with respect to "duties of pilotage."

In obedience to your Lordship's commands we have the honour to report—

Clauses of Bill conflicting.

That the clauses of the proposed Bill somewhat conflict with one another, but by clauses 4 and 5 it is proposed that certificates shall not be granted by the Board of Trade to the masters and mates of foreign ships, even though they are British subjects.

Probably section 3, though differently worded, was intended to contain a similar prohibition, but as it stands the word "and" in line 15 gives the clause a more limited construction.

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Points in which Bill agrees or conflicts with Treaties.

In our opinion, the limitation of the grant of pilotage certificates to British subjects would not conflict with the provisions of the Treaties referred to in the covering letter; but the refusal to grant pilotage certificates to a British subject, on the ground that he is the master or mate of a foreign ship, or the refusal to allow a British subject, holding a pilotage certificate, to act as pilot when master or mate of a foreign ship, would, in our opinion, be inconsistent with the Treaties.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers accompanying reference to Law Officers of March* 23, 1887.

1. Memorandum by Mr. Bergne, March 12, 1887.
2. Board of Trade Memorandum, March 16, 1887. Inclosure in Board of Trade letter, March 17, 1887.
3. Merchant Shipping Act Amendment No. 2 Bill (February 28, 1887).
4. Convention of Navigation between Great Britain and the Netherlands. Additional to the Treaty of October 27, 1837; signed March 27, 1851. No. 353
5. Treaty of Commerce and Navigation between Great Britain and the Netherlands, October 27, 1837. No. 251.

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## No. 49.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received March* 31.)

My Lord, *Royal Courts of Justice, March* 30, 1887.

Mr. Godden's complaints against Dutch authorities of Curaçao.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us the papers, noted in the accompanying list, relative to various complaints put forward by Mr. John Godden, a British subject, against the Dutch Colonial authorities of the Island of Curaçao, in respect of which he had invoked the intervention, on his behalf, of Her Majesty's Government with that of the Netherlands.

That the nature of these complaints would be found detailed, in Mr. Godden's own language, in the printed statement of his grievances which he forwarded last December to the Secretary of State, and in his later Memorandum of the 24th January, 1887, and the documents thereto annexed.

That it would be observed that one of those complaints, viz., that made by Mr Godden against the rate and manner of assessment of a tax upon his estate at Santa Barbara, in the Island of Curaçao, had already been dealt with in a letter (the terms of which were approved by our predecessors* in office) addressed, by the direction of the then Secretary of State for Foreign Affairs, to Mr. Godden on the 30th April of last year.

That Mr. Godden, however, was much dissatisfied with the decision then arrived at, and had continued to urge his supposed claims for redress in that and other respects mentioned in his statement with great persistence and energy, and that he had thereby enlisted on his behalf a certain measure of sympathy amongst persons of some position both in and out of Parliament.

That having regard to that circumstance, and to the many and complicated considerations depending almost entirely upon Dutch law which were raised in the case, it was thought advisable to lay the papers before a Dutch advocate of eminence with a view to obtaining an authoritative exposition of the Dutch law on the various points involved.

Opinion of M. de Brauw.

That the papers were accordingly submitted to M. de Brauw, of the Hague, a gentleman who had on previous occasions been consulted on other matters involving Dutch law by Her Majesty's Government; and that he had furnished a reasoned Report thereon, which was on all points unfavourable to the claims of Mr. Godden.

That before, however, proceeding to take any action upon that Report, your Lordship desired to be informed whether its conclusions and reasoning commanded our general assent; and that, in the event of our agreeing with the views expressed by M. de Brauw, your Lordship proposed to inform Mr. Godden that, after a most careful examination of his case, Her Majesty's Government did not consider that there were any sufficient grounds for addressing a representation to the Dutch Government on his behalf.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Questions only arise as to first and fifth cases.

That, in our opinion, it is only on the first case that a substantial question arises. The fourth has already been properly disposed of, and the second and third are questions of local administration, and no right possessed by Mr. Godden is alleged to to have been violated.

Upon the first question we are unable to agree with the opinion of M. de Brauw. His translation of the second paragraph of the Ordinance is as follows: "In the grant of grounds is not included the right of making mines and pits under the trodden ground, clay-pits included, no owner of grounds being entitled thereto before having obtained the permission of the Government. Neither may the blasting of stones take place without permission, and then under observance of the existing Regulations." In our judgment this does not amount to a reservation of the property in the minerals, and still less of any right of going upon the land granted in order to take them. It is nothing more than a restriction upon the concessionnaire, by which he is prevented from breaking the surface in order to take minerals without the permission of the Government. We are of opinion that the Government had no right to put up to tender and grant to Mr. Sewell a licence to go upon Mr. Godden's land and take minerals thereout. We think it is not reasonable to expect Mr. Godden to sue Dutch subjects in a Dutch Court for wrongs authorized by the Dutch Government. It is the Dutch Government which is primarily responsible for the injury he has suffered, and we think a claim should be made for payment to Mr. Godden and those claiming under him, of a fair equivalent for the profit made by the working of phosphates by the Dutch Company upon his land.

Should claim compensation for working minerals on Mr. Godden's lands.

Refusal to give copy of Register of Mortgages not justifiable.

The fifth case, namely, the refusal to furnish Mr. Godden with a copy of the Register of Mortgages (see rider A to printed statement), appears, upon the information before us, to disclose unjustifiable action upon the part of the authorities, and, if the grievance be substantial, Mr. Godden's claim in this matter also should, in our opinion, be supported.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

Curaçao Ordinance No. 20 of 1881. (Original and translation in Mr. Jesurun's No. 4, Commercial, December 21, 1885.
To Mr. Jesurun, No. 2, Commercial, July 5, 1886.
Mr. Godden, September 8, 1886.
To Mr. Jesurun, No. 3, Commercial, September 17, 1886.
Mr. Godden, November 18, 1886.
Mr. Jesurun, No. 7, October 30, 1886
Mr Godden, February 16, 1887.
To Mr. Fenton, No. 2, Commercial, January 21, 1887.
Mr. Fenton, No. 18, Commercial, February 28, 1887.

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# Peru.

## No. 50.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received February* 2.)

My Lord, *Royal Courts of Justice, January* 31, 1887.

Repudiation of Inca notes by the Governments of Peru.

WE were honoured with the commands of your Lordship's predecessor signified in Sir Julian Pauncefote's letter of the 6th January, stating that he was directed to

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* See Confidential No. 5440, p. 70.

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transmit to us the papers noted in the accompanying list with reference to the issue of a forced currency, denominated Inca notes, by the Government of Señor Nicholas Pierola in 1879, and their repudiation by subsequent Governments of Peru.

That the two cases referred to in the accompanying papers were not precisely on the same footing.

Claim of the London Bank of Mexico.

That, in the representation made by the London Bank of Mexico, it was stated that the Inca notes having been declared by Decrees of Señor Pierola (18th October and 5th November, 1880, Inclosures in letter from Bank) forced currency, and their acceptance being compulsory, his Government compelled the Bank to give Sol notes in exchange for Incas at a certain rate, and that the Bank was also compelled in the course of its ordinary business to receive a large sum of Incas, which it still held, as well as those which it had to receive by force from the Government.

That the letter from the Bank further stated that if the Decree (Inclosure in their letter A) recently issued by the Government of Peru, declaring that all the internal Governmental Acts of Nicholas de Pierola and Miguel Iglesias null and void, should be carried out, the Inca notes, already much depreciated in value, would probably become waste paper.

That the Bank represented that although their Branch was appointed receiver of the security for the Inca notes by the Decree of Señor Pierola of the 18th October, 1880, that appointment was made without the concurrence of their Branch, and without reference to it, and that their manager had addressed a communication to the Government declining the responsibility attaching to the appointment without the authorization of the head office in London, which was never given.

That the applicants asked that Her Majesty's Representative in Peru might be instructed to take steps to prevent, as far as possible, the Decree of Repudiation from being carried out.

Claim of Mr. Aitken.

That the other claim was that of a bill broker, a British subject established at Lima, named Mr. Aitken (Inclosure in Colonel Mansfield's despatch No. 48 of the 16th November).

That he was holder of Inca notes, and that he wished that Her Majesty's Representative should take such steps as might be necessary to have the Decree of Repudiation annulled, and to prevail upon the Government of Peru to provide for the immediate payment of the Incas held by him in accordance with the Decree of the 18th October, 1880.

That we should observe that it was not alleged that Mr. Aitken was forced by the Government of the country to accept those Inca notes in exchange for other currency, as was represented to have been the case as regarded the Bank; and that Her Majesty's Minister stated in his despatch concerning Mr. Aitken's application, that he understood that that gentleman purchased the notes as a speculation.

That, on the issue of the Decree of the 24th October last (Inclosures 1 and 2 in Colonel Mansfield's despatch No. 47 of the 2nd November), annulling all internal Acts of the Government of Señor Nicholas Pierola and General Iglesias, Her Majesty's Minister addressed a note to the Peruvian Government (Inclosure 3), stating that Her Majesty's Government would never admit the principle that the present and any subsequent Government of Peru were not responsible for the acts of the Governments of Señor Nicholas Pierola and General Iglesias, which were recognized by Her Majesty's Government and all other Powers having diplomatic relations with Peru. That that intimation to the Peruvian Government, as well as a subsequent note which he had addressed to them (Inclosure 6), in reply to some observations contained in a note from Señor Ribeyro (Inclosures 4 and 5), had received the approval of Her Majesty's Government.

That Sir Julian Pauncefote was to request that we would take into our consideration the papers which accompanied his letter; and that we would favour the Secretary of State with our opinion as to there being any good ground for representations to the Government of Peru either in the case of—

1. The application from the London Bank of Mexico and South America; or,
2. The claim put forward by Mr. Aitken.

In obedience to the commands of the Secretary of State we have taken the papers into our consideration, and have the honour to report—

Should not support Mr. Aitken's claim;

That, in our opinion, Her Majesty's Government would not be justified in making or supporting any claim on behalf of Mr. Aitken in respect of the Inca notes which he may hold.

nor those of Bank, either as to notes received in business, or as to those received under compulsion.

With regard to the Bank of Mexico, the case is somewhat different. So far as relates to Inca notes received by them in the course of their ordinary business, we are of opinion that they stand in the same position as Mr. Aitken, and that no claim should receive the support of the Government. But it is stated in the papers, in vague terms, that they were compelled by force to give Sol notes in exchange for Incas at a certain rate. No statement is before us as to the exact nature of the compulsion used, or as to the terms of exchange with reference to the real and nominal values of the Sol note and Inca note respectively, nor are we told whether the Bank made any complaint or protest at the time, whether it retained the Inca notes from choice or from necessity, or whether any part of the funds intended as security for such notes was, in fact, received by the Bank. In the absence of details, we cannot advise Her Majesty's Government to support any claim on the part of the Bank.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

(A.) London Bank of Mexico and South America, December 21, 1886.
Colonel Mansfield, No. 48, November 16, 1886.
Ditto, No. 47, November 2, 1886.
(B.) London Bank of Mexico, January 4, 1887.

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## No. 51.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 5.)*

My Lord, *Royal Courts of Justice, March 4, 1887.*

Repudiation of Inca notes.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the application which was lately made by the London Bank of Mexico and South America for the support of Her Majesty's Government with reference to a claim which that Bank considered they possessed upon the Peruvian Government in regard to the issue of a forced currency, denominated "Inca notes," by the Government of Señor Nicholas Pierola, and their subsequent repudiation by successive Governments of the Republic.

That the transactions in question were referred to us at some length on the 6th January last, and formed the subject of a Report, which we were good enough to transmit to your Lordship on the 31st January; and that upon the 7th ultimo a letter (of which the draft was inclosed for our information) was, by your Lordship's direction, addressed to the London Bank of Mexico and South America, embodying the terms of that Report.

Claim of London Bank of Mexico for forced exchange of Sol for inca notes.

That to that letter the Bank had replied, giving further particulars with respect to the extraction of the Sol notes from their Lima branch, and as to other matters upon which more precise information was desired.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that, with reference to the last paragraph of our Report of the 31st January last, we would favour your Lordship with our opinion as to whether, under the circumstances described in the letter of the London Bank of Mexico of the 16th ultimo and its inclosures, Her Majesty's Government should now require from the Government of Peru compensation for the Bank in respect of the Sol notes so extracted.

In obedience to your Lordship's commands we have the honour to report—

Compensation should be required for Bank.

That, in our opinion, Her Majesty's Government should now require from the Government of Peru compensation for the Bank in respect of the Sol notes so extracted.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers sent to the Law Officers, February* 24, 1887.

(A.) London Bank of Mexico and South America, December 21, 1886.
(B.) Colonel Mansfield, No. 48, November 16, 1886.
(C.) Colonel Mansfield, No. 47, November 2, 1886.
(D.) London Bank of Mexico, Jannary 4, 1887.
(E.) Law Officers, January 31, 1887.
(F.) To Colonel Mansfield, No. 5, February 8, 1887.
(G.) To London Bank of Mexico, February 7, 1887.
(H.) London Bank of Mexico, February 16, 1887.

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## Salvador.

### No. 52.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received April* 26.)

My Lord, *Royal Courts of Justice, April* 22, 1887.

New Salvadorian Law as to foreigners and nationality.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, with reference to certain provisions, relative to foreigners and to the conditions by which nationality was to be determined in Salvador, which were contained in the new Law of that Republic.

That some of those provisions had formed the subject of exceptions by the Government of the United States of America, and that Her Majesty's Minister and Consul-General for Salvador had also forwarded, for your Lordship's consideration, various criticisms and points of inquiry arising upon them, to which your Lordship desired to direct our attention.

Objectionable points.

That in addition to the various points which were dealt with in the two papers (A) and (B), the provisions in Article 49 with respect to the expulsion from the country as pernicious persons of delinquents, which phrase seemed to be used rather with reference to persons merely charged with an offence than to persons actually convicted of a crime, were liable to comment; while Article 53, by which it was provided that "in crimes of rebellion and sedition the foreign character of the delinquent shall always be considered as an aggravating circumstance in imposing the penalty," appeared open to graver objection.

Question of protest.

That with respect to the form and manner of protest which had been adopted on some previous occasions where the legislative or constitutional changes, which were at the time in contemplation by other Central American States, were considered by Her Majesty's Government objectionable in principle, Sir Julian Pauncefote was to call our special attention to the accompanying Foreign Office Memorandum of the 21st November, 1884.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion:—

(1) As to whether, and in what respects, the proposed new Law was open to objection; and (2) If it were objectionable, as to whether, and to what extent, a protest might properly be addressed by Her Majesty's Government to that of Salvador upon the subject; and (3) With any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have taken the papers transmitted with Sir Julian Pauncefote's letter into our consideration, and have the honour to report—

That in our opinion some of the provisions of the proposed Law are objectionable.

Objections to certain points.

Articles 26 and 27 are objectionable in that they purport to make the Certificate of Matriculation essential before any rights can be acquired by a British subject.

Article 29, sub-section 2, and Articles 28-41 are objectionable on the ground that they purport to limit or restrict the diplomatic interference of Her Majesty's Government for the protection of the rights of British subjects.

With regard to Article 49, the right of expulsion cannot be denied to the

Salvadorian Government, but its unreasonable exercise would justify diplomatic intervention.

It is not clear from the terms of Article 53 whether that Article has the effect of establishing a difference between the native subject and the foreigner, in regard to the punishment which may be inflicted for a particular offence, or whether it is simply a direction to the Judge as to the exercise of his discretion in awarding punishment. If it operates to subject the foreigner to a different punishment from that to which the native subject is liable, it is clearly objectionable, and should be specially noted in the diplomatic remonstrances which we now advise.

May properly protest.

We are of opinion that Her Majesty's Government may properly address a protest to the Government of Salvador, pointing out the Articles objected to and stating, in similar terms to those that were employed in the case of Guatemala, that they cannot allow the new Law to restrict the right of a British subject to claim the intervention of his Government in any case in which it would be justified by the law of nations.

As to manner of protesting

The usual practice should, in our opinion, be followed, namely, of acting in concert with the Representatives of other nations, and sending separate but identic notes.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

(A.) Exceptions taken by the United States to certain articles of new Salvadorian Law on Foreigners (Mr. H. Gastrell, No. 125, December 31, 1886).
(B.) Mr. H. Gastrell's criticisms and points of inquiry respecting new Salvadorian Law on Foreigners (Mr. H. Gastrell, Nos. 119 and 124, November 30 and December 30, 1886).
(C.) Memorandum on liability of Central American Governments for damages sustained by foreigners during revolutions (Foreign Office, October 21, 1884; with Mr. H. Gastrell's No. 91, September 11, 1884).
(D.) Articles of new Constitution of Salvador on Nationality: Translation (Inclosure in Mr. H. Gastrell's No. 112, November 12, 1886).
(E.) Law on Foreigners, San Salvador: Translation (Inclosure 2 in Mr. H. Gastrell's No. 119, November 30, 1886).
(F.) Articles of Constitution of San Salvador on Foreigners (Inclosure 3 in Mr. H. Gastrell's No. 119, November 30, 1886).
(G.) Mr. H. Gastrell, No. 125, December 31, 1886.
(H.) Ditto, No. 5, January 10, 1887.
(I.) Treaty of Friendship, Commerce, and Navigation, between Her Majesty and the Republic of Salvador. Signed at Guatemala, October 24, 1862. No. 472.

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## Siam.

### No. 53.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received April* 8.)

My Lord, *Royal Courts of Justice, April* 7, 1887.

Michell *v.* Bush. Plaintiff, an unregistered British subject, assumes Siamese nationality.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th ultimo, stating that he had the honour to transmit to us, by your Lordship's directions, the papers noted in the accompanying list, which related to the case of Mr. E. B. Michell, a member of the English Bar, now residing at Bangkok in the capacity of Legal Adviser to the Siamese Minister for Foreign Affairs.

That it would be seen that Mr. Michell, although undoubtedly a natural-born British subject, refused to register himself as such in accordance with the provisions of section 29 of the Siam Order in Council of the 28th July, 1856, and had, moreover, recently filed affidavits in the proceeding of "Michell *v.* Bush," then pending before

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Her Majesty's Consular Court for Siam, in which he described himself as a Siamese subject.

Refusal of Consular Court to hear case.

That in those circumstances the British Minister and Consul-General had at present refused on the grounds which were stated in his own despatch of the 10th January, 1887 (Mr. Satow's No. 3, Confidential), and in Mr. Michell's letter of the 3rd January, 1887 (Inclosure 1 in Mr. Satow's No. 3, Confidential), to entertain a plaint which had been presented by Mr. Michell unless it was forwarded to him by the Siamese Minister for Foreign Affairs.

That it was provided by Article 2 of the Commercial Agreement of the 13th May, 1856 (commonly known as the "Parkes Agreement"), and supplementary to the Treaty between Great Britain and Siam of the previous year, that "all civil cases in which both parties are British subjects, *or which the defendant is a British subject*, shall be heard and determined by the British Consul alone," and that section 5 of the Siam Order in Council of the 28th July, 1856, further ordered that "it shall be lawful for Her Majesty's Consul to hear and determine any suit of a civil nature against a British subject arising within any part of the dominions of the Kings of Siam, whether such suit be instituted by a subject of the Kings of Siam, or by the subject or citizen of a foreign State in amity with Her Majesty, subject in case either party be dissatisfied with the decision of the Consul to an appeal to the Supreme Court at Singapore."

That section 29 of the same Order in Council provided that a register should be kept of all British subjects residing within the Kingdom of Siam, and that every British subject who might arrive within the dominions of the King of Siam "shall, within a reasonable time after his arrival, apply to the Consul to be enrolled in such register, and any British subject who shall refuse or neglect to make application to be so enrolled, and who shall not be able to excuse to the satisfaction of the said Consul such his refusal or neglect, shall not be entitled to be recognized or protected as a British subject in any difficulties or suits whatsoever in which he may have been involved within the dominions of the Kings of Siam within the time during which he shall not have been so enrolled."

That it was conceived that any British subject neglecting to register himself as such, and being unable to excuse his neglect in that respect to the satisfaction of the Consul, would lose, among other privileges, the right of suing as plaintiff in the British Consular Courts, and, further, that in the particular case then before the Court, Mr. Michell could not be allowed to sue in the character of a Siamese subject until he had established to the satisfaction of the Court that he had become voluntarily naturalized in Siam, and had within the terms of section 6 of "The Nationalization Act, 1870," ceased to be a British subject.

That the Consul-General, however, as would be seen from his despatch, elected to treat Mr. Michell as a Siamese subject, on the mere assertion of that gentleman that he was suing in that character, and he refused to entertain his suit on the ground that the plaint had not been forwarded through the Siamese Minister for Foreign Affairs.

That the following questions seemed to arise in relation to the case:—

1. Could the Consular Court properly decline to entertain Mr. Michell's suit until he should have registered himself as a British subject, under paragraph 29 of the Order in Council, or until he should have established, to the satisfaction of the Court, that he had become voluntarily naturalized in Siam, and had ceased to be a British subject?

2. Could the Consular Court impose on Siamese plaintiffs the condition that their plaints should be forwarded through the Siamese Minister for Foreign Affairs, in view of the terms of Article 2 of the Parkes Agreement and of paragraph 5 of the Order in Council of 1856?

That, before instructions as to his future action with regard to Mr. Michell were dispatched to the Consul-General, your Lordship desired to be favoured with our opinion on the questions submitted in Sir J. Pauncefote's letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Defendant being British, Consular Court has jurisdiction.

1. That the Consular Court cannot properly decline to entertain Mr. Michell's suit until he has complied with the conditions mentioned in the question, as the fact that the defendant is a British subject brings the case within the jurisdiction of the Consul without regard to the nationality of the plaintiff.

Siamese not obliged to forward plaints through their Foreign Minister.

2. The Consular Court cannot impose on Siamese plaintiffs the condition that their plaints shall be forwarded through the Siamese Minister for Foreign Affairs.

Consul must hear and decide case according to the law.

We think it the clear duty of the Consul to hear and decide the case according to law without regard to any impression he may have formed as to Mr. Michell's objects in bringing the suit.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

1. Mr. Satow, No. 3, January 10, 1887.
2. Siam Order in Council, July 28, 1856 (Confidential No. 575).
3. Commercial Agreement, supplementary to the Treaty between Great Britain and Siam of 1855: signed at Bangkok, May 13, 1856. Treaty No. 411.

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## No. 54.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received April* 18.)

My Lord,
*Royal Courts of Justice, April* 15, 1887.

Registration of British subjects.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to a question which had arisen as to the validity of certain Regulations issued by Her Majesty's Minister Resident and Consul-General at Bangkok, with the approval of the then Secretary of State for Foreign Affairs, for the purpose of more effectually securing the registration of British subjects in Siam.

That such registration had already been made compulsory by Article 29 of the Siam Order in Council of the 28th July, 1856, but that no provision had been inserted in that Article, as was done subsequently in the analogous clauses of the Levant, and of the China and Japan Orders in Council, relating to the compulsory registration of British subjects in the Levant and in China and Japan respectively, empowering the imposition of a pecuniary fine upon those persons who neglected or refused to register themselves, and who were unable to excuse their failure so to do to the satisfaction of the Consular officer.

That it was found that some such power was essential to the practical working of the Article, and that the inclosed Regulations which had, on the 5th January, 1885, been pronounced to be "unobjectionable in point of form" by the then Law Officers of the Crown, and which had subsequently, on the 18th November, 1885, been also approved by their successors, were, on the 20th July, 1886, finally approved by the Secretary of State.

Question as to validity of the new Regulations,

That the Regulations purported, as would be seen, to be made by Her Majesty's Agent and Consul-General in Siam by virtue of the powers vested in him by section 1 of the Order in Council of the 28th day of July, 1856, to make Rules and Regulations for the peace, order, and good governance of Her Majesty's subjects being within the dominions of the Kings of Siam, and that it was now contended on behalf of certain of the British residents who objected to them, that they were not such Regulations as came properly within the description of "Rules and Regulations for the peace, order, and good governance of Her Majesty's subjects being within the dominions of the Kings of Siam," and that they were consequently *ultra vires*, and of no effect.

and power to make them under existing Order in Council.

That it was further contended that such Regulations could only be enacted by means of an amending Order in Council, and that, as bearing more especially upon that latter point, Sir Julian Pauncefote was to inclose a Memorandum by the Attorney-General for the Straits Settlements.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion as to whether the Regulations in question were valid or not, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Proposed Regulations, except No. 3, can now be made.

That, in our opinion, the proposed Regulations, with the exception of No. 3, are valid, and can be made under the existing Order in Council.

By the Treaty of the 18th April, 1855, Article II, it was provided that the interests of all British subjects coming to Siam should be placed under the regulation and control of the Consul, who should enforce the observance by British subjects of

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all the provisions of the Treaty, and give effect to all Rules and Regulations that might thereafter be enacted for the government of British subjects in Siam.

By the same Treaty, Article V, it was provided that all British subjects intending to reside in Siam should be registered at the British Consulate, that they should not go out to sea, or proceed beyond the limits assigned by Treaty for the residence of British subjects, without a passport to be applied for by the British Consul.

The Order in Council of the 28th July, 1856, by Article 1, gave the Consul the power to enforce, by fine or imprisonment, the observance of the stipulations of any Treaty, or of Regulations appended to any Treaty, and to make and enforce, by fine or imprisonment, Rules and Regulations for the observance of the stipulations of Treaties, and for the peace, order, and good government of Her Majesty's subjects within the dominions of Siam.

By Article 2 any Rule or Regulations to be enforced by a penalty is to be submitted to Her Majesty's Principal Secretary of State for Foreign Affairs.

By Article 29 it is provided that a Register shall be kept of all British subjects residing within the dominions of the Kingdom of Siam. That every British subject shall be enrolled on such Register, and that every subject who may arrive shall, within a reasonable time, apply to the Consul to be enrolled. The Article further provides that any British subject who shall refuse or neglect to be so enrolled, and who is not able to excuse such refusal or neglect, shall not be entitled to be recognized or protected as a British subject.

Duties and powers of Consul as to registration.

In the face of these provisions, it is, in our opinion, clearly the duty of the Consul to see that a correct Register is kept, and it is within his power to order the Register to be corrected annually, and, subject to the approval of the Secretary of State, to provide a penalty for non-registration.

No power to levy fee for registration.

We do not, however, see by what authority the Consul is entitled to levy a fee on registration. It is the duty of British subjects to get themselves registered, and it may be necessary for the Consul to enforce observance of the Treaty and Regulations by penalty, but we do not, at present, see any authority for making a charge upon those who are compelled to perform a duty enforced by Treaty and Order in Council.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

(A.) Law Officers' Report, January 5, 1885. Confidential No. 5246, p. 150.
(B.) " " " November 18, 1885. Confidential No. 5246, p. 152.
(C.) Mr. Satow, No. 72, September 14, 1884.
(D.) " " No. 73, September 15, 1884.
(E.) Siam Order in Council, July 28, 1856. Confidential No. 575.
(F.) China and Japan Order in Council, March 9, 1865. Confidential No. 1354.
(G.) Siam Order in Council, June 26, 1884. Confidential No. 4986*.
(H.) Memorandum (Sir E. Hertslet), December 11, 1884.
(I.) Mr. Satow, No. 63, July 1, 1885.
(J.) Précis of above (I).
(K.) Law Officers' Report, March 15, 1883. Confidential No. 4974, p. 103.
(L.) Treaty with Siam, April 18, 1855. No. 411.
(M.) Amended draft Regulations (Annex to Law Officers' Report, November 18, 1885). See (A) above.
(N.) Levant Order in Council, December 12, 1873. Confidential No. 2354.
(O.) Mr. Satow, No. 37, May 10, 1886.
(P.) To Mr. Gould, No. 53, July 23, 1886.
(Q.) Mr. Satow, January 3, 1887.
(R.) " " February 4, 1887.

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## Annex.

### *Draft Regulations (amended).*

The following Regulation made by the Undersigned, Her Majesty's Agent and Consul-General in Siam, in virtue of the powers vested in him by section 1 of the Order in Council of the 28th day of July, 1856, to make Rules and Regulations for the peace, order, and good governance of Her Majesty's subjects being within the dominions of the Kings of Siam, and approved by Her Majesty's Principal Secretary of State for Foreign Affairs, is hereby notified for the information of British subjects:—

1. Every British subject resident in Bangkok, or within twenty-four hours' journey thereof, and every British subject resident in Chiengmai, or within twenty-four hours' journey thereof, being of the age of 21 years or upwards, or being married, or a widower or widow, though under that age, shall, in the month of January 1886, and in every subsequent year, register himself or herself in the register-book kept for that purpose, either at Her Majesty's Consulate-General in Bangkok or at Her Majesty's Vice-Consulate at Chiengmai, and all British subjects resident in Siam beyond those limits shall, in like manner, register themselves as early as may conveniently be in the year 1886 and every subsequent year, subject to this qualification, that the registration of a man shall be deemed to include the registration of his wife unless she is living apart from him, and that the registration of the head of a family, whether male or female, shall be deemed to comprise the registration of all females being relatives to the head of the family (in whatever degree of relationship) living under the same roof with the head of the family at the time of his or her registration.

2. Any British subject failing so to register himself or herself, and not excusing his or her failure to the satisfaction of the Consular officer, shall be liable to a fine not exceeding 20 ticals for each instance of such failure.
3. Every person on registration of himself or herself shall pay a fee of 2 ticals.
4. The Consular officer shall issue to every person so registered a certificate of registration under his hand and Consular seal, which certificate shall be given up in exchange for a new certificate on each occasion of re-registration, and failure to produce the previous certificate, or to satisfactorily account for its non-production, shall render the person so failing liable to a fine not exceeding 20 ticals.
5. The transfer or loan of a certificate of registration shall render the person so transferring or lending to another liable to a penalty of 100 ticals.
6. The use of a certificate of registration by any other than the person to whom it was granted shall render the person so using such certificate liable to a penalty of 100 ticals.
7. The provisions of this Regulation shall be applicable only to British subjects resident, or intending to reside, in Siam; they shall be bound to take out a certificate of registration within one month of their arrival in the country.

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## No. 55.

### *The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 2.)*

My Lord, *Royal Courts of Justice, May 2, 1887.*

Claim of Mr. E. B. Michell, a British subject in Siam, to exemption from Consular jurisdiction.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th ultimo, stating that he was directed to transmit to us the papers noted in the accompanying list relative to a claim put forward by Mr. E. B. Michell, a member of the English Bar, now resident at Bangkok, in the capacity of Legal Adviser to the Siamese Minister for Foreign Affairs, that he should be exempted from the jurisdiction of the British Consular Court for Siam, and should be considered by Her Majesty's Minister Resident and Consul-General at Bangkok as a Siamese subject.

His claims to Siamese nationality

That Mr. Michell, although he had persistently claimed in the course of various controversies with the Minister Resident to be a Siamese subject, and had even sworn one or more affidavits before the Consular authorities in which he had so described and represented himself, was undoubtedly a natural-born British subject, and admittedly continued of that nationality up to the time of his taking up his residence in his present capacity at Bangkok.

not formally recognized by Siamese Government.

That he had since received no formal recognition by the Siamese Government as a subject of Siam, nor did he suggest any other manner in which he had "voluntarily become naturalized" in that State, so as to be deemed (under the provisions of section 6 of "The Naturalization Act, 1870") "to have ceased to be a British subject, and be regarded as an alien."

His refusal to be registered as a British subject.

That he had, however, refused to enrol himself as a British subject in the Consular Register at Bangkok in accordance with the provisions of section 29 of the Siam Order in Council of the 28th July, 1856, had protested against the publication of his name in the list of British subjects liable to serve on juries, and had in other ways declined to recognize and protested against the exercise of any kind of Consular jurisdiction over him.

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Claim on account of Siamese domicil.

That in addition to his original claim to exemption from the jurisdiction of the Consular Court, on the ground that he was a Siamese subject, Mr. Michell now apparently claimed to be exempt from such jurisdiction on the further and separate ground that he was domiciled in Siam.

That it appeared to be open to some doubt whether, as a matter of fact, his domicile was Siamese, but that, even assuming that such was the case, it was conceived that he would not, on that account, or so long as he continued to be a British subject, be exempt from British Consular jurisdiction.

Refusal to recognize his claims.

That, acting under the advice of the Attorney-General for the Straits Settlements, Her Majesty's Minister Resident at Bangkok had refused to recognize the validity of Mr. Michell's claims, and had, under the circumstances, detailed in his despatch No. 20 of the 28th February, allowed a suit which had been brought in the Consular Court against Mr. Michell to proceed to a hearing and determination.

Judgment against him.

That Judgment in that action had been given against Mr. Michell, and that the usual notice of Decree had been served upon him.

That Mr. Michell, however, refused to recognize the validity of that Decree, and styled the service of the notice upon him as a "gross breach of international law and comity."

That he had referred the matter to the Siamese Minister for Foreign Affairs, who had promised to communicate with Her Majesty's Minister Resident upon the subject, who, pending the receipt of that communication, and of instructions from the Secretary of State, had not directed any further action to be taken in the matter.

Question as to:—

That in those circumstances, Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

(1) his British nationality.
(2) Jurisdiction over him.

1. Whether Mr. E. B. Michell had ceased to be a British subject or not.

2. Whether, assuming that he had lost his British domicil of origin and acquired a Siamese domicil by choice, that fact would, so long as he remained a British subject, in any respect exempt him from the jurisdiction of the British Consular Courts in Siam?

(3) Execution of Judgment against him.

3. Whether, if Mr. Michell were still a British subject, the Minister Resident should, having regard to all the circumstances of the case, proceed to enforce the registration of that gentleman as such under the provisions of paragraphs 1 and 2 of the Registration Regulations, and should now permit the execution of the Judgment which had already been obtained against Mr. Michell in the action in the Consular Court to proceed?

That Sir Julian Pauncefote was to add that your Lordship would be glad to be favoured at the same time with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands, we have taken the papers transmitted with Sir Julian Pauncefote's letter into our consideration, and have the honour to report—

No proof of his loss of British nationality. Being British he is not exempt from Consular jurisdiction. His registration should be enforced, and Judgment executed.

1. That there is no evidence before us that Mr. E. B. Michell has ceased to be a British subject.

2. Assuming Mr. Michell to have, in fact, lost his British domicil of origin and acquired a Siamese domicil of choice, this fact would not, in our opinion, exempt him from the jurisdiction of the British Consular Courts in Siam, so long as he remained a British subject.

3. In our opinion, the Minister Resident should proceed to enforce the registration of Mr. Michell, under the provisions of the Registration Regulations, and should now permit the execution of the Judgment obtained against Mr. Michell to proceed.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

(A.) Regulations for the registration of British subjects in Siam, approved July 20, 1886, Confidential No. 5474*.
(B.) Mr. Satow, No. 13, January 17, 1887.
(C.) " " No. 20, February 28, 1887.
(D.) " " Telegraphic, April 28, 1887.

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## No. 56.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 23.)*

My Lord,
*Royal Courts of Justice*, *May* 21, 1887.

Regulation for registration of British subjects.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, with reference to the expediency of re-enacting by Order in Council the provisions of the Regulation issued last year by Her Majesty's Minister Resident and Consul-General at Bangkok, with the approval of the then Secretary of State for Foreign Affairs, for the purpose of more effectually securing the registration of British subjects in Siam.

Question as to its validity.

That it would be remembered that, in consequence of doubts having arisen as to the competence of the Minister Resident to issue such a Regulation in virtue of the powers vested in him by section 1 of the Siam Order in Council of the 28th July, 1856, the question of its validity was referred to us on the 18th March of this year, and that on the 15th of the following month we reported in effect that, although the remainder of the Regulation was valid, it was, in our opinion, beyond the powers of the Minister Resident to enforce paragraph 3 thereof which prescribed that "every person on registration shall pay a fee of 2 ticals."

Fees illegally levied.

That instructions were consequently sent to the Minister Resident directing him to cease imposing, for the future, any fee under that paragraph.

That he had, however, already levied thereunder fees amounting to upwards of 200*l.*, and was, and still is, being threatened with legal proceedings for the recovery of fees thus exacted from them by certain hostile members of the British community at Bangkok.

Proposed issue of an Order in Council having a retrospective effect.

That it had been suggested that an Order in Council might be issued, embodying the Regulation in a schedule, and declaring that it should be deemed to be, and to have been from the 19th March, 1886, the date of its promulgation, as binding and of as full legal force and effect as if it had been originally enacted by Order in Council.

That such an Order would, under section 4 of "The Foreign Jurisdiction Act, 1878," be unimpeachable, and would, by legalizing retrospectively the levy of any fees which had already actually been collected, not only relieve Her Majesty's Treasury from some difficulty with regard to the proper mode of dealing with those fees, but would also furnish the Minister Resident, as was thought, with the most effective means of meeting the legal proceedings with which he had been threatened; and which, there was reason to believe, were likely to be persisted in as having been instigated rather by desire, as far as possible, to embarrass his position and weaken his authority, than from any *bonâ fide* intention on the part of those who were initiating them to vindicate their own rights.

That Sir Julian Pauncefote was to add that there were precedents for ratifying by retrospection the exercise of a jurisdiction originally excessive; and that, as a similar registration fee was levied in China, Japan, the Levant, and other places where the Queen enjoyed ex-territorial jurisdiction, no practical hardship would appear to be inflicted by validating retrospectively paragraph 3 of the Regulation under which that fee had been levied in Siam.

That the Supreme Court of the Straits Settlements had, under section 24 of the Siam Order in Council, concurrent jurisdiction with the Consular Court of Siam in regard to all civil suits between British subjects arising within any part of the dominions of the Kings of Siam; and that sections 6 and 7 of the same Order provided for an appeal to the Supreme Court at Singapore in all such cases when they had been in the first instance decided in the Consular Court of Siam.

That it was conceived therefore that the Minister Resident was, like other British residents in Siam, amenable to the jurisdiction of the Supreme Court at Singapore, and that if a civil action for the recovery of a fee improperly levied should be brought against him in that Court, he would have to enter an appearance thereto in the ordinary course, but that such a retrospective provision as had been suggested above would, entirely apart from other and separate defences which might also be open to him, form in itself a valid and sufficient defence to the Minister Resident in the event of any such action being proceeded with.

That before advising the Minister Resident on that point, however, your Lordship desired to be confirmed or otherwise in the correctness of the above view by us; and that your Lordship would also be glad, at the same time, to be favoured with our opinion as to whether the issue of an Order in Council in the form suggested, or in

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any other form, was, under all the circumstances of the case, desirable; and with any general observations which we might have to offer on the question.

In obedience to your Lordship's commands we have the honour to report—

That in our opinion the action to be taken in this case must be determined more by considerations of policy than of law.

Retrospective Order in Council undesirable.

As a matter of law we think it is not desirable to make an Order in Council having a retrospective effect, and purporting to render lawful the taking of fees which were not, at the time they were received, sanctioned by the Act of Parliament 6 Geo. IV., cap. 87, or the Order in Council of the 1st May, 1855.

Fees illegally levied should be repaid.

In our judgment, the amounts so charged should, when demanded, be repaid. But as a matter of policy, so far as it is for us, we may point out that Mr. Satow received the fees under Regulations which had received the sanction of the Home Government, and as, having regard to the provisions of the 6 Geo. IV., cap. 87, the existence of these Regulations might not afford any defence, they do, in our opinion, warrant Her Majesty's Government in protecting Mr. Satow against actions as far as possible.

Mr. Satow should be protected by an Order in Council.

We think, therefore, that an Order in Council rendering valid Mr. Satow's acts, and relieving him from any penalties might, on that ground, be desirable.

He is amenable to jurisdiction of the Supreme Court of Singapore.

The Minister Resident is, so far as we can see, amenable, like other British subjects residing in Siam, to the jurisdiction of the Supreme Court of Singapore.

Such an Order would, in our opinion, afford a sufficient answer to any proceedings.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers sent to Law Officers, May 14, 1887.*

1. To Law Officers, March 18, 1887.
2. Law Officers, April 15, 1887.
3. Siam Order in Council, July 28, 1856. Confidential No. 575.
4. Regulation of 1886 as to Registration Fees in Siam. Confidential No. 5474*.
5. To Treasury, April 27, 1887.
6. Mr. Satow, No. 23, March 5, 1887.
7. Treasury, May 3, 1887.
8. To Treasury, May 6, 1887.
9. Treasury, May 10, 1887.
10. To Mr. Satow, No. 9, Telegraphic, May 7, 1887.

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## No. 57.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received July 2.*)

My Lord,
*Royal Courts of Justice, July* 1, 1887.

Regulation for registration of British subjects.

Order in Council removing doubts as to validity of.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying draft of an Order in Council for the purpose of removing doubts which had arisen with respect to the validity of the Registration Regulation (Siam) of the 19th March, 1886, set out in the Schedule thereto.

That the Report with which we favoured your Lordship upon the 21st May last, with reference to the expediency of issuing such an Order in Council, as well as the papers upon which that Report was founded, were also inclosed; and that Sir Philip Currie was to request that we would take those into our further consideration, and that we would favour your Lordship with our opinion as to whether the draft Order in Council met the requirements of the case, and might be approved.

In obedience to your Lordship's commands we have the honour to report—

Approve draft Order.

That we approve the draft Order in Council as altered and initialled by us.

Fees received before date of new Order should be returned.

In our opinion fees received before the date of the new Order in Council should be returned in order to avoid litigation, the result of which cannot be regarded as certain.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

1. Draft Order in Council (see Confidential No. 5474*).
2. To Law Officers, March 18, 1887.
3. Law Officers, April 15, 1887.
4. Siam Order in Council, July 28, 1856. Confidential No. 575.
5. Regulation of 1886 as to Registration Fees in Siam (see Confidential No. 5474*).
6. To Treasury, April 27, 1887.
7. Mr. Satow, No. 23, March 5, 1887.
8. Treasury, May 3, 1887,
9. To Treasury, May 6, 1887.
10. Treasury, May 10, 1887.
11. To Mr. Satow, No. 9, Telegraphic, May 7, 1887.
12. Law Officers, May 21, 1887.

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## No. 58.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August 24.*)

My Lord,
*Royal Courts of Justice, August* 24, 1887.

British Consular jurisdiction over Mr. E. B. Michell. Steps for enforcing.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the accompanying draft of a despatch which had been addressed to Mr. Gould,* Her Majesty's Acting Chargé d'Affaires at Bangkok, with reference to the steps which it appeared desirable for him now to take for the purpose of vindicating the Consular Court against the persistent attempts of Mr. E. B. Michell to set its authority at defiance.

That the proceedings of that gentleman had already rendered more than one reference to us necessary, and would, it was thought, be clearly within our recollection.

That two of the Reports† which we had been good enough to furnish to your Lordship with respect to this question in its various phases were inclosed therewith.

That the substance of the first two paragraphs of our Report of the 2nd May last was at once communicated, by telegraph, to Mr. Gould, but that it was thought at that time advisable, out of courtesy to the Siamese Government, having regard to the confidential position held by Mr. Michell in their service, to forbear from actually instructing Mr. Gould to proceed in the sense of the third paragraph of that Report until the Siamese authorities had been afforded some further time and opportunity either for disavowing Mr. Michell's proceedings or for otherwise expressing their views with regard to his action.

That, meanwhile, both Her Majesty's Minister Resident at Bangkok, who was at that time on the eve of proceeding to Europe on leave of absence, and, subsequently to his departure, Mr. Gould had, as the resources of their own Consular Staff were unfortunately quite inadequate to the emergency, applied to the Siamese Government for the necessary assistance to enable them to enforce the decrees of the Court against the property or, as the case might be, the person of Mr. Michell.

Siamese acknowledge Treaty, but refuse to assist in present case.

That it would be seen, however, that the Siamese Government, while not denying their general obligation to render such assistance when required, had, in this particular case, declined at present to grant it, on the ground that Mr. Michell was under Siamese and not under British Consular jurisdiction.

That a full statement of the arguments by which that contention could, in their judgment, be supported, was stated by the Siamese Government‡ to be in course of preparation for submission to that of Her Majesty at the earliest opportunity; but that, although some time elapsed, no such statement was supplied to your Lordship either by the Siamese Government, through Mr. Gould, or, during his recent visit to this country, by Prince Devawongse direct.

That it appeared to your Lordship that further delay was, in those circumstances, both unnecessary and undesirable, and that your Lordship accordingly, on the 19th of last month, instructed Mr. Gould in the sense of the inclosed despatch (No. 42 of the 19th July).

That in the event, which must at any rate be contemplated, of the Siamese Government still refusing to intervene in the matter, your Lordship would desire to be in a position forthwith to instruct Mr. Gould as to what further steps he should take to enforce the authority of his Court; and that Sir Julian Pauncefote was therefore to

* To Mr. Gould, No. 42, July 19, 1887.
† Law Officers, April 7 and May 2, 1887.
‡ See Inclosure 2 in Mr. Gould's No. 60, May 22, 1887.

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request us to favour your Lordship with our opinion as to what course should be pursued by Her Majesty's Government in such a contingency.

As to dispatch of ship of war to Bangkok.

That, with reference to this question, Sir Julian Pauncefote was to invite our particular attention to the terms of Article VII of the Treaty of Friendship and Commerce between Great Britain and Siam of the 18th April, 1885, which, after defining the conditions under which the entry of British ships of war into the River Menam is to be limited, provides that "in the absence of a British ship of war" the Siamese authorities shall "furnish the Consul with a force sufficient to enable him to give effect to his authority over British subjects, and to enforce discipline among British shipping."

But that, although it appeared clear that the Siamese Government were by the terms of that Article under an engagement to furnish the Consul with assistance sufficient to enable him to execute the decrees of his Court, it seemed open to some doubt, whether, in the event of their failure to perform their Treaty obligation in that regard, Her Majesty's Government would be justified in sending a ship of war up the river as far as Bangkok, for the purpose either of landing a boat's crew or otherwise of themselves enabling the Consul to give effect to his authority.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Dispatch of ship of war without permission a breach of the Treaty.

That, in our opinion, in the event of the refusal by the Siamese Government to afford Her Majesty's Consular officials the assistance necessary for enforcing the judgments and orders of the British Consular Court against Mr. Michell, on the ground that he is not a British subject, or of their refusal to permit a British ship of war to proceed up the river to Bangkok for the purpose, Her Majesty's Government could not send a ship of war to Bangkok without a breach of Article VII of the Treaty.

Should exercise diplomatic pressure.

If such a refusal should occur, diplomatic pressure should be brought to bear upon the Siamese Government, and they should be asked to give a statement of the reasons on which it is based, and those reasons should receive full consideration before the adoption of serious measures.

Promised explanation a reason for delay.

In this particular case, the fact that the Siamese Government state that they are about to submit to the Foreign Office a full statement of their arguments in support of the view that Mr. Michell is under Siamese and not under British Consular jurisdiction, affords a further reason for postponing any active steps, but we think that unless this statement is, in due course, transmitted, application should be made respecting it.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

## Switzerland.

### No. 59.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received April* 8.)

My Lord, *Royal Courts of Justice, April* 7, 1887.

Cunliffe-Owen divorce suit.

WE were honoured with your Lordship's commands, signified in Sir T. V. Lister's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list* relating to a question which had arisen in the course of certain divorce proceedings brought by Mrs. Emma Cunliffe-Owen against her husband, Mr. Fritz Cunliffe-Owen, before the Civil Tribunal for the District of Vevey, in Switzerland.

That both Mr. and Mrs. Cunliffe-Owen were British subjects; that they were married at Vevey on the 22nd November, 1877, and were both domiciled in Switzerland. That the Swiss Law of Divorce, however (like that of marriage), was only applicable to Swiss citizens; and that foreigners, whether domiciled in Switzerland or not, could not obtain a decree of divorce from the Tribunals of that country unless they had previously furnished themselves with an official certificate from the authorities of the country of their nationality; that such a decree would, if granted by the Swiss Tribunal, be recognized as valid by the laws of the nation to which such foreigners belong.

Request for certificate of validity of Swiss decree in England.

That in the present case the Civil Tribunal at Vevey, acting under the direction of the Superior Court of the Canton de Vaud, had declined to proceed to the determination of the suit unless a certificate to the effect indicated above was furnished to them by the competent British authorities.

That it would be remembered that the propriety of authorizing Her Majesty's Minister at Berne to make a general declaration to the Swiss Federal Government, to the effect that a divorce of British subjects domiciled in Great Britain, if granted by a competent Swiss Tribunal upon grounds recognized by British law, would be valid in Great Britain, formed the subject of a reference to ourselves in September of last year, and that we expressed our entire concurrence with the view of the then Secretary of State for Foreign Affairs that it was not desirable to grant the general authority proposed, but that any case which might arise should be considered upon its merits, and the issue of a certificate be authorized only under circumstances in which such certificate was really necessary.

That in the present case it would, however, appear that the parties were *bonâ fide* domiciled in Switzerland, and that the facts, if proved, were such as would entitle the petitioner to a divorce according to the law of this country.

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether, having regard to the circumstances of that particular case, Her Majesty's Minister at Berne might properly be instructed to grant a certificate, to be annexed to the "Acte de Vérité," that if Judgment of Divorce should be pronounced by the Swiss Tribunals in the suit then pending before them such divorce would be recognized as valid by the law of England.

In obedience to your Lordship's commands, we have the honour to report—

Certificate may be granted.

That, having regard to the circumstances of this particular case, Her Majesty's Minister at Berne may properly be instructed to grant the certificate.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

## Turkey.

### No. 60.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received March* 18.)

My Lord, *Royal Courts of Justice, March* 17, 1887.

Yacoub Levy Stambouli. British protected subject at Damascus.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to us the papers* noted in the margin, with reference to the nationality of one Yacoub Levy Stambouli, a person of Jewish extraction residing at Damascus, who had hitherto been considered to be a British subject, and as such entitled to British protection.

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* Law Officers, September 28, 1886, Confidential, No. 5440, p. 79; Mr Thornton, No. 15, March 15, 1887.

* Sir W. White, No. 27, January 17, 1887; Circular to Consuls in Turkey, November 1, 1886 (No. 1901).

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That the Ottoman authorities had protested against Her Majesty's Government continuing to accord to Stambouli their protection, and had based such protest upon the ground that he originally obtained recognition at the hands of Her Majesty's Government, as a British subject, by means of fraudulent declarations of untrustworthy persons, and other collusive or fictitious evidence.

That that contention on the part of the Sublime Porte would at present appear to your Lordship to be not entirely without warrant, as it seemed to your Lordship that Stambouli's right to British nationality rested on what were at any rate very dubious grounds.

That, in those circumstances, your Lordship desired to be favoured with our opinion as to whether the evidence contained Sir W. White's despatch No. 27 of the 17th January was such as to satisfy us that the recognition of Stambouli as a British subject was originally obtained by fraud; or whether we thought, upon the other hand, that the evidence was not sufficiently conclusive upon that point; and, in the former case, whether Stambouli should be called upon to vindicate his right to British protection before further action was taken.

That it was conceived that, notwithstanding the fact that he had been in the uninterrupted enjoyment of such protection for a period now extending over thirty years, he would be no longer entitled thereto if it were clearly shown that it was originally obtained by fraud, and that he was, in fact, not a British subject.

That your Lordship would, however, also like to be informed whether, in our judgment, that view was correct or otherwise.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

That if it were clearly shown that British protection was originally obtained by fraud, such protection could be withdrawn.

Protection should be withdrawn if obtained by fraud. Evidence of fraud insufficient; Turks refused to question his status in 1864.

That the documents submitted to us do not, in our opinion, disclose sufficient evidence to prove fraud, and, in the absence of such evidence, and having regard to the circumstance that in 1864—at the time of the receipt of the Police Report—the Representative of the Ottoman Government at Damascus refused to call in question Stambouli's status, though incited to do so by the British Consul, Her Majesty's Government would be justified in declining to withdraw from him their protection, at any rate without calling upon him to support his claim.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
EDWARD CLARKE.

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### No. 61.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received April* 8.)

*Royal Courts of Justice, April* 7, 1887.

My Lord,

Estate of G. Popolani. Claims of residuary legatees against Her Majesty's Government on account of misconduct of official administrator.

WE were honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list,* with reference to a claim which had been advanced against Her Majesty's Government on behalf of Mme. Lavison and Mr. Albert Wilkinson, as two of the residuary legatees of the late Giovanni Popolani, of Alexandria, in respect of a sum of 48,000 fr., which it was alleged they had been deprived of through the misconduct, in his official capacity, of M. Achille Palmieri while that gentleman was in the service of Her Majesty's Government as Law Secretary to the Consular Court in Egypt, and was also acting under an order of that Court as official administrator of the estate of Giovanni Popolani.

Estate of C. Popolani.

That they also claimed further sums amounting together to upwards of 100,000 fr. on the accounts of the estate of one Constantino Popolani (who died intestate and indebted to the estate of Giovanni Popolani in a sum 340,000 fr.) as rendered by the Alexandria Court on the 18th April, 1862, but that it was only in respect of the sum of 48,000 fr. first mentioned that they were at present endeavouring to hold the Government responsible.

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* Mr. C. Royle, December 15, 1886; Consul-General Fawcett, No. 24, March 2, 1887.

That in the year 1870 proceedings were taken against Palmieri in the Supreme Court of Constantinople by a Mr. Harvey, acting on behalf of the heirs of Popolani to obtain an account and the decree of that Court for such sum as should be found to be due thereon from Palmieri to the succession.

That the action was not defended by Palmieri, and that, in default of appearance, Judgment was given against him for 48,000 fr. and interest at the rate of 6 per cent. per annum.

That shortly afterwards Palmieri applied for and obtained a rule *nisi* for a new trial, but that, on the argument of the rule, on the 18th August, 1870, before the then Consul-General and Judge, it was discharged.

That difficulties appeared, however, to have arisen with regard to executing the Judgment thus obtained against Palmieri; that at any rate it had remained unexecuted to that day; but that the present claimants asserted that they were in no way bound by, or interested in, those proceedings; and that, inasmuch as the money in question was received by Palmieri as an officer of the Court, and without the persons who were interested in its ultimate disposition being in any way parties to the transaction, it was to the British Government (whose servant he was), and not to Palmieri himself, that they looked to replace the missing sums.

That as the facts of the case were involved in some obscurity, Her Majesty's Consul-General at Constantinople was requested to furnish a Report upon it for the information of Her Majesty's Government.

That he had supplied as full details as were available, but that owing to the length of time which had elapsed since the events occurred upon which the present claim was based, and to the fact that most of the documents connected with the case were destroyed by the fire at Alexandria in 1882, and that most of the parties concerned were dead, his task had been attended with considerable difficulty.

That it would appear, judging from Consul-General Fawcett's Report, that the charge against Palmieri was not one of embezzlement, but was rather in the nature of a conspiracy to defraud the estate, which he officially administered, by collusively selling a piece of land to Messrs. Dervier and Co. for 48,000 fr., with a view to its resale by that firm to the Egyptian Government for exactly double the amount, and to a subsequent division (which apparently took place) of the profit attaching to that transaction with Messrs. Dervier and Co. and a person called Lacovitch.

That it was conceived, however, that a Judgment by default obtained against Palmieri seventeen years ago was not such evidence of the fraud now charged against him as would justify Her Majesty's Government in accepting any liability in the matter (even if they should be under any responsibility) in respect of the whole or any part of the 48,000 fr. which was claimed by the residuary legatees of Popolani.

That Sir J. Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether, having regard to all the circumstances of the case, Her Majesty's Government were under any liability to the present claimants in respect of the sum of 48,000 fr., or any part thereof; and that if so, whether the claimants could hold Her Majesty's Government primarily responsible in this or any amount without having first exhausted the assets of Palmieri; or whether such liability would not merely attach to Her Majesty's Government in the event of Palmieri's resources having previously proved insufficient to satisfy the claim.

In obedience to your Lordship's commands we have the honour to report—

Her Majesty's Government are not liable in respect of the claims made by the legatees.

That, in our opinion, the facts detailed in the documents submitted do not establish any liability on the part of Her Majesty's Government in respect of the claims put forward by Madame Lavison and Mr. Albert Wilkinson.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
EDWARD CLARKE.

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### No. 62.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received June* 8.)

*Royal Courts of Justice, June* 7, 1887.

My Lord,

Judicial duties at Sophia.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th ultimo, stating that he was directed by your Lordship

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to transmit to us the papers noted in the accompanying list, with reference to a proposal which was then under consideration for relieving, as far as possible, the Agent and Consul-General at Sophia of the judicial duties he had to perform.

Proposal that Vice-Consul should hold a separate Court.

That in consequence of the increasing importance and pressure of the political work at the Agency and Consulate-General, it had been suggested that the Vice-Consul appointed to that post might hold a separate Court at Sophia for the disposal of all ordinary judicial business, leaving any exceptionally important cases to be decided, as heretofore, by the Consul-General under the Orders in Council for the Levant.

Question as to holding of Court by more than one commissioned officer in the same district.

That that proposal, however, raised the question as to whether, under section 15 of the Order in Council of the 12th December, 1873, more than one commissioned Consular officer could hold a Consular Court within the same Consular district.

By that section it was provided that every commissioned Consular officer (subject to certain exceptions mentioned) should, "for and in his own Consular district, hold and form a Court."

That all those Courts were styled Provincial Courts; but that there was an important distinction between the powers of a Provincial Court held before a commissioned Consular officer and those of a Provincial Court held before an uncommissioned Consular officer.

That the civil and criminal jurisdiction of the former Courts was defined by sections 31 and 271, and that of the latter by sections 96 and 272 of the Order in Council.

That by paragraph 38 a Provincial Court held before a commissioned Consular officer had concurrent jurisdiction with that of the several Provincial Courts (if any) held before an uncommissioned officer within the same district, and that the latter Courts were bound, by section 272, within seven days after deciding a criminal case, to report the same and transmit the proceedings to the "Superintending Consul"—that was to say, to the Provincial Court held before the commissioned officer for and in that district. That the Order in Council therefore clearly contemplated the existence, in the same Consular district, of one or more Courts of limited jurisdiction held before an "uncommissioned" Consular officer concurrently with, and subservient to, the Court of the commissioned Consular officer who was the Superintending Consul.

But that it was conceived that, notwithstanding the large terms of section 15, it was not intended by the Order in Council that where there were two or more commissioned officers in the same district each of them should hold a separate Provincial Court, for otherwise it would be difficult to decide who would be the Superintending Consul under section 38; and that it did not appear that more than one Consular officer could exercise jurisdiction in the same Provincial Court.

That the only cases in which provision appeared to have been made for more than one Judge sitting in the same Court were those of the Supreme Court at Constantinople (section 10), and the Court in Egypt (section 14).

Questions submitted.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

1. Whether under the provisions of the Order in Council more than one Provincial Court could be held before a commissioned Consular officer within the same Consular district;

2. Whether more than one Consular officer could exercise jurisdiction in any Provincial Court;

3. Whether (if the above questions were answered in the negative) it was competent to the Secretary of State to direct that a Provincial Court in and for the district of Sophia should be held before a commissioned Vice-Consul instead of a Consul General; and

4. Whether it was, under any circumstances, legal for the Law Clerk of the Smyrna Consular Court to "hold Courts frequently in petty cases," as described by Consul-General Fawcett in his despatch No. 34 of the 9th April last.

In obedience to your Lordship's commands we have the honour to report—

One Court in each district.

Sittings of Court under two commissioned officers.

Courts under commissioned and non-commissioned officers.

That, in our opinion, under the provisions of the Order in Council, there is to be one Provincial Court in each district before a commissioned Consular officer; but if two commissioned Consular officers are appointed for the same district, each may, unless the Secretary of State has made any order excepting one from acting, lawfully hold a sitting of the Provincial Court. Under clause 38 the Provincial Courts before commissioned Consular officers have concurrent jurisdiction with the Provincial Courts before uncommissioned Consular officers.

Exercise of judicial functions by Law Clerk at Smyrna illegal.

It is not, in our opinion, legal for the Law Clerk of the Smyrna Consular Court to hold Courts and exercise judicial functions, as appears to have been the practice in that Court.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

To Consul-General Fawcett, No. 16, Judicial, April 2, 1887.
Consul-General Fawcett, No. 34, Judicial, April 9, 1887.
Order in Council, Levant, December 12, 1873. Confidential No. 2873.
Order in Council, Levant, May 3, 1882. Confidential No. 2873.

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## No. 63.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received October 19.)*

My Lord, *Royal Courts of Justice, October* 18, 1887.

Estate of Hobart Pasha.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to certain questions which had arisen in the administration of the estate of the late Admiral the Honourable Hobart Pasha in Her Majesty's Supreme Consular Court at Constantinople.

That it appeared from the Memorandum inclosed in the despatch of Sir Henry Fawcett, Her Majesty's Consul-General and Judge at Constantinople, of the 19th ultimo, No. 74, that Hobart Pasha was at the time of his death permanently resident within the Ottoman dominions, and, therefore, within the jurisdiction of Her Majesty's Supreme Consular Court for the dominions of the Sublime Ottoman Porte; but that his death (on the 19th June, 1886) actually took place at Milan, in Italy, where he had gone for the benefit of his health.

Administrator appointed at Constantinople.

That he left a will, of which he appointed his wife sole executrix, but that on the 3rd August, 1886, she renounced probate thereof, and that the Judge of the Supreme Court at Constantinople thereupon appointed Sir George Thomas, Bart., Secretary of the Imperial Ottoman Bank, and the largest creditor of the deceased within the Court's jurisdiction, as administrator of such of his estate as was situate within the said jurisdiction.

Sufficiency of assets in Turkey doubtful.

That it appeared doubtful whether the assets in the Ottoman dominions over which the jurisdiction of the Supreme Consular Court extends would prove sufficient to meet the liabilities within those dominions alone, which were considerable; while there were also liabilities in England, where it was alleged a certain amount of property belonging to the deceased Admiral existed.

Claims of creditors out of jurisdiction of the Consular Court.

That no one had, however, as yet applied for administration in England, and that some English creditors had sent in their claims to Sir George Thomas, the administrator appointed by the Supreme Consular Court; that that gentleman had applied to Sir Henry Fawcett, the Judge of that Court, for direction as to whether he should recognize the claims of English creditors or others out of the jurisdiction of the Supreme Consular Court, and also what steps, if any, he should take to obtain administration in England.

That under these circumstances, Sir Henry Fawcett had, for the guidance of the Court, applied to your Lordship for instructions on the following points, viz.:—

1. Whether the administrator should recognize the claims of English creditors or others out of the jurisdiction of the Court.

2. What steps, if any, could or ought to be taken by him in reference to the obtaining of administration in England.

3. Whether he ought to limit his administration solely to such property as is situate within the jurisdiction of the Supreme Consular Court.

That, in connection with the above questions, Sir Julian Pauncefote was particularly to direct our attention to paragraphs 5 and 91 of the Ottoman Order in Council, 1873, and to paragraph 18 of the Ottoman Order in Council, 1882, which would be found at pp. 4, 28, and 158 of the accompanying collection of Orders in Council for the Levant.

That Sir Julian Pauncefote was to request that we would take the papers

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transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the three questions submitted therein, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Opinion as to English, &c., claims, and administration in England and Turkey.

That, in our opinion, the administrator cannot refuse to recognize, and is bound to the extent of his power to satisfy, claims of English creditors or others out of the jurisdiction of the Supreme Consular Court, and that if he have reason to believe that the deceased has left property in England, he should apply for letters of administration to the Probate Division of the High Court.

For the protection of the administrator, we think that the estate should be administered both in Turkey and in England under the direction of the Court.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Inclosures.*

1. Consul-General Fawcett, No. 69, July 29, 1887.
2. To Consul-General Fawcett, No. 47, August 13, 1887.
3. Consul-General Fawcett, No. 74, August 19, 1887.
4. Ottoman Orders in Council of 1873 and 1882. Confidential No. 2873.

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## No. 64.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received December* 16.)

*Royal Courts of Justice, December* 15, 1887.

My Lord,

Succession to the property of Antoun Abdul Messih. Appeal against decision of Consular Court.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us certain papers noted in the accompanying list, in connection with an appeal now pending before the Judicial Committee of the Privy Council for the purpose of setting aside the decision of the Supreme Consular Court at Constantinople in the matter of the succession to the property of one Antoun Youssouf Abdul Messih, deceased.

Memorial from the Chaldean Patriarch to the Judicial Committee.

That the case was one of very great importance, both as regards the questions at issue and the amount of property involved; and that the representative of the Chaldean Patriarch at Constantinople, who, under the circumstances more particularly mentioned in that document, conceived his interests to have been injuriously affected, had caused to be transmitted to the Turkish Ambassador in this country, for submission to the Judicial Committee, a Memorial setting out certain matters which he desired to bring to their attention at the hearing of the case.

That that Memorial had been forwarded by Rustem Pasha to your Lordship, with a request that your Lordship would be good enough to see that it reached the Judicial Committee.

That it appeared to your Lordship, however, that the Judicial Committee would refuse to receive, or consider, a Memorial of that kind with reference to an appeal actually pending before them, and that therefore it might be advisable to return the Memorial to Rustem Pasha, with some intimation as to the proper course to be pursued by the Patriarch under the circumstances.

That it seemed doubtful whether the Patriarch was at present a party to the suit, and that, if he were not, it was presumed that the leave of the Judicial Committee would have to be obtained before counsel could appear on his behalf at the hearing of the appeal, and that, in any case, he could only be heard by counsel, and on such points as were material to, and limited by, the actual issue before the Court.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the views above suggested were correct; and that if, in our judgment, the Memorial should not be forwarded to the Judicial Committee, we would be good enough further to advise your Lordship generally as to the terms of the letter which should accompany its return to Rustem Pasha.

In obedience to your Lordship's commands we have taken the matter into our consideration, and have the honour to report—

Should return Memorial. Cannot communicate with Committee as to.

That, in our opinion, the views expressed in the letter of Sir Julian Pauncefote of the 1st December, 1887, are correct, and that the Memorial should be returned to Rustem Pasha, with a letter stating that it is not possible for your Lordship to make any communication to the members of the Judicial Committee of the Privy Council with respect to an appeal which is at present awaiting their judicial consideration and decision.

Patriarch may apply by counsel for leave to intervene.

It should be added that it is competent for the Chaldean Patriarch to make an application to the Court to be allowed to intervene and be represented upon the argument of the appeal, but that such application must be made, if at all, by counsel duly instructed to appear on the Patriarch's behalf.

Should give no opinion on question.

It should further be stated that your Lordship cannot express any opinion as to the probability of the Court allowing such intervention, this question being one of a purely legal character.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Inclosures in Foreign Office letter of December* 1, 1887, *to Her Majesty's Law Officers.*

1. Rustem Pasha's letter of November 15, inclosing—
2. Letter to the Privy Council from Père Elie Joseph Khayatt, November 5, 1887

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# United States.

## No. 65.

*The Law Officers of the Crown and Sir J. Deane to the Marquis of Salisbury.—(Received January* 18.)

*Royal Courts of Justice, January* 18, 1887.

My Lord,

Seizure by United States' Government of the "Natalie" with guano from the Pedro Cays.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 21st ultimo, stating that he was to transmit to us papers relating to the case of the British vessel "Natalie." That that vessel, laden with a cargo of guano from the Pedro Cays, a bank situated some 40 miles to the south of Jamaica, was seized by the United States' authorities at Norfolk, Virginia, for an alleged breach of the United States' Navigation Laws, on the ground that those cays were part of the territory of the United States of America.

That she was, however, subsequently released, and that her owners, Messrs. Elliott and Fanning, who were British subjects resident in Nova Scotia, were now putting forward a claim for compensation, in which they requested the support of Her Majesty's Government.

That it should be mentioned that Messrs. Cordova and Co., the charterers of the "Natalie" and owners of her cargo, originally invoked the assistance of Her Majesty's Government in support of a claim for damages which they, in those capacities, had made upon the United States' Government, but that Her Majesty's Government had declined to afford them support in its prosecution, on the ground that they were American citizens and not British subjects.

That our attention was specially invited to Mr. West's despatch No. 269, Commercial, of the 27th November, 1885, reporting the seizure of the "Natalie," and to Sir E. Hertslet's Memorandum of the 11th December, 1884, on the right of sovereignty claimed by the Crown over the Pedro Cays; and that Sir J. Pauncefote was also further to add that those cays had, as a matter of fact, been in the actual possession of Great Britain for twenty-two years, having been occupied during that time by lessees from the Crown, who had paid royalties to the Crown.

That Sir J. Pauncefote requested that we would favour your Lordship with our

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opinion as to (1) whether the right of Great Britain to the possession of the Pedro Cays was in any way open to question; and (2) if not, whether a claim could properly be made by Her Majesty's Government against the Government of the United States on behalf of Messrs. Elliott and Fanning for such an amount as might, on further inquiry, be considered reasonable to compensate them for the seizure and detention of their vessel under the circumstances already detailed.

In obedience to your Lordship's commands we have the honour to report—

British right to the Cays unquestionable. Should support claim for compensation.

That, upon the facts laid before us, the right of Great Britain to the possession of the Pedro Cays is not, in our opinion, open to question, and that Her Majesty's Government can properly sustain the claim of Messrs. Elliott and Fanning against the United States' Government in respect of the wrongful seizure and detention of the "Natalie."

First ask for grounds of United States' claim to the Cays.

But before putting forward the claims for compensation made by the owners of the "Natalie," we respectfully suggest that the United States' Government should be asked to state on what grounds they consider the Guano Islands, Pedro Cays, and Morant Cays to appertain to the United States, those islands having been taken possession of by Her Majesty's Government in 1862 and 1863.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
J. PARKER DEANE.

*List of Papers.*

Mr. West, No. 269, November 27, 1884.
" " No. 19, Telegraphic, November 28, 1884.
To Mr. West, No. 221, November 29, 1884.
Mr. West, No. 272, December 1, 1884.
Colonial Office, December 3, 1884.
Memorandum by Sir E. Hertslet, December 11, 1884.
To Colonial Office, December 19, 1884.
Colonial Office, December 27, 1884.
To Colonial Office, January 6, 1885.
Colonial Office, January 14, 1885.
To Colonial Office, February 25, 1885.
" " May 26, 1885.
Sir L. West, No. 26, January 20, 1886.
" " No. 12, Telegraphic, October 28, 1886.
To Sir L. West, No. 18, Telegraphic, November 2, 1886.
To Colonial Office, November 3, 1886.
Colonial Office, November 12, 1886.

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## No. 66.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received April* 8.)

My Lord, *Royal Courts of Justice, April* 7, 1887.

Imprisonment in United States of seamen condemned by British Naval or Consular Courts.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list,* relative to the question whether a British merchant-seaman sentenced to a term of imprisonment by a Naval or Consular Court of Her Majesty could be imprisoned, under the Act of Congress of the United States of the 8th August, 1846, chapter 105, in a gaol of the United States.

Decision that Act of Congress applies only to countries having Treaties similar to Prussian.

That the Senior Judge of the San Francisco Court (Judge Hoffman) had decided that the Act in question was only intended to apply to those nations with whom the United States had Treaties similar to that with Prussia of the 1st May, 1828, to which particular reference was made therein, and that he refused to order a British seaman to be received into a United States' gaol on the ground that in the case of Great Britain and the United States there was no such similar Treaty in existence.

That Her Majesty's Minister at Washington was instructed to communicate with their Department of State with the object of ascertaining the views of the United States' Government upon the point, but that that Government had, for the reasons mentioned in Mr. Bayard's letter of the 3rd March, declined to express any opinion upon the decision.

That the question was raised, at the instance of the Rear-Admiral Commanding-in-chief on the Pacific Station, by the Board of Trade in their letter to the Foreign Office of the 28th January last, in which they suggested it they should be referred to the Law Officers of the Crown for their opinion.

That, in those circumstances, Sir T. V. Lister was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether the interpretation put upon the Act of Congress by Judge Hoffman was correct or otherwise.

In obedience to your Lordship's commands we have the honour to report—

Above interpretation correct.

That, in our opinion, the interpretation placed upon the Act of Congress by Judge Hoffman is correct.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Board of Trade, January 28; to Sir L. West, No. 10, Treaty, February 7; Sir L. West, No. 37, Treaty, March 7, 1887; Act of Congress of August 8, 1846, chapter 105.

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## No. 67.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August* 20.)

My Lord, *Royal Courts of Justice, August* 20, 1887.

Seizure of British seal schooners in Behring's Sea.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the seizure of three British Columbian seal schooners, named respectively the "Thornton," the "Carolina," and the "Onward," by the United States' Revenue cruizer the "Corwin," in Behring's Sea on the 1st August of last year, and the subsequent trial, conviction, and sentence to fine and imprisonment of the respective masters of those schooners by the United States' Tribunals for killing fur-bearing animals in contravention of United States' Statute Law, in waters, as was alleged, within American jurisdiction.

That the circumstances attending the seizure of those three vessels, as well as the grounds upon which, as was understood, the proceedings of the Captain of the "Corwin" were justified by the United States' Government, were to be found very clearly set forth in the late Earl of Iddesleigh's despatch to Her Majesty's Minister at Washington of the 30th October, 1886 (see Confidential Print, Part I, p. 24), in the extract from the "Daily British Colonist," Victoria, of the 7th October, 1886, which formed the Inclosure in Mr. Evan Macgregor's letter to Sir J. Pauncefote of the 4th November, 1886 (see Confidential Print, Part I, pp. 28 and 29), and in the Confidential Foreign Office Memorandum of the 19th October, 1886, on the right of British Colonial vessels to fish for seals in the Behring's Sea.

United States' claim to jurisdiction over the whole of Behring's Sea.

That a Map indicating the extent of the Behring's Sea over which the claim of the United States' Government to jurisdiction was believed to extend, and the exact positions of the schooners at the time of their seizure, would be found opposite p. 5 of the last-mentioned Memorandum, in which were also embodied (at p. 5) the material portions of the Treaty of the 30th March, 1867, by which Russia purported to cede the Territory of Alaska and certain of the waters of the Behring's Sea, therein more particularly defined, to the United States.

That the text of the United States' Statute (Public, No. 120, of the 1st July, 1870), by virtue of the provisions of which the seizure of the schooners and the punishment of their respective masters purports to have been effected, was to be found on pp. 14 and 15 of the Confidential Print, Part I, already referred to.

That it would be seen that, at the time of the seizures in question, none of the three schooners was at a distance of less than 50 miles from the nearest land, and that it would be seen, therefore, that any forcible interference with them, under such circumstances, by a ship of war of a foreign nation, was, as having taken place upon the high seas, entirely without warrant or justification.

under their Treaty with Russia of 1867.

That the Commander of the "Corwin," however, justified his action on the ground, in which the American Government appeared to acquiesce, that the whole of the Behring's Sea, which is within the boundaries set forth in the Ist Article of the Treaty of the 30th March, 1867, and which extends to a distance of several hundreds of miles to the east of the westerly boundary of Alaska, was comprised within American territorial waters, and that that view was also maintained by the Judge of the United

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States' District Court for Alaska, before whom the case was heard, and formed the principal ground upon which his Judgment was based.

That it was not clear whether any appeal against the decision of the District Court had been lodged by the owners or masters of the three British schooners, or either of them, nor was it known whether such appeal, if not already instituted, was still open to them.

But that it appeared that an action was pending at the suit of the owners of certain American vessels, which were seized under similar circumstances, against the Commander of the "Corwin," and that that action was being defended by the American Government.

That meanwhile, without prejudice to, or conclusion of, any of the questions involved, orders had been issued by the President of the United States for the discontinuance of all pending proceedings in the cases of the British schooners referred to, and the release of all persons connected therewith.

That repeated protests had been from time to time addressed by Her Majesty's Minister at Washington, acting on instructions from the Secretary of State, to the United States' Government in respect of the seizures in question, but that that Government had hitherto, and apparently designedly, abstained from either disavowing or entering upon a justification of the action of the "Corwin."

That the questions at issue had, it was thought, an indirect but somewhat important bearing upon the controversy now pending between the United States and this country with respect to the Canadian fisheries, and that it was therefore considered particularly desirable to obtain, without further delay, some succinct declaration from the United States' Government as to the position which they intended to take up upon them.

That your Lordship was therefore disposed, having regard to that consideration, and to the unreasonable delay in dealing with the matter which had already taken place on the part of the United States, at once to advance a general claim for compensation on behalf of the owners and masters of those three vessels, should we consider that grounds of law exist upon which such a demand could clearly be supported.

That with respect to the claim to sovereignty over certain of the waters of the Behring's Sea beyond the 3-mile limit, which it was gathered that the United States were now disposed to advance in reliance upon the terms of the Treaty of 1867, it appeared in the first place open to doubt, having regard to the wording of the Treaty itself, whether Russia either intended or purported to make any such grant.

But that even if, on the proper construction of that Treaty, it must be held that Russia did purport to cede those waters to the United States of America, the further question whether she had any right so to cede them would still remain.

That the possession of any such right would appear to be quite repugnant to the general doctrines of international law, while the attempts of Russia in the early part of this century to arrogate to herself such rights, and to treat the whole of the Behring's Sea and Straits as *mare clausum*, were always most strenuously resisted, not only by this country, but also by the United States.

That it was conceived, therefore, that the grant by Treaty of any such general jurisdiction would, if actually made, be entirely *ultra vires* in so far as the subjects or vessels of Powers other than the Contracting Parties to such Treaty were concerned, and that, even assuming that a grant of such jurisdiction by Russia to the United States of America might possibly be binding on Russian subjects and vessels within the specified limits, it could under no circumstances extend to the subjects and ships of Great Britain or of any other third Power not a party to that Treaty without the express consent of such third Power.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the above views were correct, and whether the case was one in which a demand for compensation might properly be made without further delay. That, in so doing, Sir Philip Currie was also to ask us to be good enough to add any general observations which we might have to offer on the case.

We also have the honour to acknowledge the receipt of Sir Philip Currie's notes of the 13th and 15th instant, inclosing some additional papers* which your Lordship desired us to take into consideration, with the papers already before us, in connection with the seizure by the American authorities of British Columbian vessels engaged in seal-fishing in the Behring's Sea.

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* To Sir L. West, Nos. 193 and 194; Sir L. West, No. 28 (Telegraphic), August 12; ditto, No. 225 August 4, 1887.

In obedience to your Lordship's commands we have taken all the papers into our consideration, and have the honour to report—

Seizure unwarranted. May claim compensation.

That, in our opinion, for the reasons stated in Sir Philip Currie's letter, the seizure of the vessels in question was entirely unwarranted, and that a claim for compensation may properly be made and pressed without further delay.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers sent to the Law Officers, August 8, 1887.*

Russia. Maritime jurisdiction. September 1873. Confidential No. 2298.
Admiralty, October 7, 1886.
Foreign Office Memorandum, October 19, 1886.
Sir L. West, No. 196, July 12, 1887.
To Colonial Office, July 26, 1887.
Colonial Office, July 28, 1887.
Sir L. West, No. 27, Telegraphic, August 2, 1887.
Confidential Print, Part I, 1886. Confidential No. 5438.
" " Part II, 1887. Confidential No. 5559.

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## Venezuela.

### No. 68.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received September* 9.)

[In reply to the following reference, the Law Officers reported as below on the 8th September, 1887:—]

*Foreign Office, September* 8, 1887.

Gentlemen,

Seizure of the "l'Envieuse" and imprisonment of crew.

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the papers, as marked in the margin,* reporting the seizure and detention by the Venezuelan authorities at Guïria of the British flat "l'Envieuse," and the imprisonment of her captain and crew.

The vessel belongs to a well-known firm in Trinidad, and was conveying monthly provisions to their estate on the coast of the Colony when she was driven by stress of weather into Venezuelan waters, where she anchored to await the turn of the tide.

Vessel condemned. Case under appeal.

She was then seized by Custom-house officials, and her crew imprisoned at Guïria. The local Court condemned the vessel and crew, and the case is under appeal. Full particulars of the incident are given in the despatch of the Governor of Trinidad, and in the letter from Mr. Tripp to Mr. Kimber, M.P.

I am to inclose, for convenience of reference, the accompanying Report by the Law Officers of the Crown on the cases of the "Henrietta" and "Josephine,"† referred to in the despatch from the Governor of Trinidad, and I am to request you to favour Lord Salisbury with your opinion at your earliest convenience whether, in the event of the vessel and the seamen belonging to her not being released by the Court of Appeal, the case is such as to justify instructions being given to the Commander of Her Majesty's ship "Comus," now at Trinidad, to demand the immediate release of the vessel and crew, and in case of refusal, to resort to reprisals or other forcible measures to obtain reparation.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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* Colonial Office, September 7 (one Inclosure); Mr. E. Tripp to Mr. Kimber, M.P., August 20, 1887 (one Inclosure).

† Law Officers, October 2, 1886. (Confidential No. 5440, p. 88.)

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*Report.*

May demand release, and resort to force in case of refusal.

That we are clearly of opinion that the facts of the case, as stated in the papers before us, justify Her Majesty's Government in giving instructions to the Commander of Her Majesty's ship "Comus" to demand the immediate release of the "l'Envieuse" and her crew and cargo, and, in case of refusal, to resort to reprisals or other forcible measures to obtain reparation.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, September* 8, 1887.

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## No. 69.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November* 29.)

*Royal Courts of Justice, November* 28, 1887.

My Lord,

Claim of the Venezuela-Panamá Gold Mining Company for loss caused by the President's action.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us the papers, noted in the accompanying list,[*] with reference to an application which had been made to your Lordship by the Venezuela-Panamá Gold Mine Company (Limited) for the assistance of Her Majesty's Government in procuring the restitution of a valuable property in Venezuela, of which they alleged themselves to have been despoiled by the arbitrary and illegal action of General Guzman Blanco, the President of the Venezuelan Republic.

That the circumstances under which the application was made and justified, were concisely set forth in the Company's letter of the 31st October, 1887; and that copies of various documents in its support would be found in the Appendix thereto.

That Sir T. V. Lister was also to call our particular attention, as being in some measure a confirmation of the allegation of the Company from an independent and trustworthy official source, to the despatch of Mr. F. St. John, Her Majesty's Minister at Carácas, of the 6th instant.

That on the 20th February the Venezuelan Government suspended diplomatic relations with that of Her Majesty, in consequence of the attitude maintained by the latter with regard to the controversy then, as now, pending between the two Governments respecting the boundary of British Guiana.

That Her Majesty's Representative at Carácas was in consequence directed to return to this country, and that, by the consent of the German Imperial Government, the protection of British interests and property in Venezuela was, pending the resumption of relations between that Republic and Great Britain, intrusted to the German Minister-Resident at that city.

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our Opinion as to whether such a *primâ facie* case had been established as called for the intervention of Her Majesty's Government, and, if so, whether they would be justified, under the circumstances, in notifying to the Venezuelan Government, through the German Minister at Carácas, that Her Majesty's Government held them responsible for the losses and injuries which the Company might sustain by reason of the proceedings complained of, and reserved all rights in the matter.

In obedience to your Lordship's commands we have the honour to report—

Legal question dealt with by Courts. No ground for intervention.

That in our opinion, as the legal questions arising in this matter have been considered and dealt with by Courts of competent jurisdiction, there is not, in the absence of sufficient evidence of corruption or misconduct on the part of such Courts, any ground for diplomatic intervention.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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[*] Panamá Gold Mining Company (pamphlet), October 31; Mr. St. John, November 6, 1887.

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*Printed for the use of the Foreign Office. May* 1889.

**CONFIDENTIAL.**

(5785.)

# REPORTS

BY THE

# LAW OFFICERS OF THE CROWN, &c.

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| 2 | Law Officers | Mar. 23, | Deposition and removal of Ja Ja, and his ultimate destination. His deportation to West Indies and custody on board ship justifiable. A local Ordinance will be necessary for his detention in a Colony | 3 |
| 3 | Law Officers | Apr. 6, | Removal of Ja Ja. Steps taken can only be justified by ratifying Mr. Johnston's conduct as an act of State | 4 |
| 4 | Law Officers | June 2, | Portuguese bombardment of Minengani. Her Majesty's Government not justified in making a demand for compensation on account of losses of British Indian subjects; but a friendly remonstrance might be made | 5 |
| 5 | Law Officers | 12, | Right of South African Republic, under the London Convention of 1884, Article XIII, to grant exemption from duties of goods carried by the "Netherland South African Railway Company." Conditions under which the concession is a breach of the Convention. The concurrence of the Government of the Republic necessary for differentiation of duties: this a breach of the Treaty | 6 |
| 6 | Law Officers | July 25, | Petition of the British East African Company for a Charter. Approve Charter as amended in clause 23 (sub-section 14), which grants powers in mortmain | 8 |
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| 12 | Law Officers | Aug. 21, 1888 | Claim of the English Secretary of the Chinese Legation, who is a British subject, to exemption from parish rates on his private residence. He has been excluded from the "Sheriffs' List," but exempted from payment of Crown taxes. On his refusal to pay, the rates have been levied by distraint. Sir H. Macartney, being a British subject, is not entitled to diplomatic privilege | 14 |
| 13 | Law Officers | 24, | Claim of English Secretary to the Chinese Legation to exemption from rates. Further letter does not affect the opinion of the Law Officers given in Report of the 21st August | 15 |
| 14 | Law Officers | Sept. 6, | Chinese jurisdiction over women of Chinese origin, but wives of German subjects in China. No objection to proposed Agreement surrendering such jurisdiction on the part of the Chinese | 15 |

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| 17 | Law Officers | Oct. 29, | Minquiers Rocks. British title to sovereignty may be insisted on | 19 |
| 18 | Law Officers | Nov. 21, | Schools in Tunis. Decree as to French inspection and use of French language not applicable to British subjects. Concur in Memorandum with exception of last sentence | 20 |

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| 20 | Law Officers .. | Mar. 20, | Right of retired diplomatists to continuance of pensions. Sir H. Elliot's article in the "Nineteenth Century." Offence caused thereby to Ottoman Government. Suggestions as to forfeiture of such pensions for publication of official information. The Secretary of State cannot withhold such pensions, but may incite Parliament to refuse to vote them; nor can he attach conditions to grant of statutory pensions. Legislation necessary for dealing with the matter. A Petition of Right could be maintained if Parliament has voted the money .. .. .. .. .. | 22 |
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| 23 | Law Officers .. | July 10, | Claims to exemption from taxes on account of diplomatic privilege. A Secretary to a foreign Legation, who is a foreigner, not exempt from income tax in respect of a house owned and occupied by him (M. de Zulueta). No question as to liability of servants of foreign Legations in respect of houses leased and partially sublet by them. Approve letter to Treasury as altered (Thomas Bunclark and Domingo Borges) .. .. .. .. .. .. | 26 |
| 24 | Law Officers .. | Aug. 10, | Extradition. Draft Orders in Council. (1) Applying Acts to Declaration of the 29th May, 1888, amending Treaty of 1878 with Spain. It cannot lawfully be made. No power to surrender a prisoner before expiration of fifteen days. (2) Suspending the Acts in Canada in view of the consolidation of the Canadian Acts. Approve draft Order .. | 27 |
| 25 | Law Officers .. | Nov. 19, | Extradition. Declaration amending Treaty with Spain of 1878. Do not concur in Law Officers' Report to Colonial Office of 1885 as to legality of surrendering a prisoner, with his consent, before the expiration of fifteen days. Order in Council, confirming a Treaty which infringes section 11 of Act of 1870, not justifiable .. .. | 28 |

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CONFIDENTIAL.

# REPORTS BY THE LAW OFFICERS OF THE CROWN, &c: 1888.

## AFRICA.

### No. 1.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received February* 11.)

My Lord, *Royal Courts of Justice, February* 10, 1888.

Outrages committed by G. S. Burgess, of the "Nupe," on the Benué River.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* with reference to the case of George Slater Burgess, a British subject, lately in the service of the Royal Niger Company, Chartered and Limited.

That it would be seen from the accompanying papers that Burgess, while actually serving in the Company's employ as mate of one of their steamers upon the River Benué, was undoubtedly guilty (as he had, indeed, himself admitted) of acts of revolting barbarity towards various native servants of the Company.

Difficulties in way of punishing Burgess.

That the greater part, if not all, of those inhuman outrages appeared to have been committed on board the steamer "Nupe," but that it appeared that that steamer was not registered under sections 17–19 of "The Merchant Shipping Act, 1854," as a "British ship," and that the question, therefore, arose whether the case came within section 11 of "The Merchant Shipping Act, 1867," which provided that "if any British subject commits any crime or offence on board any British ship, or on board any foreign ship to which he does not belong, any Court of Justice in Her Majesty's dominions which would have had cognizance of such crime or offence, if committed on board a British ship within the limits of the ordinary jurisdiction of such Court, shall have jurisdiction to hear and determine the case as if the said crime or offence had been committed as last aforesaid."

That, should the offences in question not be deemed to be justiciable under the last-quoted section, it was anticipated that considerable difficulty might be experienced, as well on the part of Her Majesty's Government as on that of the Company themselves, in punishing them adequately, or it might be at all.

That further particulars as to the nature of all the offences referred to, and the circumstances attending their commission, would be found in Sir Taubman Goldie's letter (and inclosures) of the 29th November last, from which it would also be seen that although Buba-n-Gidda, the place in the vicinity of which the outrages were committed, was originally comprised within those territorial limits over which, by the combined operation of Treaty grants from the native Chiefs and the permission of Her Majesty's Government the Company might at one time have exercised jurisdiction, they had now abandoned such jurisdiction by withdrawing it northwards to the

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* Royal Niger Company, November 29, 1887; ditto, January 4, 1888; "Africa No. 6 (1885)" (Parliamentary No. 2979); "Africa No. 2 (1887)" (Parliamentary No 3121); Map supplied by Niger Company (Africa No. 127, small size); West Africa Order in Council, 1885 (Confidential No. 5572).

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vicinity of Yola, in accordance with the spirit of the Agreement between Germany and Great Britain for the delimitation of the respective spheres of influence of those two Powers in Central Africa.

That in the accompanying Map, which had been prepared for convenience of reference, Buba-n-Gidda was represented by a red cross, and was, as would be seen, actually well within the limits of the German sphere, as denoted by the green line of demarcation between the two spheres of influence.

That at present the German Government had, as a matter of fact, taken no steps of any kind to assert their predominance or to establish their jurisdiction in that region; but that it appeared to your Lordship that even under other circumstances the exercise of jurisdiction over Burgess as a British subject in respect of offences committed within the German sphere of influence by any British Tribunal situated without that sphere, and otherwise competent to entertain the question, would, having regard to the meaning and intention of the Agreement between Great Britain and Germany, neither constitute an interference with German influence within their sphere, nor be resented as such by the German Government.

That as the offences in question did not amount to murder or manslaughter they could not be tried by any Colonial Court, nor in the United Kingdom, nor by Commission under 57 George III, cap. 53, and that the only question remaining for consideration on this branch of the case would appear to be whether Burgess was justiciable under the provisions of the West Africa Order in Council of the 26th March, 1885.

That by Article I of that Order, "Her Majesty has power and jurisdiction in those parts of West Africa situate west of the 25th meridian of east longitude, south of the 30th parallel of north latitude, and north of the 25th parallel of south latitude," except in so far as regards "any place for the time being comprised within the limits of the ordinary local jurisdiction of the Courts of any Colony, Settlement, or Possession of Her Majesty, or of any other non-African Power, and except the territories and territorial waters of Morocco and Liberia."

That the whole of the territories represented in the accompanying Map were within the meridian and parallels prescribed, while Buba-n-Gidda was not comprised within the excepted limits of the ordinary local jurisdiction of any of the Courts mentioned.

That by Article III of the same Order all powers and jurisdiction thereunder were vested in the Consular Courts thereby constituted, which Courts could, however, only be held and formed by those Consuls-General, Consuls, or Vice-Consuls (or persons acting in any such capacities by the authority of the Secretary of State) to whom districts had been assigned, in and for such districts, and at such places within such districts, and subject to such other limitations or restrictions as the Secretary of State might, by any general or particular instructions, from time to time direct.

That if Buba-n-Gidda were at present within the limits of any district thus assigned to one of Her Majesty's Consuls, it must be within that of Consul Hewett, whose district comprised "the Island of Fernando Po, and those territories on the West Coast of Africa comprised within the Bights of Benin and Biafra, and lying between Cape St. Paul's on the west and St. John to the east, or in the rivers or water communications lying between the two capes in question so far inland as British trading settlements or trading operations extend," but that as would be probably seen from the letter of the Niger Company of the 4th January, the facts with respect to any British trading operations or trading settlements at or in the vicinity of Buba-n-Gidda appeared scarcely such as to bring that place within the definition contained in the terms of Consul Hewett's Commission.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion—

1. As to whether, having regard to all the circumstances of the case, and more particularly to the fact that the "Nupe" was not registered as a British ship under section 17-19 of "The Merchant Shipping Act, 1854," Burgess was justiciable in respect of such of the offences mentioned as were committed on board that vessel under section 11 of "The Merchant Shipping Act, 1867," "by any Court of Justice in Her Majesty's dominions."

2. Whether Buba-n-Gidda was at present within the limits of the district assigned to Consul Hewett by the Secretary of State, and, if so, whether the Consul had jurisdiction to try Burgess under the provisions of the West Africa Order in Council, 1885.

3. Whether if Buba-n-Gidda were not within the limits of Consul Hewett's district as at present defined the Secretary of State, by assigning to that or some other Consul a district within which Buba-n-Gidda should be clearly comprised, could render such Consul competent to try Burgess for offences committed at Buba-n-Gidda before that place formed part of his district.

4. Whether, if otherwise practicable, the exercise of jurisdiction over Burgess by Her Majesty s Consul could properly be deemed to be an interference with German influence within the meaning of the arrangement between England and Germany, which was come to in August 1886, relative to their respective spheres of action in the Gulf of Guinea.

5. Whether failing, or in preference to, any of the methods indicated in the preceding questions, we could suggest to your Lordship any, and if so what, other means of effectually bringing Burgess to justice.

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Burgess justiciable under "The Merchant Shipping Act, 1867."

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, Burgess can be tried under section 11 of "The Merchant Shipping Act, 1867," by any Court of Justice in Her Majesty's dominions which would have had cognizance of the offences committed by him if they had been committed within the limits of the ordinary jurisdiction of such Court.

The non-registration of the "Nupe" does not affect British jurisdiction.

The greater part of the offences were committed on board the "Nupe;" she was a British ship within the meaning of subsection 3 of section 18 of the Act of 1854, and the fact that she was not registered under section 19 of that Act does not prevent the Court having jurisdiction in respect of offences committed on board such ship. (See section 106 of the Act of 1854.)

The point was decided in the case of the "Queen *v.* Seberg," L.R., 1 C.C.R., 264 and 39 L.J., M. c. 133.

In the view we take the other questions become immaterial.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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### No. 2.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 26.)

*Royal Courts of Justice, March* 23, 1888.

My Lord,

Deposition and removal of Ja Ja, and his ultimate destination.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list,* with reference to the deposition and removal of King Ja Ja from Opobo, within Her Majesty's West African Protectorate, to Accra, in the Gold Coast Colony, where he now remained in custody awaiting the further decision of Her Majesty's Government respecting his ultimate destination.

That in 1884 King Ja Ja, in common with other West African Chiefs, accepted British protection for himself and his dominions, which were situate around the mouth of the Opobo River, and entered into Treaty obligations with Her Majesty, which he had since violated; and that in consequence of his utter disregard of the repeated and severe admonitions and fines which were administered to him by Her Majesty's Government, it became at last necessary, in the interests of the development of the trade and good government of the Opobo River, to remove him altogether from that district.

That accordingly Her Majesty's ship "Goshawk" was, in September of last year, ordered to Opobo for the purpose of removing him, and that he was conveyed on board that vessel to Bonny, where, under the charge of Vice-Consul Johnston, he was transferred to the steam-ship "Calabar," and taken to Accra, at which latter place he was given into the custody of the Government of the Gold Coast Colony.

That the Admiral commanding-in-chief upon the West African Station (Rear-Admiral Sir Walter Hunt-Grubbe, K.C.B.) was directed to hold an inquiry into the

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* Inclosure in Colonial Office, November 11; Acting Consul Johnston, No. 25, December 2, 1887; Colonial Office, January 23; to Colonial Office, February 2; Colonial Office, February 16, 1888. See Confidential Nos. 5558 and 5686.

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various charges alleged against Ja Ja, and arrived at Accra for that purpose on the 27th November last.

That a formal inquiry, at which Ja Ja was not only heard personally, but had the assistance of a local solicitor, was held on the 29th and following days, and that on the 1st December Sir Walter Hunt-Grubbe announced his decision to Ja Ja by letter (Inclosure 1 in Acting Consul Johnston's despatch of the 2nd December, 1887).

That it would be seen that it had been decided not only that Ja Ja could not be permitted to return to Opobo, but that he should be exiled, for a period of not less than five years, to some remote possession of Her Majesty.

That the following places were originally submitted to Ja Ja's choice by Sir Walter Hunt-Grubbe, viz., Ascension, St. Helena, Cape Colony, or one of the West India Islands.

That the Colonial Office, however, entertained objections to the Cape and to Ascension (see Colonial Office, 16th February, 1888), while it also appeared that St. Helena was, on Ja Ja's own account, unsuitable for the purpose (see Acting Consul Johnston's despatch of the 2nd December, 1887).

That, at the same time, Ja Ja's continued detention at Accra, although legalized by the inclosed Ordinance of the Gold Coast Colony of the 6th October, 1887, was very undesirable, and that it was considered advisable to deport him to some suitable island in the West Indian Archipelago with as little further delay as possible.

That it was conceived that Ja Ja's custody on board ship, on the voyage necessary to transfer him to his next place of detention, would be legally warranted as an act of State, and that, as he was a foreigner and not a British subject, any right of action which he might in the latter case have possessed would, as was held in the leading case on this subject of Buron *v.* Denman (2 Exchequer Reports, 167), be merged in the international rights of the question.

That before any further action was taken in the matter, however, your Lordship desired to be favoured with our opinion as to whether Her Majesty's Government would be justified in at once proceeding, in accordance with the decision of the Court of Inquiry, to deport Ja Ja to one of the West India Islands, or whether, having regard to any legal questions which might possibly arise, it was advisable that any other, and, if so, what, steps should previously be taken.

That Sir Julian Pauncefote was therefore to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

His deportation to West Indies justifiable; but a local Ordinance for his detention necessary. His custody on board ship justifiable.

That, in our opinion, Her Majesty's Government will be justified in at once proceeding to deport Ja Ja to one of the West India Islands. It will, in that case, be necessary that a local Ordinance should provide for his detention. His being kept in custody on board ship on the voyage would be warranted as an act of State.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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### No. 3.

*The Law Officers, subsequently to their Report of the 23rd March, wrote the subjoined opinion on the further question raised in the following Minute, which was submitted to them personally by Sir J. Fergusson at the House of Commons.*

*Minute.*

Removal of Ja Ja.

Lord Salisbury,

IN anticipation of the discussion of the case of Ja Ja, I think that your direction is necessary in respect of the ground on which the legality of his deportation is to be maintained.

The Law Officers have held it to be legal on the grounds of Buron *v.* Denman. In that case a British naval officer destroyed the barracoons and carried off the property of a Spaniard engaged in the Slave Trade within a native territory, with the Chief of which we had made a Treaty to abolish that trade.

The Court gave Judgment for the Captain, on the ground that his act was one of State, as having been subsequently ratified by Her Majesty's Ministers. The Crown was therefore responsible.

Now, the authority which Mr. Johnston acted on was erroneous, and as your telegram approving of his previous action is dated on the same day as his asking permission to remove Ja Ja, the 12th September, it may be questioned and cannot be declared to have been of that character; and you have never approved the act of removal, though you have said that you "consider it expedient that Ja Ja should, for the present, be detained at Accra."

Shall it be said in debate that you have ratified the act of removal? Of course, that of detention is provided for by local act, while his removal to any other place would be an act of State, being done by your orders.

The voluntary nature of Ja Ja's departure from Opobo is somewhat doubtful.

J. F.

*Foreign Office, April* 6, 1888.

Can be justified as an act of State.

Should the question arise in debate, and it become necessary to defend the removal of Ja Ja from Opobo, the steps taken can only be justified by ratifying the conduct of Mr. Johnston as an act of State.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Foreign Office, April* 6, 1888.

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### No. 4.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 4.)*

*Royal Courts of Justice, June* 2, 1888.

My Lord,

Portuguese bombardment of Minengani. Claims of British Indian subjects.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the claims of certain British Indian traders settled at Minengani, on the East African Coast, to compensation from the Portuguese Government in respect of the sudden bombardment and subsequent burning of that Settlement on the 18th February, 1887, and subsequent days.

That the events immediately preceding the bombardment of Minengani and the circumstances with which it was accompanied were concisely set forth in the Foreign Office Memorandum of the 18th July, 1887. That a print of the correspondence, together with a list thereof, was also annexed, and that our attention was specially called to the Petition of the British Indian mercantile community (Inclosure No. 2 in Acting Consul-General Holmwood's No. 55 of the 31st March, 1887), and also to the documents numbered 4, 6, and 8 respectively in the list, which contained the various accounts which had been given of the bombardment.

That it would be seen that the town of Minengani was inhabited solely by Indian traders enjoying British protection, and that notwithstanding that the Commander of the Portuguese war-vessels was apparently apprised of that fact, and although no resistance was offered by the inhabitants to his peaceable entry into the town, it was nevertheless subjected to what under the circumstances would seem to have been an unnecessary and wanton bombardment, whereby much British property was entirely destroyed and great sufferings and privations inflicted upon a number of inoffensive British Indian traders.

That the question now arose whether Her Majesty's Government was justified in calling upon that of Portugal to make adequate compensation to the sufferers for the loss and injury inflicted upon them, and that Sir Julian Pauncefote was therefore to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on that point and with any general observations which we might have to offer on the case.

1888

In obedience to your Lordship's commands we have the honour to report—

Demand for compensation not justified.

That in our opinion Her Majesty's Government would not be justified in making a demand upon Portugal for compensation for the loss and injury caused by the bombardment. It appears that notification was given to the British subjects of the intention to bombard. We think, however, that the difficulty of complying with such notice, and the fact that during the whole of the proceedings no real opposition appears to have been made to the seizure of the town by the Portuguese, might be made the ground of friendly remonstrance with the Portuguese Government, asking their consideration of the losses sustained by British subjects.

Might make a friendly remonstrance.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

1. Acting Consul-General Holmwood, No. 30, February 15, 1887.
2. Ditto, No. 37, February 25, 1887.
3. Mr. Petre, No. 66, April 18, 1887.
4. Ditto, No. 68, April 21, 1887.
5. Admiralty, April 28, 1887.
6. M. d'Antas, May 6, 1887.
7. Consul O'Neill, No. 17, March 23, 1887.
8. Acting Consul-General Holmwood. No. 55, March 31, 1887.
9. Ditto, No. 63, April 11, 1887.
10. Précis of circumstances attending bombardment, July 18, 1887. E. A. W. C.
11. Memorandum by Sir Julian Pauncefote, "Position of Neutrals in Territory of a Belligerent during a hostile Invasion," October 20, 1883. Confidential No. 5015.

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## No. 5.

*The Law Officers of the Crown to Lord Knutsford.—(Communicated to Foreign Office in Colonial Office Letter of June 20.)*

My Lord, *Royal Courts of Justice, June 12, 1888.*

Right of South African Republic, under Convention of 1884, to exempt from duties goods carried by Railway Company.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 5th April last, stating that he was directed by your Lordship to inform us that questions had arisen upon the construction to be placed on certain Articles of the Convention of London concluded with the South African Republic in 1884, and as to the right of the Government of that State to grant to a Railway Company exemption from customs duty on goods imported into the Republic on the railway which was to be constructed by the Company in question under Concession from the Republican Government.

That Mr. Bramston was to inclose, for our consideration, the undermentioned documents bearing on the question, viz.:—

1. A despatch from Her Majesty's High Commissioner in South Africa, inclosing copies of correspondence on the subject, and the opinion of counsel at Cape Town, including the Attorney-General of the Cape Colony.
2. A translation of the Articles of the Concession granted by the Government of the South African Republic to the Netherlands South African Railway.
3. Copies of correspondence between the President of the South African Republic and Sir Donald Currie, K.C.M.G., M.P.
4. The London Convention of 1884 with the South African Republic. Treaty No. 735.
5. Map of South Africa showing the relative positions of Delagoa Bay, the South African Republic, and the British Colonies referred to in the London Convention.

Questions as to grant of exemption;

That it would be seen that by the XIIIth Article of the London Convention the Government of the South African Republic bound itself not to impose other or higher customs duties on any article imported from any part of Her Majesty's dominions than might be imposed on similar articles coming from any other place or country. That Mr. Bramston was to observe that that clause (which might be described as a "most-favoured-nation clause") was similar in effect to that contained in numerous other Treaties and Conventions made by Her Majesty's Government with foreign Powers.

That, since the date of that Convention, a Concession had been granted by the Government of the South African Republic to the Company known as the "Netherlands South African Railway Company," of which the 39th Article ran as follows in the translation given by the State Secretary of the South African Republic in his letter of the 6th January last: "For all goods, inclusive of cattle carried by the Company over the railway for third parties, freedom from import and export duties is allowed as an exclusive privilege granted to it by the Government of the South African Republic."

That it had been argued that that Article, if carried into effect, would be an infringement of the Convention of London, and that that contention had received the support of the Attorney-General of the Cape Colony, and of Mr. W. P. Schreiner, Legal Adviser to the High Commissioner (copies of whose opinions were inclosed), mainly on the ground that the "most-favoured-nation clause" necessarily precluded the grant of exclusive fiscal privileges to goods entering by a particular route, if such privileges had indirectly the effect of subjecting imports coming originally from any part of Her Majesty's dominions by other routes to other or higher duties than foreign goods imported by the favoured route.

That the Government of the South African Republic had, however, contended that the Concession merely favoured one mode of transport above others, without intending to make any distinction between the country of origin of the goods; and that the XIIIth Clause of the London Convention had no reference to such an arrangement.

That the various arguments in support of those contentions were fully set forth in the inclosed correspondence and opinions, and that your Lordship need only remind us that the inland position of the South African Republic rendered it necessary that imports originating from this country should pass through other territories, either those of British possessions, such as the Cape Colony and Natal, or those of independent States, such as the Orange Free State and Portugal.

That the Portuguese territory of Delagoa Bay, or Lorenço Marques, being contiguous to the territory of the South African Republic at the point where the railway entered the Republic, it was the view of Sir Hercules Robinson and his advisers that goods imported by the railway were imported from Portuguese territory within the meaning of the London Convention.

and as to power of Company to differentiate its charges.

That a further question had, however, as we should perceive, been raised in the correspondence between Sir Donald Currie and the President of the South African Republic, a printed copy of which was inclosed.

That, in his concluding letter, Sir Donald Currie suggested that, notwithstanding the provisions of clauses 17 and 19 of the Concession, the Railway Company could, without breach of those stipulations, frame its tariff of rates so as to create a practical preference in favour of the products of one country over those of others, as well as of one class of goods over others.

That the point might not become one of direct practical importance, but that it appeared to your Lordship that the exact powers of the Company under the Concession should be ascertained.

That Mr. Bramston was accordingly to request that we would inform your Lordship whether, in our opinion, the terms of the 39th Article of the Concession granted to the Netherlands South African Railway Company constituted an infringement of Clause XIII of the London Convention of 1884.

And whether, in our opinion, the Railway Company had power, under the Concession, to differentiate in its charges for carriage—

1. Between different classes of goods;
2. Between goods imported by different importers; and
3. Between goods originating from different countries respectively.

And supposing any such differential rates to be imposed and authorized by the Government Commissioner of the South African Republic, under Article 17, whether that would amount to an infringement of Clause XIII of the London Convention.

That Mr. Bramston was also to request that we would favour your Lordship with any observations upon the matter generally that might appear to us desirable.

We are also honoured with a further letter from Mr. Bramston, dated the 5th April, 1888, with reference to the above matter, and stating that he was directed by your Lordship to transmit to us copies of correspondence between the Colonial Office and the Foreign Office, to which Department, as we should perceive, the case sent to us was submitted in draft.

1888

We have taken the papers into our consideration, and, in obedience to your Lordship's commands have the honour to report—

Conditions under which Concession is a breach of the Convention.

That we are not prepared to say that the grant of a Concession, the character and objects of which are matters of controversy, can be said to be a breach of the XIIIth Article of the London Convention of 1884; but if, in fact, goods which enter the Transvaal from any part of the adjacent dominions of Her Majesty are subjected to duties from which goods imported by the railway are free, that, in our opinion, constitutes a breach of the Article.

Concurrence of Republican Government necessary for differentiating duties; this a breach of the Treaty.

We are further of opinion that the Company is not empowered by the terms of the Concession to establish differential charges without the concurrence of the Government of the South African Republic, and that if that Government were to authorize any differential rates between goods originating from different countries, to the prejudice of Great Britain, such action would constitute a breach of the XIIIth Article of the London Convention.

We are, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 6.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 25.)*

My Lord, *Royal Courts of Justice, July* 25, 1888.

Petition of the British East African Company for a Charter.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us a copy of a Petition by Mr. William Mackinnon, Lord Brassey, Sir Donald Stewart, and others, which had been lodged at Her Majesty's Privy Council Office for submission to the Queen in Council, praying that Her Majesty would be pleased to grant them a Royal Charter of Incorporation, by the name or title of the Imperial British East African Company, with such powers and privileges and for such purposes as were mentioned in the prayer of their Petition.

That the documents relating to the Petition were transmitted with Sir Julian Pauncefote's letter, and marked (A) to (M).

That document (A) contained the Petition, the Agreement of the founders of the Company, and a draft Charter prepared by Mr. R. S. Wright, as originally lodged at the Privy Council Office in May last.

That document (B) contained a letter from the Company, stating that the draft Charter originally lodged at the Privy Council Office had been amended.

That document (C) was a letter from the Privy Council Office, transmitting the amended draft Charter.

Amendment proposed as to "mortmain" clause.

That document (M) was a further letter from the Privy Council Office, forwarding a suggestion made by the Colonial Office with regard to an amendment of clause 23.

That document (L) contained a copy of the original draft Charter, with the amendments first introduced therein printed in italics, and the amendment referred to in the preceding paragraph inserted in manuscript.

That the remaining documents comprised copies of the Charters granted to the British North Borneo Company in 1881, and to the Royal Niger Company in 1886, together with various Reports of the Law Officers of the Crown in relation thereto.

That the draft Charter, as amended, followed generally the precedents of the Charters above referred to.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the amended draft Charter, inclosed in the letter of the Privy Council Office (document C), might properly be submitted to the Queen for Her Majesty's gracious approval, or whether any, and, if so, what, modifications should previously be introduced therein.

In obedience to your Lordship's commands we have the honour to report—

Approve Charter as amended in clause 23 (sub-section xiv): "Mortmain."

That the amended draft Charter, with the insertion of the words proposed in clause 23 (sub-section xiv) may properly be submitted to Her Majesty for approval.*

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

(A.) Mr. Mackinnon, May 24, 1888.
(B.) Mr. Mackinnon, June 20.
(C.) Letter from Council Office, June 29.
(D.) Charter, North Borneo Company, November 7, 1881. Confidential No. 4528.
(E.) Charter, Royal Niger Company, July 10, 1886. "London Gazette," July 13, 1886. Confidential No. 5269*.
(F.) Law Officers, Africa, No. 1, March 13, 1886. Confidential No. 5440, p. 1.
(G.) Lord Chancellor, May 20, 1886. Confidential No. 5440, p. 2*.
(F*.) Law Officers, July 19, 1886. Confidential No. 5440, p. 2.
(H.) Law Officers, August 8, 1885. Confidential No. 5246, p. 12.
(K.) Law Officers, Borneo, July 14, 1881. Confidential No. 4637, p. 6.
(L.) Mr. Mackinnon, June 23, 1888.
(M.) Privy Council, July 6, 1888.

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## No. 7.

*The Permanent Secretary to the Lord Chancellor to the Clerk of the Council.—(Communicated to the Foreign Office, August 4.)*

Sir, *House of Lords, August* 3, 1888.

Proposed Charter for the British East African Company.

Difficulties felt by the Lord Chancellor as to clause granting powers in mortmain.

I AM directed by the Lord Chancellor to acknowledge the receipt of your letter of the 30th ultimo, and the inclosed draft of a Charter proposed to be granted to the Imperial British East Africa Company, and to say that his Lordship feels some difficulty about clause 23 (xiv), which gives unlimited powers in mortmain without licence, and desires, before approving the draft, to know whether the point has received the consideration of the Lord President.

The Lord Chancellor has usually had his attention called to cases where large amounts have been stated as the limit in mortmain, and special reasons have been required before such amounts have been allowed; but in this case there appears to be no limit at all; also, it will be recollected that on a recent occasion the Law Officers stated objections to the inclusion of a licence to hold in mortmain in the Charter itself; those objections did not then prevail, but in this case the Charter purports to dispense altogether with any licence or authority.

I am, &c.
(Signed) K. MUIR MACKENZIE.

### Annex.

23. (xiv).—To take and hold without licence in mortmain or other authority than this our Charter messuages and hereditaments in England, and subject to any local law in any of our Colonies or possessions, and elsewhere, convenient for carrying on the management of the affairs of the Company, and to dispose from time to time of any such message and hereditaments when not required for that purpose.

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* The proposed insertion, approved by the Law Officers, is printed in italics in the following extract from the draft Charter:—

"23. (xiv.)—To take and hold without licence in mortmain or other authority than this our Charter messuages and hereditaments in England, and, *subject to any local law*, in any of our Colonies or possessions, and elsewhere, convenient for carrying on the management of the affairs of the Company, and to dispose from time to time of any such messuage and hereditaments when not required for that purpose."

1888

## No. 8.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August* 7.)

My Lord, *Royal Courts of Justice, August* 7, 1888.

Proposed Charter for the British East African Company.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relating to the draft Charter submitted by Mr. Mackinnon for the incorporation of the Imperial British East African Company, on which we reported to your Lordship on the 25th ultimo.

That it would be seen from the inclosure in the Council Office letter that the Lord Chancellor felt some difficulty about clause 23 (xiv), which gave unlimited powers in mortmain without licence.

Lord Chancellor's difficulty as to "mortmain" clause.

That it was very important that the point should be decided in time to enable the Lord President of the Council to submit the draft Charter for the Royal Assent at the Council to be held on the 10th instant; and that Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship, at our earliest possible convenience, with our opinion as to the answer which should be returned to the Lord Chancellor, and with any general observations which we might have to offer on the point raised by his Lordship.

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In obedience to your Lordship's commands we have the honour to report—

Reasons why clause as to licence,

That with regard to the second of the two matters mentioned in the letter of the Lord Chancellor of the 3rd August, 1888, as to the insertion in the Charter of a licence in mortmain, we would venture to observe that the question we raised on a recent occasion was as to the necessity of the insertion of a licence to a limited amount in the Charter of Incorporation, on the ground that the Company could obtain a licence when required, but our attention being called to several instances in which such a licence had been inserted, the previous practice was followed.

and limit of amount to be held in mortmain,

Upon the first matter we considered that, having regard to the nature of the Company and its business, a limit of amount was scarcely applicable, and that the words, "convenient for carrying on the management of the Company," were a sufficient limitation of the purposes for which land was to be held.

We would call attention to the fact that trading Companies registered under "The Companies Act," 1862, &c., other than those for the promotion of art and science, have an unrestricted power of holding lands without licence.

should stand as settled.

Under the circumstances we think that paragraph (xiv) of Article 23 should stand as settled by us.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 9.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August* 14.)

My Lord, *Royal Courts of Justice, August* 14, 1888.

Sentence on G. A. Reece for wounding natives. Petition as to.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin† relating to the Petition of a Mr. G. A. Reece to Her Majesty's Privy Council for leave to appeal against a sentence passed upon him by Her Majesty's Consular Court at Benin.

That an account of the case was given in Mr. Acting Consul Johnston's despatch No. 11 of the 9th March last.

Offence.

That Reece was a Barbados negro trading in that locality, and that while resorting to the forbidden practice of "chopping," a local term which meant recouping bad debts by seizing goods belonging to any native, he fired at some canoes and wounded some natives, for which he was brought to trial before the Acting Consul sitting judicially with Assessors under the West Africa Order in Council, 1885.

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* Council Office, August 4, 1888; Draft Charter; Law Officers' Report, July 25, 1888.

† Acting Consul Johnston, No. 11, March 9; Messrs. Cooper and Bake, received July 23, 1888; West Africa Order in Council, 1885, Confidential No. 5094*.

Sentence.

That the sentence of the Court was that he should be deported for ten years.*

Request for review of sentence.

That before proceeding further with the Petition, his solicitors, Messrs. Cooper and Bake, asked your Lordship to direct that the sentence be submitted to the Chief Justice of the West African Settlements for review under sections 14 and 29 of the Order in Council.

That it would be competent for the Secretary of State in course of time to remit the sentence of deportation should it be considered safe for Reece himself that he should return to the coast, but that your Lordship saw no ground, as at present advised, for ordering a review of the sentence of the Consular Court by the Chief Justice of the West African Settlements.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and favour your Lordship with our opinion as to whether Messrs. Cooper and Bake could properly be informed to that effect, and with any other observations which we might wish to offer on the case.

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We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to report—

No ground for acceding to request.

That, in our opinion, there is no sufficient ground for ordering a review of the sentence in this case, and that Messrs. Cooper and Bake may properly be informed that your Lordship has so decided.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 10.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received November* 27.)

My Lord, *Royal Courts of Justice, November* 27, 1888.

Detention of the "Brabo," with contract labourers for the Congo, by Her Majesty's ship "Griffon," and removal of negroes therefrom.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,† with reference to the boarding, off the Eastern African Coast, of the Belgian steamer "Brabo," by Her Majesty's gun-vessel "Griffon," and the forcible removal of the negroes who were on board the former vessel.

That the facts of the case were not yet known in any detail, but that it was believed that the extract from "l'Indépendance Belge" of the 19th instant (which was inclosed) was not inaccurate in any material respect, and that it was assumed, for the purpose of this reference, that the "Brabo" was a common carrying ship under charter from the Government of the Congo Free State, and conveying, amongst other things, a number of contract labourers, who had received wages in advance, to the Congo.

That there seemed clearly to have been no ground for suspecting the "Brabo" of being engaged in the Traffic of Slaves, or of having been fitted out for that purpose, or of having been engaged in the Traffic during the voyage on which she was engaged. (See Article II of the African Slave Trade Treaty of the 20th December, 1841.)

That the Admiral appeared to have decided that there was no justification for detaining the vessel, and she was allowed to proceed on her way; but that because apparently two of the coloured labourers on board alleged that they were embarked against their will they were removed from the ship and taken to Zanzibar, where they then were on board a British man-of-war awaiting further instructions.

That it was not unimportant to notice, in connection with the proceedings of the Commander of the "Griffon," that Slave Trade within the meaning of the various

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* This statement is not quite correct. The actual sentence of the Court was that he should pay a fine of 25*l.*; damages to the three persons wounded to the extent of 21*l.*; and the costs connected with the case, amounting to 15*l.* He was *further* sentenced to be deported from the Consular district, and the order of deportation to be in force for ten years.—W. E. D.

† Treaty, December 20, 1841 (Foreign Office No. 274); Treaty, February 24, 1848 (Foreign Office No. 339); Lord Vivian, No. 64, Africa, November 19; Colonel Euan-Smith, No. 163, Telegraphic, November 18; Extract from "l'Indépendance Belge," November 19, 1888; Law Officers' Report No. 51 of 1878 (Confidential No. 4280, p. 49).

1888

Treaties directed to its suppression was now carried on only in native boats, which unfortunately were frequently allowed to float European flags (see with regard to this system Law Officers' Report No. 51 of 1878), and that the "Brabo" was an ocean-going steamer of European build, and was, moreover, when boarded, found to be under charter for the Congo, where the Slave Trade did not exist, so that it seemed impossible to contend that the Commander of the "Griffon" had any reasonable ground for suspecting that her employment was unlawful.

That Sir Julian Pauncefote was to mention that the international engagements of Belgium with respect to Slave Traffic would be found in the Treaty between Great Britain, Austria, Prussia, and Russia signed at London on the 20th December, 1841, and in the Treaty (and Protocol annexed thereto) by which Belgium, on the 24th February, 1848, acceded to the Treaty of London above mentioned.

That the Belgian Consul at Zanzibar had protested against the action of the "Griffon," while the British Admiral on the East African Station had applied to Her Majesty's Agent and Consul-General for free papers for the two men who were removed from the "Brabo."

That it was proposed, in answer to a telegraphic request for instructions which had been received from Colonel Euan-Smith, to inform him that he had no authority to give the two men free papers, and that they should be forthwith handed over to the Belgian Consul.

Proposed instructions. Proceedings illegal.

That it was also proposed that the Admiral should be instructed that the proceedings of the "Griffon" were illegal and could not be approved.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the proposed instructions to Her Majesty's Agent and Consul-General at Zanzibar, and to the Admiral commanding on the East African Station respectively, were right and proper, or whether they might in any respect, and, if so, how, be advantageously amended.

We have also the honour to acknowledge the receipt of a further letter from Sir J. Pauncefote, dated the 26th instant, inclosing a despatch addressed by the Belgian Minister for Foreign Affairs to Baron Solvyns,* the Belgian Minister at this Court, forwarding documents showing the conditions under which the Zanzibar labourers are usually engaged for service by the Congo State.

We have taken the matter into our consideration, and in obedience to your Lordship's commands have the honour to report—

Proposed instructions right.

That, in our opinion, the proposed instructions are right and proper.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## BRAZIL.

### No. 11.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 26.)*

My Lord,
*Royal Courts of Justice, May* 24, 1888.

Claim of Mr. Hancox on Brazilian Government in consequence of annulment of contract.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list,† relating to a claim of indemnity which had been preferred by Mr. Joseph Hancox, a British subject, against the Brazilian Government, in consequence of their alleged illegal annulment of a contract which he had entered into with them for the rain-water drainage of a part of the city of Rio de Janeiro.

That full particulars of the breach of the contract complained of were given in the letter of the 8th October, 1887, addressed by Mr. Hancox to Her Majesty's Representative in Brazil (see Confidential Print, Inclosure 1 in No. 1), to which letter a copy of the contract itself, and of other documents bearing on the present claim, were appended.

That it would be seen that the contract in question was entered into on the 30th January, 1877; and that, notwithstanding the constant financial and other difficulties with which Mr. Hancox had to contend, he continued to persevere in the execution of the works until the 17th June, 1886, when, without any reason being alleged, or promise of settlement offered, he received an order to stop all works at the end of that month.

That Mr. Hancox alleged that up to that time he had fulfilled all the conditions and views of the Government in every respect, and that at that time he had provided the necessary material and plans for carrying out, and had a staff adequate to carry out, the contract to the end.

That he was thus left with all his liabilities, engagements with his workpeople, materials and plant, on hand, and had suffered in consequence irreparable loss.

That on the 28th September, 1886, he petitioned the Minister for Public Works and Agriculture, and obtained restitution of the caution-money he had deposited, and also payment for the balance of actual work done.

Compensation refused.

That he was, however, refused all compensation in respect of the material thrown on his hands, for the indemnification of his staff, and for his personal losses; and that it would be observed, moreover, that Baron de Cotegipe, in the course of the interview which he afforded to Mr. Macdonell upon the subject of the claim in question, did not allege that Mr. Hancox had been guilty of any breach of contract, but insisted on the right of the Government to deal with the matter as they thought proper.

That from the decision of the Ministry of Public Works he appealed to the Council of State, who, however, recommended the rejection of his appeal to the Princess Imperial Regent; and that on the 26th November, 1887, Her Imperial Highness approved their recommendation, and declared its rejection in the name of the Emperor.

That it appeared that by appealing in the first instance to the Council of State, without having previously invoked the assistance of the ordinary legal Tribunals, Mr. Hancox had followed the course usually prescribed in Brazil, in cases where the action of an Administrative Department of the State was involved, and that he had employed the only means open to him to obtain redress without going through what had been described as a "useless, endless, and ruinously expensive process" (see Mr. Macdonell's Memorandum of the 5th January, 1888).

That it appeared, moreover, from that Memorandum, that the Council of State had power, if not to overrule the Judgments of the Law Courts, at any rate to refuse to apply to the Chamber for the funds necessary to carry out their decisions.

That, in those circumstances, Mr. Hancox now appealed to Her Majesty's Government to give their official support to him in the claim which he now made against the Government of Brazil for a return of the moneys and retentions in their hands, that they should take the material he has provided for works, and that they should give him a reasonable indemnity for the breach of their contract with him.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether Her Majesty's Government might properly grant to Mr. Hancox the assistance and support for which he asked, and with any observations which we might have to offer generally upon the matter.

In obedience to your Lordship's commands we have the honour to report—

H. M.'s Govt. may use influence to get claim settled by arbitration.

That, considering all the circumstances, we think that Her Majesty's Government may properly use their influence to obtain a settlement of Mr. Hancox's claims by urging the Brazilian Government to consent to submit them to arbitration if they cannot come to an agreement with him.

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* Belgian Government to Baron Solvyns, November 24 (communicated November 26, 1888).

† (1) Confidential Print No. ; (2) Mr. Gough, No. 17 of 1888; (3) Batten, Proffit, and Scott, April 6; (4) to ditto, April 11, 1888.

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If opposed, should not press for full amount claimed.

In our opinion, however, if opposed, Her Majesty's Government should not press the claim to the full amount mentioned in Mr. Hancox's letter of the 23rd December, 1887, as some of the items appear somewhat of a speculative character.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

## CHINA.

### No. 12.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August* 22.)

*Royal Courts of Justice, August* 21, 1888.

My Lord,

Claim of English Secretary (a British subject) to the Chinese Legation to exemption from parish rates on his private house.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us a note from the Chinese Minister,* inclosing a notice of distraint which had been served by the Vestry of St. Marylebone upon Sir Halliday Macartney, English Secretary to the Chinese Legation, for refusing to pay the parish rates.

That Sir Halliday Macartney was a British subject, who came over from China in 1877, attached to the suite of the Chinese Minister in the capacity of English Secretary, and that his name was inserted on the list of persons composing the establishment of the Foreign Embassies and Legations which was annually supplied to the Sheriffs of London and Middlesex, under the Statute of 7 Anne, cap. 12.

That in the year 1884, however, the question was raised whether a British subject employed in such a capacity could properly be allowed diplomatic privileges and immunities, and claim to be put on the Sheriffs' list.

That on that point Sir Julian Pauncefote was to draw our attention to Sir. J. Dodson's Report of the 4th May, 1850, at p. 8 of the Confidential Print,† which was inclosed; to the correspondence between Lord Palmerston and Viscount Moncorvo, the Portuguese Minister, of the same year; and to the general correspondence which took place in 1884 between the Foreign Office and the Chinese, Japanese, and Siamese Legations, which would be found at pp. 1 to 22 of the same Print.

His exclusion from the Sheriffs' list.

That the result of the last-mentioned correspondence was that it was decided that the names of the English Secretaries to the Chinese, Japanese, and Siamese Legations should be omitted from the Sheriffs' list. That that decision, and the reasons on which it was based, were communicated to the Chinese Minister in a note from Earl Granville of the 30th August, 1884 (Print, p. 6).

His exemption, by courtesy, from Crown taxes.

That in the following year it was decided, with the concurrence of the Law Officers of the Crown, to relieve the English Secretaries of the Chinese, Japanese, and Siamese Legations (but only as a matter of courtesy) from such taxes as the Crown had legal power to remit (Print, p. 23). That the question had rested on that footing until the present time.

That a claim had now been made, as before stated, upon Sir Halliday Macartney for the payment of the parish rates of St. Marylebone, which the Crown had no power to remit.

That Her Majesty's Secretary of State for the Home Department, in the first instance, recommended, upon your Lordship's suggestion, that the parish authorities should not press their demand. That the replies received from the Vestry would be found at p. 10 of the Print.

That in Lord Granville's letter to the Chinese Minister of the 30th August, 1884 (Print, p. 6), it was stated that it had for many years been a settled principle that no British subject attached to a foreign Embassy or Legation other than a "domestic" or "domestic servant" was entitled to proclaim the protection afforded to the diplomatic body in this country by the Statute of 7 Anne, cap. 12, and that a notification

to that effect was referred to, which was published in the "London Gazette" so long ago as the year 1786, and which would be found at p. 6 of the Print.

His refusal to pay rates.

Rates levied by distraint.

That, nevertheless, Sir H. Macartney claimed immunity from the rates in question by virtue of his position as English Secretary to the Chinese Legation, and had refused to pay them. That the consequence had been that the Vestry had caused the rates to be levied by distraint in his private dwelling-house at 3, Harley Place. That the Chinese Minister, in his note of the 17th instant, characterized that proceeding as a "gross breach of his diplomatic privileges," and called on Her Majesty's Government to have the man "whom the Vestry had presumed to put in possession in his Secretary's house" immediately removed, and requested that the name of Sir Halliday Macartney might be replaced on the list furnished to the Sheriff of persons entitled to diplomatic privileges.

That the Minister further contended that it had been ruled by the highest Courts in this country that the words "domestic servant" found in the Statute of 7 Anne, cap. 12, included Councillors, Secretaries, and Attachés of Legations.

But that, according to Sir J. Dodson's Report (Print, p. 8), Secretaries and Attachés residing elsewhere than in the house of the Ambassador or Minister were not entitled by law to diplomatic privileges, though it was the practice to extend those privileges to them as a matter of indulgence and courtesy.

That Sir Julian Pauncefote was to request that we would favour your Lordship with our opinion whether Sir Halliday Macartney was legally entitled to the diplomatic privilege claimed on his behalf by the Chinese Minister; and, if so, what steps (if any) should be taken by Her Majesty's Government to protect him from the violation of that privilege.

He is not entitled to the diplomatic privilege claimed.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, Sir Halliday Macartney is *not* (being a British subject) legally entitled to the diplomatic privilege claimed on his behalf.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

### No. 13.

*Law Officers to Foreign Office.*—(*Received August* 25.)

Claim of Secretary to Chinese Legation to exemption from rates. Further letter does not affect their opinion.

THE Law Officers of the Crown present their compliments to Sir Julian Pauncefote, and, with reference to his note of the 21st instant, beg to say that the further letter* from the Chinese Minister relative to Sir Halliday Macartney's claim to exemption from payment of rates does not cause them to alter the opinion expressed by them in their Report of the 21st August.

Sir Julian Pauncefote's note was not received until after this Report had been sent in.

*Law Officers' Department, Royal Courts of Justice,*
*August* 24, 1888.

### No. 14.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received September* 8.)

*Royal Courts of Justice, September* 6, 1888.

My Lord,

Chinese jurisdiction over Chinese women, wives of German subjects.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin† with reference to the right of the Chinese Government to continue to exercise jurisdiction over a woman of Chinese nationality of origin subsequently to her marriage, according to German law, with a German subject resident in China.

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* Lew Ta-jên, July 17, 1888.

† Confidential Paper, No. 5115.

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* Lew Ta-jên, August 18, 1888.

† Memorandum by Count Leyden, July 27; ditto, Sir R. Rennie, August 6, 1888.

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That it would be seen by the Memorandum communicated by Count Leyden, the Secretary of the German Embassy at this Court, that a case had lately occurred at Swatow in which the Chinese authorities had refused to give up their jurisdiction over the Chinese wife of a German subject.

Proposed German Agreement as to surrender of such jurisdiction.

That with a view to obviate the recurrence of similar complications in the future, the German Minister at Peking had conditionally entered into, and now submitted for ratification by his Government, an Agreement with the Tsung-li Yamên, by which a notice of the marriage given to the Chinese local authorities was to be made the only condition of the assent of the Chinese Government to surrender that jurisdiction over the wife which it now asserted.

That the proposed Agreement, however, had not been formally approved by the German Imperial Government, who had meanwhile requested to be favoured with the views of Her Majesty's Government upon the subject.

That the papers had been referred to Sir R. Rennie, Chief Justice of Her Majesty's Supreme Court for China and Japan, now on leave of absence, and that his views on the subject would be found in his Memorandum of the 6th August, which was inclosed.

That Sir Philip Currie was to request that we would take the papers into our consideration, and favour your Lordship with our opinion whether there was any objection to the arrangement proposed by the German Government.

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In obedience to your Lordship's commands, we have the honour to report—

No objection to proposed Agreement.

That, in our opinion, there is no objection to the arrangement proposed by the German Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## EGYPT.

### No. 15.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 14.)*

My Lord, *Royal Courts of Justice, June 13, 1888.*

Imprisonment of Major J. Colborne for perjury at trial of B. H. Clere.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the case of Major the Honourable John Colborne, a British subject, now undergoing a sentence of imprisonment for wilful and corrupt perjury committed during the trial of a criminal indictment for libel against one B. H. Clere (otherwise Vizetelly), on the 2nd March, 1887, before Her Majesty's Consular Court for Egypt sitting at Cairo.

That Major Colborne was tried on the 6th March last in Her Britannic Majesty's Consular Court for Egypt sitting at Alexandria, before Mr. Consul and Judge Cookson and a petty jury of five British subjects. That he was found guilty by the jury, who, however, joined to their verdict a recommendation to mercy, and that he was thereupon sentenced by the Judge to six months' imprisonment.

His Petition for statement of a case for the Supreme Court;

and for suspension of his sentence.

That he subsequently presented a Petition (see Inclosure 1 in his letter to Mr. Cookson of the 4th April, 1888) to the Judge praying him, under the circumstances and for the reasons therein appearing, to state a case for the opinion of Her Majesty's Supreme Consular Court for the Ottoman Dominions at Constantinople, and to reserve five several points of law therein specified, in order that if the conviction were erroneous in matter of law it might be quashed by the Supreme Court. That, meanwhile, he requested that, pending the decision of the Supreme Court on the points involved, the execution of his sentence might be suspended, and that he might be released on entering into such recognizances as the Court might require.

Provisions of Order in Council applicable.

That section 307 of the Levant Order in Council of the 12th December, 1873, upon which that application was based, provided that, where a person was convicted, either by summary trial or on indictment, before a Court other than the Supreme Court (in that provision referred to as the Court below)—

1. "If he considers the conviction erroneous in law, then, on his application (unless it appears merely frivolous, when it may be refused), . . . . the Court below shall state a case setting out the facts and the grounds of the conviction, and the question of law, and send it to the Supreme Court. Thereupon the Court below shall, as it thinks fit, either postpone judgment on the conviction, or respite execution of the judgment, and either commit the person convicted to prison, or take security for him to appear and receive judgment or to deliver himself for execution of the judgment (as the case may require) at an appointed time and place."

That the section then went on to provide for the hearing and final determination of the matter by the Supreme Court.

Refusal of Consul to release him.

That the Consul, however, considered that, as Major Colborne was already in prison when he was asked to state a case, it was not right, as the points raised were merely technical, to release him under section 307, more especially as, in his opinion, there was no doubt as to his (Major Colborne's) moral guilt, and that it also appeared to him doubtful whether, if Major Colborne were released on bail and forfeited bail by leaving Ottoman dominions, he could be arrested elsewhere.

That the Consul pointed out, moreover, that it was open to Major Colborne to apply to the Supreme Court at Constantinople for his release.

That your Lordship had at present no specific information as to whether the Consul refused to state a case for the opinion of the Supreme Court, and whether, if so, he stated as his reason for so doing that the application of Major Colborne was, in his judgment, "merely frivolous."

That your Lordship, however, in the absence of specific information on the point, was inclined to surmise, from Sir E. Baring's telegram of the 9th May, that Mr. Cookson did so refuse.

Alternative Petition for a free pardon.

That it would be seen that the petitioner prayed in the alternative (see Petition of the 4th April, 1888) that your Lordship would be pleased to recommend Her Majesty to grant him a free pardon; but that, in the absence of a recommendation to that effect from the Judge who tried the case, your Lordship would, having regard both to the language of section 310 of the Order in Council, and to the opinion expressed by Mr. Cookson as to the prisoner's moral guilt, be disinclined at present to advise Her Majesty to grant him any immediate mitigation or remission of the sentence passed upon him, unless the proceedings had, in our opinion, amounted to so clear a miscarriage of justice as to entitle him at once to be set at liberty.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

1. Whether, for the general grounds and reasons set forth in his Petition to Mr. Cookson, Major Colborne was entitled to have a case stated for the opinion of the Supreme Court, reserving the various points of law (or any of them) therein mentioned, or whether Mr. Cookson was entitled to treat his application as "merely frivolous," and on that ground to refuse it;

2. Whether if, in our opinion, Mr. Cookson was not entitled to refuse his application on the ground last stated, Major Colborne should, pending the result of the appeal and on his giving proper security for his reappearance to the Judge, at once be released; or

3. Whether, having regard to all the circumstances of the case, there had been such a miscarriage of justice as rendered it advisable for your Lordship to recommend Her Majesty to grant Major Colborne either a free pardon or some immediate mitigation or remission of the sentence passed upon him.

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We have taken the papers into our consideration, and in obedience to your Lordship's commands have the honour to report—

Consul justified in refusing application to state a case.

1 and 2. That, in our opinion, Mr. Cookson might reasonably consider the application to state a case upon the points raised in Major Colborne's Petition as "merely frivolous," and therefore refuse it.

No apparent miscarriage of justice.

3. We are unable to say, upon the materials before us, that there has been any miscarriage of justice, and we see no reason to distrust the judgment of Mr. Cookson,

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No reason to distrust judgment of Consul as to the evidence or as to guilt.

either as to the sufficiency of the evidence, or the moral guilt of the defendant, or the term of punishment appropriate to the case.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

Honourable J. Colborne, April 4, 1888.
Major-General Montgomery Moore (undated), received May 3, 1888.
Ditto, May 7, 1888.
Telegram to Sir E. Baring, May 7, 1888.
Telegram from Sir E. Baring, May 9, 1888.
Major-General Moore, May 9, 1888.

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## FRANCE.

### No. 16.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received February* 8.)

My Lord, *Royal Courts of Justice, February* 7, 1888.

A. Bahagiar, Consular prisoner. Petition for remission or reduction of sentence.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list* with reference to a Petition which your Lordship had received from a Consular prisoner named Andrea Bahagiar, praying that either his "release or a reduction of the remaining part of his sentence" might be granted to him.

That Bahagiar was tried and convicted before the Consular Court at Tunis on the 1st June, 1883, of three several offences: (1) of wounding with a revolver a police officer named Bechir-el-Arbi, who was endeavouring to effect his arrest; (2) of breaking into the shop of Fino Giovanni; and (3) of breaking into the shop of Demetrio Cavopulo, and was sentenced to terms of five years' penal servitude, of two years' imprisonment with hard labour, and of two further years with hard labour for such offences respectively.

His conduct "very good."

That he had been confined in the Corradino Prison at Malta since the 14th June, 1883, and that his conduct since his imprisonment appeared to have been hitherto "very good," and that, should it so continue, he would in ordinary course become entitled to his "release by days of grace" on the 22nd September, 1889.

That he had already on a previous occasion (in 1886) petitioned the Secretary of State for a mitigation of his sentence, but that our predecessors in office, who were consulted with reference to the propriety of then granting his application, expressed an opinion that there were no grounds upon which any mitigation of sentence could, at that time, properly be granted to him.

That they added, however, that if Bahagiar's conduct in prison continued to be good the matter would be, as they thought, one proper for the consideration of the Secretary of State at a later period.

That having regard to the fact that the prisoner's conduct throughout his imprisonment had been very good, and to the opinion expressed upon the case by the then Law Officers in 1886, your Lordship was inclined to think that Bahagiar might properly be informed that, if he continued to conduct himself well up to that date, your Lordship would recommend his release on the 30th November of this year, when he would have actually served five and a-half years of his sentence.

That before so doing, however, your Lordship desired to be informed, for your Lordship's guidance, whether such a course would in our opinion be right and proper, or whether, having regard to the serious nature of the offences of which Bahagiar was convicted, the mere fact that his conduct in prison had been exceptionally good was not of itself sufficient to justify any further mitigation of his punishment beyond that already to be accorded to him by the operation of the "days of grace" system.

That Sir Julian Pauncefote was therefore to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether any remission of Bahagiar's sentence, and, if so, whether that proposed above, or what other mitigation of his punishment might properly be made.

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In obedience to your Lordship's commands we have the honour to report—

Mitigation of sentence by usual "days of grace" sufficient.

That we gather from the Report of our predecessors of the 28th August, 1886, that the fact that the sentence of nine years passed upon the prisoner would be reduced, and that he would be discharged at the end of six and a quarter years, was not before them.

Under ordinary circumstances, we consider that the mitigation of sentence by the shortening of the term by days of grace in consideration of good behaviour is, in the absence of special ground, sufficient reward for such good behaviour.

He should serve one year of his second term.

Unless, therefore, there are some special reasons given, we think that, having regard to the nature of the offences of which he was convicted, the prisoner should not be released before the 22nd September, 1889, but at any rate, that he should serve one year of his second term, that is, to the 14th June, 1889.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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### No. 17.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received October* 30.)

(Confidential.)

My Lord, *Royal Courts of Justice, October* 29, 1888.

Minquiers Rocks.

British title to sovereignty over.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us the inclosed Confidential Print and other correspondence respecting the right of sovereignty possessed by Her Majesty over the Minquiers Rocks.

That the position of the rocks in question would be seen from the accompanying Map, while the devolution of the British title to sovereignty over them was concisely traced in the opinion submitted by the Law Officers of the Crown for Jersey to the Lieutenant-Governor of that island on the 11th August last (Confidential Print, p. 8, Inclosure 2 in No. 18).

That a description of the islets themselves, and of their topographical relations to the coasts of Jersey and of Normandy respectively, was given in Sir E. Hertslet's Memorandum of the 10th August, 1869, and the Annex thereto of the 7th June, 1888 (Confidential Print, pp. 6-10), and that the salient points of the opposing French and British claims were summarized and contrasted in Sir E. Hertslet's Memorandum of the 2nd September, 1888, which was to be found at p. 20 of the Confidential Print.

That it would be seen (Home Office to Foreign Office of the 20th September, 1888) that Mr. Secretary Matthews entirely concurred in the conclusions stated in the last-mentioned Memorandum, supported as they were by the opinion of the Law Officers of Jersey, and considered that the right to the sovereignty of the rocks in question was clearly vested in the British Crown.

That with that view your Lordship was disposed to agree; but that before finally intimating to the Government of the French Republic the views of Her Majesty's Government upon the point, your Lordship would be glad to be informed whether or not, in our opinion, the right of Her Majesty to sovereignty over the Minquiers Rocks was established beyond dispute.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the question submitted therein, and with any general observations which we might have to offer on the case.

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* Colonial Office, January 13, 1888, with Petition of December 26, 1887; Law Officers, April 28, 1886, Confidential No. 5440, p. 40

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Her Majesty's Government may insist upon their claim to.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to report—

That, in our opinion, the facts stated in the documents before us, and especially in the Memoranda of Sir E. Hertslet and the Report of the Jersey Law Officers, support the claim of the British Crown to the sovereignty of the Minquiers Rocks, and M. Waddington may properly be informed that Her Majesty's Government insist upon such claim.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

Confidential Print, No. .
Home Office, September 2, 1888.
Map. Tracing from Admiralty Chart. Foreign Office Map, General No. 42.

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## No. 18.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 22.)*

My Lord, *Royal Courts of Justice, November* 21, 1888.

Schools in Tunis.

French inspection of, and use of French language in.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us papers marked in the margin,* with reference to a Decree of the Bey of Tunis promulgated on the 15th September last, and purporting to place all public and private schools within the Regency under the inspection of French officials, and to make the use of the French language compulsory in such schools.

Decree as to.

That the Italian Government held (see the late Count Robilant's note of the 24th September, 1888) that that Decree was not applicable to Italian subjects resident in the Regency, and that the grounds upon which they based their contention would be found concisely stated in that note.

As to immunity of British and Italian subjects therefrom.

That your Lordship was disposed to think that the Italian contention was correct, and that Her Majesty's Government was entitled to claim for British subjects resident in the Regency of Tunis a like immunity from the operation of that Decree.

That a Memorandum had been prepared showing the grounds on which, as was conceived, the Decree was, in so far as it purported to affect British subjects, beyond the powers of the Bey, and incapable of enforcement by the French Tribunals. (See Sir J. Pauncefote's Memorandum of the 6th October, 1888.)

That the French text of the Decree itself would be found, extracted from the "Journal Officiel Tunisien," of the 20th September last, at p. 4 of the inclosed Confidential Print.

That Sir Julian Pauncefote was also, with reference to the binding effect upon France, under the Franco-Tunisian Treaty of the 12th May, 1881, of the existing Treaty obligations of the Bey, to refer to a report which was furnished on the 28th April, 1886, to the then Secretary of State by our predecessors in office (Law Officers' Report No. 26, of 1886).

That Sir Julian Pauncefote was to request that we should take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether Her Majesty's Government were entitled to contend that the Beylical Decree in question was inapplicable to British subjects; and that, should we be of that opinion, your Lordship would further be glad to be informed whether the views put forward in Sir Julian Pauncefote's Memorandum of the 6th October had our general concurrence as a statement of the grounds upon which the contention of Her Majesty's Government might properly be based.

We were also honoured with a Memorandum from Sir Julian Pauncefote, dated the 7th instant, stating that he was directed by your Lordship to transmit, for our consideration, a copy of a further despatch* (and inclosures) from Her Majesty's Consul at Tunis.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to report—

Decree not applicable to British subjects. Concur in Memorandum.

That, in our opinion, Her Majesty's Government are entitled to contend that the Decree of the Bey of Tunis of the 15th September is inapplicable to British subjects, and that we concur in Sir Julian Pauncefote's Memorandum as a statement of the grounds upon which the contention of Her Majesty's Government may properly be based.

Last sentence should be omitted.

We think, however, it might be well to omit the last sentence, as we doubt whether it is stated with sufficient precision or detail.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## GENERAL.

## No. 19.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 18.)*

My Lord, *Royal Courts of Justice, February* 17, 1888.

Consular certificates, attestations, and notarial acts.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, with reference to the instructions which should be issued to Her Majesty's Consuls for their guidance in cases where they were called upon to grant certificates of fact, or to attest depositions and affidavits.

Proposed instructions.

That it was proposed, in consequence of, and in connection with, the recent enactment of the Order in Council establishing new Tables of Fees for the Consular Service, to issue a fresh Code of General Instructions to Her Majesty's Consuls in substitution for those of 1879 at present in force; and that as doubt was entertained as to the correctness of certain of the statements in the paragraph (section 18) of those Instructions which dealt with the question of certificates and affidavits, the present appeared to be a favourable opportunity for reconstructing, and, if necessary, amending, its language.

That the paragraph (18 of the General Instructions of 1879) referred to was adapted from, and founded on, the terms of the Circular letter of the 23rd August, 1847, which originally itself formed Inclosure No. 22 of the previous General Instructions, and had been, before its issue, submitted to, and approved by, the then Queen's Advocate, Sir J. Dodson.

That the paragraph which it was now proposed to substitute therefor was inclosed, and marked "B," together with a Memorandum (marked "B¹"), which dealt at greater length with the questions involved, and upon the lines of which the paragraph ("B") was in a great measure based.

That other papers dealing more particularly with the duties and powers of notaries with respect to the execution of notarial acts in, and of translations from, foreign languages were also inclosed.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

1. Whether the powers conferred upon Her Majesty's Consuls by the 20th section of the Consular Act, 1825, in respect of administering oaths, &c., and performing notarial acts, were to be regarded as facultative or imperative?

2. Whether it was competent to a Consul to demand to examine any document

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* Confidential Print, North Africa, No. ; Memorandum by Sir J. Pauncefote, October 6, 1888; Law Officers, April 28, 1886, Confidential No. 5440, p. 40; Protocol (Italy and Tunis), January 25, 1884; Treaty (Italy and Tunis), September 8, 1868; Order in Council, December 31, 1883, Confidential No. 4905*; Franco-Tunisian Treaty, Parliamentary Print, "Tunis No. 6 (1881)," No. 2415; Correspondence *re* establishment of French Tribunals (Confidential Print 4853).

* Mr. Ricketts, No. 19, October 25, 1888.

which was brought before him for purposes of attestation in all cases, and as a matter of strict right, or whether, if not, he might still insist on so doing whenever he had reasonable cause to believe or suspect that fraud or illegality of some kind was involved?

3. Whether, as regarded the matter specially dealt with in the preceding questions, the language of the suggested paragraph ("B") required amendment or amplification; and whether, in other respects, its terms were such as, in the circumstances were right and proper to be approved by your Lordship?

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In obedience to your Lordship's commands we have the honour to report—

Administration of oaths obligatory.

1. That, in our opinion, it is obligatory upon a Consular officer to administer oaths or to take affidavits, when required to do so by British subjects, in any case in which an oath, affidavit, or affirmation may properly be required. (See 5 & 6 Wm. IV, cap. 62, sec. 13.)

As to examination of documents attested.

2. That it is not competent to a Consul to demand to examine the documents in respect of which he is called upon to administer the oath, except so far as is necessary to satisfy himself, in the case of an affidavit, that the matter is one as to which an oath can be lawfully administered.

Amending proposed instructions.

3. We suggest the following amendments in "B":—

Clause 3 should be amended by substituting the following clause:—

"Consular officers, in administering an oath, or in attesting the fact of a British subject having affixed his signature to a document in their presence, only attest to the fact of the oath, affidavit, or affirmation having been made, or the document signed, before them, and they do not in any way guarantee the correctness of the contents of such affidavit or document.

"They are not entitled to decline to attest on the ground of their not being acquainted with, or to insist on acquainting themselves with, the contents of the documents they are called upon to attest, except so far as is necessary, in the case of an affidavit, to ascertain that the matter is one as to which an oath can lawfully be administered."

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

Foreign Office Memorandum, June 16, 1887.
Consul-General of Uruguay, June 10, 1887.
To Home Office, June 24, 1887.
Home Office, July 16, 1887 (one Inclosure from Treasury to Home Office, dated July 12, 1887).
To Consul-General of Uruguay, October 13, 1887.
Consular Letter of August 23, 1847 (marked "A").
Sir J. Dodson's Report, August 16, 1847 (marked "A[1]").
Proposed new paragraph to Instructions (marked "B").
Memorandum (marked "B[1]").
Consular Act of 1825 (6 Geo. IV, cap. 87).
18 & 19 Vict., cap. 42.

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## No. 20.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received March* 21.)

My Lord, *Royal Courts of Justice, March* 20, 1888.

Right of retired diplomatists to continuance of pensions.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd instant, stating that he was directed by your Lordship to submit to us the following question which had arisen with respect to the absolute right of retired diplomatists to continue, under all circumstances, in receipt of a pension when such pension had been actually granted to them in accordance with the provisions of "The Diplomatic Salaries, &c., Act, 1869" (32 & 33 Vict., cap. 43).

Case of Sir H. Elliot's article in "Nineteenth Century."

That an article had been written by Sir Henry Elliot, lately Her Majesty's Ambassador to the Sublime Porte, and had been published in the "Nineteenth Century" magazine for February last, treating of matters that took place while he was Ambassador at Constantinople.

That that article was a very unfortunate one, and had given profound offence to the Ottoman Government; that it would certainly not have been permitted to appear if the Foreign Office had been aware of it and able to prevent it.

That your Lordship was desirous of being favoured with our opinion as to whether the Secretary of State for Foreign Affairs, or Her Majesty's Government, for the time being, had the power of attaching, either in the present or the future, conditions to the pensions which were from time to time granted, under the provisions of that Act, to diplomatists on their retirement from active service.

Suggestion as to forfeiture of present or future pensions.

That your Lordship wished in particular to be advised whether it would be legal, either in respect to those who were now in actual receipt of such pensions, or those who would receive them hereafter, to provide by regulation that if any retired diplomatist published any statement with respect to matters that had taken place, or come to his knowledge, during his service under the Crown, without first submitting it to the Secretary of State for Foreign Affairs for the time being, he should *ipso facto* become liable to forfeit his pension.

That with reference to such a regulation as was suggested your Lordship also desired to know whether, in our opinion, any essential distinction of law might be drawn between its imposition upon those who were actually members of the Diplomatic Service at the date of its issue and upon those who might enter the Service after that date.

That Sir Julian Pauncefote was also at the same time to inquire whether, in the event of so extreme a case arising as might (all other means failing) in his opinion render it necessary or advisable for the Secretary of State to press upon the Treasury that they should for the future withhold payment of the periodical instalments of a pension already granted, and in the event of that Department consenting to adopt such a course, any legal remedy, either by Petition of Right against the Crown or otherwise, would be open to the grantee of such pension to enforce its continued payment.

That it was conceived that a Petition of Right would not, under any circumstances, be maintainable for the recovery of a civil pension either granted or grantable under the provisions of the Superannuation Acts (see more particularly the case of Cooper *v.* the Queen, L. R., 14 Chancery Division, p. 311), but that the language of "The Diplomatic Salaries, &c., Act, 1869," which alone seemed applicable to the present case, differed in some important particulars from that of the Superannuation Acts, to the advantage, as was thought, of the grantee of a pension under the former enactment.

That Sir Julian Pauncefote was to request that we would take the questions raised in his letter into our consideration, and that in favouring your Lordship with our opinion upon them we would at the same time add any other general observations which we might desire to offer on the subject.

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In obedience to your Lordship's commands we have the honour to report—

Cannot withhold pension granted under Diplomatic Act; but may incite Parliament to refuse grant.

That, in our opinion, where pensions have been granted under the Act of 1869, the Secretary of State has no authority to withhold payment of such pensions, except on the grounds specified in sections 11 and 12 of that Act. We think he is bound to submit to Parliament an estimate including all such pensions, but he may, in the event of any case occurring which in his judgment is sufficiently serious to require such action, *incite* the House of Commons to refuse to vote the particular pension, and if it should so refuse the pension cannot be paid.

Cannot attach conditions.

Legislation necessary.

We are of opinion that the Secretary of State cannot lawfully attach conditions to the grant of statutory pensions, and that if a pension were granted on conditions they would be held null and void, even if they had been signed by the pensioner in token of acceptance. It might, no doubt, be more easy, if such conditions were accepted, to induce Parliament to refuse to provide the pension upon their being subsequently broken, but we do not think the matter can be satisfactorily dealt with except by legislation.

As to maintenance of Petition of Right.

If Parliament has voted the money for a particular pension, then, in our opinion, a Petition of Right could be maintained.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 21.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received June* 4.)

Marriages abroad. Proposed new Consular Instructions.

My Lord, *Royal Courts of Justice, June* 1, 1888.

WE were honoured with your Lordship's commands signified in Sir T. V Lister's letter of the 26th April last, stating that he was directed by your Lordship to transmit to us the inclosed printed paper relating to the question of marriages solemnized abroad under the Consular Marriage Act, which paper it was proposed to insert as a chapter in the new Consular Instructions now in course of preparation, with the object of preventing, as far as possible (pending the passing of a new Act upon the subject), the repetition of many of the cases of irregularity which had taken place with regard to Consular marriages.

That we should observe that those proposed instructions were framed mainly on the Reports which had, at different times, been drawn up by the Law Officers of the Crown for the guidance of the Foreign Office on doubtful points as they had arisen; and that, to enable us to refer readily to those Reports, a copy of each of them was inclosed, together with copies of the Acts of Parliament also referred to in the inclosed printed paper.

That Sir T. V. Lister was to request that we would take that paper into our consideration, and that we would favour your Lordship with our opinion on the several points referred to therein, together with any observations which we might have to offer generally on the subject.

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Approve Instructions as amended.

In obedience to your Lordship's commands we have the honour to report—

That we have perused and amended the proposed Consular Instructions, and, as altered by us, approve the same as proper and sufficient.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

(A.) Act of Parliament, 12 & 13 Vict., cap. 68, 1849. Consular Marriages.
(B.) " " 31 & 32 Vict., cap. 61, 1868. Acting Consuls.
(C.) Circular, August 20, 1853. Marriages at Consulates. (Approved by Law Officers, June 4, 1867.) Circular No. 175.
(D.) Law Officers' Reports, February 21, 1859. Consular Office.
(E.) " " September 23, 1865. Consul's own marriage. Confidential No. 1489, p. 40.
(F.) " " November 3, 1865. Local Laws. Confidential No. 1489, p. 105.
(G.) " " January 12, 1866. Local Laws. Confidential No. 1597, p. 94.
(H.) " " June 4, 1867. Subordinate Consular Offices. Confidential No. 1745, p. 40.
(I.) " " February 26, 1870. Marriages in churches. Confidential No. 3660, p. 119.
(J.) " " April 17, 1871. Acting Consuls authorized by an Under-Secretary or Assistant Under-Secretary of State, Confidential No. 3916, p. 49.
(K.) " " July 4, 1871. Banns. Confidential No. 3916, p. 70.
(L.) " " August 9, 1872. Lapse of Warrant by death or resignation of Consul. Confidential No. 4098, p. 18.
(M.) " " October 22, 1872. Consular marriages not necessarily valid out of Queen's dominions. Nationality. Confidential No. 4098, p. 82.
(N.) " " February 1, 1873. Mixed marriages. Confidential No. 4259, p. 61.
(O.) " " April 18, 1873. Certificate as to English law. Confidential No. 4259, p. 115.
(P.) " " January 13, 1874. Fees. Confidential No. 4331, p. 9.
(Q.) " " March 3, 1874. Naturalized British subjects. Confidential No. 4331, p. 51.
(R.) " " March 7, 1874. Vice-Consuls and Acting Vice-Consuls. Confidential No. 4331, p. 37.
(S.) " " March 11, 1874. Lapse of Warrant by transfer of Consul. Confidential No. 4331, p. 37.
(T.) " " April 9, 1874. Warrant personal to Consul. Confidential No. 4331, p. 53.
(U.) " " April 10, 1875. Wards in Chancery. Confidential No. 4370, p. 32.
(V.) " " July 8, 1876. Civil and religious ceremonies. Mahommedan and heathen countries. Confidential No. 4028, p. 50.
(W.) " " April 27, 1880. Special Warrants. Confidential No. 4539, p. 5.
(X.) " " December 9, 1885. Lapse of Warrants by death or resignation of Consul. Confidential No. 5246, p. 21.
(Y.) " " January 26, 1886. Districts. Confidential No. 5440, p. 46.
(Z.) " " March 10, 1888. Consular Office. District, &c. See Madagascar No. 30.

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## No. 22.

*The Law Officers of the Crown and Mr. Wright to the President of the Board of Trade.*

[*After considering the following Memorandum by the Solicitor to the Board of Trade, in connection with the additional information annexed, the Law Officers and Mr. Wright reported as below on the 7th June,* 1888 :—]

Arrest of foreign fishing-boats off the Goodwin Sands. (*a.*) At low water. (*b.*) At high water.

The following are the questions raised by Commander Suckling :—

(*a.*) Is it legal for a cruizer to arrest a foreign fishing-boat if found fishing within 3 miles of the Goodwin Sands at low water?

(*b.*) Presuming (*a*) to be legal, is it legal for a cruizer to arrest a foreign fishing-boat that she sees fishing within 3 miles of the Goodwin Sands, but by the time the cruizer has overtaken the foreign boat the tide has covered the Sands?

The law involved in the consideration of these questions is so obscure that I felt it difficult to write anything which could be looked upon as authoritative and used with confidence in practice.

I therefore thought it well to obtain advice from the Law Officers of the Crown, and the following is a copy of the opinion they have given.

[*The following additional information was also laid before the Law Officers :*—]

The Goodwin Sands are lighted and buoyed by the Trinity House, who levy dues on British and foreign vessels in respect of the lights and buoys. The Sands are included in the Customs port of Dover, and in the district of the Dover Receiver of Wreck, and vessels stranding on the Sands are treated as if stranded on the shores of the United Kingdom. They are also within the limits of the jurisdiction of the Lord Warden of the Cinque Ports.

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### *Report.*

Jurisdiction should be asserted in cases (*a*) and (*b*).

In our opinion, although the questions are not free from grave doubt, jurisdiction ought to be asserted in both the cases put by Commander Suckling.

The objections to jurisdiction on which the majority of the Court relied in Reg. *v.* Keyn (2 Exchequer Div. 63) are removed by "The Sea Fisheries Act, 1883," section 18 (and see "The Territorial Waters Jurisdiction Act, 1878," 41 & 42 Vict., cap. 73, the preamble and section 5), if the locality in question is within the exclusive fishery limits assigned to Great Britain under the Convention confirmed by the Act of 1883, and the sole question appears to us to be whether the Goodwin Sands are comprised in the description, "the dependent islands and banks," in the IInd Article of the Convention. This appears to us to be a question of construction to be decided with reference to the local circumstances and to the acts of jurisdiction ordinarily exercised at the Goodwin Sands without international objection.

Evidence that the Goodwins are a "dependent bank" not conclusive.

We find nothing to indicate that a bank is necessarily excluded because a deep-water channel separates it from the mainland or nearest island, and we think that the facts that the Goodwin Sands are lighted and buoyed by British authorities, who levy dues there, and that they are part of an English port, and included in the district of a Receiver of Wreck, are some, though far from conclusive, evidence of a dependency.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.
R. S. WRIGHT.

*Royal Courts of Justice, June* 7, 1888.

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## No. 23.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July* 11.)

My Lord, *Royal Courts of Justice, July* 10, 1888.

Claims to exemption from taxes on account of diplomatic privilege in cases of:—

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list,* with reference to three cases in which the question had arisen whether exemption from taxes should be allowed on the ground of diplomatic privilege attaching to the persons on whose property such taxes had been assessed.

(1) A Secretary of Embassy in respect of a house owned and occupied by him.

That, in the first of those cases, exemption had been claimed by Don Pedro de Zulueta, the First Secretary of the Spanish Embassy, in respect of his residence, No. 54, Cadogan Place, of which he was both owner and occupier.

(2) Servants in respect of houses leased and partially sublet by them.

That, in the remaining two cases, exemption was claimed for Thomas Bunclark, domestic servant to the Turkish Embassy, and for Domingos Borges, messenger to the Portuguese Legation, in respect of houses of which they were the lessors, but in portions only of which they themselves respectively resided, the remainder of those houses being, in each case, sublet in lodgings by them.

That the facts of all three cases were fully set out in the Report (a copy of which was inclosed) made by the Commissioners of Inland Revenue to the Board of Treasury on the 9th May last, and that it would be seen that the first case (*i.e.*, that of M. de Zulueta) differed very materially from the remaining two (those of Messrs. Bunclark and Borges), which, on the other hand, appeared, in their main legal aspects, to be practically analogous to each other.

Proposed reply to Treasury.

That, in reply to the Treasury letter of the 15th May, a draft had been prepared embodying the view which your Lordship was disposed to express regarding those cases, but that before actually communicating with the Treasury in the sense therein indicated, your Lordship desired to be favoured with our opinion as to whether the terms of that draft were right and proper in the circumstances.

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In obedience to your Lordship's commands we have the honour to report—

(2) No question as to liability of servants.

That, as regards the cases of Thomas Bunclark and Domingos Borges, no question as to their liability can be fairly raised, and we approve the terms of the draft letter so far as it relates to their cases.

(1) Secretary not exempt. Difficult to enforce payment.

As regards the case of M. de Zulueta, the point is not so clear, but, in our judgment, he is not exempt from the payment of income tax (Schedule A) as owner of the house, though there might be a difficulty in enforcing payment.

Approve reply as altered.

Should it be determined, as a matter of policy, not to press M. de Zulueta for payment, we think the terms of the letter, so far as it relates to his case, should be altered as shown in the draft.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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### Annex.

*Draft of Letter to Treasury as finally amended.*

Sir, *Foreign Office, July* , 1888.

IN reply to your letter of the 15th instant, I am directed by the Marquis of Salisbury to request that the Board of Inland Revenue be informed that, in the opinion of the Law Officers of the Crown, M. de Zulueta, Secretary to the Spanish Embassy in London, is, as a matter of law, liable for the payment of income tax (Schedule A) as the owner of the house No. 54, Cadogan Place, which has been purchased by him; but that if payment be resisted, it is not desirable to endeavour to enforce it, as M. de Zulueta would be protected in his diplomatic character from any process of law which might be instituted to recover payment.

I am to add that M. de Zulueta has been recently transferred to Madrid, and the Board of Inland Revenue will probably concur in the view, that it would be unadvisable to press him for payment of the income tax during the period of his residence in London in the discharge of his diplomatic functions.

Lord Salisbury is further advised by the Law Officers that payment should be required in the cases of Messrs. Bunclark and Borges, domestic servants in the establishment of the Turkish Ambassador and of the Portuguese Minister respectively, on the ground that their occupancy of the houses in question for use as lodging-houses is not necessary for the convenience of the foreign Representatives in question, and cannot be made the subject of any diplomatic immunity.

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## No. 24.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received August* 11.)

My Lord, *Royal Courts of Justice, August* 10, 1888.

Extradition. Draft Orders in Council applying Acts to Declaration with Spain;

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us a draft of an Order in Council applying the Extradition Acts, 1870 and 1873, in the case of a Declaration between Great Britain and Spain, signed at Madrid on the 29th May last, for the purpose of amending the Extradition Treaty of the 4th June, 1878.

That copies of the said Declaration and Treaty were annexed, together with the correspondence marked in the margin.*

and suspending the Acts in Canada in view of consolidation of the Canadian Acts.

That Sir James Fergusson also had the honour to inclose a draft of a further Order in Council for the purpose of providing for the suspension in Canada of the Extradition Acts, 1870 and 1873, in view of the recent consolidation of the Canadian Extradition Acts, under the circumstances set forth in the last paragraph of the Foreign Office letter of the 4th July to the Colonial Office.

That Sir James Fergusson was to request that we would favour your Lordship with our opinion as to whether the drafts of those two Orders in Council might properly be submitted to the Queen for Her Majesty's gracious approval.

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In obedience to your Lordship's commands we have the honour to report—

Approve Order as to Canada.

That, in our opinion, the draft of the Order in Council suspending the operation in Canada of the Extradition Acts, 1870 and 1873, may properly be laid before Her Majesty for her approval.

Proposed Order as to Spain not legal.

The proposed Order in Council with reference to the Declaration of the 29th May, 1888, cannot, having regard to the terms of "The Extradition Act, 1870," lawfully be made.

No power to surrender before expiration of fifteen days.

The Secretary of State has no power, in any circumstances, or upon any consent, to surrender a prisoner before the expiration of the fifteen days mentioned in section 11 of "The Extradition Act, 1870."

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Treasury to Foreign Office, May 15, 1888, and Inclosure (Confidential Print, No. 5115); Law Officers, Japan, April 8, 1881 (Confidential Print, No. 4637, p. 29).

* *List of Papers accompanying reference to Law Officers of July* 21, 1888.

I. Declaration amending Anglo-Spanish Extradition Treaty, May 29, 1888.
II. Anglo-Spanish Extradition Treaty, June 4, 1878 (Treaty, No. 627).
III. To Home Office and Colonial Office, July 4, 1888.
IV. Draft Order in Council inclosed in above letter.
V. Home Office, July 7, 1888.
VI. Colonial Office, July 16, 1888.
VII. Draft Order in Council relative to Canada. For Order in Council as issued under date of November 17, 1888, see "London Gazette" of November 23, 1888.

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### No. 25.

*The attention of the Law Officers was called to the subjoined Report made to the Colonial Office by their predecessors in office on January 7, 1885, and other Papers:**

"My Lord, "*Royal Courts of Justice, January* 7, 1885.

Extradition of Marcelin from New South Wales to French.

"We were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us copies of a letter from the Colonial Office (with its inclosures) to the Foreign Office, and of the reply from the latter Office, respecting the circumstances under which C. M. H. Marcelin, accused of embezzlement, was surrendered in New South Wales to the French authorities.

"That our opinion was requested as to whether the doubt expressed in the Foreign Office letter was well founded.

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"In obedience to your Lordship's commands we have the honour to report—

With consent of accused, he may be surrendered before expiration of fifteen days.

"That we are of opinion that the delay of fifteen days is interposed for the protection of the fugitive criminal, and to give him an opportunity of contesting the propriety of the proposed surrender, and we think, therefore, that if he desires to be sooner surrendered it may lawfully be done.

"We have, &c.
(Signed) "HENRY JAMES.
"FARRER HERSCHELL."

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*Having considered the above reference, the Law Officers (Sir R. E. Webster and Sir E. Clarke), on the* 19*th November*, 1888, *supplemented the Report of August* 10, 1888, *as follows:*—

"We think the terms of section 11 of 'The Extradition Act, 1870," prevent the Secretary of State from surrendering a prisoner before the expiration of the fifteen days, and that if it is desirable to give the Secretary of State such a power further legislation is necessary.

Do not concur in above Report of 1885. Order in Council confirming a Treaty infringing section 11 of Act of 1870 not justifiable.

"We are unable to concur in the Report of our predecessors of the 7th January, 1885.

"It might possibly be contended that the provisions of section 5 of 'The Extradition Act, 1870,' render valid an Order in Council if made, but we do not think that any such argument would be sufficient justification for an Order in Council confirming a Treaty which so clearly infringed the provisions of section 11 of the Act."

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## GERMANY.

### No. 26.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 6.)

My Lord, *Royal Courts of Justice, March* 3, 1888.

Extension of Extradition Treaty to Protectorates.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th January last, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,† relative to a communication which had recently been made by the Imperial German Government to that of Her Majesty, inquiring whether the latter would be prepared to conclude

an Agreement for the purpose of extending the provisions of the Extradition Treaty between Great Britain and Germany of the 14th May, 1872, to the British and German Protectorates adjoining each other in West Africa and elsewhere.

Proposed Agreement.

Reply as to necessity of legislation.

That to the communication thus made your Lordship, being of opinion that such an Agreement as was suggested therein could not be carried out by Her Majesty's Government without fresh legislation, considered it advisable to reply to the German Government expressing regret that, for the reason indicated, their suggestion could not be adopted for the present; but that your Lordship, at the same time, promised that the subject should receive the careful consideration of Her Majesty's Government.

Inconvenience of present arrangements.

That some practical inconvenience was undoubtedly occasioned from time to time when such cases as those particularly mentioned by Baron Plessen on the 8th November last arose, in consequence of the facility with which a criminal could effect his escape from German to British-protected territory, and of the subsequent inability of the British authorities either to punish him themselves or to return him to be dealt with by the established Courts of the place where the crime was committed.

Difficulties as to Protectorates.

That at the same time your Lordship was inclined at present to think, having regard to the views which successive Governments of Her Majesty had maintained with regard to the nature and limitations attaching to the various Protectorates which had of late years been proclaimed by Her Majesty, that not only would it not be possible to extend our Extradition Treaties to such Protectorates without fresh legislation, but that fresh Agreements assenting to such an extension would also be requisite between Her Majesty and the various protected States respectively involved.

Difference between British and German Protectorates.

That in the case of our own Protectorates, the protected State had been uniformly considered to preserve its autonomy in so far as the latter was not affected by Treaty, but that the German Imperial Government had, on the other hand, asserted, in respect of their Protectorates, a dominion and suzerainty so complete as, if it were admitted, would place them on an entirely different footing to those of the Queen, which could not, as was thought, be considered, for the purposes of "The Extradition Act, 1870," to be within Her Majesty's dominions.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the following points:—

1. Whether the terms of the reply returned to Count Hatzfeldt on the 26th January last were right and proper?
2. Whether the views put forward in his (Sir J. Pauncefote's) letter were correct?
3. In what manner, and by what means, could Her Majesty's Government acquire power to carry out an arrangement for the mutual extradition of offenders between British and German Protectorates?

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In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Correctness of reply, and of letter of January 30.

1 and 2. That, in our opinion, the terms of the reply returned to Count Hatzfeldt on the 26th January last are right and proper, and the views put forward in the letter of Sir Julian Pauncefote of the 30th January, 1888, are correct.

Legislation or Agreement not advisable.

3. In our opinion, it will not be advisable to endeavour to provide by legislation or agreement for the mutual surrender of fugitive criminals by the English and German Protectorates. This could not be done without admitting that the Protectorate conferred the rights and duties of territorial sovereignty, and would, therefore, be in conflict with the principles hitherto maintained by Her Majesty's Government.

Should grant facilities for arrests by German officers.

We think the preferable course would be to instruct Her Majesty's officers in the Protectorate to give facilities to the German officers to arrest and conduct within the limits of the German Protectorate any persons who are alleged by the German Consular officer to be German subjects, and to have committed criminal offences within the jurisdiction of the German Courts.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Report of Royal Commission on Extradition, Foreign Office No. 2051; Home Office, September 7, 1888.

† Memorandum, Baron Plessen, November 8, 1887; to Count Hatzfeldt, January 26, 1888 Extradition Act, 1870, 33 & 34 Vict., cap. 62; West Africa Order in Council, 1885 (Confidential No. 5094*).

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## No. 27.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 14.)

*Royal Courts of Justice, March* 14, 1888.

My Lord,

**Extension of Extradition Treaty to German Protectorates.**

We were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us, and in connection with the papers relative to the same subject which were referred to us on the 30th January for our Report, a Memorandum of a further verbal communication made by Prince Ratibor on behalf of the German Imperial Government to your Lordship on the 9th February last.

**Proposal excluding British Protectorates.**

That your Lordship understood the alternative suggestion thus made by Prince Ratibor, and embodied in the Memorandum, to amount practically to a proposition that Her Majesty's Government should agree to extend the operation of the Extradition Treaty between Great Britain and Germany to fugitives from German Protectorates who might take refuge in any part of the British dominions, in which latter category, however, it was clearly understood that the Protectorates of Her Majesty could not be included.

That the Extradition Treaty now in force between Great Britain and Germany only applied (see Article I thereof) to "persons who, being accused or convicted of a crime committed in the territory of the one party shall be found within the territory of the other party;" and that the German Imperial Government had on former occasions specifically stated to that of Her Britannic Majesty that although the Emperor of Germany possessed, in their view, suzerainty over his Protectorates (and consequently, as would no doubt be held, jurisdiction therein for purposes of extradition), the Protectorates themselves were not regarded as being German territory ("Gebiete") in the sense in which that term would be applicable to the integral portions of the German Empire.

That the nature and extent of the suzerainty over, and jurisdiction within, the State-protected territories of the Empire claimed by the German Government might conveniently be gathered from the following documents, to which Sir Julian Pauncefote was especially to direct our attention:—

1. Mr. Scott's No. 315 of the 10th August, 1886, and inclosed Memorandum.
2. Count Hatzfeldt's *note verbale* of the 1st September, 1886.
3. Sir E. Malet's No. 344 of the 14th September, 1887, and inclosed Memorandum.

That it would appear to be impossible, without some modification or extension of the wording of Article I of the Treaty above alluded to by Agreement between the High Contracting Parties, to carry out the desire of the Imperial German Government.

That there were, however, at least two precedents to be found in Extradition Treaties at present in force for the employment of a more comprehensive form of wording, which, if, having regard to the legal and political considerations involved, it were thought otherwise open to no objection, might probably meet the exigencies of the present case.

**Precedents for modification of Treaty.**

That by Article X of the Ashburton Treaty between Great Britain and the United States of the 9th August, 1842, provision was made for the extradition of persons who, being charged with the commission of certain offences therein mentioned *within the jurisdiction* of the one Contracting Party, should be found within the *territories* of the other party.

That immediately after the passing of "The Extradition Act, 1870," a General Draft Treaty was drawn up in consultation with the then Law Officers of the Crown for communication to foreign Governments.

That Article 1 of that General Draft was worded as follows:—

"It is agreed that Her Britannic Majesty . . . . shall, on requisition made in their name by their respective Diplomatic Agents, deliver up to each other reciprocally any persons, except native subjects of the party upon whom the requisition may be made, who, being accused or convicted of any of the crimes hereinafter specified, committed within the *jurisdiction* of the requiring party, shall be found within the territories of the other party."

That the first Treaty concluded after the passing of the Act, and on the basis of that General Draft, was that with Germany of the 14th May, 1872, the British draft of which followed the wording above given.

That the German counter-draft, however, contained Article I of the Treaty in its present form, viz.:—

"The High Contracting Parties engage to deliver up to each other those persons who, being accused or convicted of a crime committed in the territory of the one party shall be found within the territory of the other party, under the circumstances and conditions stated in the present Treaty."

And that that wording, which was agreed to by the Law Officers and the Home Office, was accepted by Her Majesty's Government, and had been adopted more or less in all the subsequent Extradition Treaties concluded by Great Britain, with the exception of that concluded with the Netherlands on the 19th June, 1874, which followed the terms of the original General Draft of March 1871, and provided for the extradition of persons accused or convicted of offences committed within the jurisdiction of the requiring party when they should be found within the territories of the other party.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

1. Whether the present proposition of the Imperial German Government would be met, as far as Her Majesty's Government were concerned, by the substitution for Article I of the Treaty of the 14th May, 1872, of an Article framed on the model of Article I of the original General Draft of March 1871; and
2. Whether, if so, we were aware of any legal objections to the adoption of such a course.

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In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

**Objection to proposed substitution for Article I of Treaty.**

That we are not prepared to advise that the Treaty of the 14th May, 1872, should be modified by the substitution for Article I of an Article framed on the model of Article I of the original General Draft of March 1871.

**Meaning of "jurisdiction."**

It is true that the word "jurisdiction" was used in the Ashburton Treaty and in the Extradition Act of 1870 and in the General Draft Treaty prepared in pursuance of the Act; but a few years before the passing of that Act the Court of Queen's Bench had decided* (in Tivnan's case, 5 Best and Smith, 645) that "jurisdiction" meant "exclusive jurisdiction." On the assumption that it means "exclusive jurisdiction," its signification is not wider than that of "territory," and so there would be no result from the substitution of one word for the other.

On the other hand, the use of the word "jurisdiction" instead of "territory" might give rise to misconception.

For instance, under the Convention of 1852 between the United States and Prussia, which provided for the surrender of persons charged with having committed crimes within the "jurisdiction" of the one party who should be found within the "territories" of the other, a demand was made by Prussia on the United States for the surrender of a person alleged to have committed crimes in Belgium "within the legal jurisdiction of Prussia."

It was contended that inasmuch as such crimes were punishable by the laws of Belgium, the fugitive, being a subject of Prussia, was, by the laws of Prussia, subject to be punished for them in Prussia, and, there being no Extradition Treaty between Belgium and the United States, Prussia asked for his surrender to her. This view was adopted by Judge Blachford in the Circuit Court (see *re* Stupp, 11 Blachford, 124); but the Attorney-General for the United States did not concur in this opinion, but held that "jurisdiction" was a term convertible with "country," and the surrender was refused.

The Attorney-General's view was partly founded on a case in the year 1858 (see "Forsyth's Const. Law," p. 368), in which case the question was raised and submitted to the then Law Officers† whether a British subject who was charged with being accessory before the fact in this country to the murder of a Frenchman in Paris, and who had escaped to the United States, was a person charged with the crime of murder committed within British jurisdiction, whose surrender might be demanded under the Ashburton Treaty, and the opinion given by the then Law Officers was in the negative.

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* Chief Justice Cockburn, however, dissented from this Judgment.—W. E. D.

† Sir J. D. Harding, Queen's Advocate; Sir FitzRoy Kelly, Attorney-General; Sir Hugh Cairns, Solicitor-General. Opinion on Allsop's case, which arose in connexion with the Orsini outrage.—W. E. D

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Suggested alteration undesirable. Questions should be dealt with separately.

We think that it would be undesirable to alter, in the way suggested, the Treaty of the 14th May, 1872, and that it would be better to deal separately with questions which arise with regard to extradition to or from Protectorates.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers to accompany reference to the Law Officers, February* 22, 1888.

I. Verbal communication made by Prince Ratibor on behalf of the German Government. February 7, 1888.
II. Extradition Treaty with Germany. May 14, 1872. No. 536.
III. Confidential Print. Pacific Islands, Part IX, Confidential No. 5341, containing—(1) Mr. Scott's despatch No. 315 of August 10, 1886, and inclosed Memorandum, No. 239, p. 150; (2) Count Hatzfeldt's *note verbale* of September 1, 1886, No. 296, p. 187.
IV. Sir E. Malet's despatch No. 344, September 14, 1887, and inclosed Memorandum on Pacific Protectorates. Confidential No. 5611, p. 44A.
V. Treaty with United States, August 9, 1842, Article X. No. 284.
VI. Extradition Treaty with the Netherlands, June 19, 1874. No. 572.

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## No. 28.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received April* 18.)

My Lord, *Royal Courts of Justice, April* 17, 1888.

Grant of Marriage Warrants to Consul-General and Consul for the same town.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was directed by your Lordship to submit to us, in connection with the Report on certain questions arising under "The Consular Marriage Act, 1849," with which we favoured your Lordship on the 10th March, a further point on which you were desirous of obtaining our opinion.

That the point in question seemed to turn upon the construction to be placed on section 19 of the Act, and had arisen for practical consideration with reference to the following facts:—

That Her Majesty, at present, possessed two Consular officers, both resident at Frankfurt-am-Main, viz., a Consul-General (Mr. Oppenheimer), and a Consul (Mr. Goldbeck).

That of those, the Consul-General was, by the terms of his Commission, appointed to reside at Frankfurt, but had a district assigned to him which embraced, as well as that town, the Province of Hesse Nassau, and also the Grand Duchies of Baden and of Hesse Darmstadt. That he was also provided with a Marriage Warrant.

That the Consul, on the other hand, had no district assigned to him, but was merely appointed to reside at Frankfurt.

That he was not himself provided with a Marriage Warrant, although he had frequently, during the absence of the Consul-General from his district, been Acting Consul-General, and had in that capacity performed marriages under the latter's Warrant in the ordinary course.

That both Consul-General and Consul were unpaid; and that the former, who was much occupied, was anxious, for his own convenience, that the latter should, if possible, be provided with a personal Marriage Warrant, in order that he might be able to celebrate marriages while he himself (the Consul-General) was either in Frankfurt or in some other part of his large district.

That at the same time the Consul-General did not wish, nor would it be thought desirable, that he should be deprived of his own Marriage Warrant in order to facilitate such an arrangement.

That section 19 of "The Consular Marriage Act, 1849," provided that "every British Consul-General and Consul . . . . appointed to reside in any foreign country or place, who shall be directed or authorized by writing under the hand of one of Her Majesty's Principal Secretaries of State to solemnize and register marriages, and any person duly authorized to act in the absence of such Consul, or, *in any foreign place where there is no British Consul resident, any Vice-Consul or Consular Agent*, who shall be directed or authorized as aforesaid . . . . to solemnize and register marriages in such place shall, in the country or place in which he is so appointed to reside, or in which he is directed or authorized to solemnize and register marriages as aforesaid, be a Consul duly authorized for all the purposes of that Act."

That the letter of the 1st February, and the papers which accompanied it, together our Report thereon of the 10th instant, were inclosed for reference, and that Sir Julian Pauncefote was to request that we would take them into our consideration with his letter of the 29th March, and that we would favour your Lordship with our opinion as to whether it was competent for you to issue a Marriage Warrant to the Consul at Frankfurt (assigning that town as his district for the purpose of solemnizing marriages) while the Consul-General continued to hold a Marriage Warrant for a district embracing the same town as such Consul, and both officials were appointed to reside in that same town.

In obedience to your Lordship's commands we have the honour to report—

Warrants in such a case may be issued.

That, in our opinion, it is competent to your Lordship to issue a Marriage Warrant to the Consul at Frankfurt, assigning that town as his district for the purpose of solemnizing marriages, although the Consul-General and Consul are both appointed to reside in the same town, and the Consul-General holds a Marriage Warrant for a district embracing such town.

Restriction as in case of Vice-Consul, &c., not applicable.

The restriction imposed by section 19 in the Act of 1849, in the case of the granting an authority to a Vice-Consul or Consular Agent, does not apply to a Consul.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

1. Foreign Office to Law Officers of February 1, 1888, as to Madagascar marriages, with six inclosures, viz.:—
    - (A.) Law Officers, February 21, 1859. Confidential No. 971.
    - (B.) Queen's Advocate, June 4, 1867. Confidential No. 1745, p. 40.
    - (C.) Law Officers, February 26, 1870. Confidential No. 3660, p. 119.
    - (D.) Law Officers, January 9, 1875. Confidential No. 4370, p. 84.
    - (E.) Law Officers, July 9, 1886. Confidential No. 5440, p. 71.
    - (F.) Consular Marriage Act, 12 & 13 Vict., cap. 68 (1849).
2. Law Officers' Report of March 10, 1888 (Madagascar).

See also Mr. Davidson to the Attorney-General, Private, of March 21, 1888.

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## No. 29.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received April* 21.)

My Lord, *Royal Courts of Justice, April* 20, 1888.

Jurisdiction over foreigners in German Protectorates.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the legal position of the German Protectorates in South-west Africa, the South Seas, and elsewhere.

That that question had, as we were aware, been lately under discussion between the Imperial German Government and that of Her Majesty, and had already formed the subject of a considered Memorandum by ourselves with which we were good enough to favour your Lordship on the 29th June last.

Draft note to German Ambassador.

That after communication to, and consultation with, the Colonial Office (see Foreign Office to Colonial Office of the 22nd July, 1887, and Colonial Office to Foreign Office of the 10th August, 1887), a draft of a communication to be addressed to the German Ambassador at the Court of St. James' upon the subject was prepared in accordance with the terms of our Memorandum and with the observations contained in the Colonial Office letter of the 10th August last.

Memorandum on Articles as to status of German Protectorates.

That before, however, the terms of that draft (see inclosure in Foreign Office to Colonial Office of the 22nd December, 1887) were finally settled, a despatch was received from Her Majesty's Ambassador at Berlin (Sir E. Malet's No. 344A of the 14th September, 1887), forwarding a Memorandum drawn up by Mr. Scott, First Secretary to Her Majesty's Embassy, giving the substance of a series of articles which had appeared in the "Norddeutsche Allgemeine Zeitung" on German Colonial State Law, defining the legal status of new German Protectorates and their organizations

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in accordance with principles of international law and the constitutional law of the German Empire.

Does it justify German claim?

That the question was now placed in a light somewhat different to that in which it was originally submitted to us in Sir Julian Pauncefote's letter of the 18th December, 1886, for it would seem that, if the particular character of the title asserted by Germany over these so-called Protectorates amounted to a suzerainty reducing the condition of the protected State to what had sometimes been called "mi-souveraineté," the claim on the part of that Government to exercise jurisdiction over the subjects of third Powers in the territories in question might possibly be justified. (See Calvo, "Dictionnaire Diplomatique," sub-titles, "Suzerain, Mi-Souverain, Mi-Souveraineté;" Bluntschli's "Droit International Codifié," sections 75-78; Vattel, by Pradier Fodéré, vol. i, cap. xvi, sections 192-194, p. 478; J. J. Moser's "Beiträge zum Völkerrecht in Friedenszeiten," i, 508; Heffter's "Das Europäische Völkerrecht" ("Droit International de l'Europe"), as translated by Bergson, 4th edition, 1883, pp. 49, 50.)

That before, therefore, addressing any further communication to the German Imperial Government upon the matter, your Lordship would be glad to be favoured with our opinion on the further point thus arising, together with any observations which we might desire to add upon the general aspect of the question.

That in case, however, we should see no ground for modifying the views expressed in our Report of the 29th June, 1887, your Lordship would be glad to be informed whether the draft of a note to the German Ambassador, inclosed in the letter from the Foreign Office to the Colonial Office of the 22nd December last, met with our approval.

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In obedience to your Lordship's commands we have the honour to report—

Adhere to opinion. Approve draft note.

That we see no ground, in the matters now brought to our notice, for modifying or adding to our opinion of the 29th June, 1887; and we approve the draft despatch which it is proposed to send to the German Ambassador.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

Law Officers, June 29, 1887, and Inclosures. Confidential No. 5527, p. 373.
Mr. Scott, No. 268, July 16, 1887. Confidential No. 5611, p. 8.
Mr. Scott, No. 293, July 30, 1887. Confidential No. 5611, p. 11.
To Colonial Office, July 22, 1887. Confidential No. 5611, p. 11.
Colonial Office, August 10, 1887. Confidential No. 5611, p. 21.
Sir E. Malet, No. 344, September 14, 1887. Confidential No. 5611, p. 44A.
To Colonial Office, December 22, 1887. Confidential No. 5611, p. 122.
Colonial Office, December 30, 1887. Confidential No. 5611, p. 130.

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## Annex.

### *Draft of Letter to Count Hatzfeldt.**

M. l'Ambassadeur, *Foreign Office*, , 1888.

WITH reference to the correspondence which has taken place respecting the right of civil and criminal jurisdiction over the subjects of foreign States in the German Protectorates in South-west Africa, the South Seas, and elsewhere, and especially to your Excellency's notes of the 11th May and the 29th August, 1886, I have the honour to submit the following observations for the consideration of the German Imperial Government.

In the month of August of last year Her Majesty's Chargé d'Affaires at Berlin was instructed to ascertain whether the State-protected German territories referred to in the Imperial Law on Jurisdiction of the 17th April, 1886, had become German territory, and formed part as such of the German Empire, and, if not, and they consequently remained foreign territory, to inquire whether, in the opinion of the German Imperial Government, a civilized State assuming the Protectorate of an uncivilized State could lawfully exercise jurisdiction over the subjects of other civilized States residing therein, without the assent of their respective Governments.

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* This draft was, however, not sent to Count Hatzfeldt.

This important question was accordingly raised by Mr. Scott in a *pro-memoriâ* dated the 10th August, 1886, and on the 29th of the same month your Excellency delivered a *note verbale* of that date, containing the reply of your Government. From the explanations given in that note Her Majesty's Government understand that the territories comprised in the German Protectorates do not form part of the German dominions, but remain foreign territory under German suzerainty, and that the views of the German Imperial Government on the question raised are substantially as follows:—

That a Protectorate proclaimed in the name of His Majesty the Emperor of Germany is not in its terms limited to the persons residing or sojourning in the protected territory, but extends to the district itself, and accordingly has a territorial character.

That all persons being within such a Protectorate are, irrespectively of their nationality, subject to German jurisdiction, side by side with which the jurisdiction of any other State could not be exercised.

That the right of exercising jurisdiction in the Protectorates is based upon the fact that the protected territories are placed under the German suzerainty, and the exercise of supreme justice is not dependent upon the territories being declared parts of the German Empire, nor is the German supreme jurisdiction derived from the native Chiefs existing in the Protectorates.

That at the same time, on grounds of expediency, jurisdiction over the natives has in some cases been left by Treaty in the hands of their Chiefs.

That there can be no doubt as to the practical convenience of the view to which legislative sanction, as far as Germany is concerned, has been given by the German Imperial Law of the 17th April, 1886, that a country which has submitted to German protection, or to which, being an uncivilized place, German protection has been extended without any submission, becomes *ipso facto* subject to the Reichstag, and to the laws made by that body.

It seems, therefore, that the proposition contended for by the German Imperial Government is that it is competent to that Government to establish what may properly be called a Consular Protectorate in a foreign country, that is to say, a Protectorate in virtue of which the German Government, while not claiming the rights or accepting the liabilities of territorial sovereignty, maintain that the subjects of all other Powers become amenable to the jurisdiction of the officer appointed to administer such a Protectorate, and of the Tribunal of the Protectorate by which the Consular Court is replaced.

If such be the views of the German Imperial Government, Her Majesty's Government are unable to concur in them, and, in their opinion, they are not justified by the accepted principles of international law.

The particular form of the Protectorates in question is somewhat new to international relations, and no discussion of any such form of government can be found in the earlier writers upon international law. But the main principles which must be regarded are, in the opinion of Her Majesty's Government, well settled; one of these being that the right of jurisdiction over the persons found in any territory belongs only to the Power which is entitled to rights of territorial sovereignty. Those rights may be acquired by conquest, by cession, or by settlement, and where they exist, the Power which possesses them is clearly entitled to exercise jurisdiction over all persons coming within the limits of the territory, whether they be natives of such territory or the subjects (other than Diplomatic Representatives) of a foreign Power.

But no Power has any right, according to international law, to exercise jurisdiction over the subjects of another Power unless they are residing within its own territorial limits, neither can the municipal laws of any country affect or enlarge its rights under international law.

It would be competent for any civilized Power to obtain, by Treaty with a native Chief, jurisdiction within his territories over the subjects of other foreign civilized States resident within such territories; but the exercise of any such jurisdiction might be made the ground of diplomatic objection by the civilized State to whose subjects it was extended, and it should not, in the view of Her Majesty's Government, be exercised without the concurrence of that State, given generally, or in the particular case.

As regards the argument of the Imperial German Government, which is founded on the convenience of the view to which legislative sanction has been given by the German Law of the 17th April, 1886, a practical solution of the question may perhaps

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be found in a reciprocal agreement as to jurisdiction. If, as may be presumed, it is proposed to establish in the German Protectorates, and especially in German New Guinea, legal Tribunals to which foreign States can safely intrust the interests of their respective subjects, Her Majesty's Government would be prepared to assent to the exercise of jurisdiction over British subjects in German Protectorates, provided that a reciprocal jurisdiction may be exercised in British Protectorates over German subjects.

The question will not arise with respect to British New Guinea, as that territory will shortly be formally annexed to Her Majesty's dominions, when there will be competent legal officers appointed for the trial of grave cases, with an appeal in certain cases to the Supreme Court of Queensland. But in regard to the British and German Protectorates generally, I have the honour to submit to your Excellency, for the consideration of your Government, the expediency of concluding an arrangement based upon the above suggestion.

I have, &c.

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## MADAGASCAR.

### No. 30.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received February* 29.)

My Lord, *Royal Courts of Justice, February* 27, 1888.

Mr. D. Willoughby.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list,* with reference to the case of Mr. Digby Willoughby, a gentleman of British nationality, who occupied the rank of General in the Hova army, and had for some years past held a high position in the confidential employment of the Malagasy Government.

That Mr. Willoughby was last year deputed by that Government to proceed on a special diplomatic mission to Great Britain and the French Republic, and that on his return to Madagascar in June last a Commission of officers was appointed to receive from him an account of his mission.

Charges against him.

That that account was thought by the Commission to be so unsatisfactory that the Malagasy Government instituted a Court of Inquiry for the further investigation of the matter, of which Court various officers of high rank in the Malagasy army, including two gentlemen of British origin, Messrs. Shervington (Colonel) and Graves (Major) were members.

Tried and placed under arrest.

That Mr. Willoughby was by this Tribunal found guilty of having exceeded his powers as Ambassador, of disobeying orders, and of not satisfactorily explaining the business done by him in Europe on behalf of the Malagasy Government; and that he had been placed under military arrest for four months, the Malagasy Government stating that they reserved to themselves the right, if he should not at the expiration of that period produce a satisfactory statement of accounts, to proceed against him in a Civil Court.

Not enrolled as a British subject.

That Mr. Willoughby had never been enrolled upon the register of British subjects at the Consulate at Tamatave, and, by refusing and neglecting so to enrol himself, had, under section 30 of the Order in Council of the 17th May, 1867, forfeited all right to be recognized or protected as a British subject in respect to any suit, dispute, or difficulty in which he might have been involved within the dominions of the Queen of Madagascar, at any time when he should not have been so enrolled.

That he had, however, never formally renounced British nationality, nor, as was believed, had he made any attempt to become naturalized as a Malagasy subject.

That he, therefore, still remained in fact a British subject to whom, it was conceived, Her Majesty's Government had the right, though not the obligation, to extend Consular protection should they desire so to do.

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* Print of correspondence, Confidential No. 5724; Consul Haggard, No. 1, January 9, 1888.

Question as to his protection.

That, having regard to Mr. Willoughby's previous history, and especially to the fact that he was charged by the Malagasy Government with various serious offences alleged to have been committed by him while he was actually in their military and civil employ, your Lordship was inclined to think that Her Majesty's Government could hardly insist on withdrawing him altogether from Malagasy jurisdiction, but that it occurred to your Lordship that they might fairly demand that Her Majesty's Consul should have free access to that gentleman, and be present at any proceedings which might be instituted against him, and be allowed to satisfy himself that he was being properly and humanely treated.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether Her Majesty's Government were entitled to claim to extend their protection, and, if so, to what extent, to Mr. Willoughby in the circumstances mentioned.

That your Lordship would be glad at the same time to be favoured with any general observations which we might desire to offer upon the case.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

He may be protected.

That, in our opinion, Her Majesty's Government are entitled to extend protection to General Willoughby notwithstanding his having failed to register himself as a British subject, and having actually entered the service of the Malagasy Government.

Proceedings properly carried out.

We do not, however, think it necessary that any demand should be addressed to that Government, as it appears to us that the proceedings instituted against General Willoughby have been properly instituted and conducted, and we see no sign of any desire on the part of the Malagasy Government to prevent General Willoughby having the full opportunity of defending himself.

Suggestion as to aiding him.

We do not doubt that the expression of a hope on the part of Her Majesty's Government that he should be allowed full intercourse with his friends and advisers would produce satisfactory assurances.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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### No. 31.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 12.)

My Lord, *Royal Courts of Justice, March* 10, 1888.

Marriages performed in Consul's district, but not in his office.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* with reference to various questions which had arisen in connection with the celebration of marriages under the Consular Marriage Act by Her Majesty's Consul for Madagascar at certain places in that island other than his public office at Tamatave, the town in which he had been appointed to reside.

That of the marriages now more particularly in question, one was celebrated at Andovoranto, where Her Majesty possessed no Consular officer; and the remainder at Mahanoro, where the Unpaid Vice-Consul, who was, however, himself unprovided with a Marriage Warrant, resided.

That both places were within the Consular district assigned to Her Majesty's Consul for Madagascar, which extended over the whole of that island.

That it was believed that the parties to each of the marriages in question were British subjects, under no disability, and resident within the Consul's district, and that it was assumed that had they been celebrated at his Consulate at Tamatave no doubt as to their validity could have existed.

Instruction of 1853 in force.

That Sir Julian Pauncefote was specially to draw our attention in that regard to the Circular instruction which, after having been carefully considered and settled by

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* Consular Marriage Act, 1849, 12 & 13 Vict., cap. 68; Law Officers, February 21, 1859, Confidential No. 971; Queen's Advocate, June 4, 1867, Confidential No. 1745, p. 40; Law Officers, February 26, 1870, Confidential No. 3660, p. 119; Law Officers, January 9, 1875, Confidential No. 4370, p. 84; Law Officers, July 9, 1886, Confidential No. 5440, p. 71.

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the then Queen's Advocate (Sir J. Dodson), was issued to Her Majesty's Consulates, &c., in 1853, and that Sir Julian Pauncefote was, at the same time, to mention that the views put forward in that Circular subsequently received the express approval of Sir Robert Phillimore (then Queen's Advocate) on the 4th June, 1867.

That that Circular despatch was still in force, and formed Annex 15 to the existing Consular Instructions, which were now undergoing revision with a view to the issue of an amended edition in connection with the new Consular Fee Tables of last year.

Previous case.

That there was, however, amongst the various Reports of our predecessors in office, one which appeared to be somewhat inconsistent with the views put forward in that instruction, and that it might, therefore, be advisable to allude to it in somewhat more detail.

That in January 1875 the then Law Officers were consulted as to whether Mr. Vivian, who had been appointed "Agent and Consul-General for the United Principalities of Moldavia and Wallachia, to reside at Bucharest," and whose district included the whole of the former Principality, although his own public office and official residence was situated at the capital of the latter State within the confines of what were then known as the Danubian Principalities, could legally celebrate a marriage at the Vice-Consulate at Jassy, in Moldavia, where the resident Vice-Consul was not furnished with a Marriage Warrant.

That they thereupon reported that Mr. Vivian, being Consul for Moldavia, and no directions being contained in the Warrant of the 25th November, 1874 (his Marriage Warrant), which would have the effect of limiting his authority, a marriage solemnized by him in Moldavia at Jassy would, in their opinion, be valid.

That it appeared from the terms of the reference, however, that the only two documents which were specifically brought to their notice were (1) Mr. Vivian's Commission, and (2) his Marriage Warrant, and that their attention was not called to the Circular instruction of 1853, nor to the Queen's Advocate's Report thereon of the 4th June, 1867. That their opinion, moreover, seemed itself to be confined rather to the terms of the Warrant than to be intended to deal with the validity of such a marriage in so far as it might be affected by the provisions of the Consular Marriage Act.

That other Reports of the Law Officers bearing on the subject were also inclosed, together with a copy of "The Consular Marriage Act, 1849" (12 & 13 Vict., cap. 68), to sections 3, 9, and 19 of which it was desired more particularly to draw our attention.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

Questions submitted.

1. Whether the marriages celebrated by Consul Haggard at Mahanoro and Andovoranto respectively, or either of them, were invalid in consequence of their not having been solemnized before that Consul in his own Consular office at Tamatave?

2. Whether the Consular instruction of the 20th August, 1853, was right and proper in its terms, or, if not, in what respects they might advantageously be amended?

3. Whether in cases where the same Consul possessed two Consular offices (as, for instance, where a town and its port were at some distance apart) marriages could be celebrated at both or only at one of such offices?

That your Lordship would be glad at the same time to be favoured with any general observations which we might desire to offer on the above points.

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In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

1. A to validity of such marriages.

1. That, in our opinion, the marriages celebrated by Consul Haggard elsewhere than at the British Consulate are invalid, unless they were celebrated by a minister in Holy Orders, or are valid by the *lex loci*.

We understand that the only Consulate in Madagascar, that is to say, the only public office of the British Consul, is at Tamatave.

2. Instruction proper.

2. That the Consular instruction of August 1853 is right and proper in its terms.

3. Only one Consular office in each district.

3. That the terms of the Act of 1849 clearly contemplate one office of the Consulate, at which office the notice of marriage is to be exhibited, the register of notices is to be kept for public inspection, and the marriage itself is to be solemnized.

No doubt a Consul might be appointed to act for two districts, but we are of opinion that there can be only one office in each Consular district at which marriages can be lawfully celebrated.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 32.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 19.)*

My Lord, *Royal Courts of Justice, May 19, 1888.*

Action brought in the Supreme Court of the Mauritius against M. Frouville d'Etienne by the New Oriental Bank Corporation.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 4th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to certain questions which had arisen in connection with an action brought in the Supreme Court of the Mauritius against a M. Frouville d'Etienne by the New Oriental Bank Corporation.

That the Judgment of the Supreme Court in the action in question was pronounced on the 9th August, 1886, and was in favour of the plaintiffs; the defendant, who was in Madagascar at the time, having made default of appearance at the trial.

That, on the 2nd March, 1887, a motion was made to the Supreme Court by the Counsel for the plaintiffs for an Order, addressed not only to all the competent officials of that Court in the Mauritius, but also "to all competent officers and proper persons to be appointed by the British Consul at Tamatave, commanding them forthwith to make and levy by distress and sale of such property of the defendant, Frouville d'Etienne, . . . . . then residing in Madagascar, having his place of business at Tamatave, in Madagascar, as might be levied upon, by the existing law of the Mauritius *wheresoever the same might be found within the jurisdiction of that Court, and amongst other places at Tamatave*, the sum of rupees 6,103 : 84," being the amount of the said Judgment, interest, and costs.

That, thereupon, the Supreme Court held "that, as the cause of action did not arise at Madagascar, the more regular course was for the plaintiff who obtained the Judgment to apply to the British Consul in Madagascar, in order that he should issue a writ of execution after the Judgment of the Court had been laid before him."

That it would be seen from Consul Haggard's despatch No. 136 of October 1887, that various applications had been made to him for the purpose of inducing him to execute the Judgment of the Mauritius Court; but that, on the ground that no precedent existed for such a proceeding, as well as for other reasons, he declined to serve the writ.

That it was presumed that, under ordinary circumstances, the usual and regular method of executing the Judgment of the Supreme Court of the Mauritius upon a defendant's property in Madagascar would be by bringing a further action upon such Judgment, when obtained, in the British Consular Court for Madagascar. (See Law Officers' Report, Morocco, No. 45 of 1886.)

That, in the present case, however, the Judgment of the Supreme Court was given in default of the appearance of the defendant, and that the latter was, moreover, not at the present time within the jurisdiction of the Consular Court.

That a copy of the Madagascar Order in Council of the 4th February, 1869, providing for the exercise of Her Majesty's Consular jurisdiction in that island, was inclosed, together with a copy of the Rules and Regulations framed thereunder of the 1st July, 1869.

That there appeared, however, to be nothing in that Order in Council, or in those Rules and Regulations empowering the Supreme Court of the Mauritius to make, or enabling the Consular Court of Madagascar to execute, when made, such an Order as that now under review, unless with reference to a matter which had come before them on appeal from a decision or Judgment of the Consular Court, and in which the Judgment of the Supreme Court became for that purpose the substituted Judgment of the Consular Court itself.

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

(1.) Whether the Supreme Court of the Mauritius had, with regard to actions

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originating in that Court, jurisdiction to order Her Majesty's Consuls in Madagascar to execute its Judgments.

(2.) Whether, assuming an action to be brought in the British Consular Court in Madagascar to enforce a previous Judgment of the Supreme Court of the Mauritius, the former could properly grant Judgment and execution thereof, notwithstanding that such previous Judgment was obtained against a defendant in default of his appearance, and that such defendant was also absent from Madagascar; and

(3.) With any general observations which we might desire to offer on the case.

We were also honoured with Sir J. Pauncefote's note of the 21st April, covering a copy of the Mauritius Order in Council of 1851, and copies of two Ordinances which had been made since that date in the Colony, viz., No. 14 of 1881 and No. 17 of 1884-85.

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In obedience to your Lordship's commands we have the honour to report—

Consuls in Madagascar not obliged to execute Judgments of Mauritius Court, but such Judgments may be made foundation of proceedings in Madagascar Court.

1. That, in our opinion, the Supreme Court of Mauritius has no jurisdiction to order Her Majesty's Consuls in Madagascar to execute the Judgments of the Mauritius Court in actions which originate in the Mauritius Court, but the Judgments of the Mauritius Court may be made the foundation of proceedings in the Madagascar Court.

If Her Majesty's Consul were to decline to entertain such proceedings, his refusal might be made the subject of appeal to the Mauritius Court.

Procedure in action brought in Madagascar Court on a Judgment of the Mauritius Court.

2. If an action be brought in the British Consular Court of Madagascar upon a Judgment of the Mauritius Court, the summons by which the action is commenced must be served upon the defendant in the manner prescribed, and, unless permitted by the lawful procedure of the Court, such summons cannot be served out of Madagascar. The fact that the defendant did not appear in the Mauritius Court will not of itself prevent the Court of Madagascar from pronouncing a Judgment in favour of the plaintiff, but it may affect the rights of the defendant as to the defence he may be entitled to raise in answer to the action on the Judgment.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

Consul Haggard, No. 136, Africa, October 14, 1887.
Madagascar Order in Council, February 4, 1869. Confidential No. 1624.
Rules and Regulations, July 1, 1869. Confidential No. 1693.
Law Officers' Report (Morocco), January 7, 1886. Confidential No. 5440, p. 64.

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## No. 33.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received July* 19.)

My Lord, *Royal Courts of Justice, July* 18, 1888.

Claim of Messrs. Procter on French Government for losses during recent hostilities.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that he had the honour to transmit to us, by your Lordship's directions, the papers noted in the accompanying list relative to the claim of Messrs. Procter, Brothers, to be indemnified by the French Government for losses which they sustained during, and consequently upon, the recent conflict between the French Republic and the Government of the Queen of Madagascar.

That the circumstances under, and the grounds upon, which the various items of which that claim was composed were alleged to arise, were concisely set out in the statement marked (A), which had, at the suggestion of your Lordship, been prepared by Messrs. Procter's solicitors.

That it would be seen that by Article VIII of the Treaty concluded between the Governments of the French Republic and of the Queen of Madagascar on the 17th December, 1885, the latter Government undertook to pay the sum of 10,000,000 fr. to be applied in the settlement of French claims liquidated before the conflict between the two parties, *and in compensation for all the damages caused to foreign individuals by reason of that conflict.*

That by the same Article the examination and settlement of those indemnities was left to the French Government.

That Article X of the Treaty, moreover, provided that no claim should be admitted in regard to the measures which had been taken up to the date thereof (17th December, 1885) by the French military authorities.

That the French Government had, as would be seen from the correspondence annexed, finally refused to recognize Messrs. Procter, Brothers', claim as valid, except to the extent mentioned in their letter to that firm of the 22nd November, 1887, informing them that the sum of 14,611 fr. had been awarded to them, and specifying the items of which that indemnity was composed.

That Messrs. Procter, Brothers, maintained, however, that certain portions of their claim which had been disallowed *in toto* by the French Government were equally well founded, and that a reversal of the decision in respect to those portions was demanded by justice and equity.

That the French Government, on the other hand, had pointed out that the decisions of the Indemnities Commission were, after ratification by the Administration, absolutely final, and that no means existed by which any appeal could be brought against them.

That Messrs. Procter, Brothers, considered that they were entitled to the support of Her Majesty's Government in respect of the claims mentioned in their statement, which they still maintained against the French Government, and that, in those circumstances, your Lordship would be glad to be favoured with our opinion as to whether they were entitled to that support to any, and, if so, to what extent, and on what grounds.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the question submitted in that letter, and with any general observations which we might have to offer on the case.

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In obedience to your Lordship's commands we have the honour to report—

Claim should not be supported.

That, in our opinion, Messrs. Procter, Brothers, are not entitled to the support of Her Majesty's Government in respect of the claims mentioned in their statement.

Interpretation of Treaty of 1885.

The Treaty of 1885 does not create, limit, or destroy any right to compensation on behalf of foreign subjects injured by the operations of the war. It is only an arrangement between two Powers by which one Power is to receive a certain sum of money which is to be applicable to the settlement of certain claims, and, so far as the Treaty goes, the absolute control over the distribution of that fund belongs to the French Government. No doubt, however, claims which, according to the rules of international law, could be maintained against either Power, cannot be rejected by the French Government so long as the fund is sufficient to satisfy them, and all claimants would be entitled to a reasonable equality of treatment.

Claims cannot be sustained according to international law.

In our opinion, none of Messrs. Procter's claims now in dispute can be sustained according to the rules of international law.

Mahasoa Estate.

1. The alleged loss on the Mahasoa estate did not arise from any act on the part of either belligerent upon which a claim could be founded and sustained.

The "Rob Roy."

2. The "Rob Roy" did not belong to Messrs. Procter, Brothers, but to a native trader, and the cargo which did belong to Messrs. Procter was delivered to them. Moreover, Messrs. Procter appear themselves to have left the cargo from May to July, and their present claim is in respect of the delay from July to September.

The "Latona."

3. It appears from Messrs. Procter's letter of the 20th February, 1888, that the French authorities did not refuse to allow the "Latona" to be dispatched to Mahanoro, but warned the agent as to the risk he would run by sending a cargo, the nature of which is not specified, to the enemy's port.

The "Eliza."

4. Claim in respect of the "Eliza." This claim is insignificant in amount, and no ground is sufficiently stated for recognizing it as sustainable against the French Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

Messrs. Procter, Brothers, February 20, 1888. (Two Inclosures.) Confidential No. 5685, p. 13.
To Messrs. Procter, Brothers, March 14, 1888. Confidential No. 5685, p. 34.
Messrs. Procter, Brothers, March 20, 1888. (Inclosure.) Confidential No. 5685, p. 35.
Correspondence (Print) respecting the Treaty of December 17, 1885, between France and Madagascar. Parliamentary No. 3036.

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### No. 34.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received August 11.)*

My Lord, *Royal Courts of Justice, August 10, 1888.*

Claim of Messrs. Procter on French Government for losses during recent hostilities.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 31st ultimo, stating that, with reference to our Report of the 18th July respecting Messrs. Procter's claim against the French Government on account of their operations in Madagascar, he was directed by your Lordship to submit to us, for approval, a draft of a reply, founded upon our Report above referred to, which had been drawn up for communication to Messrs. Procter.

That a doubt had, however, arisen as to whether, instead of communicating to them in detail the reasons on which the decision of Her Majesty's Government was founded (which might invite further discussion), it might not be preferable only to inform them that Her Majesty's Government, after consultation with the Law Officers of the Crown, had come to the conclusion that the facts were not such as could properly form the ground of a representation to the French Government.

That your Lordship would be glad to be informed whether the accompanying draft reply met with our approval, or whether we were of opinion that Messrs. Procter should be answered as above suggested, or in any other sense.

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In obedience to your Lordship's commands we have the honour to report—

Approve substance of draft, but the general answer suggested preferable.

That, in our opinion, the draft reply states adequately and correctly the grounds upon which Her Majesty's Government should decline to support Messrs. Procter's claims, but that it would be preferable to give Messrs. Procter the general answer suggested in Sir Thomas V. Lister's letter of the 31st ultimo.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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### Annex.

*Draft of Letter to Messrs. Procter, Brothers.*

Gentlemen, *Foreign Office, July , 1888.*

I AM directed by the Marquis of Salisbury to state to you that your letter of the 20th February last, requesting the support of Her Majesty's Government to certain claims for compensation which you were of opinion you might prefer against the French Government on account of their operations in Madagascar, has received the careful consideration of Her Majesty's Government, and I am to return to you the following reply.

Treaty of 1885 has no effect on claims otherwise good by international law.

The Treaty of 1885 does not create, limit, or destroy any right to compensation on behalf of foreign subjects injured by the operations of the war. It is only an arrangement between two Powers, by which one Power is to receive a certain sum of money which is to be applicable to the settlement of certain claims, and, so far as the Treaty goes, the absolute control over the distribution of that fund belongs to the French Government. No doubt, however, claims which, according to the rules of international law, could be maintained against either Power cannot be rejected by the French Government so long as the fund is sufficient to satisfy them, and all claimants would be entitled to a reasonable equality of treatment.

Their claims cannot be sustained.

None of your claims now in dispute can be sustained according to the rules of international law.

Mahasoa estate.

The alleged loss on the Mahasoa estate did not arise from any act on the part of either belligerent upon which a claim could be founded and sustained.

"Rob Roy."

The "Rob Roy" did not belong to your firm, but to a native trader, and the cargo, which also did not belong to you, was delivered to you. Moreover, you appear to have left the cargo from May to July, and your present claim is in respect of the delay from July to September.

"Latona."

It appears from your letter above referred to that the French authorities did not refuse to allow the "Latona" to be dispatched to Mahanoro, but warned the agent as to the risk he would run by sending a cargo, the nature of which was not specified, to the enemy's port.

"Eliza."

With regard to your claim in respect of the "Eliza," it is insignificant in amount, and no ground is sufficiently stated for recognizing it as sustainable against the French Government.

I am to state that, for these reasons, Lord Salisbury regrets that he is unable to make a representation to the French Government on your behalf.

I have, &c.

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## MEXICO.

### No. 35.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received August 3.)*

My Lord, *Royal Courts of Justice, August 2, 1888.*

Proposed Treaty of Commerce with Mexico. Mexican additions to Articles IV and V.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th June last, stating that he was directed by your Lordship to transmit to us, and in connection with the Treaty of Commerce now in course of negotiation between Her Majesty's Government and that of the Mexican Republic, the text of two additional paragraphs which the latter Government were desirous of adding to Articles IV and V of the draft Treaty respectively, and which they were pressing on the acceptance of Her Majesty's Government.

That the proposed additions in question were indicated in red ink* at the foot of Articles IV and V respectively, as printed upon the separate sheets marked 4 and 5.

That of the two additional paragraphs thus added to Article IV, we had already reported in effect with regard to that marked (B) in red ink,* that, in our judgment, no objection existed to its acceptance (Law Officers' Report of the 17th February, 1887), but that new matter was introduced by addition (A) to Article IV, and also by the addition to Article V, upon the legal aspect of which your Lordship desired to be favoured with our opinion.

Questions as to:—Closing of ports by mere Proclamation without effective blockade;

That with respect to addition (A) to Article IV, some doubt was felt as to whether it might not be held to give the right to Mexico to close by a mere Proclamation, and without any attempt at an effective blockade, any of her ports which, in time of civil war, might happen to have come into the *de facto* possession of rebels, a right which successive Administrations of Her Majesty had uniformly contested, and which Her Majesty's present Government would not be prepared to admit.

and position of British subjects under proposed Article V.

That it was conceived, moreover, that the addition to Article V, as at present worded, might place British subjects in Mexico at the mercy of any local legislation, however inconsistent it might be with the rights and immunities they could otherwise claim under international law.

That if that were not the effect which was aimed at by the Mexican Government, it was not easy to suggest with what object the clause had been proposed.

That previous correspondence and other papers bearing on the matter were also inclosed in case we might wish to refer to them.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether both or either of the additions proposed by the Mexican Government to Articles IV and V respectively of the draft Treaty were such as Her Majesty's Government could in their present or any modified form properly accept.

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* Printed in *italics.*

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That Sir Julian Pauncefote was, at the same time, to add that your Lordship would be glad to be favoured with any more general observations which we might desire to offer on the matter.

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**No objections to riders (A) and (B) if altered as suggested.**

In obedience to your Lordship's commands we have the honour to report—

That as to rider (A), we see no objection to it, unless it be open to the construction suggested in the letter of Sir Julian Pauncefote of the 25th June.

In order to remove any doubt on this point, we would suggest that the last few words should read, "so long as they are, *de facto*, open to commerce."

**Addition to Article V unobjectionable.**

As to rider (B), we suggest the addition of the words referred to in our Report of the 17th February, 1887, "or of civil or criminal jurisdiction."

The proposed addition to Article V is, in our opinion, unobjectionable.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers accompanying reference to Law Officers of June* 25, 1888.

Sir S. St. John (Treaty, No. 5), October 21, 1886.
Law Officers, February 17, 1887 (Confidential No. 5597, p. 67).
To Sir S. St. John (Treaty, No. 3), April 15, 1887.
Sir S. St. John (Treaty, No. 1), January 4, 1888.
Articles IV and V of draft Treaty.

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### Annex 1.

### ARTICLE IV.

**Definition and treatment of vessels and cargoes. Most-favoured-nation-treatment.**

British ships and their cargoes shall, in Mexico, and Mexican vessels and their cargoes shall, in the dominions and possessions of Her Britannic Majesty, from whatever place arriving and whatever may be the place of origin or destination of their cargoes, be treated in every respect as ships and cargoes of the most favoured nation.

The preceding stipulation applies to local treatment, dues, and charges in the ports, basins, docks, roadsteads, harbours, and rivers of the two countries, pilotage, and generally to all matters connected with navigation.

Every favour or exemption in these respects, or any other privilege in matters of navigation which either of the Contracting Parties shall grant to a third Power, shall be extended immediately and unconditionally to the other Party.

All vessels which, according to British Law, are to be deemed British vessels, and all vessels which, according to the Law of Mexico, are to be deemed Mexican vessels, shall, for the purposes of this Treaty, be respectively deemed British or Mexican vessels.

(A.) *For the same purpose shall be considered as ports of each of the Contracting Parties those which are or hereafter may be declared open by the respective Governments for import or export trade, so long as they are* de facto *open to commerce.*

(B.) *The two Contracting Parties agree to consider as a limit of their territorial waters on their respective coasts the distance of three marine leagues reckoned fram the line of low-water mark. Nevertheless, this stipulation shall have no effect excepting in what may relate to the Coast-guard, and the application of the Custom-house Regulations and the measures for preventing smuggling, and cannot be extended to other questions of international law, or of civil or criminal jurisdiction.*

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### Annex 2.

### ARTICLE V.

**Residential rights and privileges.**

The subjects or citizens of each of the Contracting Parties shall be permitted to reside permanently or temporarily in the dominions or possessions of the other; and to occupy and hire houses and warehouses for purposes of commerce, whether wholesale or retail. They shall also be at full liberty to exercise civil rights, and therefore to acquire, possess, and dispose of every description of property, movable and immovable, as far as the laws of each country will permit. They may acquire and transmit the same to others, whether by purchase, sale, donation, exchange, marriage, testament, succession *ab intestato*, and in any other manner, under the same conditions as natives of the country. Their heirs and legal representatives may succeed to and take possession of it, either in person or by procurators, in the same manner and in the same legal forms as natives of the country.

In none of these respects shall they pay upon the value of such property any other or higher impost, duty, or charge than is payable by natives of the country. In every case the subjects or citizens of the Contracting Parties shall be permitted to export their property, or the proceeds thereof if sold, freely and without being subjected on such exportation to pay any duty different from that to which natives of the country are liable under similar circumstances.

*The citizens or subjects of each one of the High Contracting Parties who may be residing, temporarily or permanently, in the dominions and possessions of the other, are subject to the laws of the country where they reside, especially to those which determine the rights and obligations of foreigners on the same conditions as those of the citizens and subjects of the most favoured nation.*

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## MOROCCO.

### No. 36.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received April* 18.)

My Lord, *Royal Courts of Justice, April* 17, 1888.

**Exclusive Moorish jurisdiction in cases involving real property.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, stating that he was to transmit to us, by direction of your Lordship, and together with other papers bearing thereon, a despatch (No. 4 of the 7th February, 1888)* which had lately been received from Her Majesty's Consul at Tangier, raising some doubt as to the exclusive competency of the Moorish Tribunals of that place to adjudicate upon a particular case therein mentioned, and applying to your Lordship for further instructions upon the subject.

That by the Convention signed at Madrid on the 3rd July, 1880, to which Great Britain and the other Great Powers were parties, the right of all foreigners to hold property in Morocco was recognized.

That it was, however, provided (see Article XI, paragraph 3) that any question which might arise respecting such right should be decided "according to Moorish law;" and that that last proviso had been generally interpreted to mean that all questions relating to the title and tenure of real property should be heard and determined not merely according to Moorish law, but also by a Moorish Court, while Her Majesty's Government in particular had been guided by the opinion expressed to that effect by the then Law Officers of the Crown on the 15th December, 1881.

That the special point which arose for consideration upon the Consul's despatch appeared to be whether, in a suit brought to restrain a British subject, the owner of an adjoining property, from opening out a window overlooking his neighbour's house (a proceeding which was forbidden by Moorish law as being calculated to violate the privacy of harems), the plaintiff could elect to sue, or the defendant to be sued, in the British Consular Court, or whether the proceedings, as involving a right claimed to be exercised over one plot of real property in respect of the possession of another, were not within the exclusive jurisdiction of the Moorish Tribunals.

That the Chief Justice of Gibraltar had, as would be seen from Consul White's despatch, been good enough to give him informal assistance and advice with reference to the points involved; and that, in considering the case generally, the views of that Judge would doubtless not escape our attention.

That Sir Julian Pauncefote was to request that we would take the papers

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* Consul White, No. 4, February 7, 1888; Conference on Morocco, Protocol No. 9, June 18, 1880, Parliamentary No. 2335, p. 133; Convention of Madrid, July 3, 1880, Treaty No. 683; Law Officers, December 15, 1881, Confidential No. 4637, p. 34.

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transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the question submitted in that letter, and with any general observations which we might have to offer on the case.

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In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Exclusive jurisdiction of Moorish Courts.

That we agree with the opinion given by the Law Officers in December 1881. In our judgment, the question being one relating to legal rights in connection with real property, and not involving any question of contract or equitable right, the case is within the exclusive jurisdiction of the Moorish Tribunals.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 37.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received May* 30.)

My Lord, *Royal Courts of Justice, May* 29, 1888.

Claim of North-west African Company on Sultan in event of forcible incorporation of their property. Request for protection and assistance.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to a claim which had been put forward by the North-west African Company to the active assistance and support of Her Majesty's Government in claiming compensation from the Sultan of Morocco, if he should incorporate the property claimed by them in his territory by virtual force of arms.

That the Company in question was formed some ten years since for the purpose of developing British trade in regions hitherto untouched by British merchants on the North-west Coast of Africa; and that they eventually selected Cape Juby as the most suitable spot upon the coast to serve as a basis for their operations.

That the legal position in which the Company stood in 1886 with regard to their occupation of Cape Juby, and which was still practically unchanged, was set forth in the inclosed Memorandum, which had been drawn up by Mr. Davidson; and that two Memoranda were also inclosed, which had been drawn up by Sir J. D. Hay, formerly Her Majesty's Minister at Tangier, which contained much information with regard to the relations which had hitherto existed between the Sultan of Morocco and the Company; and also dealt with the negotiations, which at that date were about to be entered upon at Morocco, for a settlement of the question between the Sultan and the representatives of the Company.

That those negotiations having failed, the present phase of the question appeared to be as follows:—

Also claim for attack on their Settlement and murder of Mr. Morris.

That the North-west African Company contended, for reasons which were set forth at length in their letters of the 12th and 28th July and the 16th August, 1887, that they were entitled to the active protection and assistance of Her Majesty's Government in the event of incorporation into Morocco, and that we should perceive from a more recent letter received from them (the 23rd April, 1888), that an attack had been delivered against their settlement resulting in loss of life, but whether the assailants were merely irresponsible robbers or emissaries of the Sultan was not at that time ascertainable.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the position of the Company at Cape Juby was such as entitled them to the active support and assistance of Her Majesty's Government; and also whether, if it should be clearly ascertained that the recent outrage was committed by persons under the authority and control, or acting at the instigation of, the Sultan, Her Majesty's Government could legally insist upon His Highness giving adequate redress and compensation to the Company in question.

That your Lordship would be glad, at the same time, to be favoured with any general observations which we might have to offer on the case.

We were also honoured with a Memorandum from Sir Julian Pauncefote, dated the 5th instant, covering a letter of the 4th May, which had been received from the North-west African Company, giving details of the recent assault by Moorish soldiers on the Company's employés at Cape Juby which resulted in the murder of Mr. Morris, and stating that he was to request that that letter might be taken into consideration with the papers already forwarded from the Foreign Office on the subject.

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In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Cannot support claim, as Company's factory is not exempt from authority, &c., of Sultan.

Company entitled to protection against aggression.

That, in our opinion, Her Majesty's Government cannot properly support the claim of the Company, that their factory is exempt from the jurisdiction and authority of the Sultan of Morocco. The Company is, however, entitled to the protection of Her Majesty's Government against violent aggression upon the persons and property at such factory, but has no rights which it can set up against that which the Sultan of Morocco possesses of regulating as he pleases, without regard to the interests of the Company, the trade and commerce of Morocco.

May remonstrate as to attack.

The evidence that the affray which occurred on the 25th March resulted from the action of persons whose conduct was authorized or instigated by the Sultan appears to us to be very slight. If this were proved, Her Majesty's Government would be called upon to insist that reparation should be made, and, even in the absence of such proofs, we are of opinion that remonstrances may properly be addressed to the Sultan, and that he should be called upon to investigate and, if necessary, to punish the conduct of which his soldiers are alleged to have been guilty.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

| | | | | |
|---|---|---|---|---|
| Mr. Davidson, December 6, 1886. | Affairs of North Africa, Part XVIII, | Confidential | No. 5706, | p. 84 C. |
| Sir J. Drummond Hay, September 23, 1886. | ” | ” | ” | p. 84 D. |
| ” ” August 9, 1886. | ” | ” | ” | p, 84 A. |
| North-west African Company, July 12, 1887. | | | | |
| ” ” July 28, 1887. | | | | |
| , ” August 16, 1887. | | | | |
| ” ” April 23. 1888. | | | | |
| ” ” May 4, 1888. | | | | |

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## No. 38.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received June* 15.)

My Lord, *Royal Courts of Justice, June* 14, 1888.

Application of Mr. Grant, a Mussulman, married according to Moorish law, for registration as British subjects of his children born in Morocco.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list,* with reference to an application which had lately been made to Mr. Frost, the British Vice-Consul at Rabat, in Morocco, to enrol in the Register of his Vice-Consulate as British subjects two children born at that place under the following circumstances:—

That the father of the children (who were aged 4 and 2 years respectively) was a British subject named Grant, who, while retaining his British nationality, had formally embraced the Mahommedan faith, and, in compliance with the rites of that religion, and with all the requirements of the Moorish law, had contracted a marriage, of which those children were the offspring, with a native Mussulman woman.

That Mr. Grant had, as yet, only contracted the marriage above alluded to, and that, although that union might doubtless from one aspect be properly described as partaking of a polygamous nature, he was not at present living in a state of polygamy.

That it was, however, competent for him, at any moment during the duration of the union of which those children were born, to contract other marriages with one or more Mussulman women which would, according both to the Mahommedan religion and the Moorish *lex loci contractûs*, be of equal validity with his first marriage.

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* Sir W. K. Green, No. 7, Consular, March 10, 1888; Law Officers, June 10, 1869, Confidential No. 2545, p. 127; "Times" Report *in re* Bethell, February 16, 1888; Circular to Consuls, May 29, 1876, No. 1270; Law Officers, March 27, 1876. Confidential No. 4028, p. 42; Lord Chancellor to Lord Derby, April 27, 1876, Confidential No. 4028, p. 45.

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That Her Majesty's Consular officers abroad having been instructed (see Circular instruction of the 29th May, 1876) that the illegitimate children of British parents born abroad were not British subjects, and therefore should not be registered as such, Mr. Frost, who entertained some doubt as to whether those children were to be considered as illegitimate or not, had applied for further instructions with respect to the case.

That, with reference to the legal status of the children in question, Sir Julian Pauncefote was to refer us to the Judgment delivered on the 15th February last by Mr. Justice Stirling in the Baralong marriage case, and reported at length in the "Times" newspaper of the following day. (See also L. R., Chancery Division, vol. xxxviii, p. 220.)[*]

That it was understood, on the authority of counsel engaged in the case, that no appeal was pending, or would be brought, against the decision of Mr. Justice Stirling.

That Sir Julian Pauncefote was also to call our attention, as bearing, though less directly, upon the subject, to the cases of Warrender *v.* Warrender (2 Clarke and Finelly's House of Lords Reports, p. 488), and Hyde *v.* Hyde and Woodmansee (L. R., 2 Probate and Divorce Division, p. 130); and also to the inclosed Report of the then Law Officers dated the 10th June, 1869.

That Sir Julian Pauncefote was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion as to the instructions which should be sent to Sir William Kirby Green with reference to the application addressed by Mr. Grant to Vice-Consul Frost to register as British subjects the children in question, and with any general observations which we might have to offer on the case.

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The children not to be registered, as, by British law, the marriage is polygamous.

In obedience to your Lordship's commands we have the honour to report—

That, in our opinion, Sir William Kirby Green should be directed [*Qy.* "to instruct Mr. Frost"] to refuse to register as British subjects the children of Mr. Grant by his marriage according to the Mahommedan faith with a Moorish Mussulman woman, such marriage being of a polygamous character, and therefore not recognized by British law.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
EDWARD CLARKE.

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## NETHERLANDS.

### No. 39.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 1.)

My Lord, *Royal Courts of Justice, February* 29, 1888.

Mr. Godden's claims on account of conduct of the Curaçao authorities.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st February, stating that he was directed by your Lordship to transmit to us the various papers noted in the accompanying list, with reference to the claims for compensation put forward by Mr. John Godden against the Netherland Government in respect of his treatment by the Dutch Colonial authorities of the Island of Curaçao.

Former Report. No case except as to 1st and 5th heads.

That those claims, which might conveniently be divided under five heads, formed the subject of a previous reference to us on the 9th March of last year, and that we, in effect, reported, on the 30th of the same month, that in respect of the 2nd, 3rd, and 4th heads of claim Mr. Godden had no case, and that, while the action of the Dutch Colonial authorities—as set out in his 5th head of complaint—appeared to have been unjustifiable and to require explanation, it was, in our opinion, only with regard to the 1st head of claim that any substantial question arose.

That with regard to that particular question we were, however, unable to agree with M. de Brauw, an eminent member of the Netherland Bar, who had previously been consulted, as an expert in Dutch law, by Her Majesty's Government, and whose opinion was unfavourable to Mr. Godden on that as on all his other heads of complaint, but that we considered, on the contrary, that any reasonable claim for compensation in that respect put forward by Mr. Godden was entitled to the support of Her Majesty's Government.

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[*] The case was reported in the June number of the Law Reports, after we had sent off our reference to the Law Officers, but I wrote privately to the Attorney-General calling their attention to the fact.—W. E. D.

That in accordance with the views indicated in our Report Her Majesty's then Minister at the Hague (Sir William Stuart) was instructed to make a representation to the Netherland Government on Mr. Godden's behalf, and that on the 7th May, 1887, he addressed a note to the Dutch Foreign Minister, M. de Karnebeek, to the terms of which, as well as to the reply of M. de Karnebeek thereto of the 23rd September last, Sir Julian Pauncefote was particularly to call our attention.

That meanwhile Mr. Godden had continued from time to time to forward various other papers in support of his contentions, and that he subsequently transmitted to your Lordship a detailed and favourable report upon the merits of his case from Dr. Ramaer, a Dutch advocate who for some years held the office of Attorney-General for the Island of Curaçao, but who had been consulted by Mr. Godden, in his private capacity, after he had ceased to fill that position.

That it was therefore thought desirable, in the first instance, to submit the papers to M. de Brauw once more; and to ask him whether his opinion as already expressed was in any way modified, either by any new matter then brought to his notice, or by the legal arguments advanced by Dr. Ramaer, and at the same time to request him to report generally upon the case in its then aspect.

That M. de Brauw had since reported (to Sir W. Stuart, 12th January, 1888) in detail, and maintained, on all the principal points of the case, his original opinion in its entirety.

That with respect to the 5th head of Mr. Godden's complaint, viz., the refusal, in March 1886, of the provisional custodian of the archives in Curaçao to make and deliver to him copies of certain mortgage deeds which were in his custody as Archivist, it appeared that that gentleman was unable to prove that any substantial injury resulted to him from the mistake of the official in question.

Satisfactory explanations as to 5th head, refusal of copies of mortgages.

That the Netherland Government had, moreover, now offered explanations which tended to show that Mr. Godden did not avail himself of his proper legal remedy, and had at the same time expressed regret for the mistake of the Archivist in suitable terms.

That your Lordship was therefore inclined to think that Her Majesty's Government might properly accept those explanations as being reasonable and satisfactory under the circumstances, and that, subject to any observations on that point which we might be good enough to offer, and which might serve to modify that view, your Lordship proposed to inform the Netherland Government to that effect.

As to action on 1st head regarding the working of minerals by the Aruba Company.

That with reference, however, to the more substantial grievance raised under the 1st head of Mr. Godden's claim, the question now arose as to what further steps (if any), by way of protest or otherwise, it was either competent to, or desirable for, Her Majesty's Government to adopt, having regard more especially to the terms of the reply of the Netherland Government to the representation which Her Majesty's Government had already addressed to them upon the subject.

That Her Majesty's Government had hitherto governed their action in cases of a similar kind by the rule that diplomatic interference with respect to a matter which was *res judicata* was only admissible *in re minime dubiâ*, and that unless we should be clearly of opinion that Mr. Godden's 1st head of complaint came within that category, your Lordship was disposed to think that further interference on the part of Her Majesty's Government might be, under all the circumstances, somewhat impolitic.

That Sir Julian Pauncefote was accordingly to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion, more particularly on the two questions submitted in that letter, and, at the same time, with any general observations which we might have to offer on the case.

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In obedience to your Lordship's commands we have the honour to report—

The working of minerals a question of Dutch law.

That we have carefully considered the further opinion of M. de Brauw, and the opinions obtained by Mr. Godden from Dr. Ramaer. Upon the most important question, namely, whether the Concession held by Mr. Godden reserved to the Govern-

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ment the minerals, including the phosphate of lime, seeing that the question is one of the terminology of Dutch law, and that Dr. Ramaer does not appear to differ from M. de Brauw on this point, we are not disposed to advise Her Majesty's Government to act otherwise than in accordance with M. de Brauw's opinion.

No further diplomatic action as to conduct of Aruba Company necessary.

If the Aruba Company has acted in excess of the rights given them by the Concession, their so doing constitutes a wrong for which they may be sued, but for which the Dutch Government is not responsible. We therefore advise that upon this point, as well as upon that of the refusal to supply copies of the register, the explanations of the Dutch Government should be accepted, and no further diplomatic action taken.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

In Consul Jesurun, No. 4, Commercial, 1885.
In Mr. Fletcher, M.P., June 25, 1886.
To Consul Jesurun, No. 2, Commercial, 1886.
Mr. Godden, September 8, 1886.
To Consul Jesurun, No. 3, Commercial, 1886.
Consul Jesurun, No. 7, Commercial, 1886.
Mr. Godden, November 18, 1886.
Ditto, February 16, 1887.
Law Officers, March 30, 1887. (Confidential No. 5597, p. 74.)
Sir W. Stuart, No. 40, Commercial, 1887.
Ditto, No. 113, Commercial, 1887.
Mr. Godden, October 6, 1887.
To ditto, December 5, 1887.
To Sir W. Stuart, No. 85, Commercial, 1887.
Mr. Godden, December 7, 1887.
Sir W. Stuart, No. 154, Commercial, 1887.
To ditto, No. 87, Commercial, 1887.
Mr. Godden, December 20, 1887.
Sir W. Stuart, No. 159, Commercial, 1887.
To ditto, No. 89, Commercial, 1887.
To Mr. Godden, December 28, 1887.
Sir W. Stuart, No. 162, Commercial, 1887.
Ditto, No. 163, Commercial, 1887.
Ditto, No. 6, Commercial, 1888.

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## PACIFIC ISLANDS.

### No. 40.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received April* 12.)

*Royal Courts of Justice, April* 10, 1888.

My Lord,

Issue of licences to work unclaimed guano islands in the Pacific.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the issue to British subjects of Crown leases or licences to dig for, and take away, guano or minerals in and from certain uninhabited islands situated chiefly in the Western Pacific Ocean, to which no foreign Power laid claim, but which, in some cases, had not, previous to the issue of such licences by the Crown, been considered to form part of Her Majesty's dominions.

That those licences had been issued for places within the boundaries respectively laid down in Her Majesty's Letters Patent of the 10th June, 1868, and 19th July, 1869, either by the Government of New South Wales or the High Commissioner of the Western Pacific, as the case might be, under the authority of those Letters Patent respectively; while in places outside such limits they had been issued by the Secretary of State for the Colonies, acting under the authority of the Warrant of the 15th September, 1881,[*] which was prepared by the Law Officers of the Crown, at the instance of the Treasury, to which Department any rents reserved by the licences in question were paid.

That numerous applications for such licences had been of late received, and that before dealing with them your Lordship would be glad to learn whether the form of licence adopted by the Colonial Office met with our approval.

That Sir Julian Pauncefote was also to draw our attention to the fact that, although each of those islands would, according to the Report of the then Law Officers of the Crown of the 20th January, 1880,[†] immediately upon its occupation under the licence, and on the hoisting of the British flag by the licensee, become part of the Queen's dominions, Her Majesty would at present possess no means of exercising any legal jurisdiction therein.

That it was suggested by the Colonial Office that that difficulty might possibly be met by passing a short Act declaring that offences committed upon any British island not within the jurisdiction of the Court of any British possession should be held to have been committed within the jurisdiction of the Admiralty, in which event the offender would be rendered justiciable by any Colonial Court.

That it appeared to your Lordship, however, that the provisions of "The British Settlements Act, 1887," might sufficiently meet the case.

Questions as to:—

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

1. Form of licence.

1. Whether, having regard to all the circumstances, the form of licence[‡] adopted by the Colonial Office was suitable for the purpose in view.

2. Jurisdiction.

2. Whether the course suggested by the Colonial Office for enabling Her Majesty to exercise jurisdiction in those islands met with our approval, or whether that object could be sufficiently attained under the provisions of "The British Settlements Act, 1887" (50 & 51 Vict., cap. 54).

That your Lordship would be glad, at the same time, to be favoured with any further general observations which we might desire to offer on the case.

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In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Disapprove form of licence.

That we have grave doubts as to the propriety of granting licences in the form submitted to us.

Islands occupied under licence are British territory.

We agree with the Report of our predecessors, dated the 21st March, 1880, that "when a licence, in the form adopted under the present system, has been granted by Her Majesty, and the licensee has occupied the island to which the licence applies and notified his occupation by hoisting the British flag, the island in question becomes part of Her Majesty's dominions, and will remain part of such dominions so long as Her Majesty shall find it expedient to retain the sovereignty thereof."

As to granting licences for islands out of British dominions.

The Letters Patent of the 10th June, 1868, and the 19th July, 1879, authorize dispositions of islands and other places belonging to Her Majesty, her heirs, and successors. The Warrant of the 15th September, 1881, only authorizes the dealing with lands vested in Her Majesty by virtue of the Royal prerogative, and subject to alienation at her pleasure. Neither the Governor of New South Wales nor the High Commissioner of the Western Pacific, under their respective Letter Patent, nor the Secretary of State, under his Warrant, has, in our opinion, any power to grant licences as to islands which have not become part of Her Majesty's dominions.

As long as the Letters Patent and Warrant are limited as at present, the form of licence should be amended so as to conform with the powers contained in the Letters Patent and Warrant respectively.

We think it desirable that the use of the British flag should be required, so as to show the continuous occupation as a part of the dominions of Her Majesty.

If it is desired to grant licences with respect to islands or territories of which no possession has ever been taken, or which do not form part of Her Majesty's dominions, the licences should authorize and empower the licensee to take and hold possession on behalf of Her Majesty, and the use of the British flag should be enjoined.

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[*] Inclosure No. 3 in Colonial Office letter of November 8, 1887. Pacific Print, Part XIII, Confidential No. 5611, p. 94.

[†] Confidential No. 4539, p. 49.

[‡] Inclosure No. 4 in Colonial Office letter of November 8, 1887. Pacific Print, Part XIII, Confidential No. 5611, p. 95.

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Letters Patent or Warrants authorizing the grant of such licences should be made, or issued, if necessary.

British Settlements Act, 1887, authorize jurisdiction.

2. We are of opinion that the provisions of "The British Settlements Act, 1887," are sufficient to enable jurisdiction to be exercised, and that further legislation is not needed.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

Colonial Office, November 1, 1886.
Memorandum, November 5, 1886.
To Colonial Office, November 22, 1886.
Colonial Office, December 18, 1886.
To ditto, December 30, 1886.
Colonial Office, August 18, 1887. Confidential No. 5611, p. 22.
Ditto, August 19, 1887. Confidential No. 5611, p. 24.
Memorandum, August 31, 1887. Confidential No. 5611, p. 27.
Colonial Office, September 17, 1887. Confidential No. 5611, p. 44.
To ditto, September 17, 1887. Confidential No. 5611, p. 43.
Colonial Office, September 29, 1887. Confidential No. 5611, p. 47.
Ditto, October 19, 1887. Confidential No. 5611, p. 87.
To ditto (A), October 21, 1887. Confidential No. 5611, p. 88.
To ditto (B), October 21, 1887. Confidential No. 5611, p. 88.
To ditto, November 1, 1887. Confidential No. 5611, p. 90.
Colonial Office, November 8, 1887. Confidential No. 5611, p. 92.
Ditto, November 17, 1887. Confidential No. 5611, p. 100.
Ditto, December 16, 1887.
Ditto, December 23, 1887. Confidential No. 5611, p. 126.
British Settlements Act, 1887. 50 & 51 Vict, cap. 54.
Memorandum (with Map), January 19, 1888. Confidential No. 5543.
Colonial Office, January 26, 1888.
To ditto, January 30, 1888.

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## PERSIA.

### No. 41.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August* 11.)

(Confidential.)

My Lord, *Royal Courts of Justice, August* 11, 1888.

Right of British steamers to navigate the Karun River.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us the correspondence noted in the margin,* and to request our opinion as to the question raised therein of the right of British steamers to navigate the Karun River.

That Her Majesty's Government had for many years past repeatedly urged the Shah of Persia to throw this river open to steam navigation, but hitherto without success.

That His Majesty had, in strict confidence, stated that his principal reason for refusing to take that step was that it would give rise to claims on the part of Russia to some concessions, not very clearly defined, in the north of Persia.

Privileges granted to Turkish vessels.

That Sir H. Drummond Wolff, Her Majesty's Minister at Tehran, had reported that a large number of Turkish merchant-vessels of from 5 to 70 tons burthen navigated the Karun without restrictions, and that he had suggested that, under

Article IX of the Treaty between Great Britain and Persia of the 4th March, 1857, British vessels, whether steamers or sailing-ships, might claim the same privilege.

That the Article in question was as follows:—

British right to m.-f.-n. treatment.

"The High Contracting Parties engage that in the establishment and recognition of Consuls-General, Consuls, Vice-Consuls, and Consular Agents, each shall be placed in the dominions of the other on the footing of the most favoured nation; and that the treatment of their respective subjects and their trade shall also, in every respect, be placed on the footing of the treatment of the subjects and commerce of the most favoured nation."

Privileges not granted to Turkish steamers.

That the suggestion had been communicated to Mr. Mackenzie, of the firm of Gray, Dawes, and Co., who were interested in the question. That he stated that the Turkish vessels referred to by Sir H. Wolff were in fact open native grain and cargo boats of the nature of lighters; that British merchants were equally allowed to send boats of that kind up the river; but that to the best of his knowledge none of the Turkish river steamers, of which there were four in the Shat-el-Arab at Bussorah, had ever been allowed to ascend the Karun.

Question as to claiming rights for British steamers.

That such being the state of the case, it was of material importance, in deciding the course to be pursued, to consider whether Her Majesty's Government were entitled to claim, under Article IX of the Treaty of 1857 above referred to, that British merchant-steamers had legally the right to enter and navigate the Karun on the ground that Turkish grain-boats and lighters were so admitted, and that the Persian authorities could not, in view of the stipulations of the Treaty, draw any distinction between different classes of vessels employed in the commerce of the two countries.

Regulations on the Tigris.

That it was to be observed, in connection with that question, that in the Tigris the Turkish authorities, while imposing no restrictions on the use of similar native craft by British and Persian traders, limited the steamers employed by Messrs. Lynch and Co. to two, and would not, according to Mr. Mackenzie's statement, permit the use of foreign-built barges to be towed by those steamers.

That upon that point it might be useful to us to refer to the inclosed Reports of the Law Officers of the Crown.

Distinction between foreign and native vessels.

That there seemed no doubt that in practice a distinction had been made in the Karun and in the neighbouring Turkish rivers between native craft and foreign-built vessels and steamers, and that the question upon which your Lordship desired to have our opinion was whether there were good grounds for contending that the practice, as far as the Karun was concerned, was contrary to the Treaty engagements of Persia towards this country.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to report—

Treaty fulfilled by grant of rights equal to the Turkish. Cannot claim opening of river to steamers.

That, in our opinion, the Treaty engagements of Persia towards this country are fulfilled by the permission to British traders to use on the Karun similar vessels to those employed by Turkish subjects, and that Great Britain is not, under the existing state of circumstances, entitled to claim that that river should be open to steam navigation.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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### No. 42.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received September* 26.)

My Lord, *Royal Courts of Justice, September* 24, 1888.

Seizure of Mr. Arsenian's property.

His protest against decision of Persian Courts at Constantinople.

WE were honoured with your Lordship's commands signified in Sir P. Currie's letter of the 28th ultimo, requesting that we would favour your Lordship with our opinion upon the papers transmitted therewith relating to the case of Mr. Arsen Arsenian, a naturalized British subject of Persian nationality of origin, whose property had been made the subject of litigation in the Persian Consular Court at Constantinople, and who protested against the decisions of that Court and of the Court of Appeal therefrom.

That Mr. Arsenian had received the unofficial support of Her Majesty's Representatives at Constantinople and Tehran under circumstances which were very clearly set forth

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* Sir H. Drummond Wolff, No. 91, Telegraphic, of 1888 (Confidential No. 5665, p. 96), Nos. 95, 98, and 103, Telegraphic, of 1888 (Confidential No. 5695, pp. 3, 7, and 10); to Sir H. Drummond Wolff, No. 38, Telegraphic, of 1888 (Confidential No. 5695, p. 9); Treaty, Great Britain and Persia, March 4, 1857, No. 420; Mr. Mackenzie, July 9. 1888 (Confidential No. 5695, p. 8), and July 16, 1888; Law Officers, November 18, 1881 (Confidential No. 4637, p. 98); Law Officers, April 9, 1884 (Confidential No. 5121, p. 123).

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in the preamble of the Report of our predecessors of the 24th February, 1885 (document A, No. 6).

That it would be seen that the opinion with which that Report concludes is to the effect that Mr. Arsenian might, "under the circumstances, properly be left to prosecute an appeal to Tehran under British protection."

**Request for official assistance at Tehran.**

That it had, however, been represented by Messrs. Fox, Mr. Arsenian's solicitors, that nothing short of strong official pressure by Her Majesty's Legation at Tehran would be efficacious, and Sir Ronald Thomson, lately Her Majesty's Minister in Persia, had expressed his opinion that of the three alternatives proposed by the Persian Government in 1884, only the third, viz., reinvestigation of the whole case at Tehran, was now practicable, and that there would be no advantage in Mr. Arsenian's proceeding to Tehran to prosecute his claim unless a previous understanding had been come to with the Shah as to the way in which the case should be investigated and decided.

That it had become necessary, therefore, to examine the papers in the case, and to ascertain whether they show such a denial of justice as would justify diplomatic intervention by Her Majesty's Government on Mr. Arsenian's behalf.

That for that purpose the material papers had been printed, and two copies were inclosed with Sir P. Currie's letter, arranged as far as possible in order of sequence (document B).

That the collection contained—

1. Original Petition and Decree of the Persian Consular Court at Constantinople in February and March 1880.
2. Judgment of the same Court, May 1881.
3. Judgment of the Persian Court of Appeal at Constantinople, January 1882.
4. Report by Lord Dufferin, then Her Majesty's Ambassador at Constantinople, and by Mr. Consul-General and Judge Fawcett, on certain subsequent discussions between the advocates of the two parties.
5. Statements by Messrs. Fox, Mr. Arsenian's solicitors, with some supplementary papers, and in particular (Inclosures 7 and 8 in No. 5) a short history of the case and observations and criticisms upon the Judgments of the Persian Courts.

History of the case.

That it would be seen from the recitals of the Judgments that in **1872** Oskian Arsenian, the father of the present applicant, being at the time in partnership with Azarik Asfasadourian, took his son, Arsen Arsenian, also into such partnership.

That at the end of the year 1874 Azarik retired from the firm, and the business was carried on by Oskian and Arsen Arsenian as sole partners, under the name of Oskian Arsenian and Son.

That in July 1878, while Oskian Arsenian was residing in Constantinople, certain members of his family obtained a decision of the Medical Council of Constantinople declaring him to be of unsound mind, his insanity being attested by certificates signed by Dr. Mongéry, of Constantinople, and others, and alleged to date from the year 1877 (see the recital of the proceedings given at the beginning of the Judgment of the Persian Consular Court, document B, p. 2, and also document B, p. 31, Inclosure 7 in No. 5, paragraphs 5-7).

That in October of the same year Oskian Arsenian left Constantinople in company of his son, Arsen Arsenian, and the latter endeavoured, though unsuccessfully, to obtain from Dr. Leidersdorff, of Vienna, a certificate of Oskian's sanity. While at Vienna he states that Oskian signed a deed, dated the 19th November, 1878, dissolving the partnership from the 31st December, 1877, and constituting Arsen Arsenian sole proprietor of the business and the premises appertaining to it.

That that deed was said to have been subsequently destroyed (see note 91, foot of p. 45); but on arrival in England a subsequent deed to the same effect was executed, bearing date the 21st February, 1879, a notice of the dissolution of partnership having already been inserted in the "London Gazette" on the 6th December, 1878, and official notification having been given of it on the 22nd January, 1879, to the Persian authorities through the British Consular Court at Constantinople.

That at the same time, in consequence of the endeavours being made at Constantinople by the Turkish authorities to sequestrate Oskian Arsenian's share in the business, Arsen Arsenian took steps to establish his father's sanity by having him examined by several eminent English physicians, and, as a result of these examinations, the Persian Legation gave a certificate of sanity, dated the 23rd February, 1879 (document B, p. 29, Inclosure 3 in No. 5).

That at that time the Persian Consulate at Constantinople is stated to have resisted the claim of the Turkish authorities on the ground that Oskian Arsenian was not insane (document B, p. 30, inclosure 5 in No. 5). But the despatches or Memoranda to that effect had not been produced, and the records of them at the Persian Consulate were said to be missing (document B, p. 27 and p. 39, foot-note). The knowledge of their contents, therefore, is on hearsay, and depends, moreover, on statements of an *ex parte* nature. In February 1880 certain members of Oskian Arsenian's family petitioned the Persian Ambassador at Constantinople for a Decree of Lunacy (document B, No. 1).

The Persian Consular Court, to which the Petition was referred, issued a Decree on the 11th March (*ibid.*), whereby Oskian was declared insane, and the whole of his property was placed in the custody and control of a trustee, including the warehouse where the business was carried on, and which was, at that time, in the possession of Arsen Arsenian, but alleged by the petitioners to belong to Oskian. It was also ordered (paragraph 15) that Oskian should be brought before the Court, but he died in January 1881, without that order having been complied with.

That in the meantime Arsen Arsenian had petitioned the Persian Consular Court at Constantinople to set aside the Decree of Lunacy and recognize his claim to the warehouse.

That the Court, after hearing both parties, and decreeing an examination of the ledgers of the firm, pronounced judgment on the 16th May, 1881, confirming the Decree of the 11th March, 1880, condemning the petitioner in costs, and allowing him only that share of the property of his father which would come to him by operation of law as one of the "heirs" (document B, No. 2).

That against that Judgment Arsen Arsenian appealed, but it was again confirmed by the Persian Court of Appeal at Constantinople in an elaborate Judgment on the 9th January, 1882 (document B, No. 3).

That in the course of that Judgment (p. 23) reference was made to two letters written by Arsen Arsenian to his brother Onik on the 20th January and 30th May, 1877, in which he admitted that his father was subject to hypochondria and chronic melancholia, but prescribed absolute secrecy on the subject; and it was further stated (same page), that Sir James Paget's certificate of Oskian's sanity was qualified by the expression that he believed him to be sane so far as he could judge of a man of whose language he was ignorant.

That it also appeared from the evidence recited in the Judgment of the Consular Court of First Instance (document B, p. 10) that in 1874, when Azarik Asfasadourian left the firm, Oskian Arsenian's capital was stated in the ledgers to be £ T. 8,199, or about 7,300*l.*, whilst Arsen's share of the capital was only 1*l.* 14*s.*, and that when the partnership between Arsen and his father was finally dissolved the former agreed to pay back to his father a sum of 7,300*l.*, with 6 per cent. interest, in instalments (see p. 33).

That the whole capital of the business was valued at 18,000*l.*, of which 10,000*l.* at Constantinople and 8,000*l.* in England (see also p. 26).

That there was no record of any portion of that sum of 7,300*l.* having been paid by Arsen Arsenian to his father; nor was it stated what had become of the 8,000*l.* capital in Manchester which the Persian Court at Constantinople could not attach, but it was implied that that money had been lost and Arsen Arsenian reduced to poverty by the stoppage of the business.

That the latter had come to an arrangement with his English creditors, who refused to put in claims through the British Consulate-General at Constantinople.

That further it would appear that the family had offered to accept 4,500*l.* from Arsen Arsenian as their share of the estate, but that that compromise fell through (document B, p. 26 A).

That the papers had been perused by Mr. Tarring, Assistant Judge of the Supreme British Consular Court at Constantinople, and his Memorandum upon them was inclosed.

That Sir P. Currie was to request that we would take the papers into our consideration, and would favour your Lordship with our opinion whether the circumstances were such as to justify diplomatic intervention in favour of Mr. A. Arsenian on the ground of denial or miscarriage of justice, or on any other grounds, and generally as to the answer which might properly be returned by your Lordship to the last communication from Mr. Arsenian's solicitors.

That the volume of the previous correspondence in the case was forwarded for purpose of reference if required.

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In obedience to your Lordship's commands we have the honour to report—

Diplomatic intervention not justified.

That, in our opinion, the circumstances are not such as to justify diplomatic intervention on behalf of Mr. A. Arsenian.

Answer as to assistance in case of an appeal to Tehran.

We think that Mr. A. Arsenian's solicitors may properly be informed that the circumstances would not justify Her Majesty's Government in insisting on a rehearing of his case, but that should he decide to prosecute his appeal at Tehran Her Majesty's Minister there will be instructed, as before, to give him all the assistance and protection he properly can in the prosecution of such appeal.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

(A.) Law Officers' Reports—
  1. April 8, 1880. Confidential No. 4539, p. 80.
  2. June 9, 1880. Confidential No. 4539, p. 81.
  3. November 22, 1881. Confidential No. 4637, p. 100.
  4. November 30, 1882. Confidential No. 4783, p. 56.
  5. April 10, 1883. Confidential No. 4974, p. 87.
  6. February 24, 1885. Confidential No. 5246, p. 120.
  7. April 28, 1885. Confidential No. 5246, p. 122.
(B.) Papers relating to the case of Mr. A. O. Arsenian. Confidential No. 5653.
(C.) Mr. Tarring, August 13, 1888.
(D.) Volume of previous Correspondence, 1880–85.

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## PORTUGAL.

### No. 43.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received September 6.)*

My Lord, *Royal Courts of Justice, September* 5, 1888.

Anglo-Portuguese Oyster Company's claim to recognition as transferees of oyster fisheries.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 10th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers (marked A to G), relative to the claim of the Anglo-Portuguese Oyster Company to recognition as transferees of a Concession from the Portuguese Government to work certain oyster fisheries near Lisbon.

That the circumstances under which the claim originally arose were set out in the preliminary statement of facts which preceded the Report made to Earl Granville upon its subject by the then Law Officers of the Crown, on the 11th September, 1884 (document A), while the subsequent course of the case was detailed in the statement furnished by Messrs. Parker, Garrett, and Parker, the solicitors of the Company (document B), to which copies of the various Judgments referred to were annexed.

Judgments of Courts in their favour.

That it would be seen that the Company had obtained Judgments of the Portuguese Tribunals affirming their legal right and title to the Concession. That the property included in the Concession consisted of the Island of Montijo and oyster-beds in the district of Aldeagalleja, and of oyster-beds in the district of Almada. That pursuant to the Judgments of the Portuguese Courts judicial possession of the property in the district of Aldeagalleja was given to the Company, and that their title was duly registered in the office of the "Conservador" or Registrar of Lands for that district.

Refusal of Portuguese Government to recognize the Company.

But that the Registrar of the district of Almada, notwithstanding the Judgments and orders of the Court, declined to register the title of the Company to the oyster-beds in that district included in the Concession. That in refusing such registration he was acting by direction of the Government, who declined to recognize the Company as the transferees of the Concession, on the ground that their previous consent was required to the transfer, and that they were not parties to the law-suits which resulted in the Judgments of the Portuguese Tribunals in their favour. That in the meanwhile the Company had not only been put to enormous expense in the way of litigation, but had been unable to work the oyster-beds, and were threatened with ruin.

That the grounds on which the Portuguese Government justified their attitude towards the Company would be found stated in detail by the Minister for Foreign Affairs, Senhor Barros Gomes, in his notes to Mr. Petre, Her Majesty's Minister at Lisbon, of the 24th February and the 12th March last, which, together with Mr. Petre's replies and a Memorandum by Mr. Hart, the Manager of the Company, would be found in documents (C) and (D).

That document (E) contained the opinion of Senhor José Diaz Ferreira (the legal adviser and advocate to the Company) on the contention of the Portuguese Government.

That document (F) contained the criticisms of the Company on the two notes of Senhor Barros Gomes of the 24th February and the 12th March last.

That Sir George Bonham, Her Majesty's Chargé d'Affaires at Lisbon, in his despatch No. 63 of the 2nd July last (document G), transmitted a translation of the Judgment of the Court of First Instance at Almada, dated the 6th June, 1888, directing the "Conservador" of that district to register, in the name of the Company, the oyster-beds which they claimed in that district under the Concession.

That it was difficult to understand why the Portuguese Government should refuse to confirm the transfer of the Concession to the British Company.

That, as pointed out by the Company in Mr. Hart's letter of the 3rd July last (document F), it had not been the practice in the previous dealings with the Concession in question to obtain the previous consent of the Portuguese Government to its transfer. That when that Government issued the Royal Decree of the 12th September, 1883, declaring M. Amourous the transferee and successor of the late M. Place, they had full notice of the claim of the British Company, and that it was probably on that account that they introduced into the Decree (clause 3) imposing on M. Amourous the responsibility of answering before the competent Tribunals for all obligations contracted by M. Place in relation to the Concession (see Mr. Hart's printed letter, p. 1, document F). That it was reasonable to infer from that clause that the intention of the Government at the time was that the Concession should become ultimately vested in the parties who should be declared by the Tribunals to be lawfully entitled thereto.

That it would appear, therefore, that the British Company had been treated in this matter with considerable harshness and injustice by the Portuguese Government.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to what (if any) further diplomatic action could properly be taken by Her Majesty's Government in the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to report—

Opinions as to—

Refusal to carry out Decree of Courts;

That, in our opinion, if the Almada Registrar should refuse to obey the Decree of the 6th June, 1888, any means afforded by the Portuguese law of compelling him to do so should, in the first instance, be resorted to by the British Company, but if there is no legal remedy, or if the Registrar states that his refusal is based on the orders of the Portuguese Executive, Her Majesty's Government may properly make such refusal the subject of serious complaint.

Payment of taxes

It is stated in the letter of Senhor Barros Gomes to Mr. Petre, under date the 24th February, 1888 (see document C), that the Company paid taxes to the Treasury in respect of the oyster-beds. If it could be shown that the Portuguese Government received these taxes from the Company, and knew of the transfer at the time of payment, the fact would afford Her Majesty's Government strong arguments in support of the Company's claims.

Revocation of Decree of 1883.

The Portuguese Government are not, in our opinion, bound to revoke the Decree of the 13th September, 1883, and issue a new one recognizing the Company, but Her Majesty's Government would be justified in using their influence to induce them to do so, in view of the fact that the Portuguese Courts have confirmed the English Judgment in favour of the title of the Company, and adverse to that of M. Amourous, and that upon those proceedings the Portuguese Government were represented.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

(A.) Report of Law Officers, September 11, 1884. (Confidential No. 5121, p. 91.)
(B.) Inclosure in Mr. Hart, June 23, 1888.
(C.) Mr. Petre, No. 11, Commercial, February 27, 1888.
(D.) Ditto, No. 17, Commercial, March 19, 1888.
(E.) In ditto, No. 19, Commercial, March 22, 1888.
(F.) Mr. Hart, July 3, 1888.
(G.) Sir G. Bonham, No. 63, Commercial, July 2, 1888.

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## No. 44.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November* 3.)

My Lord, *Royal Courts of Justice, November* 2, 1888.

Anglo Portuguese Oyster Company's claim to recognition as transferees of oyster fisheries.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 4th ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, and in connection with the papers upon the same subject on which we favoured your Lordship with our Report upon the 5th September last, some further documents and correspondence, as marked in the margin,* with reference to the claim of the Anglo-Portuguese Oyster Fisheries Company to recognition as transferees of a Concession from the Portuguese Government to work the oyster fisheries in the districts of Almada and Aldeagalazza.

Refusal to register the title of Company upheld by Court of Relação.

That it would be seen from the Judgment of the Court of Relação, delivered at Lisbon on the 18th July last (a translation of which was inclosed), that the original Judgment of the Delegado of Almada of the 6th June had been reversed, and that the refusal of the Registrar of the district to register the title of the Company to the Almada oyster-beds in accordance with the Judgment and orders of the Court of First Instance had been upheld.

That an appeal to the Supreme Tribunal against the Judgment of the Court of Relação was, however, pending at the instance of the Company.

That as a matter of strict right the Portuguese Government might be entitled to insist that their previous consent was a condition precedent to the perfecting of the claim of the Company as transferees of the Concession; but that no reason had as yet been assigned by them for refusing such consent now that the title of the Company had, subject to such consent, been established by the Company as against all other claimants.

That the question therefore arose whether, in order to avoid unnecessary litigation (although the matter was still *sub judice*), Her Majesty's Government might not properly urge the Portuguese Government to indicate what steps they required the Company to take so as to enable that Government to rescind the Decree of the 12th September, 1883, in favour of M. Amorous, and to issue a fresh Decree confirming the Company in their legal rights as established by the Portuguese Tribunals.

That, with reference to the concluding words of our Report of the 5th ultimo, Sir Julian Pauncefote was to observe that the Portuguese Government were only represented upon the proceedings in pursuance of section 1087 of the Portuguese Civil Code, which was to the effect that Judgments pronounced by foreign Tribunals . . . . should not be carried into effect in the kingdom unless they were first examined and confirmed by one of the Supreme Courts of the Judicature, in the presence of the parties interested and of the Public Prosecutor ("Procurador del Rey"). . . . .

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the question submitted therein, and with any general observations which we might have to offer on the then aspect of the case.

Reversal of Judgment of Court of Relação.

We were further honoured with a Memorandum from Sir Julian Pauncefote, dated the 12th ultimo, inclosing a letter from Mr. Hart, the Managing Director of the Anglo-Portuguese Oyster Fisheries Company,† stating that the Supreme Tribunal of Lisbon had allowed the Company's appeal and confirmed the Judgment of the District Judge of Almada.

We have also the honour to acknowledge the receipt of a further Memorandum from Sir Julian Pauncefote, dated the 26th October, inclosing a further letter from Mr. Hart,* and also a translation of the Judgment of the Supreme Tribunal of Lisbon relative to the claim of the said Company.

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We have taken the papers into our consideration, and have the honour to report—

Should urge Portuguese Government to recognize Company as transferees.

That in our opinion, in view of the reversal of the Decree of the Court of Relação by the decision of the Supreme Court of Lisbon, Her Majesty's Government may properly urge the Portuguese Government to recognize the Company as transferees of the Concession, and issue a Decree to that effect.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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# RUSSIA.

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## No. 45.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received October* 4.)

My Lord, *Royal Courts of Justice, October* 3, 1888.

Arrests on British ships in foreign ports.

Question as to assistance by Consul.

WE were honoured with your Lordship's commands signified in Sir V. Lister's letter of the 10th ultimo, stating that he had to transmit to us, by your Lordship's direction, a despatch (No. 14, Consular, of the 20th June, 1888) which had recently been received from Her Majesty's Ambassador at St. Petersburgh, with its inclosures, with reference more particularly to certain questions raised therein as to the extent of the duties and obligations incumbent upon a British Consul when summoned by the local authorities to facilitate by his presence on board a British ship the serving of a warrant upon the master or any other person on that ship.

Case of the "Howards" at Libau.

That those questions had, it would be seen, immediately arisen for discussion out of the circumstances attendant upon an attempt by the Russian authorities at Libau to arrest on board his vessel, and for a criminal offence committed in that town, the master of the British ship "Howards," which attempt, as was alleged by the Russian Government, had been frustrated owing to the action of Her Majesty's Vice-Consul at Libau in refusing to accompany the local authorities on board the "Howards," or to co-operate with them in effecting the arrest.

Suggested alteration of Consular Instructions.

Sir R. Morier's despatch to Consul.

That it seemed, however, unnecessary now to consider the actual facts of that particular case (they were to be found set out in Inclosure No. 4 to Sir R. Morier's No. 14) in any detail, as the episode had been closed; but the occurrence had led to a suggestion on the part of Her Majesty's Ambassador (see Sir R. Morier's No. 14) that paragraph 7 of the Consular Instructions at present in force with regard to British ships in foreign ports was not sufficiently precise, and required some further amplification in the sense of the directions furnished by him to Mr. Consul Raby in connection with the case of the "Howards" (Sir R. Morier to Mr. Raby of the 20th June, 1888, Inclosure No. 8 in Sir R. Morier's No. 14).

As to liability of Consul in event of mistake or malice on part of authorities.

That some doubt had been expressed as to whether cases might not arise where, owing to some mistake of law or fact, or where the warrant had been maliciously issued, the person arrested on board the British ship might not, in an action for false imprisonment, hold the Consul liable for giving his countenance to support the arrest.

That Sir V. Lister was therefore to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion as to whether Sir R. Morier's despatch (No. 14, Consular, of the 20th June) and his instructions to Mr. Consul Raby (Inclosure No. 8 in that despatch) should be approved, and whether an addition to paragraph 7 of the Consular Instructions in the sense proposed might safely and properly be made.

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[*] Mr. Hart, August 8 (copy of proceedings and Judgment of Delegado of Almada); ditto, August 20 (translation of Judgment of Court of Relação); Law Officers' Report, September 5, 1888; Papers on previous reference. See No. 42, *ante*.

[†] Mr. Hart, October 8, 1888.

[*] Mr. Hart, October 19, 1888, and inclosure.

That your Lordship would be glad at the same time to be favoured with any general observations upon the subject which we might desire to offer.

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In obedience to your Lordship's commands we have the honour to report—

Approve despatch and proposed alteration. As to liability of Consul.

That we are of opinion that Sir R. Morier's despatch and his instructions to Consul Raby should be approved, and that an addition to paragraph 7 of the Consular Instructions in the sense proposed may safely and properly be made. In acting in the manner suggested the Vice-Consul could not properly incur the risk of any action by reason of the arrest being in fact irregular or malicious.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## SALVADOR.

### No. 46.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received January* 30.)

My Lord, *Royal Courts of Justice, January* 28, 1888.

New Law of Salvador as to foreigners and nationality.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to certain provisions in the new Law of the Republic of Salvador of the 29th September, 1886.

That the terms of that Law in relation to foreigners and to the conditions by which nationality was to be determined thereunder in Salvador had been already submitted to us for consideration, and formed, on the 22nd April, 1887, the subject of our Report to your Lordship.

That on the 27th July of last year a despatch, embodying the views expressed in that Report, was forwarded to Mr. Chapman, Her Majesty's Representative at Guatemala, and that he was instructed—after consultation with the Representatives of the other Powers accredited to the Government of Salvador—to bring under the notice of that Government the objectionable features in the law to which we had drawn attention.

That accordingly, on the 19th September, Mr. Chapman addressed a note to Señor Delgado, the Salvadorean Minister for Foreign Affairs, on the subject (Mr. Chapman's despatch No. 118, Inclosure 3), and that Sir Julian Pauncefote was now to invite our attention to the reply of that Minister, dated the 20th October, and of which a translation was inclosed in Mr. Chapman's despatch No. 131, Inclosure 2.

Salvadorean note.

That it would be seen that the Salvadorean Minister for Foreign Affairs combated in almost every respect the views put forward on behalf of Her Majesty's Government; and that, as the enforcement of the law in its present form against British subjects might cause, at any moment, questions of practical difficulty to arise, it became necessary to consider whether some further declaration or protest on the subject might not be desirable.

Question as to necessity for a reply.

That Sir Julian Pauncefote was, therefore, to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether Señor Delgado's note called for a reply from Her Majesty's Government, and that, if so, in what terms such reply might most advantageously be couched.

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In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

Conditions for agreeing to Articles 26 and 27.

That, in our opinion, Articles 26 and 27 as worded are open to objection, but an alteration in language would make it clear that they operated merely as directions to legal officers of the Republic as to the evidence they should require before giving effect to the claims of foreigners. Assuming this to be their true construction we do not think it would be necessary to insist upon the objection, but in our opinion the Salvadorean Minister should be informed that it is upon this distinct understanding that Her Majesty's Government abstain from further protest.

Should repeat protest against restriction of diplomatic interference.

With regard to the Articles to which we objected upon the ground that they purported to limit, or restrict, the diplomatic interference of Her Majesty's Government on behalf of British subjects, we think it necessary that our former protest should be clearly repeated and insisted upon.

Her Majesty's Government cannot properly admit that any rules or conditions made by a foreign State can have the effect of disentitling a British subject to claim the diplomatic interference of the Representatives of his country on his behalf.

Should note expressions as to Article 49.

With regard to Article 49, we think the answer to Señor Delgado should take note of his satisfactory expressions upon the subject.

Representation as to Article 53 not necessary.

As to Article 53, it is not, in our opinion, necessary that any further representation should be made.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers sent to the Law Officers, January* 10, 1888, *on the Salvador New Law on Foreigners.*

(A.) to (I.) Papers referred to Law Officers, April 2, 1887. (See Law Officers' Report of April 22, 1887 (K.). See Confidential No. 5597, p. 79.)
(K.) Law Officers' Report of April 22, 1887. Confidential No. 5597, p. 78.
(L.) To Mr Chapman, No. 23, July 27, 1887.
(M.) Mr. Chapman, No. 118, September 28, 1887.
(N.) To Mr. Chapman, No. 36, November 9, 1887.
(O.) Mr. Chapman, No. 131, November 7, 1887.

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## SIAM.

### No. 47.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received March* 26.)

My Lord, *Royal Courts of Justice, March* 24, 1888.

Change of nationality of natives of Shan States of Upper Burmah after British annexation. Case of Chong Kham.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* relative to the case of Chong Kham, a native of Moné, one of those Shan States which became British territory upon the annexation of Upper Burmah to Her Majesty's dominions.

That the actual annexation of Upper Burmah was proclaimed on the 1st January, 1886, although the status of the newly-acquired dominion was left unsettled at the time, so that it was not until the 26th of the following February that its incorporation in British India took place.

That it was therefore conceived there was, in the absence of any special reservation to the natives of the Shan States thus annexed of their original nationality, a transfer of their allegiance to the British Crown, and an implied adoption of British nationality by them, at the date of annexation, and that consequently Chong Kham, amongst other natives, although himself residing at the time in Chiengmai, in the Kingdom of Siam, in fact became a British subject on the 1st January, 1886.

That it appeared, however, that in March of the same year he, being a British subject at the time, though ignorant of that fact, and imagining himself to be still a subject of the King of Burmah, signed some document which practically amounted to an adoption of Siamese nationality on his part.

That it seemed clear, moreover, that had he known in March 1886 that he was then entitled to the protection and privileges attaching to British nationality, Chong Kham

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* Mr. Gould, No. 85, October 23, 1887 (four inclosures).

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would certainly not have endeavoured to avail himself of Siamese protection, and that considerable doubt was felt as to whether in such circumstances he could properly be said to have "voluntarily become naturalized" in a foreign State.

That for those reasons your Lordship was inclined to intimate to the Siamese Government that Her Majesty's Government considered Chong Kham entitled to the status and privileges, which he had now claimed, of a British subject.

But that your Lordship, while thus dealing with this particular case, would not propose to make any general declaration on the part of Her Majesty's Government which might bind their future action in alleged similar cases, with respect to the exact circumstances of which no such precise knowledge had reached you.

That Sir Julian Paucefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether Chong Kham was to be considered a British subject, and whether the Siamese Government might properly be informed in the sense indicated in that letter.

That your Lordship would at the same time be glad to be favoured with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

He is a British subject and entitled to a passport.

That, in our opinion, it may be properly represented to the Siamese Government that Her Majesty's Government consider Chong Kham is entitled to be regarded as a British subject, and to receive a passport from the British Consul.

Siamese may accept a voluntary transfer of nationality.

We desire to add that it does not seem clear to us that the terms of the passport granted by the local authorities have so serious a meaning as is suggested, but, in any case, we cannot refuse to the Siamese Government the right of accepting a transfer of allegiance by British subjects, if such transfer is made voluntarily and with the intention of becoming naturalized in Siam.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 48.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 26.)

My Lord, *Royal Courts of Justice, March* 24, 1888.

Wreck of the "Kong Lee," a Siamese vessel.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, with reference to a question which had arisen as to the competency of Her Majesty's Consular Court for Siam to entertain certain proceedings in the case of a vessel named the "Kong Lee."

That that vessel, which was owned by one Phya Nakhen, a Siamese official and (as was believed) subject, was some months ago wrecked in a typhoon in the Gulf of Siam, and was found floating bottom upwards in that gulf, all of her crew having undoubtedly perished through the disaster.

That she was towed by Siamese Government steamers out of the course of passing vessels, and was left by them on the mud off the west coast of the gulf in Siamese territorial waters.

That subsequently both vessel and cargo (consisting of timber) were salved by the Straits Insurance Company, a British Company, by whom the cargo was insured.

That the head office of the Company was at Singapore, and that the salvage was effected under the direction of their agents at Bangkok, Messrs. Windsor, Rose, and Co.

Dispute as to amount of salvage.

That the owner and the salvors could not agree as to the amount of salvage justly payable, and that a question then arose as to the proper Tribunal for the adjudication of the claim.

Question as to jurisdiction of British Consular Court.

That it would be seen from the account given by Mr. Gould (Her Majesty's Acting Consul-General and Judge of Her Majesty's Consular Court at Bangkok) in his despatch No. 2 of the 13th January, that, at the request of the British salvors, "he accepted charge of the wreck on behalf of the Consular Court, and wrote to the Siamese Foreign Minister notifying that he had done so, and that he had taken the necessary steps towards holding a Salvage Court."

That the owner (through his legal adviser) denied the right of the Consular Court to interfere with the wreck (Inclosure 6 in Mr. Gould's No. 2 of the 13th January), and that on the 28th December the Siamese Foreign Minister wrote to Mr. Gould formally declining to admit the jurisdiction of the Consular Court in the case, "inasmuch as the vessel had not been shown to be a British ship, or owned by a British subject" (Inclosure 8 in Mr. Gould's No. 2).

That ultimately the vessel was sold by consent of parties, and the proceeds deposited at a bank in the joint names of the owner and of the salvors, pending the settlement of the question of jurisdiction.

That Mr. Gould stated in his despatch that he awaited the decision of the Secretary of State "on the point whether the Consular Court has jurisdiction to award the salvage, or whether the question must be left to the Siamese Courts."

That the Consular Court at Bangkok was created, and given the powers of, a Vice-Admiralty Court by the Siam Order in Council of the 6th May, 1886, Part V, Article 14, and could therefore, under section 10 (4) of "The Vice-Admiralty Courts Act, 1863" (26 & 27 Vict., cap. 24), entertain "claims in respect of salvage of any ship, or of life or goods therefrom."

That it was conceived, however, that the general terms of the Order in Council were only operative within the limits of the ex-territorial jurisdiction conferred by Treaty, and that it would seem that the contention of the Siamese Foreign Minister was that, under the provisions of the Treaty, the Vice-Admiralty jurisdiction of the Consular Court could not be exercised over any but British vessels.

That the Article of the Treaty between Great Britain and Siam of the 18th April, 1855, relating to ex-territorial jurisdiction, was section 2, as modified by the 2nd Article of the Supplementary Agreement to that Treaty (commonly known as the "Parkes" Agreement of the 13th May, 1856).

That if the Consular Court were not competent in the present case to exercise its Vice-Admiralty jurisdiction *in rem*, the next question which arose was whether, under the circumstances, the British Consular Court in its ordinary jurisdiction, or a Siamese Tribunal, was the proper forum for the adjudication of the amount of salvage payable.

That according to the rule, "Actor sequitur forum rei," which prevailed under the Treaty, it would apparently be open to the Siamese owner of the ship to sue the British salvors thereof in the Consular Court for the recovery of his vessel and cargo, or its value, while, on the other hand, it would seem to be competent to the British salvors to sue the Siamese owner in the Siamese Court for salvage services.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to the reply which should be sent to Mr. Gould's inquiry on the question of jurisdiction, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

Consular Court has not jurisdiction,

That, in our opinion, the Consular Court is not competent, in this instance, to exercise its Vice-Admiralty jurisdiction *in rem*, there being no provision in the Treaty enabling it so to do.

except by the consent of the defendant.

The claim, apart from the question of jurisdiction *in rem*, is a civil claim by British subjects against a subject of the King of Siam, and the Consul has no authority to hear and determine such claim except by consent of the defendant. Unless, therefore, the defendant agrees to the jurisdiction, the Consular Court ought not to entertain the proceedings.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

### *List of Papers.*

1. Mr. Gould, No. 2, January 13, 1888.
2. Siam Order in Council, July 28, 1856. Confidential No. 575.
3. " " May 6, 1886. Confidential No. 5248*.
4. Vice-Admiralty Courts Act, 1863, 26 & 27 Vict., cap. 24.
5. Treaty between Great Britain and Siam of April 18, 1855, with the "Parkes'" Agreement of May 13, 1856. Treaty No. 411.

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## No. 49.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received June* 15.)

My Lord, *Royal Courts of Justice, June* 14, 1888.

Protection of Chan Kye Mong, an alien of Chinese origin, naturalized at Singapore.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to the case of one Chan Kye Mong, an alien whose nationality of origin was Chinese, but who was subsequently naturalized as a British subject in Her Majesty's Colony of the Straits Settlements.

That after leaving China, previously to so becoming naturalized in the Straits Settlements, Chan Kye Mong appeared, in 1871, to have taken up his residence in Siam, but that the exact dates at which he left that kingdom and arrived at Singapore were not known to your Lordship.

That in January of last year Chan Kye Mong applied, on the strength of the certificate of naturalization which had been granted him in 1875 by the Singapore authorities, to Her Majesty's Consulate at Bangkok to register him as a British subject in accordance with the provisions of section 29 of the Siam Order in Council of the 28th July, 1856, and the Registration Regulation of the 19th March, 1886, passed thereunder, which Regulation had been since confirmed by section 2 of the Siam Order in Council of the 12th July, 1887.

Registered as a British subject.

That he was accordingly registered in the books of the Consulate as a person entitled to British protection in Siam, and that the usual certificate of such registration was granted him.

His arrest and detention by the Siamese for travelling without a passport.

That in November of last year he was arrested at Supan, a provincial town in the interior of the country, whither he had gone without having first obtained, or applied for, a passport from the Siamese authorities with which, under Article V of the Treaty between Great Britain and Siam of the 18th April, 1855, he was bound to provide himself before travelling in Siam outside the territorial limits assigned by that Treaty for the residence of British subjects.

That under the latter part of the same Article the Siamese officials appeared to have been justified in detaining Chan Kye Mong, who, by travelling without a passport, had laid himself open to suspicion, but that they omitted to report the fact of such detention forthwith to the Consul as they were bound to do, and had detained him in prison and in chains since the beginning of November last in spite of the protests of Her Majesty's Consul.

That Mr. Gould, Her Majesty's Acting Consul-General at Bangkok, having in vain applied to the Siamese Government for Chan Kye Mong's release, on the ground that the latter was a naturalized British subject, had now applied to your Lordship for instructions as to his further action.

That meanwhile, a letter had been received from the Siamese Legation in this country (see the Marquis de Montri's letter of the 14th April, 1888) calling attention to the case and setting forth in some detail the various grounds on which the Siamese Government had felt themselves unable to comply with Mr. Gould's request.

Claimed as a Siamese subject.

That it was, as would be seen, contended by the Siamese Government that Chan Kye Mong, by reason of his having been of Chinese nationality when he originally came to reside in Siam in 1871, thereupon became, by the mere operation of Siamese law or usage, a Siamese subject, and that, notwithstanding the fact that he subsequently went to reside in a British Colony and there was naturalized as a British subject, he was no more entitled to the privilege of British protection while within the dominions of the King of Siam than he would have been had his nationality of origin been Siamese instead of Chinese.

That the last paragraph of Clause 3 of the Treaty between Great Britain and Siam of the 18th April, 1855, which was apparently invoked by the Siamese Minister as supporting his contention (see Marquis de Montri's letter, p. 6), merely provided that "Chinese not able to prove themselves British subjects shall not be considered as such by the British Consul, nor be entitled to his protection," and that its bearing on the question now under discussion was scarcely apparent.

His rights in Siam as a British subject affected by his nationality before naturalization.

That with reference to the question of the express limitation of Chan Kye Mong's rights and privileges as a naturalized British subject solely to the Colony of the Straits Settlements, reference might be made to section 16 of "The Naturalization Act, 1870," in addition to sections 6 and 8 (which latter section was the one especially alluded to in the Marquis de Montri's letter in connection with that point) of the local Act of the Governor of the Straits Settlements of the 15th May, 1867.

That the third paragraph of section 7 of "The Naturalization Act, 1870," which was no doubt the enactment alluded to on p. 7 of the Marquis de Montri's letter under the title of "The British Alien Amendment Act of 1870" provided that "an alien to whom a certificate of naturalization was given . . . . shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that State in pursuance of the laws thereof or in pursuance of a Treaty to that effect;" but that the application of the terms of that section to the present case necessitated the assumption that at the time when Chan Kye Mong received his certificate of naturalization at Singapore he was a Siamese and not a Chinese subject.

That it would certainly, however, seem open to doubt how far any Siamese usage or law which had never been formally assented to, or acquiesced in, by Chan Kye Mong, could operate to change his national status outside the Kingdom of Siam, or render it incumbent on Her Majesty's Government to admit that his original status had been modified in the manner suggested.

That Sir Julian Pauncefote was to inclose, for our information, copies of two Circular letters which were, on the 21st May, 1866, and the 20th April, 1882, respectively, addressed to Her Majesty's Diplomatic and Consular officers abroad, relative to the protection to be accorded by them to persons naturalized in British Colonies, together with a printed Memorandum, respecting the application of the last-mentioned Circular to the present case.

That those Circulars, it would be seen, were intended to have reference solely to the grants of passports to such persons, and to the general protection which should be afforded to them when travelling abroad under British Imperial or Colonial passports.

As to withdrawal of naturalization certificate, if it has been obtained by fraud.

That it was assumed that should the allegation of the Siamese Government to the effect that Chan Kye Mong obtained his certificate of naturalization by fraud, turn out upon inquiry to be correct, it would, in any case, be open to Her Majesty's Government to withdraw from him any protection or assistance to which he might otherwise be entitled at their hands, and to bring the circumstances to the attention of the Colonial Government with a view to the cancellation of his certificate.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to what instructions should be sent to Mr. Gould for his guidance in the case.

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In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

His claim to protection should not be pressed. Doubts as to Siamese residence affecting his nationality.

That, in our opinion, instructions should be sent to Mr. Gould to refrain from pressing further the claim to assert for Chan Kye Mong any right of protection as a British subject. We doubt whether the statement of the Marquis de Montri that, according to Siamese usage, any Chinaman coming to reside in Siam becomes a Siamese subject, could be accepted by Her Majesty's Government as one upon which they could act, and if there were no other determining circumstances in the case, we should desire to give further consideration to this point. We are, however, of opinion that the certificate obtained at Singapore, even if not obtained as is alleged by fraud, only entitled Chan Kye Mong to obtain a passport in accordance with the Circular Instructions, and that he having failed to obtain such passport, and subsequently travelled in Siam as a Siamese subject, *i.e.*, without asking for a passport from the Siamese authorities, in accordance with the Treaty, Her Majesty's Government ought not now to demand that he should be treated as a British subject.

Contravention of Passport Regulations deprives him of rights as British subject.

Approve instructions as to his protection.

We see no objection to Mr. Gould receiving instructions in the terms suggested by the concluding sentence of Sir Julian Pauncefote's Memorandum of the 12th May, 1888.*

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* See draft instructions to Mr. Gould annexed to Law Officers' Report of July 17, 1888.

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*List of Papers.*

- (A.) Foreign Office Memorandum, May 12, 1888. Confidential No. 5614.
- (B.) Consular Instruction of 1879, paragraph 11.
- (C.) Copy of Law Officers' opinion of March 10, 1865. Confidential No. 1489, p. 44.
- (D.) Colonial Office to Foreign Office of March 19, 1866, inclosing correspondence with the Home Office and Law Officers' opinion of March 10, 1865.
- (E.) Report of the Naturalization Commission, 1869. Parliamentary No. 1188.
- (F.) Confidential correspondence respecting the position of aliens naturalized in British Colonies (August 15, 1873). Confidential No. 2306.
- (G.) Treaty between Great Britain and Siam, April 18, 1855. Treaty No. 411.
- (H.) Supplementary Agreement thereto, May 13, 1856. Treaty No. 411.
- (I.) Siam Order in Council, July 28, 1856. Confidential No. 575.
- (J.) Siam Registration Regulation, March 19, 1886. See Schedule to Confidential No. 5474*.
- (K.) Siam Order in Council, July 12, 1887. Confidential No. 5474*.
- (L.) Act of Governor of Straits Settlements, May 15, 1867.
- (M.) Naturalization Act, 1870. 33 Vict., cap. 14,
- (N.) Foreign Office Circular Instruction, May 21, 1866. No. 682.
- (O.) Foreign Office Circular Instruction, April 20, 1882. No. 1624.
- (P.) Mr. Gould, No. 3 (and 12 inclosures), January 13, 1888.
- (Q.) Marquis de Montri to Lord Salisbury, April 14, 1888.
- (R.) To Marquis de Montri, April 20, 1888.
- (S.) Mr. Satow to Mr. Jervoise, May 4, 1888

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## No. 50.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received July* 18.)

My Lord,

*Royal Courts of Justice, July* 17, 1888.

Protection of Chan Kye Mong, an alien of Chinese origin, naturalized at Singapore.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd instant, stating that he was directed to transmit to us the draft of a despatch which your Lordship proposed to address to Her Majesty's Chargé d'Affaires at Bangkok, based upon our Report of the 14th ultimo, in regard to the case of Chan Kye Mong; and that Sir Julian Pauncefote was to request us to be good enough to inform your Lordship whether we concurred in the terms of that despatch.

Approve draft despatch to Mr. Gould.

In obedience to your Lordship's commands we have the honour to report—That we concur in the terms of the draft despatch submitted to us.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

### Annex.

*The Marquis of Salisbury to Mr. Gould.*

(No. 46.)

Sir,

*Foreign Office, July* 19, 1888.

I HAVE had under my consideration, in communication with the Law Officers of the Crown, your despatch No. 3 of the 13th January last, respecting the case of Chan Kye Mong, and also a note on the same subject which I received from the Siamese Minister at this Court on the 16th April, and of which I inclose a copy herein for your information.*

The facts of the case, as they appear from your despatch and the Marquis de Montri's note, are as follows:—

Chan Kye Mong, of Chinese origin, went, in the year 1871, to reside in Siam, and proceeded thence, at some date not stated, to Singapore, where a certificate of naturalization was granted to him by the Colonial authorities in 1875.

On the strength of that certificate Chan Kye Mong applied to Her Majesty's Consulate at Bangkok, in January 1887, to be registered as a British subject, and was given a certificate of registration for that year, and was informed that, unless he returned to Singapore within the year and applied for a passport, he would not be registered in 1888. Before that limit of time had expired he was arrested at Supan, a provincial town in the interior of Siam, whither he had gone without having first obtained or applied for a passport from the Siamese authorities, with which, under Article V of the Treaty between Great Britain and Siam of the 18th April, 1855, a British subject is bound to provide himself before travelling in Siam outside the territorial limits assigned by the Treaty for the residence of British subjects; and Siamese officials are, under that Article, justified in detaining a British subject so travelling without a passport; but in the case of Chan Kye Mong they omitted to report the fact of such detention to the British Consul, as under the Treaty they were bound to do, and he has been kept in prison and in chains since the beginning of November last, on charges connected with the Siamese Revenue Laws, in spite of your protests.

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* M. de Montri, April 14, 1888.

The Siamese Government contend that Chan Kye Mong, by reason of his having been of Chinese nationality when he originally went to reside in Siam in 1871, became, by the mere operation of Siamese law or usage, a Siamese subject; and that notwithstanding the fact that he subsequently went to reside in a British Colony, and there was naturalized as a British subject, he was no more entitled to the privilege of British protection, while within the dominions of the King of Siam, than he would have been had his nationality of origin been Siamese instead of Chinese.

It is not necessary that I should enter into a discussion of the plea thus set up, for the conclusion at which I have arrived in regard to Chan Kye Mong's case does not depend upon this contention of the Siamese Government, and Her Majesty's Government must not be taken as admitting its soundness.

The certificate of naturalization granted at Singapore to Chan Kye Mong, even if not obtained by fraud as alleged by the Siamese Government, did not entitle him to the rights and capacities of a British subject beyond the limits of the Colony of the Straits Settlements. It only entitled him to procure a passport from the Colonial Government (in accordance with the Circular instructions of the 21st May, 1866, and the 20th April, 1882), for the purposes of travel, and to invoke your good offices (as a subject of the Queen in a British Colony) in any difficulty which he might have with the local authorities.

But in view of his omission to procure a Colonial passport, and of his having travelled in Siam as a Siamese subject, viz., without asking for a passport from the Siamese authorities, in accordance with Treaty, Her Majesty's Government cannot now demand that he should be treated as a British subject.

I have accordingly to direct you to refrain from pressing further the claim to assert for Chan Kye Mong the rights of a British subject under the Treaty; but though he is not entitled to be registered in Siam as a British subject, and to be withdrawn from the native jurisdiction, there is no objection to your watching the case, and extending your good offices to him, as a subject of the Queen in a British Colony, to such extent as may become necessary to protect him against any unjust and illegal treatment at the hands of the Siamese authorities.

I am, &c.

(Signed) SALISBURY.

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## No. 51.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received November* 20.)

My Lord,

*Royal Courts of Justice, November* 20, 1888.

Appointment of British Consul for the Siamese Malay States.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to the formal refusal of the Siamese Government to grant their exequatur to Her Majesty's Consul for the Siamese Malay States under the circumstances following.

That it was decided early in the present year to establish a British Consulate for Kedah and the neighbouring Malay States of Siam, and that Mr. Skinner, Her Majesty's Resident Councillor at Penang, was appointed to the post.

That in April last Her Majesty's Chargé d'Affaires at Bangkok was instructed to notify the appointment to the Siamese Government, and to apply for the exequatur usual in such circumstances.

Siamese refuse an exequatur.

That the Siamese Government, however, suggested that Her Majesty's Government should, before the exequatur was granted to Mr. Skinner, enter into an arrangement with respect to the exercise of Her Majesty's exterritorial jurisdiction in the Siamese Malay States similar to that already concluded with regard to Chiengmai, Lakon, and

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Lampoonchi by the Treaty between Great Britain and Siam of the 3rd September, 1883.

That Sir Julian Pauncefote was to observe, however, that the object of that Agreement was, not to enable Her Majesty's Government to appoint a Consul in those provinces, a power which they claimed under Treaty as thereinafter mentioned, but to provide that British Indian subjects coming from British Burmah for the timber trade should be placed under the jurisdiction of a native Tribunal, subject to being withdrawn from such jurisdiction by Her Majesty's Consul for those provinces. [The precise circumstances under which that Treaty was made were stated in the reference attached to the Law Officers' Report No. 50 of 1882.]

That similarly in 1885, when the Government of the French Republic were desirous of appointing a Vice-Consul at Luang Phrabang, the Siamese Government refused to recognize the appointment unless an arrangement analogous to that in force in Chiengmai, Lakon, and Lampoonchi could be negotiated.

That the principal ground, however, assigned for the Siamese refusal (which had the indirect support of Her Majesty's Government) in the latter case was the absence of any French subjects needing protection within the limits of Luang Phrabang, while in Kedah and the other Siamese Malay States now in question, British subjects and protected persons were found in considerable numbers, and that the two cases, therefore, appeared to stand on a very different footing.

That Her Majesty's Government contended that they were entitled to make the appointment in question by virtue of the existing Treaty stipulations alone, and without entering into any such special arrangement as was alluded to above; and that it was considered that it might not be politic on the part of Her Majesty's Government by negotiating a special Convention in order to induce the Siamese Government to grant an exequatur to Mr. Skinner, to weaken in any respect that absolute right to appoint Consuls and exercise Consular jurisdiction in Siam, which, as was contended, was secured to Her Majesty by Treaty.

Right of appointment under m.-f.-n. clause of Treaty of 1855.

That Her Majesty's Government claimed the right by virtue of the most-favoured-nation clause (Article X) contained in the Treaty between Great Britain and Siam of the 18th April, 1855, and of Articles II and VI of the Commercial Treaties between Germany and Siam of the 7th February, 1862, and Italy and Siam of the 3rd October, 1868, respectively.

Italian and German Treaty rights.

That copies of those Treaties were inclosed, and that it appeared therefrom that Her Majesty's Government had, by virtue of the Articles in the German and Italian Treaties, already more particularly referred to, a right to appoint Consuls in the "ports and towns" of Siam, but that no such Consul might begin to exercise his functions until he had received his exequatur.

Grounds of Siamese refusal.

That the grounds apparently advanced by the Siamese Government for refusing an exequatur in the present case were :—

1. That Article II of the Treaty between Germany and Siam of the 7th February, 1862, only stipulated for the reciprocal recognition, by the Powers parties thereto, of Consuls appointed in the "ports and towns," not the "provinces," of their respective States, and that the Treaty between Italy and Siam of the 3rd October, 1868, did not "promise an exequatur" *to Consuls thus appointed.* (See Mr. Gould's telegram No. 7 of the 13th October, 1888.)

2. That the Queen's Commission to Mr. Skinner was worded in an unusual manner, and that previous intimation of the intention of Her Majesty's Government to appoint a Consul was not given to the Siamese Government.

That it might be argued that a Consul, in order to come within the terms of the German and Italian Treaties already referred to, must be appointed to a "port" or a "town," and that if it were thought that the fact of Consul Skinner not being so appointed afforded to the Siamese Government a valid ground for refusing his exequatur, that objection could be removed by assigning him some place of residence under the terms of a fresh Commission.

That it was not, however, desired to take that course, unless, in our opinion, it should be essential to the validity of the British contention to do so.

That with regard to objection No 2, Sir Julian Pauncefote was to say that the appointment was as a matter of fact notified to the Siamese Government in the manner usual in such cases; and that the Queen's Commission—a copy of which was inclosed—described Mr. Skinner's Consular district as "the States of Kedah, Satul, Perlis, Ghirbi, Junk-Ceylon, Kepah, Ranung, and Kra," whereas in the case of Chiengmai, above mentioned, the Consular district was described as "the territories of Chiengmai, Lakon, Lampoonchi, Muang Nan, and Phra," while Chiengmai itself was appointed to be the Consular place of residence, and was further referred to in the Commission issued to the Vice-Consul, of which a copy was annexed, as being "within the said dominions" (*i.e.*, of the King of Siam).

That those latter words were omitted from Mr. Skinner's Commission simply because no place of residence was assigned for him.

That before, however, taking any further steps in the matter, your Lordship desired to be favoured with our opinion on the following questions :—

1. Whether any alteration in the form of Mr. Skinner's Commission was necessary; and 2, whether (*a*) if such alteration were not requisite, or, on the other hand (*b*), if it were; and, notwithstanding the fact that it was made by Her Majesty's Government, the Siamese Government still refused to grant an exequatur in the case of Mr. Skinner, their refusal would amount to such a breach of the obligations devolving, both from existing Treaties and by the usage of nations, upon that Government, as to entitle Her Majesty's Government to "passer outre," and to inform them that, if the exequatur were not issued without further conditions or delay, Mr. Skinner would be instructed to exercise his Consular functions without it, and that Her Majesty's Government would hold them responsible, in all respects, for his proper treatment.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and also with any general observations we might have to offer on the matter.

We were also honoured with a note from Sir Julian Pauncefote, dated the 14th instant, covering a further despatch (and inclosure) from Her Majesty's Chargé d'Affaires at Bangkok. (See Mr. Gould's No. 51 of the 10th October, 1888.)

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We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to report—

H. M.'s Govt. entitled to privileges granted to Italy.

That in our opinion Her Majesty's Government is entitled to claim the same privileges as are conferred on the King of Italy by the Treaty of the 3rd October, 1868. By the VIth Article of that Treaty the King of Italy "may appoint Consuls in the Siamese State, and they may reside in the cities or ports where His Majesty may think fit to place them." It is by the same Article provided that the Consuls shall enjoy all the immunities and privileges granted to the Consuls of the most favoured nations, and it is stipulated that, before they assume the exercise of their functions, they shall obtain the usual exequatur from the King of Siam.

Form of Commission needs amendment.

In our opinion the form of Mr. Skinner's Commission requires amendment, inasmuch as it does not show that the places for which he is commissioned are within the Siamese State, and does not appoint any city or port in which Mr. Skinner is to reside.

Refusal of exequatur after correction of Commission a breach of Treaty.

Steps to be taken in such case.

In the event of the Siamese Government refusing an exequatur to Mr. Skinner when it is applied for—after the issue of a Commission, correct in form—we are of opinion that such refusal would constitute a breach of Article X of the Treaty of 1855 on the part of the Siamese Government. But such breach of Treaty would not entitle Her Majesty's Government to instruct Mr. Skinner to exercise Consular functions, notwithstanding such refusal. It might properly be made the ground of diplomatic remonstrance, and, if that were ineffective, of the suspension of diplomatic relations with Siam.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers sent to Law Officers, October* 24, 1888.

Law Officers' Report, No. 50 (Siam), April 5, 1882. Confidential No. 4783, p. 70.
Treaty between Great Britain and Siam, April 18, 1855.
" " Germany and Siam, February 7, 1862.
" " Italy and Siam, October 3, 1868.
To Mr. Knox, April 20, 1878.
Mr. Gould, Telegraphic, No. 7, October 13, 1888.
To Mr. Gould, Telegraphic, No. 5, October 1, 1888.
Mr. Gould, Telegraphic, September 28, 1888.
" " No. 30, June 28, 1888.
" " No. 28, June 11, 1888.
To Mr. Gould, Telegraphic, No. 4, July 10, 1888.
Mr. Gould, Telegraphic, June 19, 1888.
To Mr. Gould, No. 32, April 27, 1888.
To Mr. Skinner, April 27 (A), 1888.
" " April 27 (B), 1888.
Commission issued to Mr. Skinner (copy).
" " Vice-Consul at Chiengmai (copy)
Mr. Gould, No. 51, October 10, 1888.

## SPAIN.

### No. 52.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received February* 11.)

My Lord, *Royal Courts of Justice, February* 10, 1888.

Collision between the "Polantha" and "Moratin" in the Guadalquivir.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* with reference to a collision which had lately occurred in the River Guadalquivir between the British vessel "Polantha" and the Spanish vessel "Moratin."

That your Lordship regretted that you were unable to furnish us with fuller details of the case in question, which had only just been brought to your Lordship's attention by the Spanish Embassy, but that it was thought that the accompanying papers would, at any rate, suffice to enable us to advise your Lordship with reference to the only question at present arising thereon.

Decision of Spanish Court.

That it appeared that immediately after the collision the authorities of the port of Seville held an inquiry, in accordance with the Regulations there in force, and decided that there was no valid claim for damages on either side, as the casualty was an accidental one.

That the owners of the "Polantha," however, being apparently dissatisfied with the decision, and not recognizing its validity, had now commenced a suit against the "Moratin" in the Admiralty Court of this country.

That the Spanish Government maintained that our Courts had no jurisdiction to entertain the suit, and that the only proper and competent Tribunal to do so was the one which had already adjudicated upon the affair.

Spanish protest against further proceedings in British Courts.

That the Spanish Ambassador had protested, both verbally and by letter, against the continuance of proceedings in the Admiralty Court, and had requested your Lordship to cause Her Majesty's Government to take the necessary steps "to inhibit the (Court of) Admiralty in the legal proceedings which it is supposed they have commenced."

That it had been already verbally intimated to his Excellency that such a course as he suggested was, in your Lordship's judgment, impossible; but that in view of, and out of deference to, the strong wish expressed by the Spanish Government upon the matter, your Lordship would consult Her Majesty's Law Officers before finally

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* Señor del Mazo, January 25, 1888; with proposed draft reply thereto.

replying, on the part of Her Majesty's Government, to the contention put forward by that of Spain.

That a draft of a letter which, should we see no objection, your Lordship proposed eventually to address to the Spanish Ambassador, had meanwhile been prepared, and was inclosed; and that Sir J. Pauncefote was to request that we would, at our earliest convenience, take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the terms of that draft were right and proper in the circumstances; or, if not, in what respects they might be advantageously amended or altered.

In obedience to your Lordship's commands we have taken the matter into our consideration, and have the honour to report—

Approve, with omission, proposed answer as to British jurisdiction in such cases.

That we think the answer is one which might properly be sent, omitting the part struck out, which raises questions of a controversial character, upon which it is not, in our opinion, desirable to enter.*

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

### Annex.

*The Marquis of Salisbury to Señor del Mazo.*

M. l'Ambassadeur, *Foreign Office, February* 11, 1888.

I have the honour to acknowledge the receipt of your Excellency's note of the 25th ultimo regarding certain proceedings which are stated to have been taken in the Admiralty Court in this country respecting a collision which occurred in the River Guadalquivir between the British vessel "Polantha" and the Spanish vessel "Moratin," and, in reply to your Excellency's request that steps may be taken by Her Majesty's Government to inhibit the Court of Admiralty from continuing the proceedings in question, I have the honour to make the following observations.

In causes of collision it has been the practice of this country, as well as of most European States, and of the United States of America, to allow a party alleging grievance by a collision to proceed *in rem* against the colliding ship wherever that vessel be found, and I am advised and entertain no doubt that the Court of Admiralty of Great Britain has jurisdiction to hear and determine an action brought by a British subject against a foreign ship for a collision in foreign waters.

But in any event, the question, whether a legal Tribunal has or has not jurisdiction in a particular case, is a matter entirely for the decision of the Tribunal itself, and Her Majesty's Government have no power whatever to inhibit the Court in question from entertaining proceedings which have been instituted before it, [*even if such proceedings are, as is implied, clearly misconceived and vexatious, on which latter point, however, your Excellency's note affords no specific information.*

*If the matter has, as stated, been already finally decided by a Spanish Court competent to entertain it, the Judgment of such Court can be pleaded in the present suit in answer to the claim now set up; but it is advisable that the owners of the Spanish vessel should put in an appearance to, and be represented at, the hearing of the action, as, if the Court should hold itself competent to entertain that action, it may possibly enter Judgment against them by default if they do not so appear.*

*The result of the latter proceeding would probably be that on the first occasion when their ship came within British jurisdiction it would be seized to satisfy the Judgment.*]

I have, &c.
(Signed) SALISBURY.

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* The part to be omitted is printed within brackets and in italics.

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## SWITZERLAND.

### No. 53.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received November* 15.)

My Lord, *Royal Courts of Justice, November* 14, 1888.

Lloyd *v.* Lloyd. Divorce suit.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to a certain divorce suit now pending before the Swiss Tribunals, and more especially to the question whether a decree of divorce, should it eventually be granted by those Tribunals to the plaintiff in that suit, would be recognized as valid by the law of England.

That the circumstances of the case were set out in the letter addressed by the plaintiff's advocate to the Federal Department of Justice and Police at Berne (M. Favey, of the 9th October, 1888 [Inclosure 2 in Mr. Leveson-Gower's No. 91 of the 13th October]), and appeared to be shortly as follows:—

That the plaintiff (Mrs. Lloyd) was, like her husband, a natural-born British subject, and was married to him at Lausanne on the 7th June, 1884.

That the residence of both parties for some time subsequent to the marriage appeared to have been permanently fixed at Lausanne, and that it was at any rate clear that the marital domicile was Swiss.

That in June 1887 Mr. Lloyd deserted his wife, and had since been living in openly adulterous relations with another woman.

That, according to Swiss law, a divorce was obtainable by either party in respect of the adultery of the other (see Loi Fédérale of the 24th December, 1874, Article 46 A); but that, in respect of marriages contracted between foreigners, the Federal Law contained a further special provision to the effect that no action for divorce . . . . could be entertained by the Tribunals except it were established that (the Courts of) the country to which the parties belonged would recognize as valid their Judgment when pronounced (Loi Fédérale of the 24th December, 1874, Article 56).

As to informing Swiss Court that sentence will be recognized in England.

That in those circumstances the advocates for Mrs. Lloyd desired, and that it appeared to be necessary for the purposes of the suit that they should be able, to satisfy the Tribunal at Lausanne:—

1. That a divorce if pronounced between the parties by a competent Swiss Tribunal would be recognized in this country; and

2. That it would be recognized if pronounced on the sole ground of the adultery of the husband, unaccompanied by desertion for a period of two years and upwards.

Request, &c., of President for a formal reply.

That they had accordingly petitioned the Federal Department of Justice and Police to endeavour to obtain a declaration from Her Majesty's Government on the above points; and that the President of the Swiss Confederation (who was also Minister of Justice) had officially recommended their position to the favourable consideration of Her Majesty's Government (see M. Hertenstein to Mr. Leveson-Gower, of the 12th October, 1888), and had begged that a formal reply might be given to the two questions submitted by the petitioners.

That copies of two Reports upon a somewhat analogous case, with which we favoured your Lordship on the 28th September, 1886, and 7th April, 1887, respectively, were also inclosed for convenience of reference.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion (1) as to whether, in the circumstances, the recommendation of the President of the Swiss Confederation might properly be acceded to; and, if so (2) as to the terms of the answer which should be returned to the questions submitted by M. Favey in his letter of the 9th October.

That your Lordship would be glad at the same time to be favoured with any general observations which we might have to offer upon the case.

In obedience to your Lordship's commands we have the honour to report—

May accede to request, and answer that sentence will be recognized.

That, in our opinion, the recommendation of the President of the Swiss Confederation may properly be acceded to, and that the questions submitted by M. Favey in his letter of the 9th October should both be answered in the affirmative.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

Mr. Leveson-Gower, No. 91, October 13, and inclosures.
To Mr. Leveson-Gower, No. 21, October 4.
Mr. Leveson-Gower, No. 80, September 22, 1888, and inclosures.
Law Officers' Report, September 28, 1886. Confidential No. 5440, p. 79.
Law Officers' Report, April 7, 1887. Confidential No. 5597, p. 88.
Sir F. Adams, and inclosure, September 1, 1886.
Loi Fédérale, December 24, 1874.

## TURKEY.

### No. 54.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received January* 30.)

My Lord, *Royal Courts of Justice, January* 30, 1888.

Case of Hussein Hadji Mehmet, sentenced to death for murder in Cyprus.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 20th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the case of one Hussein Hadji Mehmet, a Mussulman native of Nicosia in the Island of Cyprus, who, on the 6th December last, was convicted before the Assize Court of that place of the murder of a woman called Latifé, and sentenced to death accordingly.

Turkish representations.

That in consequence, however, of the representations made on behalf of the convict to Her Majesty's Ambassador at Constantinople by the Grand Vizier, and by the Turkish Ambassador at the Court of St. James' to the Secretary of State, it was thought advisable to suspend the execution of the sentence until Her Majesty's Government could have the opportunity of considering fully the circumstances under which the crime was committed.

Strong reasons for commutation of sentence.

That it would be seen, moreover, from the accompanying papers, that strong reasons of a political and diplomatic nature existed in favour of a commutation of the death sentence, if such a course could, consistently with the interests of justice, be pursued.

That a transcript of the notes of the evidence taken at the trial by the Chief Justice of Cyprus, who presided over the Court on the occasion, was inclosed, together with copies of a Petition, dated the 8th December, from the mother of the convict, and of a further Petition, dated the 18th December, from his mother and brother, and of the remarks of the Chief Justice thereon respectively.

That the existing judicial system of Cyprus was constituted and the procedure of its Courts prescribed by the Order in Council of the 30th November, 1882, and that the convict was tried by a Court, formed under Article 6 of that Order, administering Ottoman law in accordance with Article 23 thereof.

That the Assize Court derived its authority to try the case from Article 50, and that the procedure at the trial was regulated by Chapter XX, Articles 120 to 137, of the same Order.

That it would be observed that there was as yet no "trial by jury" in Cyprus, that an Ottoman subject charged with murder was, however, tried by a Court of five, or, at all events, four Judges, and consisting of—

1. The Chief Justice of Cyprus.
2. The Puisne-Judge of the Supreme Court.

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3. The President of the District Court.

4 and 5. Two native members of the same District Court, one being a Christian and the other a Moslem by religion.

That Sir Julian Pauncefote was also to bring to our attention Article 196 of the Order as dealing specifically with the cases in which an accused person could or could not be lawfully convicted upon the evidence of a single witness.

That by clause 22 of the previous Order in Council of the 14th September, 1878 (which clause, although the Order in Council had in some other respects been modified by subsequent legislation, was still in force), provision was made for the exercise of power and jurisdiction by Her Majesty in and over the Island of Cyprus, and that, by virtue of this clause, the High Commissioner of that island "may, as he shall see occasion, in Her Majesty's name and on her behalf, grant to any offender convicted of any crime in any Court, or before any Judge, Justice, or Magistrate within the said island, a free and unconditional pardon, or a pardon subject to such conditions as may at any time be lawfully thereunto annexed, or any respite of the execution of the sentence of any such offender for such period as may to him seem fit."

That other papers, bearing rather on the diplomatic than the purely legal aspects of the case, were also inclosed for our information.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether, having regard to all the circumstances, the case was one in which Her Majesty's High Commissioner might, in Her Majesty's name and on her behalf, properly grant to the convict a remission of the sentence of death passed upon him, either by commuting it to one of imprisonment for life, or to any other (and, if so, what) punishment.

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In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

May commute sentence.

That, in our opinion, the case is one in which Her Majesty's High Commissioner may, in Her Majesty's name and on her behalf, properly grant a commutation of the sentence to one of ten years' imprisonment.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers in the case of Hussein Hadji Mehmet, of Cyprus.*

1. Sir W. White, No. 98, Confidential, Telegraphic, December 16, 1887.
2. To Colonial Office, December 16, 1887.
3. Rustem Pasha, December 16, 1887.
4. To ditto, December 17, 1887.
5. To Colonial Office, December 17, 1887.
6. Colonial Office, December 17, 1887.
7. To Sir W. White, December 19, 1887.
8. Colonial Office, December 20, 1887.
9. To Sir W. White, No. 1, January 2, 1888.
10. To Rustem Pasha, January 9, 1888.
11. Colonial Office, January 13, 1888.
12. Parliamentary Paper, "Turkey No. 36 (1878)" (No. 2054).
13. Ditto, "Cyprus No. 1 (1879)" (No. 2150).
14. Volume of Law Officers' Reports for 1880 (Confidential No. 4539). (See p. 24.)
15. Order in Council, November 30, 1882. Confidential No. 4760*.

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## No. 55.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 8.)*

[In reply to the following reference, the Law Officers reported as below on the 8th May, 1888.]

Gentlemen, *Foreign Office, April* 14, 1888.

Existence of certain Treaties with Turkey which, though not now in force in Turkey proper, are still in force in Bulgaria.

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the papers noted in the accompanying list in connection with a question which has lately arisen as to whether those Treaties which were in force between this country and Turkey (including more particularly the Commercial Treaty of the 29th April, 1861) at the time of the signature of the Treaty of Berlin on the 13th July, 1878, are still in force in Bulgaria, although such Treaties may have been denounced by Turkey subsequently to this date, and may have, in consequence, expired in so far as Turkey proper is concerned.

This general question arises practically for decision upon the particular case already mentioned of the Commercial Treaty between Great Britain and Turkey of the 29th April, 1861, which was denounced by Turkey in 1882, and undoubtedly expired, in so far as Turkey proper was concerned, in 1883.

This Treaty originally applied to the Province of Bulgaria as part of the Ottoman dominions, and continued so to apply to that province until the conclusion of the Treaty of Berlin.

By the Treaty of Berlin, however, Bulgaria was constituted an autonomous and tributary Principality under the suzerainty of the Sultan.

Effect of Treaty of Berlin as to Treaties in Bulgaria.

It appears, moreover, on an examination of the Protocols of the Conferences which took place at Berlin in June 1878 between the Representatives of the Great Powers prior to the signature of that Treaty (see more particularly Nos. 5 and 6), not to be open to serious doubt that it was then thought necessary to determine how Bulgaria should stand towards other nations with regard especially to her commercial relations with them until she should have had time to consider and consolidate her position, and to enter into direct negotiations with foreign Powers with a view to the conclusion of new Commercial Treaties should such a necessity be found to exist.

But pending a revision of those Treaties, it seems to have been the intention of the Powers that those Treaties which were then in existence should continue in force pending such ulterior arrangements as Bulgaria might find it advisable to make, for her own and their mutual benefit, with foreign Powers, independently of and without any interference from the Sublime Porte.

In confirmation of the view above put forward it appears important to call special attention to the language held by Prince Bismarck, from which none of the other Plenipotentiaries dissented, at the sitting of the 25th June, 1878.

His Highness then said, with reference to the proposition presented by Austria-Hungary, France, and Italy on the subject of maintaining intact in Bulgaria and Eastern Roumelia the Treaties of Commerce, of Navigation, and Regulations for Transit concluded with the Porte, that he "regarded it as in accordance with the law of nations that Bulgaria should remain under the authority of the Treaties by which she was bound under the Government of the Porte."

By Article XX of the Commercial Treaty of 1861 between Great Britain and Turkey the right was reserved to either party to denounce it, after a certain fixed period, by giving a year's notice; but by the Treaty of Berlin (Article VIII), Turkey, as one of the Contracting Parties thereto, has agreed with the other Powers not only that the Treaties of Commerce, &c., which were then in force between foreign Powers and the Porte should be maintained in the Principality, but also that "no change should be made in them with regard to any Power without its previous consent."

It therefore appears fair matter of contention that Turkey has thereby renounced her right to denounce her Treaties with foreign Powers so far as Bulgaria is concerned, without the assent of the other Powers who were parties to the Treaty of Berlin; that she agreed, on behalf of her then Tributary Principality, that no change should be made by Bulgaria in those Treaties with regard to any Power without the previous consent of that Power; and that she engaged, on her own behalf as well as on that of the Principality, that the subjects and citizens and commerce of all the Powers should be treated in Bulgaria "on a footing of strict equality."

If this be so, it would appear to follow that Bulgaria also was by the Treaty of Berlin deprived of the power of abrogating the Commercial Treaties which were at that time in force without the consent of each of the Powers interested.

On the opposite hypothesis, Bulgaria would at this moment have no Commercial Treaty engagements towards any of those Powers whose Treaties with Turkey have expired, and there would then apparently be nothing to prevent her from regulating her commercial relations with these foreign Powers by Decrees which might possibly prove very vexatious and obnoxious in their character, and highly prejudicial to British interests. She might, moreover, having once got rid of her existing Treaty engagements, delay the negotiations for the conclusion of new ones till such time as it suited her own convenience to enter into them.

It is submitted, however, that it was clearly not the intention of the Powers to allow the existence of such a state of things as this, but that the negotiators of the Treaty of Berlin intended, on the contrary, to establish a *modus vivendi* which neither Turkey nor

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Bulgaria would have any right to disturb without the full consent of all the Powers who were parties to that Treaty.

As to claiming m.-f.-n. treatment from Bulgaria.

By Article V of the Treaty of 1861, it was provided that "the duties to be imposed on any article, the produce or manufacture of the dominions or possessions of Her Britannic Majesty, imported into the dominions or possessions of His Imperial Majesty the Sultan, should in no case exceed one fixed rate of 8 per cent. *ad valorem*, or a specific duty fixed by common assent equivalent thereto;" and a Tariff Agreement providing for specific fixed import duties was eventually framed under the latter alternative mentioned in this Article, and came into force on the 1st (13th) March, 1862.

This fixed Tariff continued to prevail throughout the Ottoman dominions in respect to imports from Great Britain and British possessions until May 1883, although imports from some other countries, as, for instance, Germany, were subjected to somewhat more favourable treatment, being untariffed, and liable in all case to a general *ad valorem* duty of 8 per cent.

In May 1883, by virtue of the denunciation of the Treaty under which it had been framed, this fixed Tariff ceased to operate in Turkey proper, where it has since been replaced by a general import duty calculated at the rate of 8 per cent. *ad valorem*.

The English Capitulations of 1675 contain an engagement (Article XVIII) on the part of the Sultan "that all the Capitulations, privileges, and Articles granted to the French, Venetian, and other Princes which are in amity with the Sublime Porte, having been in like manner, through favour, granted to the English," by virtue of the Sultan's special command, "the same shall be always observed according to the form and tenour thereof, so that no one in future do presume to violate the same or act in contravention thereof."

These Capitulations were confirmed by the Treaty of Peace concluded at the Dardanelles on the 5th January, 1809, and have been kept alive (subject to certain modifications which for the present purpose it does not appear material to consider) by Article I of the Commercial Convention of the 16th August, 1838, between Great Britain and Turkey, and by Article XX of the Commercial Treaty of the 29th April, 1861, between the same High Contracting Parties, which declared that that Treaty should be substituted for the Convention of 1838.

It is presumed, therefore, that, although the Treaty of 1861 expired by notice in 1883, the Capitulations still remain in force, and can be appealed to as conferring upon British subjects and their commerce in the Ottoman dominions (in which, for the purpose of any claim resting upon the authority of the Capitulations, the Principality of Bulgaria may, under present circumstances, be included) a right to be treated on at least as favourable a footing as the subjects and commerce of any other nation, and that in all respects.

With reference to this latter point, I am to direct your especial attention to the Report of the then Law Officers of the Crown of the 18th May, 1883, and the two Foreign Office Memoranda (Confidential No. 4376 of the 7th February, 1883, and Confidential No. 4950 of the 11th April, 1883) inclosed herewith.

In these circumstances, Lord Salisbury is desirous of being advised (1) whether it is competent to Her Majesty's Government to claim from that of Bulgaria most-favoured-nation treatment for British subjects and commerce under either the Treaty of 1861, the Berlin Treaty of 1878, the Capitulations of 1675, or all of them; and more especially (2) whether, having regard to the wording of Article VIII of the Treaty of Berlin, which provides that British commerce should be treated in Bulgaria on a footing of "strict equality" with reference to the commerce of other Powers, there would be any inconsistency in Her Majesty's Government now demanding that treatment, while at the same time maintaining that the Treaty of 1861 between Great Britain and Turkey is still in force in Bulgaria, although the Tariff which was framed under it, and which bore a later date, gave to Great Britain different treatment to that which was conceded to Germany under her Treaty Tariff.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion on the questions submitted in this letter, and with any general observations which you may have to offer on the matter.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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In obedience to your Lordship's commands we have the honour to report—

That we have considered the papers laid before us.

Treaties with Turkey before 1878 still in force in Bulgaria.

By the Treaty of Berlin it was provided that existing Treaties of Commerce with Turkey should be maintained in the Principality, and that no change should be made in them with regard to any Power without its previous consent. It was not competent to Turkey, after entering into this Treaty, to exercise with regard to Bulgaria the power it previously had of denouncing the Treaty of 1861.

Treaty of 1861 in force till 1889: Can then claim m.-f.-n. treatment from Bulgaria.

1. We are of opinion that Bulgaria will remain bound by the Treaty of 1861, at any rate until the 9th July, 1889, and that after that it will be competent to Her Majesty's Government to claim from that of Bulgaria most-favoured-nation treatment under the Capitulations of 1675 and the Berlin Treaty of 1878.

Demand for equality of treatment consistent with Treaty of 1861.

2. In our opinion there would be no inconsistency in Her Majesty's Government demanding equality of treatment, although the Treaty of 1861 and the Tariff thereunder are still in force. The words of Article V of the Treaty of 1861 are that the duty shall not exceed a certain figure. There is, in our opinion, nothing in this inconsistent with the demand for equality of treatment.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, May* 8, 1888.

*List of Papers.*

Mr. Hardinge, No. 42, Commercial, December 9, 1887
To Mr. O'Conor, No. 20, Commercial, December 1, 1887.
Sir Hussey Vivian, November 21, 1887.
To Mr. O'Conor, No. 14, Commercial, October 26, 1887.
Mr. O'Conor, No. 23, Commercial, October 11, 1887.
To ditto, No. 10, Commercial, August 20, 1887.
Mr. O'Conor, No. 16, Commercial, August 6, 1887.
To ditto, No. 7, Commercial, July 18, 1887.
Sir H. Vivian, July 13, 1887.
Mr. Lascelles, September 30, 1884.
To Mr. R. J. Kennedy, No. 15, Commercial, July 25, 1884.
Mr. R. J. Kennedy, No. 22, Commercial, July 1, 1884.
To ditto, No. 13, Commercial, June 6, 1884.
Mr. R. J. Kennedy, No. 17, Commercial, May 20, 1884.
To Mr. Lascelles, No. 9, Commercial, April 29, 1884.
Ditto, No. 5, Commercial, February 22, 1884.
Mr. Lascelles, No. 6, Commercial, February 4, 1884.
Memorandum, Foreign Office, February 7, 1883. Confidential No. 4376.
Berlin Treaty, 1878. Treaty No. 623.
Correspondence relating to Berlin Congress. "Turkey No. 39 (1878)," Parliamentary No. 2062.
Mr. Wrench's Report on new Turkish Tariff. Confidential No. 5169.
Treaty with Turkey, 1861. Treaty No. 453.
Memorandum, Foreign Office, April 11, 1883. Confidential No. 4950.
Law Officers' Reports, May 5 and 18 (Nos. 104 and 105), 1883. Confidential No. 4974, pp. 127, 128.

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## No. 56.

### *The Law Officers of the Crown to the Marquis of Salisbury.—(Received September* 21.)

My Lord, *Royal Courts of Justice, September* 20, 1888.

Petition of Selim Faris Chediak, of Turkish parentage, born in Malta, to be registered as a British subject.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 30th July last, transmitting to us a despatch from Sir Evelyn Baring as to the nationality of one Selim Faris Chediak, and also a despatch from Her Majesty's Consul-General and Judge at Constantinople,* forwarding a Petition from Selim Faris Chediak, praying that he might be recognized and registered as a British subject, and stating that it appeared that that person, who was of Turkish parentage, was born at Valetta, Malta, and was, therefore, a natural-born British subject. That he stated also that his father was naturalized as a British subject at Malta, but he had adduced no proof of the fact.

That the provisions of Her Majesty's Order in Council for the Levant (December

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* Papers: Sir E. Baring, No. 209, April 3; Sir H. Fawcett, Treaty No. 4, June 29, 1888; Levant Order in Council, 1873 (Confidential No. 2873)

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12, 1873) with regard to the registration of British subjects would be found in sections 16 to 19. A copy of the Order was transmitted therewith. That the case might give rise to a conflict of jurisdiction, for it was conceived that, notwithstanding Chediak's birth in British territory, so long as he resided in Turkey he owed allegiance to the Sultan, and was subject to Ottoman jurisdiction.

That, in those circumstances, your Lordship would be glad to be favoured with our opinion as to whether Chediak's application to be registered as a British subject in the British Consulate at Constantinople should be acceded to, and, if so, whether any note of his double allegiance and nationality should be appended to such registration. Further, whether the certificate of the Maltese authorities inclosed in Sir Henry Fawcett's despatch might be accepted as sufficient proof of his birth at Valetta.

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In obedience to your Lordship's commands we have the honour to report—

Sufficient evidence to justify his registration.

That, in our opinion, there is sufficient evidence to justify the registration of Chediak as a British subject, and he should be so registered, unless there are any considerations which make it desirable to refuse to recognize him as such. But at the time of such registration, he should be informed that it does not relieve him from his allegiance to the Ottoman Government, and a note should be made in the register that such notice has been given. The certificate of the Maltese authorities may be accepted as sufficient proof of his birth at Valetta.

Though sufficient doubt to justify a refusal if desired.

If Her Majesty's Government do not desire to register him, there is, in our opinion, quite sufficient doubt as to the fact of his birth in Malta to justify a refusal on the present information.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 57.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received November* 27.)

My Lord,
*Royal Courts of Justice, November* 27, 1888.

Claim of Harari family to British protection.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relative to the claim of various members of the Harari (or Arary) family to British nationality, and consequently to British protection within the Ottoman dominions.

That the family in question was of Damascene origin and Jewish faith, and that the history of their claim would be found concisely set forth in Mr. Consul Wrench's Memorandum of the 16th February, 1887, and in the two Memoranda by Sir E. Hertslet (1) of the 15th March, 1886, respecting the nationality of Mr. Solomon Harari; and (2) of the 3rd August, 1888, respecting the claim of the Harari family to British protection in Turkey, which were inclosed.

Turkish refusal to recognize their claim.

That it would be seen that Solomon Harari had himself lately adopted Turkish nationality, but that other members of the family still pressed their claims to recognition as British subjects, although the Ottoman local authorities had hitherto absolutely refused, in any way whatever, to admit their claim, and had, especially since Solomon Harari's renunciation of his pretensions to British nationality, been treating them as Ottoman subjects.

That in 1857, and again in 1858, the then Queen's Advocate was consulted with reference to this claim, and reported in effect that there was no evidence sufficient to sustain it (see Queen's Advocate's Reports of the 22nd October, 1857, 27th January and 2nd September, 1858).

That Mr. Ezra Harari had lately (see Consul Dickson's No. 2 of the 6th January, 1888, and inclosures) submitted proofs of his British nationality to Her Majesty's Embassy at Constantinople, but that the documents which he had furnished did not appear to strengthen the case which had already been laid before and reported on by the Queen's Advocate.

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[*] Sir W. White, No. 7, February 8, 1887; ditto, No. 7, February 22, 1888; Memorandum by Sir E. Hertslet, August 3, 1888; ditto, March 15, 1886; Queen's Advocate's Report, October 22, 1857; ditto, January 27 and September 2, 1858.

That other papers, as noted in the inclosed list, were also sent in case we should desire to refer to them.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether Her Majesty's Government were justified in recognizing the claim of the various members of the Harari family to British nationality, and in pressing it upon the Government of the Sublime Porte.

That your Lordship would be glad, at the same time, to be favoured with any general observations which we might have to offer on the case.

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In obedience to your Lordship's commands we have the honour to report—

Claim cannot be pressed.

That, in our opinion, having regard to all the circumstances of the case, Her Majesty's Government would not be justified in recognizing and pressing upon the Government of the Sublime Porte the claim of the various members of the Harari family to British nationality. It would not, in our judgment, be desirable to withdraw from Ezra the protection accorded him in 1856, and continued since that time.

Protection of E. Harari should be continued.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 58.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received December* 22.)

My Lord,
*Royal Courts of Justice, December* 21, 1888.

Y. L. Stambouli. British-protected subject at Damascus.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us a despatch (No. 416 of the 24th October) which, together with its inclosures, had lately been received from Her Majesty's Ambassador to the Sublime Porte with reference to the claim of one Yacoub Levy Stambouli to British nationality.

That that claim was contested by the Government of the Sublime Porte on the ground that recognition was originally obtained by means of fraudulent evidence, and, as would be remembered, formed the subject of reference to us on the 26th February of last year.

That we then reported (on the 17th March following*) that the documents submitted to us did not disclose sufficient evidence to prove fraud, and that, in the absence of such evidence, and having regard to the circumstances that in 1864, at the time of the receipt of the police Report upon the case, the Representative of the Ottoman Government at Damascus refused to call in question Stambouli's status, though incited to do so by the British Consul, Her Majesty's Government were justified in declining to withdraw from him their protection, at any rate without calling upon him to support his claim.

Further papers as to alleged fraud in obtaining British protection.

That it would be seen, however, that Sir William White entertained grave doubts as to the validity of Stambouli's claim, and had submitted for the further consideration of your Lordship a Memorandum by Mr. Block, the Assistant Dragoman to Her Majesty's Embassy at Constantinople, giving the reasons which convinced him that the protection which had been accorded to the Stambouli family was in the first instance fraudulently obtained.

That the other documents bearing on the case, as well as some papers having reference generally to the treatment of cases of disputed nationality, were inclosed.

That the claims of the Harari family, which were also alluded to in Sir W. White's despatch, would form the subject of a separate reference to us.

That Sir Julian Pauncefote was to request that we would take all the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the additional information contained in Sir W. White's despatch No. 416 and its inclosures, when considered in connection with the evidence already laid before us in the papers which accompanied the reference of the 26th February, 1887, satisfactorily established that Stambouli's recognition as a British subject was originally obtained by fraud, and justified Her Majesty's

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[*] Confidential No. 5597, p. 89.

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Government in withdrawing the protection hitherto granted to himself and his descendants on the assumption that they were British subjects.

No sufficient ground for altering previous Report.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to report—

That the additional papers now submitted to us show no sufficient ground for altering, or adding to, our previous Report.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## UNITED STATES.

### No. 59.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received January* 24.)

(Secret and Very Pressing.)

My Lord, *Royal Courts of Justice, January* 24, 1888.

Import of goods for transit by United States' fishing-boats into Canadian ports.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to us the accompanying decypher of a telegram which had been received from Her Majesty's First Plenipotentiary to the Fisheries Conference now sitting at Washington,* requesting that our opinion might be immediately obtained for his guidance as to whether Article XXIX of the Treaty of Washington of the 8th May, 1871, extended to goods brought into Canadian ports for transit by fishing vessels, and thereby added another to the four purposes [viz., those of (1) shelter; (2) repairing damages; (3) purchasing wood; and (4) obtaining water] for which it was agreed by Article I of the Convention of London of the 20th October, 1818, that American fishermen were entitled to be admitted to enter the bays or harbours of Her Britannic Majesty's dominions in America, not included within the limits prescribed by that Article.

That the document more particularly alluded to in the last paragraph of the decypher, as giving the Canadian argument against the suggestion, was inclosed for reference, together with copies of the Treaty Convention and Confidential Print which specially bore upon the point now in controversy between the British and American Plenipotentiaries.

That a copy of a Report furnished in connection with the same subject by our predecessors in office to the then Secretary of State upon the 5th August, 1886, was also inclosed.

That Sir Julian Pauncefote was to request that we would take the papers† transmitted with his letter into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion on the question.

In obedience to your Lordship's commands, we have the honour to report—

Not added by Treaty of 1871 to purposes for which they may enter those ports.

That we are clearly of opinion that Article XXIX of the Treaty of Washington does not extend to goods brought into Canadian ports for transit by fishing vessels, and does not add another to the four purposes mentioned in Article I of the Convention of 1818. The United States' fishing-boats are entitled to enter those ports for shelter, repairing damages, purchasing wood, and obtaining water, and for no other purpose whatever.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Mr. Chamberlain, No. 1, Telegraphic, January 22, 1888.

† (1) Mr. Chamberlain, No. 1, Telegraphic, January 22, 1888; (2) Convention between Great Britain and the United States of October 20, 1818, Treaty No. 197; (3) Treaty of Washington of May 8, 1871, Treaty No. 529; (4) Her Majesty's Plenipotentiaries to the Fisheries Conference, No. 5, December 4, 1887; (5) Ditto, No. 6, December 8, 1887; (6) Law Officers, August 5, 1886, Confidential No. 5440, p. 84.

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### No. 60.

*The Law Officers of the Crown to Lord Knutsford.*—(*Transmitted in Colonial Office letter of March* 20, *received March* 21, 1888.)

My Lord, *Royal Courts of Justice, March* 14, 1888.

Seizure of British Columbian sealers by United States' cruizers in Behring's Sea.

WE were honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 9th ultimo, stating that in the month of August last the Marquis of Salisbury explained to us the circumstances in which certain British Columbian sealing schooners, named the "Thornton," the "Carolina," and the "Onward," were seized by the United States' Revenue cruizer "Corwin" in Behring's Sea, and the respective masters of those vessels tried, convicted, and sentenced to fine and imprisonment by the United States' Tribunals for killing fur-bearing animals in contravention of United States' Statute Law in waters, as was alleged, within American jurisdiction.

That, having considered the case submitted to us by Lord Salisbury, we reported to his Lordship on the 20th August* last that the seizure of the vessels in question was entirely unwarranted, and that a claim for compensation might properly be made and pressed without further delay.

Revised claims.

That Sir Robert Herbert was now desired by your Lordship to transmit to us copies of despatches from the Governor-General of Canada,† inclosing revised statements of claims against the United States' Government in the case of those vessels. That the claims had been revised in the circumstances shown in the correspondence noted in the margin.

Claims for further seizures.

That Sir R. Herbert was also to inclose copies of three further despatches from the Governor-General of Canada, forwarding claims against the United States' Government in the cases of the vessels "W. P. Sayward," "Grace," "Anna Beck," "Dolphin," "Alfred Adams," and "Ada," seized in the Behring's Sea during the season of 1887 for the alleged offence of illegally capturing seals, and in the case of the schooner "Favourite," which vessel was on the 2nd August, 1886, while sealing in Behring's Sea about 68 miles from land, ordered by the United States' cruizer "Corwin," under threat of seizure, to cease operations and leave the Behring's Sea forthwith.

That a copy of a letter from the Foreign Office, having reference to the claims inclosed in the Governor-General's secret despatches of the 2nd and 23rd December, 1887, and advanced in respect to the vessels "Thornton," "Carolina," and "Onward," was also inclosed, together with a printed copy of our Report of the 20th August, 1887, above referred to, and of the reference, with the accompanying documents, on which that Report was founded.

That Sir R. Herbert was further to inclose a copy of a despatch from the Governor-General of Canada, dated the 19th January, 1888, reporting that orders had been issued for the return to their owners of the vessels "Onward," "Thornton," and "Carolina."

That Sir R. Herbert was to request that we would take the papers transmitted with his letter into our consideration, and inform your Lordship how far, in our opinion, the various claims advanced in respect of the above-mentioned vessels could be properly urged by Her Majesty's Government against the Government of the United States.

In obedience to your Lordship's commands we have the honour to report—

That we have considered the claims which have been presented in respect of the seizure of the vessels "Thornton," "Carolina," and "Onward," and the observations thereon in the letter of Sir Julian Pauncefote of the 21st January, 1888.

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* Confidential No. 5597, p. 97.

† Governor-General of Canada to Secretary of State, No. 9, January 15; Secretary of State to Governor-General, Secret, September 14, 1887

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Opinion on revised claims generally.

We think it desirable to lay down, in the first place, certain considerations which must be borne in mind and applied in dealing with all the claims in question. We observe that the seizure of the vessels took place in the year 1886, during the fishing season. The claims may therefore properly embrace the value of the vessels, their equipment, and the loss of profits by reason of the interruption of the season of the year 1886; but if the claimants ask to be paid the value of their vessels, they cannot also claim the loss of profits during the succeeding seasons. On the other hand, if they make a claim for the profits which would have been earned during the seasons 1887 and 1888, they are not entitled to claim at the same time the full value of the vessels as in the year 1886.

If the claims are to be made on a basis of loss of profit they must be wholly remodelled, and the capital items representing the full value of the ships in 1886 must be omitted, the only claim admissible being one for deterioration in value by reason of the detention and want of repair of the vessels as compared with the estimated deterioration that would have taken place in the usual course of the voyages up to the 5th September, 1887, when it appears that the vessels were actually released.

In order to sustain any claim for estimated loss of profits during 1888, it would have to be shown that it was not reasonably possible to refit and equip vessels only released on the 5th September, 1887, so that they might be used during any part of the season of 1888.

As to items of various claims.

Turning now to the particular claim for each vessel, we find the revised claim of the "Thornton," set out on page 142 of the further correspondence 1887. We see no objection to the items of Exhibit A. making up 14,101 dollars, subject to proper verification of the items and amounts, and the production of vouchers, and to what we say below as to the charge of 7 dollars per skin.

As to the amount of 2,250 dollars claimed under Exhibit C., there is no objection in principle to the claim, assuming that the expenses were incurred directly in consequence of the seizure and are properly vouched.

With regard to the items in Exhibit D., the owners are entitled to some amount in respect of the estimated previous profits of the seal catch of 1886, but we are unable to judge from the accounts, as made out, whether the proper allowance has been made for expenses. The skins are charged in this exhibit, as well as in Exhibits A. and E., at 7 dollars each, but it is quite clear that very considerable expense would have been incurred before the owners of the vessel would have been in a position to realize the value of the skins; and though the objection is to a certain extent met by the Memorandum on page 143, we think the deduction should be made to appear clearly on the face of the claim.

As to Exhibit E., it is clear that some amount of interest may be claimed, but its exact amount must depend on the particular items of the other exhibits as sent in, and this applies to the case of all three vessels.

The particulars of the next claim, that of the "Carolina," appear as revised on page 138 of the further correspondence. To the items making up the sum of 14,101 dollars in Exhibit A. we see no objection, subject to the same reservation as mentioned in the case of the "Thornton," and the same remark applies to 1,500 dollars claimed in Exhibit C.

Exhibit D. will also have to be amended by allowing for the expenses which would have been incurred before the skins could have been actually brought into the market, and we notice that this is not met in the case of the "Carolina," as, to some extent, it is in the case of the other two vessels, by any Memorandum, though the amount is given of some of the expenses in Exhibit F.

Dealing on the same principles with the particulars of the claim in the case of the "Onward," which appear on p. 4 of the further correspondence 1888, we see no objection to Exhibit A., though we notice that the fines imposed on the captain and mate are included, which is not done in the other cases. We think it is an expense which may properly be claimed unless it is included, as we should expect it to be, in Exhibit C.

The other exhibits, which are in identical form with those in the case of the "Carolina," call for no further remarks than those we have already made on that case.

Further seizures unwarranted. Claims should be pressed.

With regard to the vessels "W. P. Sayward," "Grace," "Anna Beck," "Dolphin," "Alfred Adams," and "Ada," seized in the Behring's Sea during the season of 1887, upon the facts before us, these seizures were entirely unwarranted, and the claims for compensation should be pressed.

Claim for interference with the "Favourite" should also be pressed.

In respect of the schooner "Favourite," which was warned to cease operations under threat of seizure, the simple question is whether the threat was intended to be put in force, and whether she *bonâ fide* ceased to fish in consequence.

We have little doubt that both these questions would be answered in her favour, and in her case also a claim should be pressed, though the measure of damages will be different from that in the case of the other vessels, and would, in the absence of special circumstances, be the actual loss occasioned by reason of the interruption of the fishing.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 61.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received May* 8.)

My Lord, *Royal Courts of Justice, May* 7, 1888.

Exemption of British ships from tonnage and light dues.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to a question which had lately been raised as to the right of British ships to claim exemption from the payment of tonnage and lighthouse dues in the ports of the United States under the following circumstances:—

That by a recent American Statute (United States' Act of the 19th June, 1886, chapter 421, section 11 [see United States' Statutes at large, vol. xxiv, p. 79]), the President of the Republic had been granted (amongst other things) power to relieve, from tonnage dues in the United States ships arriving from those ports where United States' ships were relieved from similar dues.

That it would be observed that, under that section, any ship, whether a United States' ship or not, arriving in a United States' port from a foreign port where tonnage dues were levied on United States' ships, would not be entitled to the exemption; and that any ship, whether a United States' ship or not, arriving in a United States' port from a foreign port where tonnage dues were *not* levied on United States' ships, would be entitled to the exemption.

That under the second paragraph of Article II of the Treaty of the 3rd July, 1815 (Hertslet's Commercial Treaties, vol. ii, p. 386), British vessels were entitled to the same treatment as regarded tonnage dues (or dues levied on the ship according to its tonnage) as United States' ships.

That the paragraph in question was as follows:—

"No other or higher duties or charges shall be imposed in any of the ports of the United States on British vessels than those payable in the same ports by vessels of the United States; nor in the ports of any of Her Britannic Majesty's territories in Europe on the vessels of the United States than shall be payable in the same ports on British vessels."

That it would be seen that that Article merely conferred "national treatment" on British vessels in United States' ports; nor did any words appear elsewhere in the Treaty under which it would seem possible to claim most-favoured-nation treatment for British ships in United States' ports.

Reciprocal exemption of German and other ships.

That the President of the United States had from time to time, in the exercise of the powers conferred upon him by the above-mentioned section 11 of the Statute of the 19th June, 1886, exempted from tonnage dues vessels entered in the ports of the United States from various ports where reciprocity in that respect was accorded to United States' vessels.

That a recent Proclamation* (copy of which was inclosed) had so exempted vessels arriving from any of the ports of the German Empire.

That representations had been addressed to Her Majesty's Government, urging that steps should be taken to obtain for ships sailing from British ports the same exemption as was accorded under that Proclamation to ships sailing from German ports.

Grounds for claiming such exemption for British ships.

That it was suggested that to claim the exemption in question without fulfilling the condition laid down in the United States' Statute, viz., the exempting from tonnage dues of the United States' ships in British ports, would, however, not amount

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* See Sir L. West's No. 40, Commercial, February 3, 1888.

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to a claim of most-favoured-nation treatment from the United States for British ships, but would, in effect, be to claim such treatment for British ports.

That there was no clause either in the Convention now under consideration nor, as far as was known, in any other existing Treaty granting most-favoured-nation treatment to ports *nominatim*, but that it seemed scarcely reasonable to conclude from the fact that it was the practice specifically to mention "ports" in Commercial Treaties that the Contracting Parties to such Treaties were to be allowed to differentiate in their treatment of a particular ship according to the port of departure from which she sailed.

That it seemed, on the contrary, rather to have been contemplated that the usual Commercial Treaties stipulating for most-favoured-nation treatment in trade and national treatment in navigation were intended to give to each party in the territories of the other the most favoured position possible.

That if the views above put forward were correct, it would appear necessary to consider whether the system involved by the United States' Statute now under consideration did not render the stipulations of the Treaty between the United States and Great Britain illusory.

That the following extreme case, which was merely suggested hypothetically, seemed to put the possible effect of the system now introduced by the United States' Statute in a clear light.

Assuming that the tonnage dues now levied in the United States on ships entered from British ports were raised to such an extent as would make it practically impossible for such ships to sail to United States' ports, and that tonnage dues ceased to be levied in the United States on ships from any but British ports, owing to the abolition of tonnage dues in all ports other than British and United States' ports, then such raising of the tonnage dues in the United States, and such carrying out in all but British ports of the condition required by the United States' Statutes, would change in degree only, but not in nature, the state of things now existing.

Yet in the case supposed, ships would be practically prohibited from sailing to the United States from British ports, while no such prohibition would operate against the ports of any other country.

That the question naturally arose, whether such practical prohibition could be in harmony with a Treaty, the object of which was to render the "commerce and navigation" between the two countries "reciprocally beneficial and satisfactory."

That it was presumed that if that question were answered affirmatively in the case supposed, it must also be answered affirmatively in the existing case.

That in connection with that aspect of the case, Sir Julian Pauncefote was to transmit to us a despatch from Her Majesty's Minister at Washington (No 101, Commercial, 8th April, 1886), inclosing correspondence respecting the claims made by various Powers to have extended to the ports of their territories the exemption provided for by the United States' Statute, without fulfilling the condition therein laid down.

That it was to be observed, however, that the claims discussed in that correspondence were based, not on national treatment clauses such as that contained in the Treaty between this country and the United States, but on most-favoured-nation clauses or clauses of the same nature.

That with regard to the claim put forward in that correspondence by Germany to have extended to her ports, under the most-favoured-nation clause, the exemption from tonnage dues, Sir Julian Pauncefote was to observe that there was no reason to assume that the claim in question was admitted, because although Germany had obtained the exemption, she was entitled to it apart from Treaty stipulations, by reason of the fact, that no tonnage and light dues were levied in German ports by the German Imperial Government.

That Sir Julian Pauncefote was to request that we would take the above observations and the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

1. Whether Her Majesty's Government was entitled, without carrying out the conditions laid down in the United States' Statute of the 19th June, 1886, chapter 421, to claim, under the Treaty of the 3rd July, 1815, for vessels sailing from British to United States' ports similar exemptions in the latter to those granted under the Presidential Proclamation of the 26th January last to vessels sailing from German to United States' ports, or to similar exemptions to those granted to vessels sailing from any other ports with regard to which similar Presidential Proclamations had been issued under the provisions of the United States' Statute in question.

2. Whether Her Majesty's Government was entitled also, without carrying out the condition laid down in the above-mentioned United States' Statute, to claim, under the Treaty of the 3rd July, 1815, for all British ships arriving in the United States, from whatever port they might proceed, exemptions similar to those granted in the Proclamation of the 26th January last, or any other such Proclamation.

That Sir Julian Pauncefote was to add that the President of the Board of Trade, on whose behalf, as well as on that of your Lordship, our opinion on the above questions was desired, was anxious to be in a position to deal with the matters involved with the least possible delay.

That your Lordship would, therefore, be greatly obliged if we would favour you with our Report on these questions, and with any observations which the case might suggest to us, at the earliest convenient opportunity.

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In obedience to your Lordship's commands, we have the honour to report—

**Cannot claim exemption without reciprocity.**

1. That, in our opinion, Her Majesty's Government is not entitled to make the claims stated in the first question without fulfilling the conditions of the United States' Statute.

**Entitled to fulfilment of Treaty of 1815.**

2. Notwithstanding the condition contained in that Statute, Her Majesty's Government is entitled to claim the fulfilment of the Treaty of 1815, which applies to all British ships from whatever port they may proceed.

This right is entirely independent of any Proclamations under the United States' Statutes of 1884 and 1886.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

Treaty United States and Great Britain, July 3, 1815. Hertslet, vol. ii, p. 386. (Not sent.)
United States' Statute, June 26, 1884, chap. 121. United States' Statutes at large, vol. xxiii, p. 53.
United States' Statute, June 19, 1886, chap. 421. United States' Statutes at large, vol. xxiv, p. 79.
Sir L. West, No. 101, Commercial, April 8, 1886.
Sir L. West, No. 40, Commercial, February 3, 1888.

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## No. 62.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 18.)*

My Lord, *Royal Courts of Justice, July* 17, 1888.

**Seizure of British sealers in the Behring's Sea for breach of United States' fishery laws.**

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, in connection with a telegram which had recently been received at the Admiralty from the Rear-Admiral Commanding-in-chief on the Pacific Station, to the effect that four British sealing-schooners, which were captured on the high seas by American Revenue cruizers for alleged violations of the United States' seal fishery laws in July of last year, were about to be removed by the American authorities from Sitka Island, in the United States' Territory of Alaska, to Port Townshend, in the United States' Territory of Washington.

That the circumstances attending the seizure of those and other British Columbian sealing-vessels in the Behring's Sea, and the grounds on which the United States' Government appeared inclined to justify such seizure, formed the subject of a reference to and Report by us on the 20th August of last year.

That in order to reach Port Townshend it would be necessary for the vessels now in question to pass through the Strait of Juan de Fuca, which separated Vancouver's Island from the opposite United States' Territory of Washington.

That the Strait was, as would be seen from the accompanying chart, which was annexed for convenience of reference, of no great width, and that it was thought probable that the vessels might, in their passage through it, pass within the delimiting line of the British territorial waters.

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Right to enforce release when in British waters.

That, although it was conceived that, *as a matter of strict right*, Her Majesty's Government would be justified in ordering the release, by force, of British vessels which were being escorted through British waters in the custody of foreign cruizers, whether the original capture of such cruizers had been rightful or not, it was not desired, on the present occasion, to take such a course.

Question as to violation of territory justifying a demand for their release.

But that the further question arose (upon which, as well as upon the view expressed above, your Lordship would be glad to be favoured with our opinion) as to whether, in the event of those vessels re-entering British waters while in the custody of United States' officials, or under the escort of United States' cruizers, a violation of British territory and jurisdiction would not take place sufficient to justify a demand, on the part of Her Majesty's Government, for the subsequent restoration of the vessels, and that independently of any question as to whether their capture had, in the first instance, been rightful or not.

Case of Peter Martin.

That Sir Julian Pauncefote was to mention, as bearing upon that question, the case which occurred in 1877 of Peter Martin, an American citizen, who, while under a sentence of imprisonment for an offence against the laws of British Columbia, was, in the course of his conveyance in custody from Laketown to Victoria, taken through United States' territory by the Colonial officials. That his release was thereupon demanded by the United States' Government and conceded by that of Her Majesty. That that case formed the subject of a Report by the then Law Officers, which was inclosed for reference, and of which paragraphs 3–7 seemed specially applicable to the matters at present under consideration.

That Sir Julian Pauncefote was to request that we would take the papers into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in his letter, and with any general observations which we might have to offer on the case.

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In obedience to your Lordship's commands we have the honour to report—

Right to enforce release of sealers when in British waters.

That, in our opinion, as a matter of strict right, Her Majesty's Government would be justified in ordering the release, by force, of British vessels which were being escorted through British waters in the custody of foreign cruizers, whether the original capture by such cruizers were rightful or not.

The passage of captured sealers through British waters justifies a demand for their release.

The conveyance of these captured British vessels, by the United States' officials or cruizers, through British waters, would undoubtedly constitute a violation of the sovereignty of Great Britain, and would justify a demand for the subsequent restoration of the vessels. Whether their capture was, in the first instance, rightful or not is quite immaterial.

Agree with previous Law Officers.

We concur in the opinions of the Law Officers, dated 2nd October, 1876, and 2nd June, 1877, to which your Lordship has been good enough to call our attention.

Matter a question of policy.

We think it right to add that it is, of course, a grave question of policy whether the legal right should be asserted in this case.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

1. Admiralty, June 10, 1888.
2. Law Officers, August 20, 1887. Confidential No. 5597, p. 97.
3. Ditto, October 2, 1876, No. 106. Confidential No. 4028, p. 75.
4. To Admiralty, June 11, 1888.
5. Chart.
6. Law Officers, June 2, 1877. Confidential No. 4216, p. 97.

## No. 63.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received October 29.)*

*Law Officers' Department, Royal Courts of Justice,*
*October* 27, 1888.

My Lord,

Detention of the steam-ship "Tiverton," and arrest of the master.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us the correspondence, noted in the margin,* which had passed between the Foreign Office, the Board of Trade, and the North of England Protecting and Indemnity Association, with reference to the arrest of the master of the British screw-steamer "Tiverton," and the temporary detention of that vessel at Brunswick, United States of America, in the month of April last.

That it appeared that the stevedore who was employed by the charterers for the purpose of loading the "Tiverton" had obtained from the Courts of Georgia State (in which the port of Brunswick is situated) a writ of attachment against the cargo of that vessel in respect of his charges, payment of which had been previously demanded and refused.

That the master having announced his intention to put to sea, the officials of the Court proceeded on board for the purpose of executing the writ, and that the master, having refused to allow them to do so, was arrested on the charge of obstructing a United States' officer in the service of a legal process.

That the charge was heard upon the following day, when there being, in the judgment of the Court, no sufficient evidence of forcible obstruction to sustain it, the master was discharged.

Ship released on bail.

That the ship, however, appeared to have been detained a short time longer until bail was given to meet the stevedore's claim, when she was permitted to proceed upon her voyage.

Diplomatic intervention refused.

That the intervention of Her Majesty's Government on behalf of the master and owners of the "Tiverton" was subsequently invoked by the North of England Protecting and Indemnity Association, but that as the owners had not at present exhausted the legal remedies open to them in the Courts of the State of Georgia, and that as it had not been shown that the proceedings complained of were in any respect contrary to the law in force in that State, or amounted in themselves to a patent denial of justice, Her Majesty's Government had hitherto felt themselves unable to accede to the request.

Proposed letter to Board of Trade.

That in those circumstances your Lordship was disposed to suggest to the Board of Trade that a further letter in the terms of the inclosed draft should be addressed to the Association in answer to their last communication; but that before doing so your Lordship would be glad if we would take the correspondence transmitted with Sir Philip Currie's letter into our consideration, and favour you with our opinion as to whether the terms of the draft were right and proper.

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In obedience to your Lordship's commands we have the honour to report—

Approve reply refusing to intervene except in case of denial of justice.

That, in our opinion, the terms of the draft submitted to us are right and proper.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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### Annex.

*Draft of Letter to Board of Trade.*

*Foreign Office, November* , 1888.

Sir,

I AM directed by the Marquis of Salisbury to acknowledge the receipt of the Board of Trade letters of the 14th and 18th September, forwarding further communications from the North of England Protecting and Indemnity Association, relating to the

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* Consul Cridland, No. 11, June 26, and inclosures; Board of Trade, August 21, and inclosures; to Board of Trade, September 5; Board of Trade, September 14, and inclosures; ditto, September 18, 1888, and inclosures; proposed reply to Board of Trade.

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circumstances arising out of the seizure of the steam-ship "Tiverton" at Brunswick, United States of America, and asking what answer should be returned thereto.

In reply, I am to state that, in the opinion of Lord Salisbury, the Association should be informed that, until the contrary is proved, the law of Georgia must be assumed to be as set forth in the inclosed despatch from Mr. Cridland, Her Majesty's Consul at Charleston,[*] and as actually put in force by the local Tribunal.

If there has been any illegality or irregularity, the remedy of the parties aggrieved is by appeal to the Tribunals of Georgia, and it is only in case of a patent denial or delay of justice that diplomatic interference could properly be resorted to.

I am to return herewith the original inclosures which accompanied the Board of Trade letters of the 14th and 18th September.

I am, &c.

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### No. 64.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received November* 30.)

*Royal Courts of Justice, November* 28, 1888.

My Lord,

Seizure of British seal-schooners in Behring's Sea.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us the inclosed Report, dated the 7th July last, of a Committee of the Canadian Privy Council upon the present position of the cases of the Canadian sealing-schooners which had been seized from time to time by the United States' authorities in Behring's Sea.

That other papers and correspondence bearing on the same subject were also inclosed,[†] and amongst them Sir Julian Pauncefote was to direct our more particular attention to the following documents:—

1. Colonial Office letter of the 20th October, and Memorandum thereon, dated the 23rd October, by the Honourable F. Bertie, of the Foreign Office;
2. The Report on the question with which we favoured your Lordship on the 20th August of last year, Confidential No. 5597, p. 97; and
3. The instructions, based on that Report, which were subsequently forwarded to Her Majesty's Minister at Washington. (To Sir L. West, 10th September, 1887.)

That the contents of that despatch were duly communicated by Her Majesty's Minister to the United States' Government on the 23rd September, 1887 (see Sir L. West's No. 272 of the 23rd September, 1887).

That it was not, however, considered by Her Majesty's Government expedient during the pendency of the Fisheries Conference at Washington, which began its sittings shortly afterwards, to press the question more urgently upon the attention of the Government of the United States, and that in fact no detailed reply to those representations had as yet been received from them.

That it was considered, moreover, that it would be impolitic to take any further action in the matter until the Presidential and general elections, which were then imminent, in the United States, were concluded, but that it would thereafter become necessary to decide what further representations (if any) should be made.

Question as to resort to diplomatic redress.

That it was suggested in the Minute of the Dominion Privy Council that the owners of the vessels seized should not be compelled to appeal to the Supreme Court of the United States against the decisions of the State Tribunals, but that diplomatic redress should alone and at once be resorted to.

Jurisdiction of United States' Courts.

That it was, moreover, pointed out that some doubts existed as to whether such appeals would lie, and that the giving of bonds to secure the release of the vessels might involve an admission of the jurisdiction of the Courts of the United States in the matter, while it was of course contended that, inasmuch as the seizures in question took place upon the high seas, those Courts could have no such jurisdiction.

That it was thought possible that if those appeals were not prosecuted to the final Tribunals, the United States' Government might attempt to put forward the contention, that the owners had a legal remedy in those Courts which they neglected to seek, and that they had thus forfeited their right to diplomatic intervention.

That, on the other hand, it was conceived that the position which Her Majesty's

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[*] Consul Cridland, No. 11, Consular, June 26, 1888.

[†] Confidential Print, 1886, No. 5438; 1887, No. 5559; 1888, No. .

Government could properly take up with respect to such a contention would be that they, as a Government, were not concerned with, nor bound by, the steps either taken, or neglected to be taken, by the owners as private individuals; but that, as a Government, they were entitled to demand, and did demand, reparation for the violation of their flag upon the high seas, which was an international claim, and as such, only capable of vindication and adjustment through diplomatic channels.

That Sir Julian Pauncefote was to request that we would take the Minute of the Canadian Privy Council of the 7th July into our consideration, together with the other papers transmitted with his letter, and that we would favour your Lordship with our opinion upon the various points raised therein, and with any general observations which we might have to offer upon the present position of, and method of dealing with, those claims.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to report—

As to deferring discussion till after settlement of appeal.

That it could not be successfully contended by the United States of America that the communications which have passed between the Governments of Great Britain and the United States constitute an agreement that the discussion of the question of international right should be held over until after the decision of the Appellate Court in the United States upon the points raised in the proceedings there; but, assuming such an agreement to exist, we are of opinion that no claim should at present be made by Her Majesty's Government, except that the proceedings in the Appellate Court should be expedited by the United States' Government as far as possible. We are of opinion that the giving of bonds in this Appeal would not involve any admission of the jurisdiction of the United States' Courts, as the bonds merely represent the vessels which were, in fact, under arrest; but it would be advisable, in any communication on the subject to the United States' Government, to make it quite clear that Great Britain does not admit that any justification can possibly be found for the seizure of these vessels upon the high seas, and that the claim for compensation on that ground will be maintained, whatever may be the decision of the Appellate Court. We see no reason to modify our opinion upon this point given on the 20th August, 1887.

Giving of bonds not an admission of jurisdiction.

Should make it clear that claim will be pressed in any event.

If politic, claim may now be pressed.

Unless, from considerations of policy, it be thought desirable to postpone urging the claim of the owners of the vessels upon the United States' Government until after the determination of the appeal, we are of opinion that the claim for compensation may now properly be pressed.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## VENEZUELA.

### No. 65.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 27.)

*Royal Courts of Justice, March* 26, 1888.

My Lord,

Foreign Enlistment Act. As to position of Venezuela with regard to.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office[*] (together with the papers noted in the accompanying list), in which the question was raised whether the Republic of Venezuela was, under present circumstances, to be considered by Her Majesty's Government a "friendly State" within the meaning of "The Foreign Enlistment Act, 1870" (33 & 34 Vict., cap. 90).

Suspension of relations.

That in February of last year the Venezuelan Government suspended relations with that of Her Majesty in connection with the controversy then proceeding between

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[*] Colonial Office, March 16, 1888.

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the two Governments as to the boundary between the Colony of British Guiana and Venezuela.

That the British Minister shortly afterwards left Carácas and returned to this country.

That diplomatic relations between the two Governments had not yet been renewed, nor had the immediate prospect of a renewal been improved by the vigorous action which Her Majesty's Government lately found it necessary to take in order to vindicate the claims of the owners of the vessels "Henrietta" and "Josephine."

That it was thought to be not impossible that persons who were hostile to the present Government of Venezuela might attempt to utilize Her Majesty's possessions in the West Indies, and more especially the Island of Trinidad, for purposes which might, were normal diplomatic relations existing between Venezuela and this country, amount to an infraction of the provisions of the Foreign Enlistment Act; and that the question arose whether a State, which had of its own motion suspended friendly relations with Her Majesty's Government, and had maintained during such suspension the attitude and language adopted during the last twelve months by the Venezuelan Government to that of the Queen, was still to be considered a "friendly State" within the meaning of that enactment, and as such entitled to the benefit of the provisions of that Act to the same extent as though friendly diplomatic relations were still subsisting between the two Governments.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the question submitted in that letter, and with any general observations which we might have to offer on the case.

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In obedience to your Lordship's commands we have the honour to report—

Venezuela a "friendly State."

That, in our opinion, Venezuela is a "friendly State," that is to say, "a foreign State at peace with Her Majesty," within the meaning of "The Foreign Enlistment Act, 1870."

Act can be enforced.

It is therefore competent to Her Majesty's Government to enforce the provisions of that Act against persons who engage in hostile expeditions directed against that country.

Danger of infringing Act.

We have only to add that, having regard to existing circumstances, it might involve this country in further complication if any serious attempt to infringe the provisions of the Foreign Enlistment Act were overlooked or disregarded.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

1. Colonial Office, August 12, 1887.
2. To Colonial Office, August 18, 1887.
3. Parliamentary Paper, "Venezuela No. 1 (1888)." Foreign Office No. 3177.
4. Foreign Enlistment Act, 33 & 34 Vict., cap. 90.
5. Mr. St. John, No. 9, February 7, 1887. Confidential No. 5576, p. 66.
6. To Sir E. Malet, No. 93, February 28, 1887. Confidential No. 5576, p. 69.
7. Sir E. Malet, No. 75, March 1, 1887. Confidential No. 5576, p. 69.
8. Mr. St. John, No. 13, February 11, 1887.
9. To Colonial Office, March 8, 1887. Confidential No. 5576, p. 72.
10. To Sir E. Malet, No. 111, March 9, 1887. Confidential No. 5576, p. 78.
11. To Admiralty, March 9, 1887. Confidential No. 5576, p. 79.
12. To Mr. St. John, No. 2, Telegraphic, March 9, 1887. Confidential No. 5576, p. 72.
Colonial Office, March 16, 1888.

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# ZANZIBAR.

## No. 66.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received December 8.)*

*Royal Courts of Justice, December* 8, 1888.

My Lord,

Consular jurisdiction in Zanzibar. Proposed Order in Council.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us the accompanying draft of an Order in Council, which had been prepared by Mr. R. S. Wright, for the purpose of empowering Her Majesty's Agent and Consul-General at Zanzibar to make, with reference to British subjects and British-protected persons there, "Regulations for peace, order, and good government, and for enforcing the observance of any Treaty or Convention to which Her Majesty may be a party, and for enforcing the observance of any local Law or Decree, for the time being in force, made by or under the authority of the Sultan of Zanzibar."

That, by the Siamese Order in Council of the 28th July, 1856, section 1, and by the China and Japan Order in Council of the 9th March, 1865, Part VII, section 84 (of which copies were inclosed), power was given to Her Majesty's Representative to make Regulations for peace, order, and good government, and for enforcing the observance of Treaties; and that, under that general power, the observance of certain local Laws of general application had been imposed on British subjects in China (as regarded the sale of munitions of war), in Japan (as regarded pilotage and quarantine), and in Siam (as regarded the sale of opium).

That we should perceive that in the present draft the terms of the general power had been amplified so as to give express authority for the above purpose.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, at our earliest convenience, and that we would favour your Lordship with our opinion as to whether the proposed Order in Council might properly be laid before the Queen in Council for Her Majesty's gracious approval.

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We have taken the matter into consideration, and, in obedience to your Lordship's commands, have the honour to report—

Approve proposed Order.

That, in our opinion, the proposed Order in Council may properly be laid before the Queen in Council for Her Majesty's gracious approval.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

Sir J. Pauncefote to Mr. Wright, December 1, 1888, with Inclosures.
Law Officers, December 17, 1885. Confidential No. 5246, p. 153.
Mr. Wright to Sir J. Pauncefote, December 3, 1888.
Siamese Order in Council, July 28, 1856. Confidential No. 575.
China and Japan Order in Council, March 9, 1865. Confidential No. 1354.
For Order in Council as issued see Confidential No. 5700*.

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## No. 67.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received December 8.)*

*Royal Courts of Justice, December* 8, 1888.

My Lord,

Zanzibar (Prize Court) proposed Order in Council.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us the accompanying draft of "The Zanzibar (Prize Court) Order in Council, 1888," which had been prepared by Mr. R. S. Wright on instructions sent to him by the Treasury at the instance of your Lordship.

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That the object and scope of the Order in Council would be found shortly explained in the Foreign Office Memorandum of the 30th November, and in Mr. Wright's letter of the 1st December.

That Sir Julian Pauncefote was to request that we would take the draft Order in Council into our consideration, and that we would favour your Lordship with our opinion as to whether it might properly be laid before the Queen in Council for Her Majesty's gracious approval.

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In obedience to your Lordship's commands we have the honour to report—

Approve proposed Order. That in our opinion the draft Order in Council may properly be laid before the Queen in Council for Her Majesty's gracious approval.

We have, &c.
(Signed) **RICHARD E. WEBSTER.**
**EDWARD CLARKE.**

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*List of Papers.*

Memorandum of November 19 on Count Hatzfeldt's Memorandum of November 14, 1888.
Memorandum, November 30, 1888.
Colonel Euan-Smith, received November 30, 1888.
Mr. Wright, December 1, 1888.
Zanzibar Order in Council, November 29, 1884. Confidential No. 5029*.
Parliamentary Paper, No. 10, Africa, 1888, Foreign Office, No. 3255.
For Order in Council as issued see Confidential No. 5708*.

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*Printed for the use of the Foreign Office. May* 1890.

CONFIDENTIAL.

(5956.)

# REPORTS

BY THE

# LAW OFFICERS OF THE CROWN, &c.

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*Printed for the use of the Foreign Office. May* 1890.

**CONFIDENTIAL.**

# REPORTS BY THE LAW OFFICERS OF THE CROWN: 1889.

## AFRICA.

### No. 1 A.

[Colonial Office.]

*The Law Officers of the Crown to Lord Knutsford.*

[*Transmitted to the Foreign Office by the Colonial Office in their Letter of February* 2, 1889.*]

*Royal Courts of Justice, January* 31, 1889.

My Lord,

Proposed South African Customs Union.

WE were honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to us, for our opinion and advice, the inclosed copies of a Bill passed by the Legislature of the Cape of Good Hope for the purpose of so altering the Customs Tariff of the Colony as to enable it to enter a proposed South African Customs Union.

Local Acts.

That Sir Robert Herbert was to inclose copies of certain correspondence which had taken place since the receipt of the Bill in this country between the Colonial Office, the Foreign Office, and the Governor, together with copies of local Acts, Foreign Office Memoranda, and of a Parliamentary Paper referred to in, or bearing upon, the correspondence.

New Act sanctioned, but not promulgated.

That the Bill, which was reserved by the Governor for the signification of Her Majesty's pleasure, had, as we should gather from the correspondence, been since assented to by Her Majesty in Council; but that the Governor had been directed not to issue the Proclamation necessary under section 1 to bring it into force, pending the receipt of assurances from the Colony that it would be so amended as to avoid giving ground of complaint to those foreign countries which, by Treaty, enjoyed most-favoured-nation rights in the Cape of Good Hope.

That, for the purposes of the present case, it might be taken that the Act, in so far as it favoured the commerce of Natal, or any other British possession in South Africa, need not be regarded as contravening the most favoured-nation rights of foreign countries. That the opinion of the Law Officers of the Crown of the 14th January, 1882,† appeared to bear out that view.

Distinction between land and sea commerce.

That it would also appear from the correspondence that a distinction might be drawn by the Cape Colony (as it was by many foreign countries, notwithstanding their being bound by most-favoured-nation Treaties) between favours conferred on commerce by land and favours conferred on commerce by sea, and that it was only in so far as the Cape Act conferred favours on the commerce of foreign countries (being members of

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* See also further Report of the Law Officers to the Colonial Office of March 14, 1889: Africa, No. 2 A, p. 6.

† See Confidential 4783, No. 30, p. 42.

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the Customs Union) brought to the Cape Colony by sea that the new Cape Law was open to objection from a diplomatic point of view.

Draft despatch to Cape Colony.

That Sir Robert Herbert was to direct our special attention to the draft despatch to the Governor of the Cape which formed an inclosure to the Colonial Office letter to the Foreign Office of the 27th December, and to submit for our consideration the following questions:—

1. Whether that despatch correctly indicated the objections to the Customs Union Act in its present form, and the points in which it was at variance with the rights, under most-favoured-nation clauses, to which some foreign countries were entitled in the Cape Colony; and

2. Whether the amendments to the Act proposed in that despatch, and shown in the annexed copy of that Act marked (A), would remove the objections above referred to; whether they were proper and sufficient, and, if not, Sir Robert Herbert was to request that we would be good enough to suggest such other and further amendments as would be sufficient for the object in view.

We have taken the matter into our consideration, and in obedience to your Lordship's commands have the honour to

*Report—*

Draft correct as to objections to Act, and m.-f.-n. clauses.

That, in our opinion, the draft despatch does correctly indicate the objections to the Customs Union Act in its present form, and the points in which its provisions might conflict with the rights of other nations under the most-favoured-nation clauses of Treaties.

Objections to Act not removed.

2. We are of opinion that the amendments of the Act shown in the copy marked (A), and referred to in the passage inclosed in red ink brackets on p. 21 of the draft despatch, would not remove the objections referred to.

Cannot distinguish between land and sea trade;

We think the distinction between goods imported by land and goods imported by sea cannot be supported, and we agree in the views expressed by Sir Edward Hertslet in his Memorandum of the 10th August, 1880.

except as to local produce.

In our judgment, as a general principle, the only case in which such a distinction can be justified is in the case of Frontier Regulations between two States having a common boundary, respecting the interchange of local produce.

Difficulty as to Treaties.

Assuming our view to be correct, we need only call attention to the most-favoured-nation clause in the German Treaty of the 30th May, 1865 (see p. 16 of Parliamentary Paper C.—3735), as one, among others, upon which difficulty might well arise.

Effect of Act.

The Acts 20 of 1870, 22 of 1884, and 16 of 1887, must, we assume, be accepted as existing legislation; but we must note that it is exceedingly difficult to say what the effect of section 2 of the Act No. 39 of 1888 upon those Acts is; in our opinion, however, the principle of the provisions to which attention has been called should not be extended.

Paragraphs to be omitted.

The paragraphs in schedule (B) numbered in red 1, 2, 3, 4, and the note numbered 5, and the series of asterisks to which the note refers, should be struck out.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## Annex.

### *Draft of Despatch to Governor Sir H. Robinson.*

Sir,

*Downing Street, January* , 1889.

HER Majesty's Government have given most careful consideration to the Reserved Bill for enabling the Cape Colony to join in a South African Customs Union, which was inclosed in your despatch No. 140 of the 19th September.

I need not recapitulate the telegraphic correspondence which has since passed, and I therefore proceed to inform you of the nature of the difficulty which has been experienced in dealing with the request of your Ministers that the Reserved Bill should be at once and unconditionally sanctioned by Her Majesty.

In my despatch No. 45 of the 26th June last it was intimated that a serious question might arise as to whether the terms of the proposed Customs Union, in so far as they include the Orange Free State, or any other independent State, might not be

held to be at variance with certain of the Commercial Treaties between this country and foreign States whereby such States have become entitled to most-favoured-nation treatment in the Cape Colony.

This question has again been fully considered with reference to the provisions of the Reserved Bill. Much diplomatic and other correspondence has at various times taken place upon this subject, and the examination of this correspondence has necessarily occupied considerable time.

A reference to the existing Commercial Treaties showed that, besides five cases where the text was of doubtful construction (viz., Belgium, Denmark, Persia, Portugal, and Sweden and Norway), fifteen countries enjoy most-favoured-nation rights in respect to imports into the Cape Colony. A Schedule of the Treaties referred to is appended to this despatch.

The Cape Trading and Customs Returns for 1887 showed that five of these countries had in that year carried on direct trade with the Cape Colony, viz.:—

| Country. | Trade. |
|---|---|
| | £ |
| Argentine Republic .. .. .. | 1,031 |
| Chile .. .. .. .. .. | 179 |
| Germany .. .. .. | 67,561 |
| Spanish Colonies .. .. .. | 4,438 |
| Turkey .. .. .. .. | 33 |

On reviewing the existing Customs legislation of the Cape Colony, as contained in the Acts noted in the margin,* it was perceived that the principle of granting specially favourable treatment to imports from the inland border States and to certain kinds of South African produce was not new, and had not been objected to.

The difficulties in respect of such legislation which have now been brought under the notice of Her Majesty's Government did not then probably come directly under consideration, but however that may be, it is now clearly held that a like acquiescence cannot be given to such legislation at the present time; and I may point out that the measure now under consideration presents some new features.

The privileges conferred by the Reserved Act are of two kinds: (1) there are those granted to the produce of all South Africa; and (2) those which are granted to the produce and manufactures of States and Colonies which are members of the Customs Union.

Since 1870 the following articles, the produce of South Africa, have been exempted from import duty, viz., feathers, fish, green fruit, hides, horns, ivory, fish-oil, ore, and skins. These exemptions, with the exception of that on fish-oil and ore, are continued by Schedule (B) of the present measure, and to the exceptions already existing are added:—

(α.) "All raw produce of South Africa."
(β.) Angora hair the produce of South Africa.
(γ.) Tobacco the produce of South Africa.

Green fruit is put on the general free list.

The exemptions in the Act of 1870, however little defensible in principle, having regard to Treaty obligations, were perhaps in fact at the time confined to objects of purely local trade; but a general exemption of tobacco grown anywhere in "South Africa," however that term may be defined, and however the tobacco may be imported, might obviously be a cause of grievance to any State which is entitled to most-favoured-nation treatment, but the subjects of which continue to be liable to pay duty on the tobacco which they may import into the Cape Colony.

I pass on to the favours granted to States and Colonies who become members of the Customs Union.

As regards British Colonies, I may say at once that Her Majesty's Government desire to raise no question. As at present advised, they are of opinion that favours granted by one British Colony to another are not a violation of a most-favoured-nation clause of the ordinary kind, although there may be particular cases where a foreign country is specifically entitled by Treaty to the same treatment as British Colonies. The question, therefore, need only now be considered so far as concerns foreign States members of the Customs Union.

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* Act 20 of 1870; Act 22 of 1884; Act 16 of 1887.

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I may premise that Her Majesty's Government are fully aware that the Orange Free State is not a manufacturing country, nor likely to become one; that it exports but few articles to the Cape Colony for consumption of a value which is to be measured, perhaps, in at most hundreds of pounds sterling; and that the same observations apply in a general way to the South African Republic, which might possibly one day become a member of the Customs Union. Moreover, such trade as there is, or may be, from the Orange Free State to the Cape Colony must be overland trade. But these considerations, as Her Majesty's Government are advised, are not material in considering any claim which might be raised by a foreign country to treatment in the Cape Colony equally favourable to that accorded to the Orange Free State or other South African State, a member of the Union. The question in assessing the duty, say, on a consignment of German jewellery imported at Cape Town would not be whether the jewellery is, in fact, manufactured in the Orange Free State and imported into the Cape Colony, but whether, if it were so imported, it would be free of duty; and there can be no doubt that, under the terms of the Reserved Bill, it would be admitted free, whether it came by land or by sea.

It has been suggested that the favours conferred on the foreign States members of the Union, being conditional, could only be claimed by other foreign States (even although possessing most-favoured-nation rights) on condition of entering the Union. But Her Majesty's Government are unable to accept this suggestion, because many Commercial Treaties contain, besides the ordinary most-favoured-nation clause, a provision that each party will grant unconditionally to the other any favour that it confers upon a third Power. [*The solution of the difficulty which occurs to Her Majesty's Government as most simple and feasible is to restrict the operation of the Act to importations overland.*] If this were done, there would appear to be no practical difficulty in placing all most favoured nations on precisely the same footing as the members of the Union, if they or any of them should claim to be so treated.

The precise form which the amendment of the Act for this object should take will be considered without delay.

I have already intimated to you that, without the assurance of some legislation in this sense, Her Majesty's Government could not authorize you to issue the Proclamation which is necessary to bring the new legislation into force.

It has been suggested that one mode of dealing with the difficulty would be to confirm the Act and bring it into operation, leaving it open to any foreign nation entitled to most-favoured-nation treatment to raise its claim, should it desire to do so, to be placed on the same footing as is secured by the Act to any foreign South African State.

It may, however, be reasonably apprehended that, if one such foreign State were to apply for and receive that privilege, others would raise a similar claim.

This in itself would occasion a great loss to the Cape revenue; but it must further be remembered that, if a like concession were not made to British traders, they would be placed at an intolerable disadvantage as compared with foreign traders, while, if such concession were made to them, the revenue of the Cape Colony would be in great part extinguished.

For these reasons, Her Majesty's Government do not think it possible to look in that direction for a solution of the difficulty, and they are consequently of opinion, as I have stated, that it will be necessary to limit the arrangement to goods imported by land.

I have, &c.

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## No. 1.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 7.)*

**Sentence on G. A. Reece for wounding natives.**

My Lord,

*Royal Courts of Justice, March* 6, 1889.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* with reference to the Petition of Mr. G. A. Reece to Her Majesty in Council for special leave to appeal against a sentence passed upon him in Her Majesty's Consular Court at Benin in March of last year.

**Petition for leave to appeal.**

That the Petition came on for hearing before the Judicial Committee of the Privy Council in January last, and that, in the result, Mr. Reece had been granted leave to appeal against the sentence of the Consular Court upon depositing the sum of 300*l*. as security for costs.

**Former opinion opposed to granting such leave.**

That the circumstances of the case formed the subject of, and were briefly stated in, the reference to us of the 8th August last year, when a copy of the Petition, which Mr. Reece's solicitors in this country had inclosed to the Secretary of State, and had stated that they were about to present to Her Majesty in Council on his behalf, was forwarded to us, and we were requested to report whether, in our opinion, any grounds existed for ordering the sentence in question to be submitted for review to the Chief Justice of the West African Settlements under sections 14 and 29 of the West Africa Order, 1885.

That on that occasion we reported that there was, in our opinion, no sufficient ground for ordering such a review of the sentence, and that Messrs. Cooper and Bake were accordingly so informed.

**Further grounds put forward for first time.**

That it would be observed, however, on comparing the copy of the Petition as lodged at the Privy Council Registry on the 15th January last with that inclosed to the Secretary of State by Messrs. Cooper and Bake in their letter received by him on the 23rd July, 1888, and forwarded to us on the 8th August following, that the grounds of appeal mentioned in paragraphs 14 and 15 of the former document were then brought forward for the first time.

**Deportation when permissible.**

That, although Mr. Reece was represented at the trial by two native counsel of experience, the point that the Consul had no power under the provisions of the Order in Council (Article 15, Sub-Article (i)) to pass a sentence of deportation, except default in finding proper security for his future good behaviour had previously been made by Mr. Reece, was not taken, nor was it until a few days before the hearing of that gentleman's Petition of Appeal before the Privy Council that your Lordship was made aware, and not even then by Mr. Reece or his legal advisers, of the existence of the particular state of facts upon which the Judicial Committee, as was believed, exclusively based their judgment.

That had the considerations which had induced the Judicial Committee to recommend the grant of Mr. Reece's Petition been properly laid before your Lordship in July last by Messrs. Cooper and Bake, you would have been disposed, subject to our advice and approval, to exercise the power vested in your Lordship by the first paragraph of section 14 of the West Africa Order, 1885, and to remit that portion of the sentence passed on Mr. Reece which ordered his deportation.

**Illegality of Consul's sentence of deportation.**

That your Lordship was inclined to think that, although the recommendation of the Judicial Committee that Mr. Reece's Petition should be granted was couched in very general language, and was not in terms made on any one specific ground, it might, nevertheless, safely be assumed that any opinion they might have formed as to the probable illegality of the Consul's order was based upon the grounds indicated in paragraphs 14 and 15 of the Petition before them, and was confined to that portion of the sentence dealt with in those paragraphs by which the punishment of deportation was prescribed.

**Propose to remit sentence.**

That if we should agree in that view, your Lordship would propose to treat the earlier portion of the sentence as not open to impeachment, but that, having regard to all the circumstances of the case, and especially to the probable issue of the appeal—should it be prosecuted—which was now pending before the Judicial Committee, your Lordship would also propose, should we see no objection, forthwith to remit the sentence of deportation, and, in so doing, to call the attention of Mr. Reece to the fact that it was due to his own remissness in not bringing the real facts of the case to the attention of your Lordship in the first instance that your Lordship was not in a position to take that course at an earlier date.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions raised therein, and with any general observations which we might have to offer on the present aspect of the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

**Sentence should be remitted.**

That if, as is now stated for the first time in paragraph 15 of the Petition of the 15th January, 1889, the petitioner was not ordered to give security for good

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* West Africa Order, 1885 (Confidential 5094*); Law Officers' Report (Confidential 5785, No. 9), August 14, 1889; Consul Johnston, No. 11, March 9; Messrs. Cooper and Bake, July 1888, and Inclosure (A); copy Petition (B); copy Petition (C), lodged at Privy Council, January 15; Privy Council to Foreign Office, January 17; Foreign Office to Treasury, January 18; Treasury to Foreign Office, January 26; Privy Council to Foreign Office, January 28; Privy Council to Foreign Office, February 7, and Inclosure (D); Mr. Wright to Mr. Davidson, January 23, 1889.

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behaviour prior to the sentence of deportation, the course proposed should be adopted, that is to say, the sentence of deportation remitted, and the attention of Mr. Reece and his solicitors called to the fact that, though most specific allegations were made in the Petition forwarded by Messrs. Cooper and Bake to the Secretary of State in July 1888 raising other objections, the point now taken in the Petition of the 15th January, 1889, was never suggested, nor the fact that the petitioner had not been ordered to give security for good behaviour mentioned.

Should ascertain truth of allegation.

It might be as well to ascertain from Consul Johnston that the allegation in paragraph 15 of the Petition is true.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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**[Colonial Office.]**

## No. 2 A.

*The Law Officers of the Crown to Colonial Office.**

[*Transmitted to the Foreign Office by the Colonial Office in their letter of March* 25.]

My Lord, *Royal Courts of Justice, March* 14, 1889.

Proposed South African Customs Union.

WE were honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 26th ultimo, stating that he was directed by your Lordship to acknowledge the receipt of our Report of the 31st January on the Cape Act for giving effect to the proposed South African Customs Union.

Further papers as to effect of m.-f.-n. clause with regard to.

That since our Report was received the Board of Trade had been consulted on the subject, and that Sir Robert Herbert was to inclose a copy of a Confidential Memorandum drawn up in that Department setting forth the reasons (which were not brought before us when our opinion was previously invited on the question) for holding that most-favoured-nation clauses in Commercial Treaties did not prevent Customs Union arrangements.

That for convenience of reference other Memoranda referred to in the Board of Trade Memorandum were annexed, viz., a set of Memoranda drawn up in 1872 in reference to the proposed commercial reciprocity system between the Australian Colonies, which was subsequently authorized by the Imperial Act 36 Vict., cap. 22, and a Memorandum drawn up by Mr. R. Giffen, of the Board of Trade, in December 1887, upon the question of commercial union between Canada and the United States.

That your Lordship, however, desired Sir Robert Herbert to point out that in referring to those two last-mentioned Memoranda it should be borne in mind that the case with reference to which they were written differed essentially from the present case, and that it would be seen that Mr. Giffen in his Memorandum touched only incidentally in paragraph 20 upon the question as affecting Treaty rights.

That as regarded the Memoranda of 1872 Sir Robert Herbert was to call our special attention to the opinion expressed by Mr. J. B. Bergne, and his reference to the Oldenburg Treaty at p. 5.

That Sir Robert Herbert was also to inclose a copy of a Memorandum drawn up in the Colonial Office in October last advocating the confirmation of the Cape Act, and that, although your Lordship did not wish that document to be accepted as expressing more than the individual opinion of the writer, your Lordship thought it important as showing that there were precedents, both in the action of this and other countries, for holding that most-favoured-nation clauses were not to be literally interpreted where border trade was concerned, or where some arrangement in the nature of neighbourly reciprocity or commercial union was in question.

Proposed limitation in favour of over land trade.

That with regard to that portion of our Report of the 31st ultimo in which we referred to the case of frontier Regulations between "two States, having a common boundary, respecting the interchange of local produce," Sir Robert Herbert was to explain that the Cape Government had lately expressed its readiness to amend the Customs Act by confining the right of free or favoured importation in the case of foreign States, members of the Union, to importation overland.

That the Cape and the Orange Free State, as we were aware, had a common inland frontier, and that the Orange Free State had no access to the sea. That in those circumstances Sir Robert Herbert was to request that we would again consider the subject, and inform your Lordship (1) whether, after considering the arguments and precedents contained in the Memorandum of the Board of Trade, we were of opinion that the view taken by that Department that most-favoured-nation clauses did not prevent an arrangement in the nature of a Customs Union between neighbouring countries, and (2) whether a Customs Union limited as now proposed by the Cape Government in its operation, in regard to foreign States joining the Union, to importations overland, might be brought into operation.

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* See also previous Report of the Law Officers to the Colonial Office (Africa, No. 1 A) of January 31, 1889.

That the Cape Customs Act, and other material documents which were previously before us, were inclosed for convenience of reference.

In obedience to your Lordship's commands we have the honour to

*Report—*

M.-f.-n. clauses do operate against proposed Union.

1. That, having fully considered the Memoranda now brought to our notice, we are still of opinion that the "most-favoured-nation" clauses do operate to prevent the establishment of a Customs Union, whereby a foreign State obtains privileges as to goods sent into British territory which are denied to nations whose Treaties with Great Britain contain such clauses.

Proposed limitation does not remove objection founded on m.-f.-n. clauses.

2. In our opinion, the limitation of the effect of such Customs Union to goods imported overland does not remove the objection founded upon these clauses.

Objection in previous case.

We note that in the case of the Commercial Treaty between China and France for the grant of more favourable terms in respect of goods imported by land through Cochin China than were in force as to goods imported by sea, the Board of Trade made objection that this concession violated the "most-favoured-nation" clauses, and the Foreign Office only refrained from pressing such objection on the ground that the matter was not of practical importance.

The principle laid down should be maintained.

We do not express an opinion as to how far the small value of the trade of the independent State which it is proposed to admit to the Union may render it probable that no exception to the measure will be taken by Germany, but we think it desirable that the principle we have laid down should be maintained, even if, in some trifling cases, its strict application may be dispensed with.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 2.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received April* 2.)

[After quoting the terms of the reference printed below, dated the 1st March, 1889, they report as on page 9 :—]

*Foreign Office to the Law Officers of the Crown.*

Gentlemen, *Foreign Office, March* 1, 1889.

Circumstances attending death of native members of Niger Co.'s expedition under Herr Zweifel.

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the papers noted in the accompanying list,* with reference to the circumstances attendant upon the death of certain native members of an exploring expedition which was dispatched by the Royal Niger Company into the interior of their territories under the leadership of Herr Zweifel. (Colonial Office, June 16, 1888, Print, Section 3, p. 2, No. 2; Sir S. Rowe, May 19, 1888, Print, Section 3, Inclosure 1 in No. 2, pp. 2 and 3; Report by Sir J. Marshall, Inclosure 5 in No. 2, Print, Section 3, pp. 7-13.)

In December 1887 Herr Zweifel collected a party of about 160 natives of the

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* Extract from "Weekly News" of Lagos, communicated by War Office, June 8; Colonial Office, June 16; Royal Niger Company, June 23; Colonial Office, July 26, September 21, and November 26; Royal Niger Company, November 19, 1888; Royal Niger Company's Charter of July 13, 1886; Regulation (D) of Royal Niger Company for Administration of Justice to Foreigners; Law Officers' Reports, "Germany," of March 3 and March 14, 1888, Confidential No. 5785, pp. 28 and 30, Nos. 26 and 27.

Correspondence respecting the trial of certain persons at Sierra Leone for the murder of a slave girl at Onitsha, on the River Niger, laid before Parliament in 1882, Parliamentary No. 2330*.

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Timannee, Susa, and Lamba tribes at the back of Sierra Leone, for the purposes of the expedition.

These natives were apparently selected with special reference to their experience in rubber and gums and similar products, but the Niger Company state that the object of the expedition was not so much the collection of those articles as the exploration of the interior with a view to develop the resources of the Company. These objects, it is stated, were fully explained to the natives. Of these, some sixty were armed with rifles, fifteen had revolvers, twenty had swords and cutlasses, besides the native "machetes" (knives) which they carried.

Nationality of Herr Zweifel.

Herr Zweifel himself, a gentleman well known on the coast, was, it is believed, of German nationality, and had been in the service of the "Compagnie du Sénégal," from whom he had received high recommendations, having had considerable experience in the class of work for which he was engaged by the Niger Company. (Royal Niger Company, June 23, 1888, Print, Section 3, p. 13.)

He was intrusted by the Company with the entire management and control of the whole expedition and its officers, which included three Europeans besides himself.

The expedition left Sierra Leone on the 14th December, and though symptoms of discontent were shown by the men from time to time, no serious trouble threatened until they reached Loko in the interior on the 4th March. From that time until they arrived at Lokojah, the scene of the disaster, eleven days later, the expedition suffered severely from want of food, both in quantity and quality, and by the time they reached Lokojah would seem to have been in a demoralized and mutinous condition.

Mutiny of native members of expedition.

While remaining at Lokojah this discontent appears to have ripened into insubordination, and some of the men complained that they were not being employed in accordance with the terms of their agreement—to cut rubber—but only on travelling work, and accordingly declined to go on any further.

Assistance of Mr. Wallace in suppressing.

They then proceeded, in defiance of orders, to break out of the inclosure where they were confined to prevent complications with the local natives, and made such threatening demonstrations that Herr Zweifel summoned Mr. Wallace (the Company's agent in those parts) to his assistance, and he, at Herr Zweifel's request, brought an armed force, consisting of twelve of the local police and a native contingent, to protect the safety of the Europeans of the expedition.

After vain efforts had been made to bring the natives to obedience by persuasion and threats on the part of Mr. Wallace and Herr Zweifel, the attempt was made, with only partial success, to induce them to give up their arms, and on some of them advancing in a threatening attitude, one of the Headmen was shot dead by Mr. Wallace.

Attack of natives on Europeans repelled with loss of 6 killed and 30 wounded.

This seems to have been followed by a rush of the natives in force on the Europeans, by whom they were received with a volley, the Europeans and their native followers being armed with rifles and revolvers.

This resulted in the death of six of the natives of the expedition on the spot, and the wounding of thirty, of whom one died subsequently, while the remainder fled, the majority finding their way back to Sierra Leone, where they laid their complaint before the Governor, and some reaching Lagos, whence they were sent back by the Colonial authorities to Sierra Leone.

Shortly after the occurrences in question Lokojah was visited by Sir James Marshall, the Chief Justice of the Niger Territories, who investigated the facts and examined witnesses, *including Mr. Wallace and Herr Zweifel.*

The evidence elicited by Sir James Marshall and the depositions of the natives, taken before the Police Magistrate of Freetown, appear to agree as regards all the main facts of the case. (See Report of Sir J. Marshall. Inclosure 5 in Colonial Office letter of June 16, 1888; and also Inclosure 3 in the same letter, pp. 7-13, and pp. 3-7 of Print, Section 3.)

Herr Zweifel passed through Sierra Leone by the same steamer on which many of the natives of his expedition returned, but as there was some doubt in the minds of the authorities as to the legality of arresting him he was not interfered with. (Sir S. Rowe, July 27, 1888, Print, Section 9, p. 1.)

It now appears from some of the depositions taken at Sierra Leone that some of the men are British subjects, and it seems also possible that some of those killed may have held a similar status. (Colonial Office, July 26, 1888, Print, Section 7, p. 1.)

It is believed that Herr Zweifel is now in Germany or elsewhere upon the Continent, and that Mr. Wallace is at the Niger. (Royal Niger Company, November 19, 1888.)

Can Herr Zweifel and Mr. Wallace be tried for murder?

The question arises whether the shooting of these natives was, having regard to all the circumstances of the case, clearly justifiable as a measure of self-defence and for the preservation of the lives and discipline of the remainder of the expedition, or whether there is *primâ facie* ground for placing Herr Zweifel and Mr. Wallace, or either of them, on their trial for murder if found within the jurisdiction of a competent Court.

In the latter event, a further question arises as to whether any, and, if any, what steps should be taken, and by whom and where, to bring these persons to trial.

It is presumed that the Chief Justice of the Niger Territories would have had jurisdiction to try both of them. (See Royal Niger Company's Charter of July 13, 1886, Article 8, and Regulation (D) for Administration of Justice to Foreigners made thereunder.)

Moreover, as regards Mr. Wallace, who is a British subject, I am to bring to your attention the printed correspondence annexed respecting the trial of certain British subjects at Sierra Leone for the murder of a slave-girl at Onitsha, on the River Niger, in 1880.

In that case as in the present the offence alleged was committed outside of Her Majesty's dominions, and a Commission was issued under the provisions of 46 Geo. III, cap. 54, and 57 Geo. III, cap. 53, for the trial of the offenders, who were eventually convicted of manslaughter, and sentenced to various terms of imprisonment.

But the case of Herr Zweifel, who is believed to be a German subject, and to be at large, does not come within the Anglo-German Extradition Treaty (see Law Officers' Reports, "Germany," of March 3 and March 14, 1888), and it is conceived that he would not be justiciable, either in the United Kingdom or in any British Colony, in respect of a crime committed in the Niger Territories.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion on the questions submitted in this letter, and with any general observations which you may have to offer on the case.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

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We have taken the matter into our consideration and, in obedience to your Lordship's commands, have the honour to

*Report—*

Mr. Wallace should be prosecuted. Form of procedure.

That, in our opinion, there is *primâ facie* ground for placing Herr Zweifel and Mr. Wallace on their trial on a charge of murder or manslaughter; and that the Company should be called upon to take steps to secure the institution and proper conduct of such a prosecution in the case of Mr. Wallace before the Chief Justice of the Niger Territories.

Having regard to the fact that Mr. Wallace is himself one of the principal officers of the Niger Company, we think the actual conduct of the prosecution should be in the hands of persons instructed by, and responsible to, some official upon the Coast who is in Her Majesty's service, and is not connected with the Niger Company.

Herr Zweifel not justiciable in any British Court; cannot be extradited.

We are of opinion that Herr Zweifel is not justiciable in any British Court, and could not be tried under any Commission issued under the Statutes of George III. No demand for his surrender can be addressed to the German Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, April* 1, 1889.

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## No. 3.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 5.)*

My Lord, *Royal Courts of Justice, June* 3, 1889.

Right of Niger Co. to levy an annual sum as interest on

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 27th April last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the right of the

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capital expended in taking over Protectorate.

Royal Niger Company to levy the annual sum of 12,500*l.* as interest on the capital sum of 250,000*l.* expended by them for the purposes mentioned in Article XIV of the Charter granted to them on the 10th July, 1886 (see Confidential Print 5610, Part I of "Correspondence respecting the Royal Niger Company, 1885-87," p. 8).

Sanction of H. M.'s Govt.

That it would be seen on reference to pp. 195, 232, 236, and 237 of the abovementioned volume of printed papers, as well as to pp. 11, 14, 49, 54, 55, 64, and 68 of Part II of the same series (Print 5753), that Her Majesty's Government gave very careful consideration to the point before finally sanctioning the levy of the sum in question.

Objection of German Government.

That it was, however, objected to by the German Government (*ibid.*, p. 283), on the ground that it was contrary to an agreement entered into between Great Britain and Germany in 1885, and recorded in a note from the German Ambassador in this country of the 2nd June, 1885, of which a copy was inclosed.

Construction to be put on Ct. Münster's note.

That a correspondence then ensued between the two Governments, which would be found in the papers marginally noted,* from which it would appear that the chief point now at issue was the proper construction to be put upon the words of Count Münster's note which ran, "Zölle sollen nur insoweit erhoben werden, als dies zur Deckung der durch die Uebernahme der Schutzherrschaft entstehenden Kosten für erforderlich erachtet wird," or freely translated into English, "The only duties leviable shall be those deemed necessary to cover expenses incurred *through the taking over of the Protectorate.*"

That the words underlined† were the literal translation of the German words "durch die Uebernahme der Schutzherrschaft."

That the German contention was that that should only be taken to mean expenses incurred *after* the Protectorate was taken over by this country; whilst the argument put forth by Her Majesty's Government was that the sense and spirit of the Agreement and of the words themselves was that they covered all expenses incurred in connection with the taking over of the Protectorate, including the expenses entailed upon the Company in the negotiation of the Treaties which alone made the assumption of the Protectorate, and the grant of the Charter, possible.

That Sir T. Villiers Lister was to request that we would take the foregoing observations, together with the papers transmitted with his letter, into our consideration, and favour your Lordship with our opinion as to whether the contention of Her Majesty's Government was well founded.

In obedience to your Lordship's commands I have the honour to

### *Report—*

Effect of arrangement of 1885 on right of Niger Co. to levy duties.

That if the question raised in this case is to be decided by a consideration of the exact terms of the arrangement made in the year 1885, there might be some difficulty in supporting the right of the Niger Company to levy dues to meet the sum of 12,500*l.* interest upon the sum of 250,000*l.*, which appears to have been agreed by Her Majesty's Government as being the amount expended by them in the acquisition, maintenance, and execution of the Treaty rights.

It is, however, to be observed that the terms of the arrangement are somewhat differently worded in the several documents which are before me.

In the letter of Sir T. Villiers Lister of the 27th April, 1889, the words are rendered, "The only duties leviable shall be those deemed necessary to cover expenses incurred through the taking over of the Protectorate."

In Lord Granville's letter of the 16th May, 1885 ("Africa No. 6," p. 3), the words are, "Duties will be levied solely for the purpose of meeting the expenses necessary to enable them to carry out the obligations imposed upon them" (the Government) "by the Protectorate;" and in Count Münster's letter of the 2nd June, 1885 (No. 6 in the same document), the words are translated, "Customs shall only be raised to such an amount as may be considered sufficient to cover the expenses arising from the taking over of the Protectorate."

H. M.'s Govt. are sole judges of amount to be levied in British Protectorate if it relates to expense of establishing Protectorate.

But, whatever may be the proper rendering of the arrangement, in my opinion, Her Majesty's Government are the sole judges of the amounts which are properly to be regarded as within that arrangement, so far as the British Protectorate is concerned, the German Government having the same rights respecting the German Protectorate; and unless it could be alleged that Her Majesty's Government were sanctioning

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* Sir E. Malet; Count Hatzfeldt, February 28; to Mr. Beauclerk, No. 106, March 8; Count Hatzfeldt, April 7, 1889.

† Printed in italic.

duties which had no connection with the arrangement as to expenses incurred in establishing the Protectorate, it would, in my opinion, be improper to admit that the German Government, or any other Gouernment, can—so to speak—revise, or adjudicate upon, the amount so settled, or ascertained, by Her Majesty's Government.

I understand the Report, under date the 6th March, 1888, signed by Sir William Sargeaunt (set out at pp. 64 and 65 of No. 5753 of 1888), to have been adopted by Her Majesty's Government, and to be in effect a recognition that the Niger Company have expended 250,000*l.* in the acquisition, maintenance, and execution of Treaty rights.

I think that this fairly comes within the words of the arrangement, and that whatever form of words be adopted, at any rate Her Majesty's Government are the sole judges in the matter.

I have, &c.
(Signed) RICHARD E. WEBSTER.

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In obedience to your Lordship's commands I have the honour to

### *Report—*

Question depends on construction put upon Ct. Münster's note.

That, in my opinion, this question depends upon the ascertainment of the exact meaning of the terms used by Count Münster in his letter of the 2nd June, 1885, which was accepted by the Foreign Office as correctly reciting the agreement then arrived at between the two Governments.

I observe that the important sentence in that letter is differently translated in the documents now before me.

In the covering letter the words are, "The only duties leviable shall be those deemed necessary to cover expenses incurred through the taking over of the Protectorate." But, in the Memorandum which records the negotiations of April 1885, which resulted in the letter from Lord Granville of the 16th May, and Count Münster's answer of the 2nd June of that year, the same sentence is thus translated: "Duties shall only be levied to the extent that may be considered necessary to cover the expenditure incurred in consequence of the assumption of the Protectorate." And in the printed translation of Count Münster's letter given in "Africa No. 6 (1885)," I find the translation is in the following words: "Customs shall only be raised to such an amount as may be considered sufficient to cover the expenses arising from the taking over of the Protectorate."

The two last-quoted renderings make the passage closely correspond with the assurance given by Lord Granville that the "duties will be levied solely for the purpose of meeting the expenses necessary to enable them to carry out the obligations imposed upon them by the Protectorates."

Doubts whether compensation to Niger Co. for expenditure, as described in their Memo., could be considered part of cost of taking over Protectorate.

If I had to construe the English sentence given in the covering letter as the equivalent of Count Münster's words, I should have no doubt that it would justify the imposition of duties in respect of expenditure made, or liabilities incurred, by Her Majesty's Government in the acquisition of the Protectorate; but the other translations which were accepted at a time when this question had not arisen, and are supported by Lord Granville's language, would not, in my opinion, sanction the levying of such duties. And I entertain serious doubt whether compensation to be paid to the Niger Company in respect of such expenditure as is described in the Memorandum of the Vice-Chairman of the Company, dated the 27th January, 1886 ("Niger Correspondence," Part I, p. 212), and in the Memoranda of Mr. Taubman-Goldie of the 24th October, 1887 ("Niger Correspondence," Part I, p. 214), and of the 16th February, 1888 ("Niger Correspondence," Part II, p. 50), could be considered as part of the cost of taking over the Protectorate upon any sound construction of the language used by Count Münster.

I have, &c.
(Signed) EDWARD CLARKE.

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*List of Papers.*

1. General Act of Berlin Conference. Treaty No. 757.
2. Confidential Print, Royal Niger Company, Part I. No. 5610.
3. " " Part II. No. 5753.
4. Count Münster .. .. .. .. .. June 2, 1885
5. "Africa No. 6 (1885)." Parliamentary No. 2979.
6. Count Hatzfeldt .. .. .. .. .. February 28, 1889.
7. To Mr. Beauclerk .. .. .. (No. 106. Africa) March 8, "
8. Count Hatzfeldt .. .. .. .. .. April 7, "

## No. 4.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 8.)*

My Lord, *Royal Courts of Justice, June* 7, 1889.

Is "foreign Protectorate" included in term "dominions of a friendly State" as employed in Foreign Enlistment Act?

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list,* in connection with a question which had arisen as to whether a foreign Protectorate was included within the meaning of the term "dominions of a friendly State," as employed in "The Foreign Enlistment Act, 1870" (33 & 34 Vict., cap. 90), so as to render the provisions of that Act, and more especially of section 11 thereof, applicable to recruiting operations carried out on British soil for the purposes of an expedition designed against the Government of a Protectorate of a Power friendly to Great Britain.

That the circumstances under which the question had arisen for determination were briefly as follows:—

Contemplated attack on Damaraland (German Protectorate) by Mr. Lewis, a British subject.

That in March last a representation was made to Her Majesty's Government by the German Ambassador at the Court of St. James' to the effect that a British subject named Lewis, who had certain claims, hitherto unrecognized, against the German Government in connection with concessions alleged to have been made to him by the native Chiefs of the Damara region, was recruiting forces within the limits of Cape Colony with a view of attacking the authorities of the German Protectorate which had now been established in Damaraland.

Enforcement of Foreign Enlistment Act by Cape Govt.

That "The Foreign Enlistment Act, 1870," was, in accordance with the provisions to that effect in section 3 thereof, put into force by the Government of Cape Colony on the 28th September, 1870, by Proclamation duly published in the "Cape Government Gazette."

Is Foreign Enlistment Act applicable to such cases?

That inquiries which were at once instituted by Her Majesty's Government on receipt of the German Ambassador's representation had proved that the fears of the German Imperial Government were in that particular instance fortunately groundless, but that the general question of the applicability of the Foreign Enlistment Act to cases of that kind having thus accidentally arisen, appeared to your Lordship to be of such importance that you were desirous of at once obtaining our opinion with regard to it.

That it was clear that territory over which a British Protectorate had been proclaimed on behalf of Her Majesty was not for the purposes of the Act part of the British dominions, and that assuming the word "dominions" to be used in an analogous sense in the expression "dominions of a friendly State," it would also appear that territory over which a friendly Power had extended its protection could hardly be included within that expression.

German Protectorate not part of State domain.

That the Protectorates, for instance, of the German Empire were not considered to form an integral portion of the State domain, and were technically termed "Schutzgebiet" (or State-protected territory) in contradistinction to "Reichsgebiet" (or the domain of the Imperial State).

That at the time the Foreign Enlistment Act was passed the modern system of Protectorates had not attained its present development, and that is was probable that the occurrence of such a case as that to which our attention was now invited was not contemplated by the Legislature.

That if, however, such a case should be considered not to fall within the provisions of the existing Act, it might probably be found advisable to introduce a short amending Act to extend the operation of those provisions to the Protectorates of a friendly foreign Power.

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* "Foreign Enlistment Act, 1870," 33 & 34 Vict., cap. 90; to Sir E. Malet, March 27; Colonial Office, April 1; ditto April 27, 1889.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the provisions of "The Foreign Enlistment Act, 1870," were applicable as between the dominions of Her Majesty and the Protectorates of a friendly foreign Power, and, if not, whether further legislation should be introduced with the view of making the provisions of that Act so applicable.

That your Lordship would be glad to be favoured, at the same time, with any general observations which we might have to offer on the matter.

In obedience to your Lordship's commands we have the honour to

*Report—*

Expedition to Damaraland within § 11 of Act.

That, in our opinion, the expedition which was supposed to be preparing within the limits of Cape Colony to proceed to the Damara region would have been within the provisions of the 11th section of the Foreign Enlistment Act.

Damaraland a friendly State, though a Protectorate.

No necessity for further legislation.

The Damara region, although a Protectorate of the German Government, is not part of the dominions of that State within the meaning of the section, but it is a friendly foreign State within the meaning of section 11 taken together with section 30 of the Act, and we see no necessity for any further legislation on the subject.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

## No. 5.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 19.)*

My Lord, *Royal Courts of Justice, July* 19, 1889.

Order in Council for Africa and Madagascar.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 30th April last, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* relative to a draft Order in Council for Africa, including the Island of Madagascar.†

Draft of for approval.

That with reference to our opinion of the 5th August, 1887, upon the draft of the proposed Africa Order, 1887, which was submitted for our consideration on the 25th July, 1887, Sir Thomas Sanderson was to state that further consideration of the subject led to the conclusion that it would be preferable to deal with the questions treated in the proposed Order by means of a new Order repealing the West Africa Order of 1885 and the Madagascar Order of 1869, and applying to all parts of Africa, including Madagascar, which were subject to Her Majesty's foreign jurisdiction, and were not covered by other Orders in Council under the Foreign Jurisdiction Acts.

That the draft Order in Council had been prepared by Mr. R. S. Wright for that purpose, and that Sir Thomas Sanderson was to request that we would favour your Lordship with our opinion whether it might, in its then form, be approved; and that we would at the same time be good enough to add any general observations or suggestions which might occur to us in connection with the matter.

That Sir Thomas Sanderson was to add that your Lordship was consulting the Board of Treasury as to the application of the Colonial Prisoners' Removal Act under section 79.

In obedience to your Lordship's commands we have the honour to

*Report—*

Approve draft in form initialled by them.

That, in our opinion, the draft Order may be approved in the form initialled by us.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Draft Order in Council; West Africa Order, 1885, Confidential No 5572; Madagascar Order, 1869, Confidential No. 1624; draft West Africa Order, 1887.

† For Order in Council as issued, see Confidential No. 5846**.

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## AUSTRIA.

### No. 6.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received November* 29.)

Nationality of children born in British Embassy of foreign parents.

Children of M. H. Kozel.

My Lord, *Royal Courts of Justice, November* 28, 1889.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 19th August last, stating that he was directed by your Lordship to transmit to us a letter which had been received from the Home Office,* inclosing copy of a letter addressed to Mr. Secretary Matthews by a M. H. Kozel, himself a subject of the Netherlands, with reference to the national status of his son and daughter, who were born within the walls of the British Embassy at Vienna, while M. Kozel was in the service of the late Sir Andrew Buchanan, at that time Her Majesty's Ambassador at the Court of Austria.

That M. Kozel lived with the late Sir Andrew Buchanan for many years, and served him continuously as house steward at the Hague, at Berlin, at St. Petersburgh, and at Vienna.

That at St. Petersburgh he married an Englishwoman, who was also in Sir Andrew's service, and that there were two children of the marriage, both born, as already stated, at the British Embassy, Vienna.

That upon Sir Andrew Buchanan's retirement from the Diplomatic Service in 1879 Kozel accompanied him to England, where he has, with his children, ever since resided.

That M. Kozel was now desirous of being informed whether his children, by virtue of their birth within the walls of a British Embassy, under the circumstances mentioned, were natural-born British subjects; and that Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on that question, and with any general observations upon the case which we might desire to offer.

That a short Memorandum upon the subject, which had been drawn up by Mr. Streatfeild, of the Foreign Office, was also inclosed,† but that it would be observed that he had been unable to find any actual precedents which were in point, either in the manuscript correspondence of the Foreign Office or elsewhere.

We have taken the matter into our consideration, and in obedience to your Lordship's commands have the honour to

*Report*—

They are not natural-born British subjects.

That, in our opinion, the fact that M. Kozel's children were born in the British Embassy is not of itself sufficient to entitle them to be treated, by virtue of their birth, as natural-born British subjects.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
EDWARD CLARKE.

## BELGIUM.

### No. 7.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received May* 21.)

Slave Trade Treaty with Belgium.

My Lord, *Royal Courts of Justice, May* 20, 1889.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 6th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying draft of a Treaty with His Majesty the King of the Belgians for the suppression of the African Slave Trade.

Draft of, for approval.

That the draft Treaty was, as would be seen from the marginal notes, with certain modifications, framed upon the lines of the Treaty with Turkey of 1880, and that of 1841 between this country, Austria, Prussia, and Russia.

That it would be seen that Article II omitted all reference to the proviso of Article II of the Treaty of 1841 that cruizers exercising the right of search should be furnished with warrants and commanded by officers of a certain rank.

That it was thought that, in the altered conditions under which both the Slave Trade itself, and any naval operations connected with its suppression, were now carried on, there was no fear of abuses arising from the omission of such a proviso.

That all allusion to the search of vessels under the convoy of a ship of war was also omitted, as it was improbable that the case provided for in Article VII of the Treaty of 1841 would arise.

That no special stipulations had been made as to the proceedings at the port where captured vessels were delivered over to the local authorities, beyond securing, in Articles IV and VI, that the proceedings should take place before the competent Tribunal.

With the view of more effectually dealing with the modern custom of transporting slaves in native craft, modifications had been made in the enumeration of those articles and other signs which, when found on a suspected vessel, were to be considered as *primâ facie* evidence of her illicit character. That those were contained in Article V.

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the proposed Treaty was one that might properly be concluded, together with any general observations which we might have to offer upon it.

In obedience to your Lordship's commands we have the honour to

*Report*—

Approve draft as altered.

That, in our opinion, the draft Treaty, as altered and initialled by us, is one that may properly be concluded.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
EDWARD CLARKE.

## EGYPT.

### No. 8.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received February* 19.)

Costs of prosecutor in cases tried before a Consular Court in Egypt.

My Lord, *Royal Courts of Justice, February* , 1889.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, with reference to the incidence of the taxed costs and expenses of the prosecution in criminal cases tried before the British Consular Court in Egypt.

That the question arose for determination under the following circumstances:—

Case of Mr. Clere.

Sir C. Cookson, Her Majesty's Consul and Judge at Alexandria, had applied to your Lordship to sanction the charge of 59*l.* 12*s.* 3*d.*, being (1) the amount of the taxed costs (33*l.* 5*s.*) of Mr. Clere, prosecutor in the recent case of Regina *v.* Colborne in Her Majesty's Consular Court at Alexandria, which resulted in the conviction of the accused for perjury on the 9th March last, Mr. Clere having been put under

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* Home Office to Foreign Office (and Inclosure), August 6, 1889.

† Memorandum by Mr. Streatfeild, August 12, 1889.

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recognizance to attend and give evidence at the trial; and (2) the travelling expenses (26*l.* 7*s.* 3*d.*) of the witnesses in the case.

That Sir C. Cookson stated that the taxed costs and expenses above mentioned were allowed by him under the authority of 7 Geo. IV, cap. 64, sec. 23, which authorized the Court to pay expenses of prosecutor and witnesses of prosecution, together with compensation for trouble and loss of time on trial by indictment for certain misdemeanours, amongst which was perjury, of which the prisoner was convicted.

**View of Sir C. Cookson.**

That Sir C. Cookson contended that he had no power to refuse those costs, on the ground that the Act 7 Geo. IV, cap. 64, was part of the law applicable to the British Consular Court in Egypt, by virtue of sections 5 and 6 of the Levant Order in Council of the 12th December, 1873, which provided that Her Majesty's criminal jurisdiction exercisable in the Ottoman dominions for the repression or punishment of crimes and offences, or for the maintenance of order, should, *as far as circumstances admitted*, be exercised on the principles of and in conformity with the common law, the statute law, and other law for the time being in force in and for England, and with the powers vested in and according to the course of procedure and practice observed by and before Courts of Justice in England.

**Does Act 7 Geo. IV, cap. 64, apply to case?**

That the Treasury had, however, raised the question whether part of Mr. Clere's taxed costs could properly become a charge on public funds, and that your Lordship would therefore be glad to be favoured with our opinion as to whether the circumstances of the case were such as admitted of the provisions of 7 Geo. IV, cap. 64, sec. 23, being applied thereto.

That if that question were answered in the affirmative it was presumed, having regard to the wording of section 6 of the Order in Council, that Sir C. Cookson had no alternative but to apply the provisions of the Act above mentioned.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the question submitted therein, and with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and in obedience to your Lordship's commands have the honour to

*Report—*

**Act not applicable to a Consular Court.**

That in our opinion, the circumstances of this case are not such as to admit of the provisions of 7 Geo. IV, cap. 64, sec. 23, being applied thereto, inasmuch as the following sections of the Act prescribe the mode in which such expenses shall be allowed and paid, and are altogether inapplicable to a Consular Court and proceedings taking place before it.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Inclosures in Letter to Law Officers, January* 25, 1889.

1. Consul Cookson, No. 8, March 23, 1888.
2. Sir E. Baring, No. 11, Consular, April 1, 1888.
3. Draft to Treasury, May 2, 1888.
4. Treasury, June 6, 1888.
5. Draft to Consul Cookson, No. 11, June 15, 1888.
6. Consul Cookson, No. 26, November 8, 1888.
7. Schedule of payments made by Her Majesty's Consul at Alexandria during quarter ended March 31, 1888. (Seven Inclosures.)
8. Query Paper of June 21 to Alexandria Consulate, with Mr. Burrell's replies, dated July 14.

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## No. 9.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received May* 1.)

[In reply to the following reference, the Law Officers reported as below on the 1st May, 1889:—]

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*Foreign Office to the Law Officers of the Crown.*

Gentlemen,

*Foreign Office, April* 24, 1889.

**Privileged Debt of 1876. Right of Egyptian Government to pay off at par.**

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the papers noted in the accompanying list,* with reference to the question (which has lately been much agitated in financial circles, and has now become of very pressing and immediate importance to Her Majesty's Government) whether the Egyptian Government are justified, having regard to their relations with the holders of the bonds of the Privileged Debt of 1876, and to all the circumstances of the case, in paying off those bonds at par if empowered so to do by a Decree issued with the assent of the Great Powers of Europe, who recognized this Privileged Debt, and were parties to the Egyptian Law of Liquidation promulgated on the 17th July, 1880.

The facts of the case are as follows:—

**Issue of stock in 1876.**

In 1876 the Egyptian Government issued 17,000,000*l.* of Privileged bonds or Preference stock. This issue was made in virtue of a Khedivial Decree of the 18th November, 1876, and the service of the stock was guaranteed by the revenues of the Egyptian railways and the revenues of the Port of Alexandria, and by a first charge on the other revenues assigned to the service of the Public Debt of Egypt.

**Conditions and securities of issue.**

In order to render the guarantee more secure, the Egyptian Government consented to hand over the Administration of the Railways and of the Port of Alexandria to an International Commission consisting of English, French, and Egyptian officials, and they further agreed that the Administration thus formed should remain in action until all the Preference Debt had been either redeemed by the operation of the sinking fund, or had been repaid.

**Stipulation as to repayment.**

It was, however, expressly stipulated that the Administration of the Port of Alexandria should be freed from the guarantee and detached from the International Administration so soon as 2,000,000*l.* of the Preference Debt had been either redeemed or repaid, and that the Railways should in like manner be freed by the redemption or repayment of a further 15,000,000*l.*

**Scheme for sale of railways in 1876.**

It should be mentioned that, at the time of the negotiations which culminated in the Decree of the 18th November, 1876, a scheme was under consideration and examination for the sale of the Egyptian railway system to an English Company, and the terms of the Decree were therefore carefully chosen with a view to reserve full power to the Egyptian Government to liberate the Railways from the control of the bondholders by repayment of the bonds guaranteed on the railway revenue. This scheme was not eventually carried out, but it is submitted that the fact of its existence, contemporaneously with the negotiations above referred to, as well as the fact that several similar schemes have been brought forward during the last ten years, goes far to show that it was recognized and intended that the Egyptian Government should be at liberty to take back the railways at any time on repayment of that portion of the Preference Debt which was secured on them.

**Portions of Decree bearing on case.**

The portions of the Decree, of which it will be observed that certain Articles are printed on the face of the Preference bond (marked A in pencil) herewith, bearing particularly on the present question, are annexed below:—

"Art. 3. Il est établi une Administration spéciale des Chemins de Fer et du Port d'Alexandrie, qui sera placée sous la direction d'une Commission, comme il sera indiqué ci-après.

"Les revenus des Chemins de Fer et du Port d'Alexandrie seront directement

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* Sir E. Baring, No. 173, April 4, 1889; Messrs. Harries, Wilkinson, and Raikes, April 13, 1889 (four Inclosures); Secretary of Council of Foreign Bondholders to Sir E. Vincent, April 13, 1889, inclosing correspondence; "Documents relatifs à la Conversion de la Dette Privilégiée. Le Caire, Avril 1889;" Memorandum by Sir E. Vincent, April 18, 1889; Privileged bond No. 305,840 (marked A in pencil); Unified bond No. 0,139,397 (marked B in pencil); Khedivial Decree, November 18, 1876, establishing Privileged and Unified Debts; Law of Liquidation, July 17, 1880; Khedivial Decree, July 27, 1885; Egyptian Code Civil; Messrs. Harries, Wilkinson, and Raikes, April 23, 1889 (one Inclosure).

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appliqués au payement des intérêts, et de l'amortissement d'une série d'obligations Privilégiées, ayant une hypothèque spéciale sur les Chemins de Fer et le Port d'Alexandrie pour une somme de dix-sept millions de livres sterling, rapportant 5 °/o d'intérêts, amortissables en soixante-cinq ans, jouissance du 15 Octobre, 1876.

"Ces obligations seront offertes par préférence aux porteurs des Emprunts 1862, 1868, et 1873, en échange des obligations de ces emprunts, qui rapportent 7 °/o, lesquelles obligations seront annulées.

"L'annuité nécessaire au service des obligations Privilégiées 5 °/o, s'élevant à huit cent quatre-vingt-cinq mille sept cent quarante-quatre livres sterling, et payables en deux semestrialités de quatre cent quarante-deux mille huit cent soixante-douze livres sterling, chacune *formera la première charge sur les revenus des Chemins de Fer et du Port d'Alexandrie et restera, en tout cas, la première obligation de la Commission de la Dette Publique.*

"Art. 27. L'Administration, formée ainsi qu'il est dit ci-dessus, restera en fonctions jusqu'à ce que toutes les obligations Privilégiées spécialement créées aient été amorties et remboursées. Le Port d'Alexandrie étant compris dans cette garantie pour une somme de deux millions de livres sterling pourra être libéré de la garantie et détaché de l'Administration commune lorsque deux millions de livres de ces titres Privilégiées auront été amortis ou remboursés.

"Les Chemins de Fer étant compris dans cette garantie pour quinze millions de livres sterling en titres Privilégiés pourront être libérés par l'amortissement ou le remboursement de quinze millions de ces titres."

Liquidation of 1880, and increase of debt.

The financial measures of arrangement with the creditors of Egypt not proving sufficient, that country was compelled in 1880 to have resort to liquidation, and on the 17th July of that year a Law of Liquidation was enacted, with the consent of the Great Powers, recognizing the Privileged Debt, which increased that debt by a further issue of 5,743,800*l.*, the bonds being in identically the same terms (dates of issue excepted) as those of 1876.

The total of the Privileged Debt thus became 22,743,800*l.* nominal, and now (a portion having been already redeemed by the operation of the sinking fund) amounts to somewhat over 22,000,000*l.*

Further liquidation in 1885.

The operation of the sinking fund has, however, since 1885, been practically suppressed, for in July of that year the Egyptian Government was again compelled to resort to liquidation, and a Khedivial Decree was issued with the assent of the European Powers suspending the operation of the sinking fund, which can only be again put into force by further legislative action in Egypt, taken with the sanction of those Powers.

Proposed repayment of Preference Debt.

The credit of Egypt has greatly improved of late, and the Egyptian Government now desire to repay the Preference Debt, and to free the railways and the Port of Alexandria from the hypothecation to the bondholders in accordance, as that Government maintains, with the provisions of Article 27 of the Khedivial Decree of 1876.

It has been suggested, for instance, that the Privileged bonds, which have been recently above par and now stand at par or thereabouts, should be paid off, and a loan in substitution raised by an issue of new bonds bearing interest at, say, 4 per cent.; or, in so far as the holders assent, the change might be carried out as a simple conversion, a clause as to reduced interest being stamped upon the bonds.

Repayment at par. Contention of bondholders;

It is, however, contended on behalf of the bondholders that Article 27 of the Decree of 1876, although it grants a right of repayment to the Egyptian Government, does not allow the exercise of this right except with the previous consent of the bondholders, or, in other words, that the Egyptian Government has not the right to repay the bonds at par, but only the right to repurchase them from the bondholders at whatever price the latter choose to demand.

and of Egyptian Government.

The Egyptian Government, on the other hand, submit that the reference to sixty-five years merely indicates the term within which the Egyptian Government must repay the whole of the principal of the debt, and that the right of repayment conferred by Article 27 is a distinct alternative to the scheme of redemption by means of a sinking fund, and that the terms of the Article can only contemplate repayment at par, the word "repay" clearly indicating restitution to the creditors of the exact amount originally lent, or assumed to have been lent, on the face of the bonds by the bondholder to the borrowing Government.

Arguments in favour of Egyptian view.

This argument appears to be fortified by reference to the official text of the Decree, which is in the French language. Here the meaning of the word "rembourser" (properly translated in the English text by "repay" or "pay off") is even more clearly opposed to the idea of repurchase, which would be properly rendered in French by the word "racheter," "remboursement" meaning, as is submitted, repayment of the capital at par, and "rachat" being the proper word to denote repurchase by arrangement with the bondholders on such terms as they might be willing to accept.

It is worthy of observation, as supporting this view, that, in the official text of the Khedivial Decree of the 18th November, 1876, by which the Egyptian Unified Debt of 59,000,000*l.*, as well as the Privileged Debt, was established, the word "rachat" is actually employed, with reference to the Unified as distinguished from the Privileged bonds, in the sense indicated in the preceding paragraph of this letter. (See Article 6 of that Decree endorsed on the Unified bond sent herewith, and marked B in pencil.)

Moreover, had it been intended that repayment (or "remboursement"), as distinguished from redemption by the operation of the sinking fund ("amortisation"), should only be permitted after further separate agreement with the bondholders, it would have been clearly unnecessary to mention a repayment of this nature in the contract at all, since it is at any time open to a creditor and debtor to settle existing debts by mutual arrangement; and by mutual arrangement alone could the Egyptian Government secure the acceptance of any such scheme by their individual creditors.

It seems further inconceivable that, at a time when negotiations were actually in progress for the purchase of the Egyptian railways by an English Company, the framers of the Decree should have used language which could permit any uncertainty to exist as to the price at which the charges on the railways could be paid off, and thus afford a small number of Preference bondholders an opportunity of resisting by extortionate demands a scheme in which all parties were interested, and which would have been, if carried out, to the great advantage of the general body of Preference holders.

It is true that there is no such express provision in the Law of Liquidation of 1880 as exists in Article 27 of the Decree of 1876 for the Railways or the Port of Alexandria being detached from the guarantee by the repayment of the capital respectively represented by these securities; there is, however, no stipulation in a reverse sense in the Law of 1880, and the fact that this subsequent Law is altogether silent on the point may, as is submitted, be taken as a confirmation of the clause already existing in the previous Decree.

To contend that the sole power of paying off this Preference Debt now possessed by the Egyptian Government is that provided by the scheme of redemption under which the whole of the bonds were to be repaid by periodical drawings spread over a term of sixty-five years (see the Table of Amortization printed on the bonds) is to treat as mere surplusage the words "ou remboursés" which follow the word "amortis" in the original French text of Article 27.

It is submitted on the contrary that in the expression "amortis ou remboursés" the word "ou" is to be read disjunctively, and that a distinct alternative to the operation of the sinking fund is thereby provided in the form of the right of repayment of the bonds at par.

The amortization by means of the sinking fund has, as already stated, ceased to be in operation for the last three years, having been suspended and practically abolished by the Khedivial Decree of the 27th July, 1885, with the approval of the Great Powers.

If, therefore, the inability of the Egyptian Government to pay off the Privileged Debt at par be insisted upon, the effect will apparently be to render that debt practically irredeemable, and thus to make it a continuous burden upon the revenues of Egypt, a result which, considering the scope and object of all the several liquidations, and other arrangements of the finances of Egypt, which have from time to time been made with the approval of the Great Powers, cannot, it is clear, have been for a moment contemplated either by their Representatives or by those of the Egyptian Government.

Conditions of action of Egyptian and British Governments.

As the whole arrangements with regard to the Privileged Debt of Egypt are subject to the approval of the Great European Powers, it may be assumed that the Egyptian Government will not take any steps in this matter until the assent of those Powers has been obtained; while in so far as the individual action of Her Majesty's Government is concerned their assent to any probable arrangement would be greatly dependent upon the abstract legal right of the Egyptian Government under their existing engagements with the bondholders to pay off the loan at par.

Matter governed by Egyptian law.

On the legal question thus raised it is submitted that the relations between the bondholders and the Government of Egypt are not governed by English law but by the law of Egypt—the State which contracted the loan—and that the power

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to pay off at par is a question of Egyptian law, governed primarily and in so far as they are expressly in point by the provisions of the Egyptian Civil Code, and in other respects subject generally to the recognized principles of jurisprudence regulating the discharge of obligations.

Egyptian law.

With reference to the Egyptian law upon the matter, I am to refer you more particularly to Articles 155, 199, and 201 of the Egyptian Civil Code, and to section 3 of the Egyptian Code of Procedure 773.

Various opinions of experts in Egyptian law are also submitted herewith, and will be found in the printed pamphlet entitled "Documents relatifs à la Conversion de la Dette Privilégiée. Avril 1889. Le Caire: Imprimerie Nationale." It will be seen that the "Contentieux du Ministère des Finances," the "Comité du Contentieux de l'État," and the three independent jurists of eminence who have been consulted are unanimous in interpreting the obligations of the Egyptian Government to the bondholders as permitting a scheme of repayment of the kind now proposed.

Opinion of counsel of bondholders.

I am also to inclose, for your information, a letter dated the 13th April, which has been received from Messrs. Harries, Wilkinson, and Raikes, a firm of solicitors acting on behalf of a large number of the bondholders.

It will be seen that Messrs. Harries and Co. adopt on behalf of the bondholders whom they represent the view that Article 27 of the Khedivial Decree of 1876 implies no power on behalf of the Egyptian Government to pay off the bonds at par against the will of the bondholders, or to compel them to receive payment of the principal moneys secured by the bonds otherwise than by half-yearly drawings spread over the term of sixty-five years according to the indorsed Table of Amortization; and that they inclose in support of this contention opinions which have been obtained from Sir Charles Russell, Q.C., M.P., Sir Horace Davey, Q.C., M.P., Mr. Finlay, Q.C., M.P., and other counsel practising at the English Bar.

As, however, the exact facts which were put before these eminent counsel, and upon which they formed the opinions quoted, were not stated, Messrs. Harries and Co. were asked to be good enough to supply Her Majesty's Government with copies of the case or cases laid before their counsel. This they have now done, and a copy of their "case for opinion" is also sent herewith.

Opinion of Khedive's Financial Adviser.

I am also to inclose, for your consideration, a Memorandum with which the Financial Adviser to His Highness the Khedive has favoured Her Majesty's Government, containing his observations and criticisms upon these opinions. (See Sir E. Vincent's Memorandum of the 18th April, 1889.)

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion—

Questions submitted.

1. As to whether, having regard to the terms of the Khedivial Decree of November 1876, and to the tenour of the bonds themselves, the Egyptian Government is justified in paying off the bonds of the Privileged Debt at par if empowered to do so by a Decree to which the Great European Powers who recognized that debt subscribe their assent; and in the event of your answer to the above question being in the affirmative—

2. Whether, having regard to all the circumstances of the case, Her Majesty's Government may, as one of those Powers, properly assent to such a Decree.

I have, &c.  
(Signed) P. W. CURRIE.

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[The Report of the Law Officers is as follows:—]

We have taken the matter into our consideration and in obedience to your Lordship's commands have the honour to

*Report—*

Case governed by Egyptian law.

1. That the right of the Egyptian Government to pay off the bonds constituting the Preference Debt is, in our opinion, to be determined with reference to the law of Egypt.

Bonds may be paid off under a Decree and with assent of Powers.

Having regard to the terms of the Khedivial Decree, and the tenour of the bonds themselves, we are of opinion that the Egyptian Government may, if empowered to do so by a Decree to which the Powers assent, pay off the bonds at par.

May assent to such a Decree.

2. We are of opinion that, in view of all the circumstances of the case, Her Majesty's Government may properly assent to such a Decree.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
EDWARD CLARKE.

*Royal Courts of Justice, May 1, 1889.*

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## No. 10.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 14.)*

My Lord, *Royal Courts of Justice, May 13, 1889.*

British Protectorate on the Somali Coast.

Proposed Order in Council as to jurisdiction.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council which had been prepared with a view of providing for the exercise of civil and criminal jurisdiction by Her Majesty within the limits of the British Protectorate which had lately been established on the Somali Coast.

That other papers bearing on the subject, and explanatory of its details, were also annexed for our convenience.

That the grounds on which it had been deemed advisable to prepare the Order in Council in question would be gathered from the following statement:—

Extent and establishment of Protectorate.

That the British Protectorate as now established extended practically over the whole of that portion of the East African Coast, generally styled the Somali Coast, which lay between Cape Jibouti, on the southern side of the entrance to the Bay of Tajourra, and Bunder Ziadeh, situated approximately on the 53rd parallel of east longitude (Greenwich), and that the circumstances which led to its establishment were briefly as follows:—

That in 1884 it was decided to withdraw the Egyptian authorities and troops from Harrar, and from the whole of the coast which they had hitherto occupied from the Straits of Bab-el-Mandeb to Ras Halfoun, including the ports of Tajourra, Zeyla, and Berbera.

That Her Majesty's Government had consequently to consider what course to adopt in order to anticipate the contingency of local disturbances or of foreign occupation, some of the ports, and especially Berbera, being of importance to Aden as a market whence food supplies were drawn.

That with regard to the coast eastward of Zeyla it was determined to make such arrangements as might be thought desirable for the preservation of order, and the security of British interests, and to conclude Agreements with the local Sheikhs.

That that resulted eventually in the establishment of a British Protectorate in the regions described.

That copies of the Treaties with the tribes were inclosed.

That Her Majesty's Government, at the same time, offered upon certain conditions, which would be found in the despatch to Lord Dufferin No. 178 of the 29th May, 1884, to recognize the Sultan's authority over Tajourra and Zeyla.

Negotiations.

That no reply having been received from the Porte, the Turkish Government were warned that unless immediate steps were taken for the occupation of Zeyla, it would be necessary for Her Majesty's Government to send a force there so as to preserve order, and that that was what practically happened.

That at Tajourra the French stepped in, and the coast between Ras Ali and Ghubbet Karab was placed under French protection.

That in 1887 a Declaration was drawn up for the delimitation of the respective spheres of influence of Great Britain and France on the Somali Coast.

That that Declaration was annexed.

Notification of Protectorate.

That in July 1887 Her Majesty's Government notified to the Powers which took part in the Congo Conference at Berlin in 1886 the establishment and limits of the British Protectorate.

That a similar notification was made to the Porte, with certain explanations and assurances, which would be found in the accompanying despatch to Sir W. White.

That in answer to inquiries made by the French Embassy in October 1887 respecting a newly-imposed duty, the French Chargé d'Affaires was informed that Zeyla was under the protection of Great Britain and the administration of British officials.

That in February 1888 a fresh Agreement was concluded with the French

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Government, whereby the boundary of the French Protectorate was moved somewhat nearer to Zeyla.

That in January 1888 the Turkish Ambassador made a formal proposal that the Governor of the Yemen should take over the occupation of Zeyla, and garrison it with Turkish troops.

That that proposal was declined for the reasons stated in the accompanying despatch to Her Majesty's Ambassador at Constantinople.

That under those circumstances the inclosed draft Order in Council, under the Foreign Jurisdiction Acts, had been drawn up to provide for the exercise of civil and criminal jurisdiction within the limits of the British Protectorate.

Position of Zeyla.

That some doubt had been felt as to whether Zeyla, having regard to the fact that it might not unreasonably be held to have been formerly a possession of the Porte, and to the other peculiarities of its position already narrated, ought to be excluded from the operation of the Order in Council, in which case, as was presumed, it would still, as a portion of the Sultan's dominions, fall under the operation of the Levant Orders.

That that arrangement, however, would be a very inconvenient one, and, under all the circumstances of the case, had not been judged necessary or advisable.

That no reference had been made in the draft Order in Council to the slight modification of boundary made in favour of France by the Agreement of February 1888; and that it was held that that matter might probably be dealt with under clause 3 by the issue of instructions by the Secretary of State to the British authorities on the coast.

That Sir T. V. Lister was to request that we would take the draft Order in Council, with the explanatory papers annexed, into our consideration, and that we would favour your Lordship with our opinion as to whether it might properly be laid before Her Majesty in Council for approval in its present form; or, if not, to suggest any alterations or modifications in its terms which might, in our opinion, advantageously be made.

We have taken the matter into our consideration, and in obedience to your Lordship's commands have the honour to

*Report—*

Approve proposed Order in Council.

That, in our opinion, the draft Order in Council may properly be laid before Her Majesty for approval in its present form.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

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|---|---|
| 1. Draft Order in Council. For Order in Council as issued, see Confidential | No. 5866*. |
| 2. Copies of Treaties with the tribes .. .. .. „ | No. 5453. |
| 3. To Lord Dufferin, No. 178, of May 29, 1884 .. .. „ | No. 5057, p. 45. |
| 4. M. Waddington, June 15, 1887 .. .. .. „ | No. 5467, p. 204. |
| 5. To Mr. Scott and others, July 20, 1887 .. .. .. „ | No. 5587, p. 8. |
| 6. To Sir W. White, No. 171, July 20, 1887 .. .. „ | „ p. 9. |
| 7. To Count d'Aubigny, October 22, 1887 .. .. .. „ | „ p. 47. |
| 8. To M. Waddington, February 9, 1888. | |
| 9. Map of Somali Coast. Africa, No. 40 B. | |
| 10. To Sir W. White, No. 62 A, February 27, 1888. | |

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## No. 11.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 10.)*

[After reciting the terms of reference which follow, they report as on page 25:—]

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*Foreign Office to the Law Officers of the Crown.*

Gentlemen, *Foreign Office, June 8, 1889.*

Right of Egypt to conclude non-political Treaties.

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the papers noted in the accompanying list, which relate to the question of the extent of the right granted to Egypt by the Sultan of the Ottoman Empire to conclude independently, and without his intervention, Conventions of a non-political character with foreign Powers.

Firmans respecting Egypt.

I inclose a printed collection of the Firmans respecting Egypt issued between 1841 and 1879, and, in so doing, I am, in the first place, particularly to call your attention to the Firman addressed by the Sultan to the Khedive of Egypt on the 8th June, 1867 (p. 28 of Print), which runs as follows:—

"Be it known, on the arrival of this my Imperial Firman, that, as is also mentioned in my Firman granting the privilege of hereditary succession to the Viceroyalty ('Kidiviet') of Egypt, those fundamental laws which are in force in other parts of my dominions shall be maintained and respected by Egypt. Now, by fundamental laws are meant all those principles laid down in the Imperial Rescript of Gulhaneh (1839). But inasmuch as the internal administration of the province, and consequently its financial, material, and other interests are confided to the Government of Egypt in order to preserve and extend those interests, it is permitted to that Government to frame such Regulations as may seem necessary in the form of 'special Tanzimat for the interior.' In like manner, whilst all the Treaties of the Sublime Porte must be respected in Egypt, *an exception is made only as regards the customs duties and as regards foreigners in matters relating to the police, postal, and transit services, for which full powers are given to them to enter into special arrangements with foreign Agents. But such arrangements must not take the form of Treaties or Conventions having any political signification or purport.* And in the event of their being inconsistent with the principles laid down above, or opposed to my original sovereign rights, it will be necessary to hold them as null and void.

"Wherefore, the question of conformity or non-conformity to these principles in matters where a doubt exists as regards Egypt must be referred to the Sublime Porte previously to such arrangements being concluded.

"And when in the manner explained above any special arrangements are entered into concerning the customs duties in Egypt, information thereof must be transmitted to my Sublime Porte.

"Also, when any Conference respecting Commercial Treaties takes place between my Government and other Powers, in order that the commercial interests of Egypt may be attended to, the opinions of the Egyptian Administration shall be consulted thereon."

On the 8th June, 1873, the Sultan granted to Ismaïl Pasha a new Firman (p. 32), purporting to supersede previous Firmans by uniting them all in one instrument; and I am also to bring to your special attention the following language employed by His Majesty on this occasion (see pp. 34-35 of Print):—

"J'attache la plus grande importance à la prospérité de l'Égypte, au bien-être, à la tranquillité, et à la sécurité de sa population, et comme ce sont des objets qui reposent sur l'administration civile et financière du pays, ainsi que sur le développement des intérêts matériels et autres du pays qui sont du ressort du Gouvernement Égyptien, nous mentionnons comme suit, en les modifiant et les élucidant, tous les privilèges que mon Firman Impérial, soit anciennement, soit à nouveau, a accordés au Gouvernement Égyptien pour qu'ils soient possédés à toujours par les Khédives qui se succéderont.

"L'administration civile et financière du pays et tous les intérêts matériels et autres, sous tous les rapports, sont du ressort du Gouvernement Égyptien et lui sont confiés, et comme l'administration, le bon ordre de tout pays, le développement de la richesse et de la prospérité de la population proviennent de l'harmonie à établir entre les faits, les relations générales, la condition et la nature du pays, ainsi que le caractère et les mœurs des habitants, le Khédive d'Égypte est autorisé à faire les règlements intérieurs et des Lois toutes les fois qu'il sera nécessaire.

"*Il est aussi autorisé à renouveler et à contracter, sans porter atteinte aux Traités politiques de ma Sublime Porte des Conventions avec les Agents des Puissances Étrangères pour les Douanes et le commerce et pour toutes les relations qui concernent les étrangers,* et toutes les affaires intérieures et autres du pays, et cela dans le but de développer le commerce et l'industrie et de régler la police des étrangers ainsi que leur situation et tous leurs rapports avec le Gouvernement et la population."

* * * * * *

"*C'est en conformité de ma volonté Impériale que les règles et principes contenus dans ce Firman doivent être observés à toujours et à jamais exécutés, en lieu et place de tous les autres contenus dans mes précédents Firmans* (p. 36)."

On the occasion of the deposition of Ismaïl Pasha in 1879, the Sultan, in appointing Tewfik Pasha to succeed his father as Khedive of Egypt, attempted *proprio*

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*motu* to revoke all the existing Firmans, but eventually a Firman (bearing date the 2nd August, 1879) was issued, which stated (p. 38):—

"Tous les impôts de cette province seront perçus en mon nom. Les habitants d'Égypte étant de mes sujets, et ne devant comme tels subir la moindre oppression ni acte arbitraire, à cette condition le Khédiviat d'Égypte, auquel est confiée l'administration civile, financière, et judiciaire du pays, aura la faculté d'élaborer et d'établir, d'une manière conforme à la justice, tous Règlements et Lois intérieurs nécessaires à cet égard."

And, with regard to the conclusion of non-political Conventions, said (p. 38):—

"*Le Khédive sera autorisé à contracter et à renouveler, sans porter atteinte aux Traités Politiques de mon Gouvernement Impérial, ni à ses droits souverains sur ce pays, les Conventions avec les Agents des Puissances Étrangères pour les Douanes et le commerce, et pour toutes les transactions avec les étrangers concernant les affaires intérieures*, et cela dans le but de développer le commerce, l'industrie, et l'agriculture, et de régler la police des étrangers et tous leurs rapports avec le Gouvernement et la population. Ces Conventions seront communiquées à ma Sublime Porte avant leur promulgation par le Khédive."

In notes exchanged between the Porte and the British and French Ambassadors (29th July and the 2nd and 3rd August, pp. 39, 40, and 41), it was declared in the name of the Porte that the stipulation in the last Firman: "Ces Conventions seront communiquées à ma Sublime Porte avant leur promulgation par le Khédive," . . . . . "exclut toute obligation de la part du Khédive d'obtenir la sanction ou l'autorisation du Sultan pour promulguer ou mettre en pratique les dites Conventions." The Turkish Declaration went on to say: "Toutefois, la Sublime Porte se réservant le droit de refuser de reconnaître ou de sanctionner les dites Conventions, et devant toujours être à temps pour le faire si elles portaient atteinte aux Traités Politiques de la Sublime Porte ou à ses droits souverains sur ces pays, comme il est dit dans le texte même du Firman."

The Porte further declared "que le présent Firman ne restreint en rien, sauf ce qui y est expressément relaté, les droits, privilèges, et prérogatives précédemment et personnellement accordés aux Khédives d'Égypte:" this Declaration being made in order to obviate any obscurity as to the meaning of the following paragraph in the Firman, viz. (p. 39)—

"Le Khédiviat ne saura sans aucun motif ni prétexte abandonner à d'autres, en tout ou en partie, les privilèges accordés à l'Égypte, et qui lui sont confiés comme une émanation des prérogatives inhérentes au Pouvoir Souverain, ni aucune partie du territoire."

View taken by Her Majesty's Government.

The view which has hitherto been taken by Her Majesty's Government as resulting from these various Firmans has been:—

1. That the Treaties between Turkey and foreign States are binding on Egypt even in commercial matters if such Treaties are of a date antecedent to the Firman of 1873, which conceded to Egypt the right to make non-political Conventions with foreign Powers; but that Egypt can, by entering into Conventions with the foreign Powers having such Treaties with Turkey, free herself from the obligations thus devolving upon her.

2. That Egypt is not affected by the commercial stipulations in Treaties concluded by Turkey subsequently to the Firman of 1873, and that she can enter into Commercial Conventions with foreign Powers and promulgate and act upon them without its being necessary for her to obtain the sanction of the Porte, provided that such Conventions do not deal with political questions, and that they be communicated to the Porte before promulgation.

View taken by the Porte.

There is reason, however, to believe that the Porte takes a different view of the matter, and it appears possible that the Sultan may claim that the words "ni à ses droits souverains sur ce pays" which occur in the Firman of 1879 not only amount to a reservation disentitling Egypt to claim that such Conventions as the Khedive may enter into with foreign Powers are good against the Porte, but justify the Porte in including Egypt in the commercial arrangements which Turkey may make by Treaty with foreign Powers. The passage in which those words are used is as follows:—

"Le Khédive sera autorisé à contracter et à renouveler, sans porter atteinte aux Traités Politiques de mon Gouvernement Imperial, ni à ses droits souverains sur ce pays, les Conventions avec les Agents des Puissances Étrangères, &c., &c."

The Commercial Treaty between England and Turkey expired in 1883, having been denounced by the Porte, and any Treaties of a like nature existing between Turkey and the other foreign States have, with one exception, been abrogated or will expire in little more than a year from the present time, the exception being the Treaty with Portugal, which will not terminate till the year 1896.

Her Majesty's Government have carried on negotiations for a Commercial Treaty with Turkey for some time past, but without much prospect of bringing them to a satisfactory conclusion, and the position which they now occupy is that of being entitled to the most-favoured-nation treatment, which they claim under the Capitulations with the Porte of 1675. Her Majesty's Government have, however, been in negotiation with the Government of Egypt for the conclusion of a Commercial Convention, and the Turkish Minister for Foreign Affairs has made a verbal communication to the Dragomans of most of the Embassies at Constantinople, to the effect that the Porte has heard that Her Majesty's Government is negotiating with the Khedive a Special Commercial Convention, but that as all foreign Governments happen to be at the same time in negotiation with Turkey for new Commercial Treaties, the Porte wishes to draw the attention of these Governments to the unadvisability of continuing the negotiations with Egypt so long as the Treaties with the Suzerain Power have not been brought to a conclusion.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion as to whether the views, above indicated, upon the construction of the Firmans, can be maintained in their integrity; and, if not, to what extent, and in what respects, they can, on a fair construction of these documents, be successfully combatted.

I have, &c.
(Signed) P. W. CURRIE.

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*List of Papers.*

Law Officers, No. 24, Egypt, November 1884. Confidential No. 5121.
Law Officers, No. 34, Egypt, pp. 42, 43, and 44 of 1883 Reports. Confidential No. 4974.
Firmans, &c. Confidential No. 4747.
Sir W. White, No. 24, Telegraphic, of May 22, 1889.

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We have taken the papers which were inclosed in Sir Philip Currie's letter of the 8th ultimo, and also those which were forwarded to us on the 1st instant, into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report*—

View taken by Her Majesty's Government can be maintained subject to limitation indicated in Law Officers' Report of December 15, 1883.

That, in our opinion, the views hitherto taken by Her Majesty's Government can be maintained, subject to the limitation indicated in the Report of our predecessors dated the 15th December, 1883, that where any Power has an existing Treaty with the Porte in respect of commerce with the Ottoman dominions, including Egypt, it is not competent to such Power to conclude a Commercial Convention with Egypt inconsistent with such Treaty, without denouncing that Treaty, or being prepared to submit to its immediate denunciation by the Porte.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, July* 10, 1889.

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## No. 12.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received October* 2.)

*Royal Courts of Justice, September* 30, 1889.

Carmelo Debono sentenced for coining.

My Lord,

WE were honoured with your Lordship's commands signified in Sir Villiers Lister's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* of his letter respecting the case of Carmelo Debono, who, on the 4th April last, was sentenced in Her Majesty's Consular Court at Alexandria to five years' penal servitude for counterfeiting coin, and whose wife is now praying for a mitigation of his sentence.

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* Mrs. Debono, May 27; Sir C. Cookson, No. 28, August 24, 1889.

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Petition for mitigation of sentence.

That his wife's petition was, by your Lordship's directions, referred to Sir Charles Cookson who had tried the case, and it would be seen, from the reply which had been received from that gentleman (No. 28 of the 24th ultimo), that, in view of various facts which had since the trial come to his knowledge, he was of opinion "that there are grounds in this case for the exercise of Her Majesty's prerogative of pardon, or at any rate for a remission of part of the unexpired sentence."

That Sir V. Lister was to request us to take the accompanying papers into our consideration, and to inform your Lordship what action we would recommend should be taken by your Lordship in the matter.

In obedience to your Lordship's commands we have the honour to

*Report—*

Prisoner should be pardoned.

That, in our opinion, Her Majesty's prerogative of pardon should be exercised in this case. Apart from the finding of the portmanteau and its contents, there was no evidence sufficient to support the conviction, and it now appears clear from Sir Charles Cookson's Report that the prisoner's statement about the portmanteau was true.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## FRANCE.

### No. 13.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 30.)*

My Lord, *Royal Courts of Justice, March 29, 1889.*

Pillage of the "Belem," wrecked off the coast of Labrador.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to the alleged pillage by British fishermen of the French brig "Belem," which was wrecked off the coast of Labrador in July 1887.

That the history of the case would be found fully set out in the accompanying précis, which had been prepared in the Foreign Office, but that a print of the actual correspondence which had passed upon the subject between the various Departments and Governments concerned was also annexed, in case we should desire to refer more particularly thereto.

That it would be seen that great discrepancies existed between the facts of the case as furnished to Her Majesty's Government by the French authorities (M. Jusserand of the 16th April, 1888) and those adduced in evidence (1) before the Court of Inquiry instituted by the District Magistrate at Harbour Grace, and (2) before the British Naval Court which subsequently held an exhaustive investigation into the matter.

That the Secretary of State for the Colonies, after a full consideration of the case, had been unable to find any ground upon which the Government of Newfoundland could properly be held liable to compensate the sufferers.

But that, before deciding what answer should be returned to the French Government in the event of their pressing the claim for compensation put forward on behalf of the master of the "Belem," your Lordship would be glad to be also favoured with our opinion on that point.

That copies of two Memoranda by Sir Edward Hertslet, dated respectively the 8th February, 1877, and 14th April, 1888, were also inclosed.

That the first of those Memoranda dealt generally with various cases of outrages on foreigners in British dominions and on British subjects abroad, while the second dealt particularly with the case of the British vessel "Prince of Wales," which was wrecked on the coast of Brazil in 1861.

That on pp. 3 and 4 of the general Memorandum of the 8th February, 1877, would be found a short account of the case of the Austrian vessel "Sollicito Bocchese," which was wrecked off the coast of Galway in February 1850, and plundered by the inhabitants of Baffin Island.

Question as to liability of the Newfoundland Government.

That Sir Julian Pauncefote was therefore to request that we would take the papers transmitted with his letter into our consideration, and that we would be good enough to furnish your Lordship with our opinion as to whether, having regard to all the circumstances attendant upon the wreck of the "Belem," the Government of Newfoundland could properly be called upon to compensate the sufferers thereby, and, if so, upon what grounds.

That Sir Julian Pauncefote was to add that your Lordship would be glad to be furnished, at the same time, with any general observations which we might have to offer on the case.

We have taken the matter into our consideration and, in obedience to your Lordship's commands, have the honour to

*Report—*

No reason to admit French claim.

That, in our opinion, there is no evidence that the pillage complained of was caused by the neglect or default of persons in judicial or executive employment, while there is evidence that it was mainly caused by the improper conduct of the captain; and that there is therefore no reason to admit the claim for compensation made by the French Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

M. Waddington, July 26, 1887. Confidential No. 5615, p. 110.
Colonial Office, August 15, 1887. Ibid., p. 120.
To M. Waddington, August 19, 1887. Ibid., p. 121.
Colonial Office, August 22, 1887. Ibid., p. 121.
" " September 15, 1887. Ibid., p. 130.
" " October 18, 1887. Ibid., p. 137.
To Count d'Aubigny, October 22, 1887. Ibid., p. 142.
Colonial Office, November 11, 1887. Ibid., p. 155.
Admiralty, November 17, 1887. Ibid., p. 160.
M. Jusserand, April 16, 1888. Confidential No. 5673, p. 65.
To Colonial Office, April 27, 1888. Ibid., p. 74.
Colonial Office, June 13, 1888. Ibid., p. 104.
To M. Waddington, June 19, 1888. Ibid., p. 107.
Colonial Office, September 20, 1888. Ibid., p. 169.
To Colonial Office, September 27, 1888 Ibid., p. 177.
Colonial Office, December 21, 1888. Ibid., p. 233.
Memorandum, February 8, 1877. Confidential No. 3279.
" " April 14, 1888. Confidential No. 5705.
Précis, January 15, 1889.

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### No. 14.

*The Law Officers of the Crown to the Marquis of Salisbury,—(Received June 26.)*

My Lord, *Royal Courts of Justice, June 25, 1889.*

Tunisian Decree conferring power on French Tribunals to decide private suits brought against the Tunisian Administration.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the inclosed copy of a Decree (and other accompanying papers) which was published, by order of His Highness the Bey of Tunis, on the 27th November, 1888, and which purported to confer on the French Tribunals established within the Regency, power to hear and decide all suits brought by private individuals against the Administration.

Effect of Decree.

That the effect of the Decree in question, in so fas as it was binding upon the subjects of foreign Powers, appeared to be to compel any such foreigners who might have sustained injuries at the hands of the Beylical Government, to personally present their claims before the French Tribunals under restrictions and conditions of a more or less onerous description, and to deprive them of the right, which they had hitherto

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been admitted to possess under the Capitulations, of having such claims presented and pressed by their own Governments respectively through diplomatic channels.

That in so far as the claims and interests of British subjects were concerned, Her Majesty's Government had agreed, since the establishment of the French Protectorate, that the French Resident should be the channel through which any representations, which they might deem it necessary to make, should reach the Bey, but that they had in nowise surrendered, on behalf of the subjects of Her Majesty, the privileges which they derived from the Capitulations, and which in no way formed part of the ex-territorial jurisdiction in civil and criminal matters formerly possessed by Her Majesty's Government in Tunis, but subsequently transferred by international agreement to the exclusive jurisdiction of the French Tribunals upon the establishment by the French Republic of a Protectorate, or Regency, over Tunis.

**Doubt as to its being binding on foreign Powers.**

That as, therefore, the provisions of the Decree in question seemed to be entirely unconnected with the arrangement under which British Consular jurisdiction over British subjects was transferred to the French Tribunals, it appeared to Her Majesty's Government, when the measure was first brought to their attention, that it was open to grave doubt whether it could be held obligatory upon foreign Powers without their previous assent.

**Advantages of Decree.**

But that, at the same time, Her Majesty's Government were alive to the advantages which might arise from a system whereby the claims of British subjects against the Tunisian Government might be referred to the French Tribunals, if it could be secured that the procedure were substantially the same as that followed in France with respect to suits against the Government of the Republic, and that the right to appeal were also preserved to the fullest extent allowable in other cases.

That it was consequently thought advisable, in the first instance, to procure the opinion of M. Clunet, the well-known French jurist, upon those points, and that an exhaustive Report had now been obtained from that gentleman, in which he went fully into those questions.*

**Opinion of M. Clunet.**

That it would be seen that M. Clunet considered that the Tunisian Decree was more favourable to a claimant than the French law; but that, at the same time, he acknowledged that the latter was iniquitous; and that, under those circumstances, it scarcely seemed advisable to surrender our diplomatic remedy for a judicial one, which, in its present shape, might prove insufficient or illusory.

**As to advisability of objecting to Decree.**

That Sir Philip Currie was specially to call our attention to the various objections urged against the Decree in Consul Ricketts' despatch No. 27 of the 1st December, 1889; and also in the note of the Italian Chargé d'Affaires of the 7th January, 1889; and that he was to inquire whether, in, our opinion, it might not be advisable for Her Majesty's Government to demur to the measure, until, at any rate, its terms were enlarged so as to confer upon foreign claimants a right of appeal to the highest appellate Tribunals as full as that provided in the case of suits of a similar nature, if brought by one private individual against another, and until the other objectionable features to which attention had been called were removed or modified.

That Sir Philip Currie was accordingly to request that, after taking the papers transmitted with his letter into our consideration, we would favour your Lordship with our opinion on the questions submitted therein: and that should we consider the provisions of the Decree objectionable, your Lordship would further be glad to be favoured with our views as to the nature of the modifications and amendments which it might be advisable that Her Majesty's Government should urge upon the attention of the Government of the French Republic.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

**No ground for objecting to Decree.**

**Right to protect diplomatically unaffected.**

That, in our opinion, there is no ground for objecting to the Decree of the 28th November, 1888. The only effect of such Decree is to give to persons who have claims against the Administration the means of enforcing those claims by suits before the French Tribunals—a provision which is of advantage to foreigners as well as to the subjects of the Bey. The right of the British Government, as it existed immediately before the making of the Decree, to protect its subjects by diplomatic

action against wrong-doing on the part of the Tunisian Government is of course unaffected by any such Decree.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

| | | | | |
|---|---|---|---|---|
| Consul Ricketts .. .. .. .. | No. 27. | Political | December | 1, 1888. |
| Draft to Lord Lytton .. .. .. .. | No. 17 | | January | 10, 1889. |
| Lord Lytton .. .. .. .. .. | No. 122 | | March | 7, „ |
| Correspondence and Convention as to cession of British Consular Jurisdiction in Tunis to the French Tribunals, Confidential No. 4853. | | | | |
| M. Catalani .. .. .. .. .. .. | | | January | 7, „ |
| Italian Protocol of January 25, 1884, Confidential No. 4991, p. 39 in No. 60. | | | | |
| Italian Law of March 20, 1865, 8vo., No. 2764, p. 64. | | | | |
| Order in Council of December 31, 1883, Confidential No. 4905. | | | | |

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## No. 15.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 15.)*

*Royal Courts of Justice, July* 11, 1889.

My Lord,

**Alleged violation of domiciles of British subjects in Tunis without consent of British Consul.**

WE were honoured with your Lordship's commands signified in Sir T. H. Sanderson's letter of the 18th May last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to two cases recently brought to the attention of your Lordship by Her Majesty's Consul at Tunis, in which it was alleged that the domiciles of British subjects, named respectively Licari and Ellul, had been illegally violated.

That the facts of both cases were very similar, and that, as the considerations of law arising in either case appeared to be practically identical, it had been thought well to endeavour to present the cases together in the summary which followed, viz.:—

**Case of Mr. G. Licari. Seizure of liquor.**

That on the 16th December, 1888, the premises of Mr. G. Licari, a British subject, proprietor of a liquor manufactory at Tunis, were entered by the Tunisian police, under the orders of an Inspector of the Sanitary Board, appointed by the Municipal Council, and that some 2,000 bottles of liquor and other articles were seized and placed under seal. That that step was taken in consequence of samples of his goods, which had previously been taken by an Inspector, having been declared unfit for consumption on being subjected to analysis by French experts.

That in reporting that case to the Foreign Office, Mr. Ricketts stated that the Tunisian authorities based their proceedings on the Municipal Decree of the 15th July, 1888, regulating the sale of liquors, and on the XVIIth Article of the Treaty of 1875, by which it was provided that "manufactories (of British subjects) and their appurtenances, being immovable property, shall be subject to the provisions of the Convention of the 10th October, 1863, relative to the permission granted to British subjects to hold real property in the Regency of Tunis."

**Seizure not authorized by French Courts.**

That Mr. Ricketts further suggested that, although that line of argument might perhaps have been admitted, had the act complained of proceeded in the first instance under an order of the French Tribunals, Mr. Licari's premises had, in fact, been entered under no higher authority than that of an agent appointed by the Municipal Council, and without the previous knowledge and sanction of Her Majesty's Consul-General. (Mr. Ricketts No. 32 of the 24th December, 1888.)

That in the following January, Mr. Ricketts reported (No. 9 of the 25th January, 1889) that the Bey had, on the 3rd of that month, issued a Decree establishing a Sanitary Commission, with the French Consul as President.

That in reply to his inquiries with regard to the Commission, Mr. Ricketts was informed (to Mr. Ricketts No. 22 of the 22nd February, 1889) that Her Majesty's Government had no objection to the transfer to that body of the functions hitherto exercised by the Municipality relative to sanitary business.

That as regarded, however, the enforcement of any sanitary Regulations, Her Majesty's Government held that the French Tribunals had alone power to execute process on foreigners, and that, therefore, the dwelling of a British subject could not be forcibly entered by order of the Sanitary Commission alone.

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* See Earl of Lytton's No. 122, March 7, 1889.

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That Mr. Ricketts was subsequently instructed to act in conformity with those views, but to make no protest unless a violation of a British domicile should take place, by its being entered without his consent by Tunisian officials acting without any further authority than the orders of the Sanitary Commission.

That meanwhile, on the 4th February, Mr. Ricketts had been informed (No. 15 of the 4th February, 1889), in reply to his despatch No. 32 respecting the Licari case, that the French Tribunals were entitled to issue process to be executed on foreigners and their residences in all matters which came within the civil or criminal jurisdiction of those Tribunals, but that the matter in question, not having been brought before them, was a case of process issued by the native Municipality alone, and in violation of immunities secured to British subjects by Treaty.

That he was, therefore, instructed to make a representation to that effect to the French Resident.

Condemnation of Mr. Licari by French Courts.

That in March Mr. Ricketts reported (No. 21 of the 19th March and No. 22 of the 22nd March) that the case had been submitted by the Municipality to the French Courts, and that Mr. Licari had been condemned by them to fine, imprisonment, and forfeiture of his goods.

That copies of the Judgment against Guiseppe and Emmanuelle Licari, and also of that against Francesco and Baldessare Licari, were forwarded to the Foreign Office by Mr. Ricketts in his despatches No. 30 of the 11th April and No. 34 of the 22nd April, 1889, which were transmitted to us.

That on the 25th March Mr. Ricketts made the representation to the French Resident which he had been instructed to make respecting that case by the Foreign Office despatch No. 15 of the 4th February, 1889 (Mr. Ricketts' telegram of the 3rd April, 1889).

Seizure of goods of Mr. A. Ellul without judicial process.

That in April Mr. Ricketts reported (No. 31 of the 15th April, 1889) that the premises of Mr. A. Ellul, a butter merchant, had been entered by the police under the orders of Delegates from the Municipality for the enforcement of sanitary measures, without any judicial process having been instituted against Mr. Ellul, and without the previous consent of Her Majesty's Consul-General having been obtained.

That in the note which Mr. Ricketts addressed to the French Resident protesting against those proceedings, he seemed to have based his remonstrances on the fact, that samples of Mr. Ellul's goods had been taken away contrary to his wish, and that such a proceeding on the part of the Tunisian authorities amounted to a violation of the XXIIIrd Article of the Treaty of 1875, which stipulated that no British subject "shall be compelled to sell anything to a Tunisian against his free will."

That a Memorandum, which was in the nature of a reply to the representation made by Mr. Ricketts on the 25th March, was communicated to the Foreign Office on the 6th May by the French Chargé d'Affaires.

French reply on cases.

That the Memorandum reviewed the Licari and Ellul cases from the French point of view, and maintained that the action of the Municipal officers was authorized by French law, and did not require the previous sanction of the British Consul.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the action of the Tunisian authorities in either or both of the cases in question constituted a violation, and, if so, in what respects, of the existing Treaty rights of British subjects, and that he was to add that your Lordship would be glad, at the same time, to be favoured with any general observations which we might have to offer on the case.

We were also honoured with a Memorandum from Sir Philip Currie, dated the 30th May, covering two further despatches from Her Majesty's Consul at Tunis on the same subject.*

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report*—

Proceedings not in violation of Treaty rights.

That we gather from the papers before us that the acts of the Tunisian authorities, which form the subject of complaint, were performed by the "police judiciaire" authorized by the French Tribunals to act in execution of the Tunisian laws, and the French Code of Criminal Procedure, and that the officers were responsible to the French Tribunals, which have adjudicated upon the whole matter, and before which no question appears to have been raised as to the irregularity of the proceedings.

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* Consul Ricketts, No. 41, May 20; ditto, No. 43, May 22, 1889.

Under these circumstances, the acts complained of do not, in our opinion, constitute a violation of the Treaty rights of British subjects.

Under the Conventions of 1863 and 1875, there is no provision which would exempt the dwellings of British subjects from liability to the process prescribed by the Municipal law.* If the Protocol of July 1868 is to be regarded as in force in Tunis the case would no doubt be different, but, having regard to the dates and language of the Conventions of 1863 and 1875, we doubt whether reliance can safely be placed upon that Protocol so far as this case is concerned.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

1. Treaty of October 10, 1863, relative to the holding of real property by British subjects in Tunis Treaty No. 474.
2. Convention with Tunis of July 19, 1875. Treaty No. 586.
3. Order in Council of December 31, 1883, abolishing British Consular jurisdiction in Tunis. Confidential No. 4905*.
4. Municipal Decree of July 15, 1888, regulating the sale of liquors in Tunis.
5. Consul Ricketts .. .. .. .. .. .. (No. 32) December 24, 1888.
6. „ „ .. .. .. .. .. .. (No. 9) January 25, 1889.
7. To Consul Ricketts .. .. .. .. .. (No. 15) February 4, „
8. „ „ .. .. .. .. .. .. (No. 22) „ 22, „
9. Consul Ricketts .. .. .. .. .. .. (No. 21) March 19, „
10. „ „ .. .. .. .. .. .. (No. 22) „ 25, „
11. „ „ .. .. .. .. .. (Telegraphic) April 3, „
12. „ „ .. .. .. .. .. .. (No. 30) „ 11, „
13. „ „ .. .. .. .. .. .. (No. 31) „ 15, „
14. „ „ .. .. .. .. .. .. (No. 34) „ 22, „
15. Memorandum communicated by M. Jusserand on May 6, 1889.

[*Note.*—A further communication on this subject, dated the 16th July, 1889, was received from the Law Officers; but it was not printed, as it in no way modified the above opinion.]

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## No. 16.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received July* 19.)

*Royal Courts of Justice, July* 19, 1889.

My Lord,

Cases of the "Virginie" and "Amazone."

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 21st ultimo, stating that he had the honour to transmit to us, by direction of your Lordship, together with other papers noted in the accompanying list, the inclosed draft of a note which it was proposed to address to the French Ambassador at the Court of St. James', in reply to a representation which was received on the 14th September last by Her Majesty's Government from that of the French Republic with regard to the cases of two French fishing-schooners, named respectively "La Virginie" and "L'Amazone."

Condemned for violation of Newfoundland Bait Acts.

That those vessels were, on the 9th July of last year, boarded within the territorial waters of Newfoundland by the Customs Commissioners of that Colony, and were by them conveyed to the port of Placentia, where their respective masters were charged before the Resident Magistrate with a violation of the Colonial Bait Acts.

That, after a careful investigation, a fine of 200 dollars was inflicted in each case, and, as an additional penalty, each vessel was confiscated.

Appeals against Judgments.

That against those Judgments both vessels appealed, and, pending the hearing of the appeals, were, on the 22nd August, 1888, handed over to their respective owners on their complying with such conditions as to bail and otherwise as to the Court seemed just.

That the appeal was heard before Mr. Justice Little in August last at the sitting of the Supreme Court for Newfoundland on circuit.

Results of appeals.

That Judgment was then reserved, but had since been delivered, setting aside the

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* See also Minute by Sir E. Hertslet of July 22, 1889.

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decision of the Stipendiary Magistrate in so far as the forfeiture of the vessels was concerned, but affirming it in other respects.

That an official copy of that Judgment, under the signature of the Judge and the seal of the Supreme Court of Newfoundland, had now been procured, and had been reproduced in the inclosed print, which it was proposed, should we see no objection, to forward to the French Government, with the note of which the draft was sent with the papers.

No further appeals.

That Sir Philip Currie was, with respect to the finality of that Judgment, to call our attention to the opinion of the Attorney-General of Newfoundland of the 19th March last (Inclosure 3 in Colonial Office letter of the 13th April), from which it would be seen that neither party had entered an appeal, nor applied for a rehearing of the cases, and that the time for so doing had long since expired.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the course proposed was one which was suitable, and whether the terms of the draft note were such as were right and proper, having regard to the circumstances of the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Approve proposed course, and draft note as amended.

That, in our opinion, the course proposed is suitable, and that the terms of the draft despatch are right and proper, subject to the following amendment of the final sentence.

After "detail," begin a fresh sentence thus:—

"Her Majesty's Government is now informed that the time for appealing against this decision has elapsed, and that no appeal has been lodged, and I have the honour to say that the conclusion," &c.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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### Annex.

*Draft of Letter from the Marquis of Salisbury to M. Waddington.*

M. l'Ambassadeur, *Foreign Office*, , 1889.

I HAVE the honour to acknowledge the receipt of your Excellency's note of the 15th instant again calling attention to the case of the two French schooners "La Virginie" and "L'Amazone," and requesting that the decision of Her Majesty's Government in the matter might now be communicated to you.

I must express my regret for the delay which has taken place, and which has been caused by the necessity of procuring documents from Newfoundland material for a thorough examination of the question.

These have been received, and Her Majesty's Government have not failed to give their best consideration to the representation made by M. Jusserand on the 14th September last.

The two vessels in question were boarded by Newfoundland Commissioners within the territorial waters of that Colony on the 9th July, 1888, and were taken to Placentia, where the masters were brought before the Resident Magistrate and charged with a violation of the Bait Act. After a careful investigation, a fine of 200 dollars was inflicted in each case, and the master was sentenced to the additional penalty of having his vessel confiscated.

In calling attention to the circumstances in question, M. Jusserand, among other objections to the course pursued by the Newfoundland authorities, contended that whether or not the facts complained of took place within the 3-mile limit, the Colonial officers were not warranted in boarding the French schooners, since the latter were not found in the actual violation of the law, in default of which such an act of search, and, *à fortiori*, of seizure, was illegal, and therefore could not be admitted by the French Government.

M. Jusserand further alleged that the vessel making the seizure had no military character, and added that he was instructed to bring these points under the special notice of Her Majesty's Government pending the issue of the appeal to a higher Court, which had been made by the persons directly concerned.

Her Majesty's Government have now been furnished with a copy of the Judgment in the matter which has been delivered by the Newfoundland Court of Appeal, and I have the honour to transmit it herewith to your Excellency, for the information of your Government.

It deals so fully with all the particulars of the case, and with the objections raised by the French Government, that it seems unnecessary for me to recapitulate the facts and arguments in detail. *Her Majesty's Government are now informed that the time for appealing against this decision has elapsed, and that no appeal has been lodged, and I have the honour to say* that the conclusion arrived at, by which the Court set aside the Judgment appealed from in so far as it related to the forfeiture of the vessels, but affirmed it in other respects, appears to Her Majesty's Government to be well founded.

I have, &c.

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*List of Papers.*

| | | | |
|---|---|---|---|
| M. Jusserand | September 14, 1888. | Confidential No. 5763, | p. 167. |
| To Colonial Office | October 3, ,, | ,, ,, | p. 190. |
| Colonial Office | October 6, ,, | ,, ,, | p. 190. |
| Ditto | November 14, ,, | ,, ,, | p. 202. |
| To Colonial Office | December 18, ,, | ,, ,, | p. 232. |
| Colonial Office | December 22, ,, | ,, ,, | p. 235. |
| Ditto (B) | January 11, 1889 | Confidential No. 5828, | p. . |
| Ditto | January 25, ,, | ,, ,, | p. . |
| Ditto | April 13, ,, | ,, ,, | p. . |

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## No. 17.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 12.)*

*Royal Courts of Justice, November* 11, 1889.

My Lord,

New French Nationality Law.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 30th August last, stating that he was directed by your Lordship to transmit to us despatches from Her Majesty's Embassy at Paris, as marked in the margin,* on the subject of a Law respecting nationality recently passed in France.

That the text of the Law would be found in Mr. Egerton's despatch No. 34, Treaty, of the 20th June, and the points of importance to which Her Majesty's Ambassador called attention in his Excellency's despatch No. 10, Treaty, of the 29th March last.

That, in connection with the subject, Sir Thomas Sanderson was to call our attention to Article XI of the Commercial Convention between Great Britain and France of the 28th February, 1882.

Proposed instructions

as to protest or observation.

That Sir Thomas Sanderson was further to inclose drafts of instructions which your Lordship proposed to address to Her Majesty's Ambassador and Consuls in France, and that he was to request that we would favour your Lordship with our opinion whether they were right and proper under the circumstances of the case, or whether we were of opinion that there was anything in the new French Law which called for protest or observation on the part of Her Majesty's Government before instructions were issued in conformity with its provisions.

That Sir Thomas Sanderson was also to request that we would, if necessary, favour your Lordship with any general observations which might occur to us on the subject.

We were also honoured with a note from Sir Thomas Sanderson, dated the 7th September last, inclosing a despatch† from Her Majesty's Ambassador at Paris containing further details respecting the new Law.

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* See List annexed.

† The Earl of Lytton, No. 58, Treaty, August 24, 1889.

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We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

No need for protest. Approve instructions.

That, in our opinion, there is nothing in the new French Law which calls for protest or observation on the part of Her Majesty's Government, and that the draft instructions are right and proper under the circumstances.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

| | | | | |
|---|---|---|---|---|
| 1. Earl of Lytton .. .. .. | (No. 10. Treaty) | March | 29, 1889. |
| 2. Mr. Egerton .. .. .. | (No. 34. Treaty) | June | 20, „ |
| 3. Earl of Lytton .. .. .. | (No. 45. Treaty) | July | 20, „ |
| 4. „ „ .. .. .. | (No. 46. Treaty) | „ | 20, „ |
| 5. „ „ .. .. .. | (No. 48. Treaty) | „ | 26, „ |
| 6. „ „ .. .. .. | (No. 58 Treaty) | August | 24, „ |
| 7. Memorandum (Sir H. Bergne) .. .. .. | | July | 25, |
| 8. Draft instructions to Her Majesty's Ambassador and Consuls in France. | | | |
| 9. Commercial Convention with France (February 28, 1882). | No. 695. | | |
| 10. Circular of November 4, 1878, addressed to Her Majesty's Consuls in France. Circular No. 1406. | | | |

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## Annex.

*Draft of Despatch to the Earl of Lytton.*

(No. . Treaty.)

My Lord, *Foreign Office, November* , 1889.

WITH reference to your Excellency's despatch No. 10, Treaty, of the 29th March last, and to subsequent correspondence on the subject of the new French Law of Nationality, I now transmit to you a draft of an instruction which I propose to address to Her Majesty's Consuls in France explaining the effect of this measure, and prescribing rules for their guidance in the matter.

I have to request that, in accordance with the invitation contained in M. Spuller's note of the 19th July, inclosed in your despatch No. 45, Treaty, of the 20th, your Excellency will communicate a copy of this draft instruction officially to the French Government, and request to be informed whether they concur in its terms and are prepared to instruct the French authorities accordingly.

Status of sons of British fathers not born in British dominions or in France.

You will point out that Her Majesty's Government have assumed that the French Law is not intended to impose the status of French citizens on British subjects born in France, whose fathers were born, not in Her Majesty's dominions, but in some country other than France; and that a statement appears in the Circular to Her Majesty's Consuls to the effect that M. Spuller's assurance includes this class of persons; but no doubt should be allowed to exist whether such is the intention of the French Government.

Instructions as to—

Passports.

In regard to the request contained in your Excellency's despatch No. 10, Treaty, of the 29th March last, for instructions as to passports, I have to inform you that you are authorized to grant passports to all persons who are British subjects according to British law, under the heretofore existing conditions; and to afford them, in case of necessity, such protection as you properly can, except in regard to military service in the case of those who, by the new Law, are called upon to serve.

Military service.

Marriages.

As regards the question whether a person who is a British subject according to British law, and at the same time a French citizen according to the new French Law, can marry a British subject either at the British Embassy or at a British Consulate without having gone through a previous ceremony according to the law of France, I have to state that such a marriage at Embassy or Consulate would be valid by British law, but that it would appear to be very desirable that the parties should comply with the French law before having their marriage solemnized at the British Embassy or Consulate, especially if they intend to reside in France.

I am, &c.

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## GENERAL.

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### No. 18.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received January* 17.)

My Lord, *Royal Courts of Justice, January* 16, 1889.

Levy of light dues on shipping in British ports.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th July last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list respecting the bearing of the national treatment and most-favoured-nation clauses in Treaties between this country and foreign States on the system under which light dues were at present levied on shipping in the ports of the United Kingdom.

That we should perceive from the inclosed correspondence that the question was raised by an inquiry addressed to the Secretary of State by Mr. White, the Chargé d'Affaires of the United States' Legation in this country, and to which no reply had been returned.

That it was well, however, to bear in mind, in connection with the matter, that the United States' Government had recently been engaged in a controversy with foreign Governments as to their right to levy tonnage dues, &c., differing in amount according to the geographical situation of the places from which the voyage was made, and that their attitude in that controversy was set forth in the inclosed extract from the "National Republican" (see Sir L. West's No. 85, Commercial, of the 24th March, 1886).

That Mr. White's inquiry was, in the first place, referred to the Board of Trade, and that their reply of the 9th July set forth the precise manner in which light dues were levied on shipping in the ports of the United Kingdom.

That Sir Julian Pauncefote was next to direct our attention to a note by Sir Edward Hertslet on that letter, in which it was pointed out that, although the United States could, under Article II of the Treaty of the 3rd July, 1815, claim *national* treatment for their vessels, there was no clause in that or any other Treaty with the United States which would entitle them to claim *for their vessels* in this country the treatment of the most favoured nation.

Is geographical discrimination a breach of m.-f.-n. clauses?

That with regard, however, to the wider question of principle, Sir Julian Pauncefote was to inclose a proof copy of a paper which was then in preparation for Parliament, and which showed in a convenient form for reference the various most-favoured-nation Articles in existing Treaties between this country and foreign States; and that he was to request us to be good enough to favour your Lordship with our opinion as to whether the system under which light dues were now levied in the United Kingdom, as set forth in the Board of Trade letter, could be regarded as an infraction of any of those most-favoured-nation clauses.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Present system not a breach of any m.-f.-n. clauses

That, in our opinion, the existing system of light dues in the United Kingdom, whereby the due payable is made to vary according to the length and nature of the voyage on which the vessel is engaged, cannot fairly be regarded as a breach of any of the most-favoured-nation clauses.

No distinctions with reference to nationality.

It is, in the first place, to be observed that the distinction has no reference to nationality. Whatever be the flag of the vessel, whether she be British or foreign, the charges are exactly the same.

Objections to not allowing differential charges.

The result may be that vessels trading from the ports of some of the countries have to pay higher dues than those trading from the ports of others. But it would be a very serious thing to concede that it was not open to any country to make such a difference of charge—assuming, of course, that all vessels, whatever their flag, are charged alike, and that the scale of charges is framed in good faith, and with reference to the value of the undertaking to the benefit received in respect of which the dues are charged—because it will be found that, in many of the schedules of dock and harbour rates authorized by Parliament, similar differential charges are made, varying in

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amount according to the length and nature of the voyage and the ports from which the vessels have traded.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

| | |
|---|---|
| Mr. Henry White | June 19, 1888. |
| To Board of Trade | June 22, „ |
| Board of Trade | July 9, „ |
| Memorandum by Sir E. Hertslet | „ 20, „ |
| Inclosure in Sir L. West's No. 85, Commercial | March 24, 1886 |
| Return of Treaties containing most-favoured-nation clauses. "Commercial No. 11 (1888)." Foreign Office No. 3267. | |
| Return of Treaties containing national treatment clauses. "Commercial No. 13 (1887)." Foreign Office No. 3203. | |

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## No. 19.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 1.)*

*Royal Courts of Justice, May 31, 1889.*

My Lord,

Draft Bill to validate marriages irregularly solemnized under the Consular Marriage Acts of 1849 and 1858.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us the draft of a Bill which it was proposed to introduce into Parliament this Session to validate certain marriages which had been irregularly solemnized under the Consular Marriages Acts of 1849 and 1858.

That it would be seen from the Memorandum which accompanied the Bill that its object was to validate certain marriages under those Acts, the validity of which had been questioned on the ground either of some defect in the authority of the officer by or before whom they were solemnized, or by reason of their not having been solemnized at the Consulate itself.

That it would also be seen from the accompanying printed Memorandum* by Sir Edward Hertslet, that questions had also been raised as to the validity of certain other marriages of British subjects abroad, solemnized either at Her Majesty's Embassies or Legations, or by missionaries in uncivilized countries; or, in Russia, by persons in holy orders of the Church of England.

That your Lordship was, however, of opinion that any attempt to deal with all those various marriages in the present Bill might probably raise difficult questions as to the validity of marriages solemnized by Nonconformist ministers, as it would be hardly possible to validate such marriages in the past without validating them also in the future; and that, as it had become necessary to introduce into Parliament at as early a date as possible (although it would not be possible to do so during the present Session) another Bill to amend the present Acts under which British subjects could now be married abroad, your Lordship proposed to confine the present Bill to validating marriages under the Consular Marriages Acts of 1849 and 1858.

That your Lordship was also of opinion that it would be better to deal with such irregular marriages generally than to enumerate in a Schedule or Schedules to the Bill each particular irregular Consular marriage, so far as it was known in the Foreign Office, as cases might have occurred in which similar irregularities had been committed, but had not been reported to the Secretary of State.

That Sir T. V. Lister was to request that we would take the draft Bill, together with the accompanying papers, into our consideration, and that we would favour your Lordship with our opinion as to whether it might properly be introduced into Parliament in its then shape.

That your Lordship would be glad, at the same time, to be favoured with any general suggestions or observations which we might desire to offer upon the matter.

* Confidential No. 5473.

In obedience to your Lordship's commands, we have the honour to

*Report—*

Approve draft Bill.

That, in our opinion, the Bill, with the amendments noted in the draft, may properly be submitted to Parliament.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## Annex.

### CONSULAR MARRIAGES CONFIRMATION.

*Memorandum.*

The object of this Bill is to validate certain marriages under the Consular Marriage Acts, the validity of which has been questioned, on the ground of some defect in the authority of the officer by or before whom they were solemnized, or by reason of their not having been solemnized at the Consulate itself.

Questions have also been raised as to the validity of certain other marriages of British subjects abroad, solemnized either at Embassies or by missionaries in uncivilized countries; but any attempt to deal with these marriages would raise difficult questions as to the validity of marriages solemnized by Nonconformist ministers. It would hardly be possible to validate such marriages in the past without validating them also in the future. A certain class of missionary marriages celebrated in Basutoland and British Bechuanaland is being dealt with by a separate Bill to be introduced at the instance of the Colonial Office.

The object of subsection (2) of clause 1 is to place persons naturalized between 1850 and 1870 in the same position as persons naturalized under "The Naturalization Act, 1870" (33 & 34 Vict., c. 14).

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*Draft of a Bill to remove Doubts as to the Validity of certain Marriages under the Consular Marriage Acts.*

A.D. 1889.

Whereas doubts have been entertained as to the validity of certain marriages purporting to have been solemnized in foreign countries or places in accordance with "The Consular Marriages Act, 1849," and "The Consular Marriage Act, 1868," and it is expedient to remove those doubts:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Confirmation of certain marriages under Consular Marriage Acts.
12 & 13 Vict., c. 68.
31 & 32 Vict., c. 61.

1.—(1.) Every marriage (both or one of the parties thereto being subjects or a subject of this realm) which, before the passing of this Act, has purported to have been solemnized in any foreign country or place in accordance with "The Consular Marriages Act, 1849," as amended by "The Consular Marriages Act, 1868," and has been registered in accordance with those Acts, shall, notwithstanding any defect in the authority of the Consul or other officer by whom or in whose presence the marriage was solemnized, and notwithstanding that the marriage was not solemnized at the Consulate, be as valid as if it had been solemnized with a due observance of all forms required by those Acts.

(2.) For the purposes of this section an alien who has been naturalized shall be deemed to be a British subject, except when he is within the limits of the foreign State of which he was a subject before being naturalized, and of which he has not ceased to be a subject, in pursuance of the Laws thereof, or of a Treaty to that effect.

"Naturalization Act, 1870," § 7.

(3.) Provided that this Act shall not render valid any marriage which, before the passing of this Act, has been declared invalid by any Court of competent jurisdiction, or affect any right dependent on the validity or invalidity of such marriage, or render valid any marriage either of the parties to which has, during the life of the other, lawfully intermarried with any other person.

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Short title.

3.—(1.) This Act may be cited as "The Consular Marriages Confirmation Act, 1889."

(2.) The Acts whereof the titles are given in the Schedule to this Act may be cited by the respective short titles given in that Schedule.

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SCHEDULE.

| Session and Chapter. | Title. | Short Title. |
|---|---|---|
| 4 Geo. IV, c. 91 . . | An Act to relieve His Majesty's subjects from all doubt concerning the validity of certain marriages solemnised abroad | "The Foreign Marriages Act, 1823." |
| 12 and 13 Vict., c. 68 . | An Act for facilitating the marriage of British subjects resident in foreign countries | "The Consular Marriages Act, 1849." |

(Initialled) R. E. W.
E. C.

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[Colonial Office.]

## No. 19 A.

*The Law Officers of the Crown to Lord Knutsford.*

(Inclosed in Colonial Office letter to Foreign Office of August 30, 1889.)

My Lord, *Royal Courts of Justice, August* 13, 1889.

Proclamation of annexation and of Protectorate.

Submitting draft Forms.

WE were honoured with your Lordship's commands signified in Mr. Wingfield's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us draft Forms of Proclamation of Annexation and of Protectorate, drawn up in the Foreign Office, which it was proposed should be used by the officers of Her Majesty's Navy when declaring an Annexation or a Protectorate.

That Mr. Wingfield was to inclose a printed Memorandum* on the subject also prepared in the Foreign Office; and that he was to request that we would inform your Lordship whether, in our opinion, the proposed Forms were suitable and sufficient for the purpose.

That it would be observed that the Forms had been drawn up so as to be applicable only in the case of an island or islands, but that it was presumed that in the case of Annexation or the establishment of a Protectorate on the mainland, the substitution of the word "territory" or "territories" would meet the requirements of the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Approving Forms as altered.

That, in our opinion, the proposed Forms, as initialled by us, are suitable and sufficient.

Their application to territory other than island.

In the case of territory other than island, the word "territory" or "territories" followed by sufficient particulars of identification can be substituted.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Memorandum (E. H.) June 12, 1889. Confidential No. 5838, p. 114.

*Form of Proclamation of a Protectorate.*

*Proclamation.*

"In the name of Her Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland, Empress of India.

"By [*here insert the name and title of the officer making the announcement*].

"Whereas I have it in command from Her Majesty Queen Victoria, through Her Principal Secretary of State for the Colonies, to declare that Her Majesty has this day assumed a Protectorate over [*here insert the name of the island,* if only one, giving a description of its position*], *or*, over the group of islands† known as [*here insert the name of the group*] situated between [*here insert the degrees of latitude north and south of the Equator, and of longitude east or west of Greenwich*] and that the following island* [*or islands**] and all the small islands* or islets* depending upon it [*or them*] is [*or are*] included in such Protectorate [*here insert the name or their names*].

"Now, therefore, I [*here insert the name and title of the officer making the announcement*] do hereby proclaim and declare to all men that, from and after the date of these presents, the above-mentioned island* [*or island**] has [*or have*] been placed under British protection.

"Given under my hand [*here insert name of place and date*].

"[Signature of officer.]

"[Witness.]"

R. E. W.
E. C.

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*Form of Proclamation of an Annexation.*

*Proclamation.*

"In the name of Her Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland, Empress of India.

"By [*here insert the name and title of the officer making the announcement*].

"Whereas I have it in command from Her Majesty Queen Victoria, through Her Principal Secretary of State for the Colonies, to assert the sovereign rights of Her Majesty over [*here insert the name of the island* or islands**], the same having been ceded in sovereignty to Her Majesty [*or, the same having been taken possession of by Her Majesty with consent of the local Chief or Chiefs thereof*].

"Now, therefore, I [*here insert the name and title of the officer making the announcement*] do hereby proclaim and declare to all men that, from and after the date of these presents, the full sovereignty of the island* of [*here insert the name and exact position*] *or* of the islands* situated between [*here insert the degrees of latitude north or south of the Equator, and of longitude east or west of Greenwich, and the names of the principal islands**] vests, together with its [*or their*] dependencies, in Her Majesty Queen Victoria, her heirs and successors, for ever.

"Given under my hand at [*here insert name of place and date*].

"[Signature of officer ]

"[Witness.]"

R. E. W.
E. C.

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* The word "territory" should be substituted for "island" in the case of territory on the mainland.

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## No. 20.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August* 23.)

My Lord, *Royal Courts of Justice, August* 21, 1889.

**New Canadian Extradition Act.**

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to us the inclosed letter from the Colonial Office relative to a new Extradition Act which had been passed by the Dominion of Canada, and to which Her Majesty's Secretary of State for the Colonies proposed to advise Her Majesty to give her assent.

That the questions which appeared to be raised in that Act were set forth in the accompanying Memorandum, to which were annexed the various documents of reference alluded to therein.

**Should H. M. assent to?**

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and favour your Lordship with our opinion whether Her Majesty might properly be advised not to disallow the Canadian Act, and with any general observations on the subject which we might wish to make.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report*—

**Nothing to lead H. M. to withhold assent.**

That, in our opinion, there is nothing in the proposed Canadian Act which should lead Her Majesty to withhold her assent. There is, however, one matter arising on section 5 of the Act to which we think it right to direct attention.

**Diplomatic arrangement between Canada and foreign country might lead to difficulties.**

That section appears to contemplate diplomatic arrangements between a foreign country and Canada, to which arrangements Her Majesty's Government would not be directly parties. It occurs to us as being possible that such arrangements might involve this country in difficulties in the event of the foreign country declining to fulfil any undertaking given, not to Her Majesty's Government, but to Canada. This question, however, is one more of policy than of law, but we feel it right to call your Lordship's attention to the point.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

| | |
|---|---|
| Colonial Office .. .. .. .. .. .. | July 9, 1889. |
| Memorandum by Sir H. Bergne .. .. .. .. | July 13, „ |

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## No. 21.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received September* 10.)

My Lord, *Royal Courts of Justice, September* 7, 1889.

**International Metrical Convention.**

**Position of Great Britain.**

WE were honoured with your Lordship's commands signified in Sir J. Fergusson's letter of the 31st July last, in which he stated that by your Lordship's direction he transmitted to us the papers noted in the accompanying list with reference to the position of Great Britain in regard to the International Metrical Convention of 1875.

**Objects of.**

That Convention, which had for its chief object the creation of an International Office of Weights and Measures, was signed at Paris on the 25th May, 1875, by the Representatives of a large number of foreign States (among which, however, Great Britain was not included), and an International Committee for the execution of its provisions was formed under the presidency of General Ibañez, one of the Spanish Plenipotentiaries.

That ratifications were exchanged at Versailles by most of the Signatory Powers on the 20th December following.

**Adhesion of Her Majesty's Government.**

That the adhesion of Her Majesty's Government to that Convention (subject to certain conditions and reservations) was officially announced by Her Majesty's Minister at Paris to the President of the International Committee on the 17th September, 1884, and the Lords of the Treasury agreed to pay an entrance fee of 1,787*l.* from the Civil Contingencies Fund on the occasion of Her Majesty's Government joining the Convention of States represented by that Committee.

**Withdrawal of Her Majesty's Government from Committee for executing.**

That on the 26th February, 1887, the Treasury announced to the Foreign Office the intention of Her Majesty's Government to withdraw from the Committee, and Her Majesty's Ambassador in Paris addressed a note to the Committee accordingly. That Lord Lyons, in sending home a copy of that communication in his despatch No. 85, Commercial, of the 14th March, 1887, inquired whether he should also write a note to the Committee referring to Article XIII of the Convention, and denouncing the Convention in the specific terms of that Article.

**Denunciation of Article XIII.**

That the Article in question is as follows:—

"XIII. A l'expiration d'un terme de douze années, la présente Convention pourra être dénoncée par l'une et l'autre des Hautes Parties Contractantes.

"Le Gouvernement qui userait de la faculté d'en faire cesser les effets en ce qui le concerne sera tenu de notifier son intention une année d'avance . . . ."

That shortly after Lord Lyons had made the above inquiry, his Excellency received a letter from General Ibañez, also calling attention to the provisions of Article XIII (see Lord Lyons' despatch No. 110, Commercial, of the 28th March, 1887). That Lord Lyons was informed in reply, by despatch No. 39, Commercial, of the 16th April, 1887, from the Foreign Office, that the accession of Her Majesty's Government had been made in an informal way, that the Act was not communicated to any of the Governments already parties to the Convention, but only to a private person in his capacity of President of the Committee, and that Her Majesty's Government had not exchanged ratifications of that Convention with any foreign Government. That his Excellency was at the same time instructed to inquire whether a year's notice would be accepted forthwith, inasmuch as Great Britain might be held to be a party to the Convention, and almost immediately afterwards, at the request of the Treasury and Board of Trade, conveyed in the latter's letter of the 6th April, 1887, he was requested to endeavour to obtain acceptance of the withdrawal without notice.

That the International Committee replied to his Excellency, as will be seen by referring to Lord Lyons' despatch No. 158, Commercial, of the 6th May, 1887, that it was not for them to accept the British notice of withdrawal, but for the Governments of the Contracting States, to whom they would submit the question in case Her Majesty's Government persisted in its intention to withdraw, although in the opinion of the International Office every Power joining the Convention was bound at least for twelve years from the date of its accession. But the Foreign Office suggested to the Treasury, under date of the 9th May, 1887, that Her Majesty's Government should abide by the view that, subsequently to the lapse of the term of twelve years from the date of signature of the Convention, twelve months' notice could be given by Great Britain as prescribed by Article XIII.

That, in reply, the Treasury pointed out, in a letter of the 16th May, 1887, that Her Majesty's Government paid the large sum of 1,787*l.* on entrance in 1884 as for subscriptions from the inauguration of the Committee in 1875, and consequently were placed in the same position as regarded the term during which they must remain members of the Committee as the original Signatory Powers.

That the views of Her Majesty's Government, as expressed in that correspondence with the Treasury, were conveyed to General Ibañez, who, however, as reported by Lord Lyons in his despatch No. 198, Commercial, of the 10th June, 1887, contested the assertion that the sum paid on entrance was the equivalent of back subscriptions since 1875, and also contended that, that argument being erroneous, the conclusion fell to the ground.

That the statement of General Ibañez regarding the entrance money was neither disputed nor admitted by the Treasury.

That their Lordships had (see their letter of the 6th August, 1887) in the meantime been induced by the representations of the Royal Society and the Astronomer Royal to review their decision to withdraw, and General Ibañez was accordingly so informed (see despatch to Mr. Egerton No. 117, Commercial, of the 10th August, 1887, and his reply No. 301, Commercial, of the 11th August, 1887).

That, subsequently, in order to meet a deficiency caused by the arrears of certain defaulting States, application was made to the other States parties to the Convention to pay an extraordinary contribution, and on the 1st November, 1888, as reported by Mr. Egerton in his despatch No. 375, Commercial, of the 7th November, 1888,

1889

General Ibañez made a further appeal to Her Majesty's Government, who, it was asserted, had alone refused to give her share of the deficiency.

That to his request the Treasury, as reported by the Board of Trade in their letters of the 1st February, 1889, and the 27th April, 1889, were unwilling to accede without receiving a formal acknowledgment of the liberty of Her Majesty's Government to withdraw from the International Committee of Weights and Measures, though they had no present intention of so doing.

That, accordingly, Lord Lytton gave notice to that effect to General Ibañez, as reported in his despatch No. 107, Commercial, of the 4th May, 1889.

That the General, in acknowledging his Excellency's communication in a note, copy of which was inclosed in Mr. Egerton's despatch No. 129, Commercial, of the 27th May, 1889, maintained the contention of the International Committee, that Her Majesty's Government were not entitled to withdraw from the Convention until the expiration of twelve years from the date of their accession, observing that the payment made by Her Majesty's Government on joining did not represent back subscriptions, but merely a share in the cost of construction of the Bureau, and arguing in effect that Her Majesty's Government would, by premature withdrawal, become a debtor for the advantages derived from their temporary adhesion, and that that view had apparently been acquiesced in by Her Majesty's Government by their reconsideration of their decision to withdraw.

That General Ibañez further suggested that Her Majesty's Government should bring their views before the General Conference of Contracting States in September next, and should postpone action in the matter until the meeting.

That, in those circumstances, your Lordship was desirous of being advised as to whether, in our view, the position of Great Britain upon her accession to the Convention did or did not become precisely analogous, for purposes of withdrawal therefrom, to that of the original Signatory Powers, and, if not, in what respects and for what reasons any distinction could properly be made between those Powers and this country in regard to the terms of withdrawal.

That Sir J. Fergusson was to request that we would take the papers transmitted herewith into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands, we have the honour to

*Report*—

Position of Great Britain as to withdrawal from Convention. Effect of Article XIII.

That, in our opinion, the position of Great Britain upon her accession to the Convention became precisely analogous, in respect of the power of withdrawal therefrom, to that of the original Signatory Powers. The clear effect of Article XIII is that after the 1st January, 1888, any Power a party to the Convention, whether as one of the original Contracting Powers or as having acceded to it under Article XI, is entitled upon one year's notice to denounce the Convention.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

| | | |
|---|---|---|
| Treasury .. .. .. .. .. .. | | July 23, 1889. |
| Board of Trade .. .. .. .. .. | | July 16, „ |
| To Treasury .. .. .. .. .. | | July 11, „ |
| Paris .. .. .. .. .. | (No. 153) | |
| Board of Trade .. .. .. .. .. | | June 22, „ |
| Paris .. .. .. .. .. | (No. 129) | |
| Ditto .. .. .. .. .. | (No. 107) | |
| To Paris .. .. .. .. .. | (No. 49) | |
| Board of Trade .. .. .. .. .. | | April 27, „ |
| To Board of Trade .. .. .. .. .. | | February 14, „ |
| Ditto .. .. .. .. .. .. | | February 6, „ |
| To Paris .. .. .. .. .. .. | | February 4, „ |
| Board of Trade .. .. .. .. .. | | February 1, „ |
| Paris .. .. .. .. .. | (No. 375) | 1888. |
| Ditto .. .. .. .. .. | (No. 301) | 1887 |
| To Paris .. .. .. .. .. | (No. 117) | |
| Treasury .. .. .. .. .. .. | | August 6, „ |
| To Treasury .. .. .. .. .. | | June 14, „ |
| Paris .. .. .. .. .. | (No. 198) | |
| Ditto .. .. .. .. .. | (No. 174) | |
| To Paris .. .. .. .. .. | (No. 72) | |
| Treasury .. .. .. .. .. .. | | May 16, „ |
| To Treasury .. .. .. .. .. | | May 9, „ |
| Paris .. .. .. .. .. | (No. 158) | |
| To Treasury .. .. .. .. .. | | April 15, „ |
| Paris .. .. .. .. .. | (No. 128) | |
| To Paris .. .. .. .. .. | (No. 41) | |
| Board of Trade .. .. .. .. .. | | April 6, „ |
| To Paris .. .. .. .. .. | (No. 39) | |
| Paris .. .. .. .. .. | (No. 110) | |
| To Treasury .. .. .. .. .. | | March 16, „ |
| Paris .. .. .. .. .. | (No. 85) | |
| To Paris .. .. .. .. .. | (No. 20) | |
| Treasury .. .. .. .. .. .. | | February 26, „ |
| Ditto .. .. .. .. .. .. | | August 30, 1884. |

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## No. 21 A.

**[Colonial Office.]**

*Law Officers of the Crown to Lord Knutsford.*

*(Transmitted by the Colonial Office to the Foreign Office in their letter of December* 14, 1889.)

*Royal Courts of Justice, November* 28, 1889.

My Lord,

Canadian Extradition Act, 1889.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 22nd ultimo, stating that he was directed by your Lordship to invite our attention to the accompanying print of correspondence respecting the Extradition Act recently passed in Canada. That that correspondence had already been before us upon the general question whether the Act should be approved by Her Majesty, but that there was a further question upon which your Lordship desired our advice.

Section 5 contemplates diplomatic arrangements.

That the Dominion Parliament, under "The British North America Act, 1867," had, in the opinion of the Minister of Justice, the right to legislate upon the matter by virtue of the power given to it (see section 91) to make Laws for the peace, order, and good government of Canada; and that your Lordship understood that, after giving full consideration to the points raised by Sir Henry Bergne in his Memorandum of the 13th July, we did not think it necessary to question that opinion; but that, as we observed in our Report to the Foreign Office of the 21st August last, section 5 of the Extradition Act in question appeared to contemplate diplomatic arrangements between a foreign country and Canada, to which arrangements Her Majesty's Government would not be directly parties.

Is it within the powers of the Canadian Government?

That the particular instance was not of serious importance, but that the section appeared to be in principle an encroachment upon the Treaty-making power of the Imperial Government; and that your Lordship would be obliged if we would favour you with our opinion whether the 5th section was strictly within the powers of legislation conferred upon the Dominion Parliament by "The British North America Act, 1867," and with any general observations which might occur to us on the subject.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

No objection to section 5.

That, in our opinion, there is no objection to the 5th section of this Extradition Act, as being in excess of the powers conferred upon the Dominion Parliament by section 91 of the Act of 1867.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## GERMANY.

### No. 22.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received May* 30.)

*Royal Courts of Justice, May* 28, 1889.

My Lord,

Claim of Mr. T. F. Funnell for compensation for his imprisonment by the German authorities, and for the seizure of his vessel the "Lady Godiva."

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 8th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to a claim for compensation which had been put forward on behalf of Mr. Thomas Francis Funnell, the registered owner and master of the trawl fishing-smack "Lady Godiva," and which it was desired that Her Majesty's Government should press upon the Imperial German Government.

That the circumstances under which the claim arose were set forth at length in the statement of the case which had been prepared at the instance of the Grimsby Smack-owners Association, and that various documents in support of the allegations contained in the case were also inclosed.

That it was represented that Mr. Funnell was entitled to compensation at the hands of the German Government for the actual losses incurred by him through the action of the German gun-boat "Falke," and also in respect of the pain and suffering undergone by him during an alleged wrongful imprisonment extending over nine weeks and five days.

That it would be observed that a number of questions were appended to the statement of the case, but that it was not thought necessary to ask us to favour your Lordship with specific answers to those various queries, except in so far as we might think it desirable to do so.

That should we, however, be of opinion that Mr. Funnell was entitled to compensation, your Lordship would be glad if we would indicate the respects in which, and the grounds on which, a claim in that behalf might properly be pressed upon the attention of the German Government.

That Sir James Fergusson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might have to offer on the case.

We were also honoured with a Memorandum from Sir James Fergusson, dated the 13th ultimo, covering some further papers relative to the case.

We have taken the matter into our consideration, and in obedience to your Lordship's commands have the honour to

*Report—*

Mr. Funnell's claim should be strongly pressed.

That, in our opinion, this is a case in which the claim for compensation should be strongly pressed upon the German Government.

We think Mr. Funnell is entitled to compensation for the illegal seizure of his vessel and gear, and the imprisonment to which he was himself subjected. The fact that a prosecution, properly instituted and conducted, does not result in a conviction is not in itself a ground for a diplomatic claim for compensation. But, in this case, the German officers seems to have acted, to a certain extent, upon the view that the "Lady Godiva" had no right to be within German territorial waters.

Further, at the time they adopted the very serious course of firing upon the vessel, they had no substantial evidence that she had actually fished, or been preparing to fish, in German waters.

Nature of the compensation to be demanded.

The compensation claimed should be:—

1. The damage done to the ship, sails, and rigging;
2. The value of the gear seized, less the amount obtained for it when it was sold;
3. The costs incurred by Funnell in and about these proceedings over and above the sum paid to him under order of the Court; and
4. A sum of money in compensation for the nine weeks of imprisonment to which he was subjected before trial.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

| | | | |
|---|---|---|---|
| Board of Trade Print | | | 1887. |
| Hamburg | No. 5. | February | 11, 1888. |
| To Board of Trade | | „ | 16, „ |
| Board of Trade | | „ | 21, „ |
| To ditto | | „ | 24, „ |
| Board of Trade | | March | 9, „ |
| To ditto | | „ | 12, „ |
| To Hamburg | No. 1. | „ | 12, „ |
| Ditto | No. 2. | „ | 16, „ |
| Board of Trade | | „ | 16, „ |
| To Hamburg | No. 3. | „ | 19, „ |
| To Board of Trade | | „ | 19, „ |
| Hamburg | (Telegraphic). | „ | 19, „ |
| Board of Trade | | „ | 29, „ |
| To ditto | | April | 3, „ |
| To Hamburg | No. 4. | „ | 16, „ |
| Hamburg | (Telegraphic). | „ | 17, „ |
| Ditto | No. 12. | „ | 16, „ |
| Ditto | No. 13. | „ | 17, „ |
| Ditto | (Telegraphic). | May | 8, „ |
| To Board of Trade | | „ | 9, „ |
| Hamburg | No. 18. | „ | 11, „ |
| To Board of Trade | | „ | 16, „ |
| Board of Trade | | „ | 17, „ |
| To Hamburg | No. 6. | „ | 19, „ |
| Ditto | No. 7. | June | 9, „ |
| Board of Trade | | „ | 11, „ |
| To Hamburg | No. 8. | „ | 13, „ |
| Hamburg | No. 20. | „ | 13, „ |
| To Board of Trade | | „ | 15, „ |
| Board of Trade | | „ | 23, „ |
| Hamburg | No. 23. | „ | 27, „ |
| To Board of Trade | | „ | 29, „ |
| Board of Trade | | July | 5, „ |
| To Hamburg | No. 11. | „ | 7, „ |
| Hamburg | No. 24. | „ | 7, „ |
| To Board of Trade | | „ | 10, „ |
| Hamburg | No. 25. | „ | 14, „ |
| To Board of Trade | | „ | 16, „ |
| Ditto | | October | 27, „ |
| Hamburg | No. 39. | „ | 30, „ |
| To Board of Trade | | November | 3, „ |
| Board of Trade | | „ | 20, „ |
| To Hamburg | No. 18. | „ | 23, „ |
| Hamburg | No. 43. | December | 10, „ |
| To Board of Trade | | „ | 14, „ |
| Board of Trade | | „ | 14, „ |
| Ditto | | „ | 17, „ |
| To Hamburg | No. 19. | „ | 20, „ |
| Hamburg | No. 44. | „ | 19, „ |
| To Board of Trade | | „ | 21, „ |
| Board of Trade | | „ | 21, „ |
| Ditto | | January | 10, 1889. |
| To Hamburg | No. 1. | „ | 14, „ |

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| | | | |
|---|---|---|---|
| To Board of Trade.. | .. | February | 14, 1889. |
| Hamburg.. | No. 2 A. | " | 11, " |
| To Board of Trade.. | .. | " | 20, " |
| Mr. Heneage, M.P. | .. | " | 22, " |
| Board of Trade | .. | " | 16, " |
| To Hamburg | No. 2. | " | 20, " |
| Board of Trade | .. | " | 23, " |
| To ditto | .. | " | 28, , |
| To Mr. Heneage, M.P. | .. | " | 28, , |
| Board of Trade | .. | March | 8, " |
| To Hamburg | No. 3. | " | 12, " |
| Hamburg.. | No. 5. | " | 20, " |
| To Board of Trade.. | .. | " | 23, " |

*Further List of Papers.*

| | | | |
|---|---|---|---|
| Hamburg.. | No. 8. | March | 30, 1889. |
| Mr. Heneage, M.P. | .. | April | 10, " |

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## GREECE.

### No. 23.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 17.)*

*Royal Courts of Justice, July 15, 1889.*

My Lord,

Claim of Mr. M. Spartali, a British subject, on account of guns, &c., supplied to Greek Government.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 25th ultimo, stating that he had the honour to transmit to us, by your Lordship's direction, the papers noted in the accompanying list, which related to a claim of Mr. Michael Spartali, a British subject, formerly Greek Consul-General in this country, upon the Greek Government.

That the claim arose in connection with the supply of ships' guns and munitions of war to Greece in 1867, at the time of the insurrection in Crete.

That a Memorandum giving the history of the case would be found in Inclosure (A) of Mr. Spartali's letter of the 28th January, 1888. That it was, however, unnecessary for the present purpose to enter into details, as, in principle, the matter had been recently settled by the presentation of a Bill to the Greek Chambers providing a sum of 10,810*l.* for the liquidation of Mr. Spartali's claim (Sir E. Monson, No. 261, 6th December, 1888).

That a Report from the Greek Minister of Finance on introducing the Bill would be found in the same despatch. That it also gave a history of the case, and that it would be seen that Mr. Spartali had throughout received the support of Her Majesty's Government.

Payment of claim sanctioned by Greek Chamber.

That the greatest difficulty was experienced by the Greek Government in passing the Bill through the Chamber, but that it was eventually carried on the 23rd January last, and Her Majesty's Minister at Athens was authorized to receive the money on Mr. Spartali's behalf, if the Greek Government preferred that course.

Attachment of the money.

That before, however, anything could be done, an alleged creditor of Mr. Spartali attached the money (Sir E. Monson, No. 19, 31st January, 1889).

That the circumstances of the attachment were explained in a Memorandum inclosed in Sir E. Monson's despatch No. 21 of the 2nd February, 1889.

Bankruptcy of Mr. Spartali.

That it should be mentioned that, in 1884, Mr. Spartali, who was then carrying on business as a merchant in this country under the style of Spartali and Co., became unable to discharge his liabilities, and that on the 1st December of that year a receiving order under "The Bankruptcy Act, 1883," was made with regard to his estate.

Composition with his creditors.

That that order was, however, subsequently (*i.e.*, on the 21st April, 1885) rescinded by the Court, who sanctioned a scheme of composition which was proposed by the debtor, and accepted by his creditors; and that Mr. Spartali had since resumed and now carried on business under his original style of Messrs. Spartali and Co. (Mr. Spartali, 2nd February, 1889).

Present position of case.

That Mr. Spartali (by his letter of the 6th February) contended that Messrs. Caravia, the persons who had laid the embargo upon the money payable to him by the Greek Government, were impostors, and that he had forwarded an authenticated certificate from the trustee in bankruptcy, declaring that they had already received composition of the debt for which they had attached the money (Mr. Spartali, 6th February, 1889, and Sir E. Monson's No. 149 of the 16th June).

That it appeared from Sir E. Monson's Report (No. 32 of the 14th February, 1889) that the Greek Government were quite unable to take any action in the matter, as the case was now in the hands of the Greek Tribunals. That, for reasons which were explained at length in the same despatch, Mr. Spartali was advised to lose no time in assigning the money to some third person to whom the Greek Government could pay it as soon as the embargo was raised.

That those recommendations were brought to Mr. Spartali's notice, and in reply to a request which he made (Mr. Spartali, 16th February) that M. Tricoupi should be asked to remit the money at once to England, he was informed that Her Majesty's Government could not request the Greek Government to disregard an order of attachment granted by a competent Greek Tribunal.

That a similar communication was made to Her Majesty's Minister at Athens, to whom, however, it was pointed out that Her Majesty's Government would be justified in complaining if any delay of justice should occur.

That Mr. Spartali followed the advice given him, and transferred his claim to the sum of money in dispute to a Mr. Whiting, who on his part executed a power of attorney empowering Her Majesty's Minister at Athens to receive the money (see Mr. Spartali of the 3rd April, and Sir E. Monson's No. 71 of the 5th April).

That the latest phases of the case, with which much political feeling was mixed up, would be found in Sir E. Monson's despatches Nos. 120 and 137 of the 21st May and 5th June respectively.

That there appeared to be every prospect of protracted and vexatious legal proceedings, and no probability that the Greek Government would consent to withdraw the case from the cognizance of the Tribunals.

That it therefore became a question for consideration whether, having regard to the fact that the money had actually been voted by the Greek Chamber for a specific purpose, and also to the other circumstances of the case, Her Majesty's Government was justified in insisting on its immediate payment to Her Majesty's Minister at Athens, who had been authorized to receive it under the power of attorney of Mr. Whiting, to whom it had been assigned by Mr. Spartali.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the question more particularly submitted therein, as well as with any general observations which we might have to offer on the case.

We were also honoured with a note from Sir Philip Currie, dated the 5th instant, inclosing a further despatch from Her Majesty's Minister at Athens relative to the matter in question.*

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

As to immediate payment of money to Her Majesty's Minister.

That, in our opinion, having regard to all the circumstances of the case, Her Majesty's Government would not be justified in insisting upon the immediate payment of the money to Her Majesty's Minister at Athens.

It appears that on the 7th May a notice was given on behalf of Mr. Whiting that, in default of payment by the Greek Government, he would take legal proceedings to set aside the attachment, and Sir E. Monson states in his despatch No. 120 of the 21st May that the Greek Government had a period of six weeks within which to decide as to the payment of the money.

Matter should be decided by the Tribunals.

We think the question is properly one for the decision of the legal Tribunals, and that, in the present circumstances, Her Majesty's Government would not be justified

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* Sir E. Monson, No. 157.

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in acting upon the assumption that those Tribunals will fail in dealing promptly and justly with the case.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## HAÏTI.

### No. 24.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received January 25.)*

My Lord,
*Royal Courts of Justice, January* 24, 1889.

Haïtian blockade of Gonaïves. Protest and losses of British subjects.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us a Petition (see inclosure in Mr. McGuffie's and Mr. Purgold's joint letter of the 16th November) signed by various British subjects resident and engaged in commerce at the port of Gonaïves, in the Island of Haïti, protesting against the recent blockade of that port by the Provisional Government of the island, and calling attention of Her Majesty's Government to the losses occasioned to themselves in connection therewith.

That the circumstances attendant on the blockade in question were, in so far as they were then known to Her Majesty's Government, shortly as follows:—

That on the 16th October Her Majesty's Consul-General in Haïti reported in a despatch that civil war had commenced in that Republic, and that he had been officially informed on the 13th by the Provisional Government established on the deposition of President Salomon that they had decided on the bombardment of the towns of Gonaives and St. Marc. (See Mr. Zohrab's No. 46.)

That on the 15th October they issued a Decree notifying the blockade of the ports of Cape Haïtian, Gonaïves, and St. Marc.

That on the 23rd Mr. Zohrab reported that the Haïtian northern ports were effectively blockaded, and that two vessels belonging to the United States had been captured for running the blockade, and, on the 31st October, that the ports of Jacmel and Port de Paix were also blockaded. (See Mr. Zohrab's telegrams, the 23rd and 31st October.)

That Notices accordingly were inserted in the "London Gazette" of the 2nd, 6th, and 9th November.

That according to a telegram published in the "Times" of the 8th November from New York, the troops of the Provisional Government had occupied Jacmel, which had been reopened to commerce.

That no notice of that fact having at that time reached Her Majesty's Government officially, Mr. Zohrab's attention was called to it, as well as to certain omissions of detail in the notices of blockade sent home by him (to Mr. Zohrab, No. 8, of the 14th November), but that on the 26th November a despatch arrived from him announcing the surrender of Jacmel to the Government. (No. 52, 6th November.)

That Mr. Herbert, who was in charge of Her Majesty's Legation at Washington, having inquired whether the blockade of Haïtian ports was recognized by Her Majesty's Government (Mr. Herbert's telegram No. 38 of the 21st November), he was informed of the nature of the Notices published in the "London Gazette." (To Mr. Herbert, telegram No. 47, 24th November.)

Action of United States as to captured American ship.

That from further telegrams received from Mr. Herbert (8th and 13th December) it appeared that the United States' Government were sending four men-of-war to enforce the surrender of an American ship captured by the *de facto* Government of Haïti for running the blockade.

That a narrative of the circumstances which led to the rising in certain parts of the Republic, and of the election of Senator Legitime as Chief of the Executive Power, was given in Mr. Zohrab's despatches Nos. 42, 43, and 47, of the 2nd, 9th, and 18th October; while the grounds upon which the Signatories to the Petition alleged that the proceedings of the Provisional Government were unlawful would be found set out in that document itself.

That other papers bearing more generally upon the subject were also noted in the accompanying list, and were annexed for our information.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to (1) whether the protest of the petitioners was well founded and called for a representation on their behalf from Her Majesty's Government to that of Haïti, and, if so (2) on what grounds such a representation might most properly be based.

In obedience to your Lordship's commands we have the honour to

*Report—*

No grounds for making a claim.

That we are unable, upon the facts as at present disclosed, to see any grounds for Her Majesty's Government making any claim against the Haïtian Government on account of losses caused by their action.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers sent to Law Officers, December* 21, 1888.

Messrs. McGuffie, Purgold, and others, November 16, 1888.
Consul Zohrab, No. 46, October 16, 1888.
Ditto (Telegraphic), October 23, 1888.
Ditto (Telegraphic), October 31, 1888.
Extract from "London Gazette," November 2, 1888.
Ditto, November 6, 1888.
Ditto, November 9, 1888.
To Consul Zohrab, No. 8, November 14, 1888, with extract from "Times" of November 8 annexed.
Consul Zohrab, No. 52, November 6, 1888.
Mr. Herbert, No. 38 (Telegraphic), November 21, 1888.
To ditto, No. 47 (Telegraphic), November 24, 1888.
Mr. Herbert, No. 41 (Telegraphic), December 8, 1888.
Ditto (Telegraphic), December 13, 1888.
Consul Zohrab, No. 42, October 2, 1888.
Ditto, No. 43, October 9, 1888.
Ditto, No. 47, October 18, 1888.

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### No. 25.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received January 25.)*

My Lord,
*Royal Courts of Justice, January* 24, 1889.

Blockade of Haïtian ports.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 10th instant, stating that, with reference to his letter of the 21st ultimo, he was directed by your Lordship to transmit to us the further papers noted in the accompanying list relative to the blockades of certain ports belonging to Haïti, which had been established by the Provisional Government of that Republic.

That the circumstances under which those ports had been closed, and the manner in which the blockade had been maintained, were as follows:—

Inefficiency of blockade.

That in a despatch dated the 25th November, 1888, Consul-General Zohrab stated that "the blockade of the northern ports was maintained, but in so lame a way that it is really ineffective, and coasting vessels go frequently into the different harbours with ammunition and provisions from Monte Christo, in the Dominican Republic, where a depôt has been formed."

That, when acknowledging and accepting the intimation made by the Provisional Government of the blockade of Cape Haïti, Gonaïves, and St. Marc, Mr. Zohrab had reminded that Government (16th October, 1888) "that by international law a blockade to be respected must be effective," and that he had inquired "whether the blockade would be maintained by an armed force sufficient to make it respected," but to which observation and inquiry he did not appear to have received any reply from the Haïtian Government.

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Decree closing certain ports.

That on the 13th December the Councillor in charge of the Department for Foreign Affairs forwarded to Mr. Zohrab a Decree of the National Assembly, dated the 10th of that month (and a copy of which was inclosed in Mr. Zohrab's despatch No. 57), temporarily closing the ports of St. Marc, Gonaïves, Port de Paix, and Cape Haïti to foreign trade, and suppressing the right to land or embark at the Grande Saline, at Mole St. Nicholas, and Fort Liberté.

British views as to such Decrees.

That it was not stated whether those ports were in the possession or control of the *de facto* Government or of the insurgents; and that Sir Julian Pauncefote was to observe that this country had always disputed the right of closing ports by Municipal Decree where such ports were in the possession of rebels, and had invariably maintained that for that purpose it was necessary to establish an effective belligerent blockade.

Law Officers' Reports.

That Sir Julian Pauncefote was to add that Haïti acceded, on the 17th September, 1856, to the Declaration of Paris of the 16th April, 1856, respecting maritime law, and that he was to refer to the Reports of the Law Officers of the Crown mentioned in the accompanying list.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, together with those transmitted to us on the 21st December, and that we would favour your Lordship with our opinion whether the Decree of the National Assembly of Haïti, dated the 10th December last, temporarily closing the ports of St. Marc, Gonaïves, and Port de Paix and Cape Haïti to foreign trade, and suppressing the right to land or embark at the Grande Saline, at Mole St. Nicholas, and at Fort Liberté, should be notified in the "London Gazette."

That Sir Julian Pauncefote was also to request that we would furnish your Lordship with any further observations we might have to offer on the subject.

We have taken the matter into our consideration, and in obedience to your Lordship's commands have the honour to

*Report—*

Should publish Decree in the "Gazette" as a communication;

That, in the absence of any evidence that the ports named in the Decree are actually in the possession of the rebels, and that the Decree is issued as a belligerent act, we are of opinion that it would be advisable to publish such Decree in the "London Gazette;" but we think the Decree should be published by itself as a communication, so as to avoid any inference that Her Majesty's Government recognize that the ports are effectively closed.

and inform Haïtians of the fact.

We are further of opinion that the Government of Haïti should be informed that the Decree has been so published upon the assumption that it was issued for commercial and fiscal purposes; and that Her Majesty's Government does not admit that ports, when in the possession of insurgent forces, can be closed against foreign commerce otherwise than by a regular and effective blockade.

Instructions to Consul as to difference between closing of ports by Decree and by blockade.

It might be as well also to call the attention of the British Consul-General at Port-au-Prince to the distinction between a prohibition against the entering of ports issued by a Government for municipal purposes and the establishment of a blockade.

We have, &c.  
(Signed) RICHARD E. WEBSTER.  
EDWARD CLARKE.

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*List of Papers sent to Law Officers, January* 10, 1889

1. Consul Zohrab, No. 54, November 25, 1888.
2. Ditto, No. 55, December 11, 1888.
3. Ditto, No. 57, December 14, 1888.
4. Law Officers, September 4, 1866 (Mexico). Confidential No. 1597, p. 198.
5. Ditto, July 15, 1869 (Spain).
6. Ditto, November 29, 1869 (Haïti)
7. Ditto, July 1, 1870 (Venezuela).
8. Ditto, August 13, 1870 (Venezuela).
9. Ditto, April 18, 1879 (Venezuela).
10. Ditto, April 18, 1879 (Venezuela).
11. Ditto, July 16, 1883 (Haïti), with two Annexes.
12. Ditto, February 27, 1885 (Equator).
13. Ditto, April 2, 1885 (Colombia).
14. Ditto, June 23, 1885 (Colombia).
15. Ditto, August 24, 1885 (Colombia).

Law Officers' Reports on "Overdale" and "Kirklock":—

16. Law Officers, January 6, 1885. Confidential No. 5246, p. 124.
17. Ditto, January 12, 1885. " " p. 125.
18. Ditto, February 3, 1885. " " p. 125.
19. Ditto, February 7, 1885. " " p. 126.
20. Ditto, February 11, 1885. " " p. 127.
21. Ditto, February 12, 1885. " " p. 128.
22. Ditto, February 17, 1885. " " p. 129.
23. Ditto, April 10, 1885. " " p. 130.
24. Dittc, April 15, 1885. " " p. 133.
25. Ditto, August 8, 1885. " " p. 134.
26. Ditto, October 28, 1885. " " p. 135.
27. Ditto, November 20, 1885 " " p. 138.

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## No. 26.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 7.)*

My Lord, *Royal Courts of Justice, June* 7, 1889.

Case of the "Mercedes," armed in the U. S. by insurgents, and commissioned by an U. S. citizen.

WE were honoured with your Lordship's commands signified in Sir T. H. Sanderson's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the proceedings of the steamer "Mercedes," a vessel acting in the service of, and (as was supposed) under some species of commission from, the leaders of the insurrection which was now raging in the Island of Haïti.

That the "Mercedes" was originally an American vessel of about 200 tons register, and considerable speed, sailing under the name of the "Novelty."

That she was purchased last year by an agent of the Haïtian insurgents, and having received arms and ammunition in Boston and New York, was permitted, notwithstanding the protests of the Haïtian Minister at Washington, to clear for San Domingo.

That having arrived off that island she was put into commission by an American citizen, named Compton (who was formerly in command of the "Haïtian Republic," an American vessel which was captured for breach of blockade by the Haïtian Government ship-of-war "Dessalines," and commenced a career as a hostile cruizer in the interests of the insurgents.

Capture of a British schooner; imprisonment of crew.

That information had reached Her Majesty's Consul-General at Port-au-Prince to the effect that on some date between the 15th and 22nd April the "Mercedes" fired at and captured a British schooner off the port of St. Marc, and, after having removed a portion of her cargo, as well as her crew (five) and passengers (ten), left the schooner derelict.

That the passengers and crew (some or all of whom were presumably British subjects) were then taken to St. Marc, where they were placed in close confinement and prevented from communicating with our Vice-Consul at that place.

"Mercedes" declared a pirate.

That on the 25th April a Decree was issued by President Légitime proclaiming the "Mercedes" to be a pirate, and authorizing all ships, of whatever nation, to attack, capture, and deliver her up to the authorities at Port-au-Prince.

Piracy doubtful.

That it appeared doubtful, however, whether the facts of the case warranted Her Majesty's Government in considering the vessel in question as a pirate, or in treating her as such.

That the Government of Haïti, by proclaiming a blockade *jure gentium* of that portion of the coast which was in the possession of the insurgents, had recognized the latter as belligerents, while the proceedings of the "Mercedes," although undoubtedly in excess of the rights of a belligerent in respect of neutrals, did not appear to be in such gross or barbarous violation of the recognized usages of war as to justify the State against whose subjects they were directed in regarding them as piratical.

Proposed instructions for release of crew and passengers.

That at the same time it was conceived that they were of a character which not only justified, but required, vigorous action on the part of Her Majesty's Government, and that it was thought that it might be advisable at once to communicate with the Naval Commander-in-chief on the West Indian Station, and to direct him to dispatch a sufficient force to St. Marc, and to demand the immediate and unconditional release of any British subjects who might be there illegally detained; and in the event of his demand not being forthwith complied with, and of no adequate explanation of the

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circumstances being afforded him, to proceed to use any forcible measures which he found necessary to insure compliance with such demands.

That Sir T. H. Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the course indicated above was such as was right and proper in the circumstances.

That your Lordship would be glad, at the same time, to be favoured with any further observations or suggestions which might occur to us with reference to the case.

Reports as to "Mercedes" false.

We were also honoured with a note from Sir Thomas Sanderson, dated the 5th instant, inclosing a letter from the Admiralty, according to which information appeared to have reached the officer in command of Her Majesty's naval forces at Jamaica to the effect that the reports in regard to the proceedings of the "Mercedes" were false.

We have taken the matter into our consideration, and, in obedience to your Lordships commands, have the honour to

*Report—*

Approve proposed course.

That, in our opinion, the course proposed to be taken was entirely right and proper.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

| | | |
|---|---|---|
| Consul-General Zohrab .. .. .. | (No. 11) | April 30, 1889. |
| " " .. .. .. | (No. 13) | May 3, " |
| " " .. .. .. | (No. 15) | " 5, " |
| Admiralty .. .. .. .. | .. | June 3, " |

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## No. 27.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 9.)*

My Lord, *Royal Courts of Justice, July* 8, 1889.

Blockade of Haïtian ports by Provisional Government.

WE were honoured with your Lordship's commands signified in Sir T. H. Sanderson's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the question of the blockade of certain ports belonging to Haïti established by the Provisional Government of that Republic.

That the circumstances under which the blockade was established had already been before us, and formed the subject of our two Reports of the 24th January last.

That subsequent to those Reports, the notice of the 5th February last was inserted in the "London Gazette."

Blockade ineffective.

That on the representations of the "Atlas" Steam-ship Company that the blockades were ineffective, and ignored by the Government of the United States, who gave their trading vessels the protection of their naval forces against the Haïtian blockading ships, reports were called for from the British naval authorities, and Mr. Zohrab, Her Majesty's Consul-General in Haïti. That the former had not yet arrived, but that Mr. Zohrab telegraphed on the 14th June that the blockade had become absurdly ineffective, and that he had notified the Haïtian Government and the ships' agents at Port-au-Prince that it would not be respected.

Proposed notice as to its non-recognition,

That the question now arose whether, in the circumstances, Her Majesty's Government was justified in considering that the blockade had become ineffective, and consequently not binding upon neutral vessels, and, if so, whether a notice should be inserted in the "London Gazette" stating that, in consequence of the blockade having plainly ceased to be effective, Her Majesty's Representative in Haïti had notified the Haïtian Government that it could no longer be respected, and that British vessels entering or leaving ports in the possession of the insurgents must not be molested by the cruizers of the Haïtian (Provisional) Government.

and instructions for protection of British ships.

That Sir T. H. Sanderson was further to inquire whether, in the event of British vessels being molested after the issue of such notice, in their attempts to enter or depart from the ports alleged by the Decree of the Haïtian Government to be blockaded, Her Majesty's naval forces on the station should be instructed to intervene for the purpose of securing free access to and egress from such ports to such vessels.

That Sir T. H. Sanderson was to request that we would take the papers transmitted with his letter into our earliest consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might have to offer on the matter.

Non-recognition notified to Government.

We have also the honour to acknowledge the receipt of Sir T. H. Sanderson's letter of the 6th instant, inclosing a despatch, dated the 12th June, from Her Majesty's Consul-General in Haïti, reporting a conversation with the President and other Members of the Government of Haïti, in which he gave them notice that the blockade of their ports would no longer be respected by British ships.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Approve proposed notice and instructions.

That, in our opinion, the proposed notice should be published, and the instructions suggested given.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

| | | |
|---|---|---|
| "London Gazette" .. .. | (Confidential No. 5722*) | February 5, 1889. |
| Atlas Steam-ship Company .. .. .. .. | | May 14, " |
| Mr. Zohrab .. .. .. .. | (Telegraphic) | June 14, " |
| Sir J. Fergusson .. | (Memorandum, with Inclosure) | " 27, " |
| Sir J. Pauncefote .. .. .. | (No. 147 A) | " 2, " |
| Mr. Zohrab .. .. .. .. | (No. 6. Political) | March 14, " |
| " " .. .. .. .. | (No. 25. Political) | June 12, " |

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# ITALY.

## No. 28.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received May 21.)*

My Lord, *Royal Courts of Justice, May* 20, 1889.

Slave Trade Treaty with Italy.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying draft of a Treaty between Her Majesty and the King of Italy for the suppression of the African Slave Trade.*

Draft of, for approval.

That the draft Treaty was, as would be seen from the marginal notes, framed with certain modifications upon the lines of the Treaty with Turkey of 1880, and that of 1841 between this country, Austria, Prussia, and Russia.

That it would be seen that Article II omitted all reference to the proviso of Article II of the Treaty of 1841 that cruziers exercising the right of search should be furnished with warrants, and commanded by officers of a certain rank.

That it was thought that, in the altered conditions under which both the Slave Trade itself and any naval operations connected with its suppression were now carried on, there was no fear of abuses arising from the omission of such a proviso.

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* Treaty No. 837.

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That all allusion to the search of vessels under the convoy of a ship of war was also omitted, as it was improbable that the case provided for in Article VII of the Treaty of 1841 would arise.

That no special stipulations had been made as to the proceedings at the port where captured vessels are delivered over to the local authorities, beyond securing, in Articles IV and VI, that the proceedings should take place before the competent Tribunal.

That with the view of more effectually dealing with the modern custom of transporting slaves in native craft, modifications had been made in the enumeration of those Articles and other signs which, when found on a suspected vessel, were to be considered as *primâ facie* evidence of her illicit character. That those were contained in Article V.

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the proposed Treaty was one that might properly be concluded, together with any general observations which we might have to offer upon it.

In obedience to your Lordship's commands we have the honour to

*Report—*

**Approve draft as altered.**

That, in our opinion, the draft Treaty, as altered and initialled by us, is one that may properly be concluded.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 29.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August* 24.)

My Lord, *Royal Courts of Justice, August* 21, 1889.

**Sequestration of cargo of "Thames" on account of suit against captain.**

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 10th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to the proceedings of the Italian authorities and legal Tribunals with reference to the case of a Belgian subject named Eckelheimer, who, having shipped as steward on board the British steam-ship "Thames" at New York, and having deserted from that vessel at Palermo, subsequently brought an action against her master, Mr. Dale, in the Tribunals of the latter port.

That the history of the case up to date was succinctly given in the two Memoranda inclosed with the papers, dated respectively the 12th November, 1888, and the 18th May, 1889, but that the somewhat voluminous correspondence was also inclosed in case we should desire to refer more particularly to any portions of it.

**Appeal not carried to higher Courts.**

That it would be seen that, although the advisability of taking that course was privately suggested to the owners of the "Thames," the case had not been carried upon appeal by them to the ultimate Italian Tribunals, and that it was therefore somewhat uncertain whether those Courts would or would not uphold the Judgment of the Tribunal of Commerce, or ratify the arguments put forward in support of the action of that Court by Signor Damiani in his reply of the 21st February last to the informal representations which had been addressed to him by Her Majesty's Embassy at Rome upon the subject.

**Case of breach of international law.**

That the fact that the case had not been carried upon appeal before the highest legal Tribunals of Italy had, no doubt, an important bearing upon the question of the propriety of diplomatic interference in the matter on the part of Her Majesty's Government, but that, at the same time, the actual proceedings, so far as they had gone, seemed to constitute, in effect, an evasion of the ordinary principles of international law, whereby a British ship was, subject to certain exceptions immaterial to the present purpose, considered to carry British law with her, and all breaches of discipline, either on the high seas or in foreign ports, as well as all matters arising out of the contract with the crew, were to be judged of by, and construed according to, British law.

**British Treaty rights.**

That, moreover, under Article XII of the Treaty of Commerce and Navigation between Great Britain and Italy of the 15th June, 1883, it was provided that Her Majesty's Consular officers in Italy should enjoy "all the faculties, privileges, exemptions, and immunities of every kind which are, or shall be, granted to the most favoured nation;" while by Article XXI of the Italo-Spanish Consular Convention of the 21st July, 1867, it is agreed that the Consular officers of the two Contracting Powers "shall be exclusively charged with the maintenance of internal order on board the merchant-ships of their nation, and they alone shall take cognizance of the questions of whatever kind which arise between the captain, the officers, and the sailors, and especially of those relating to pay, and to the fulfilment of reciprocal agreements."

That it was therefore contended that, independently of the general principles of international law which were usually recognized as applicable in such matters, and through the combined operation of the most-favoured-nation clause in the Anglo-Italian Treaty of 1883, and of Article XXI in the Italo-Spanish Convention of 1867, and other similar Articles in Consular Conventions to which Italy was a party (as, for instance, Article XIII of the Franco-Italian Convention of the 26th July, 1862), Italy had entered into a special Treaty obligation which was directly applicable to the case now under consideration.

**As to necessity for further action.**

That having regard also to the fact that questions of great importance to British shipping interests were involved, and that the mode in which the Italian authorities had treated them might, if allowed to pass without any formal protest, possibly be invoked as a precedent in future cases of the same nature, it became necessary carefully to consider whether it was not incumbent on Her Majesty's Government to take some further steps in the matter.

That Sir James Fergusson was therefore to request that we would take the various papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether there had been any such violation either of the general principles of international law or of the provisions of special Treaties applicable to the particular case in question, or whether any other, and, if so, what, grounds existed such as would justify a further representation to the Italian Government.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

**The proceedings at Palermo a violation of British rights.**

That, in our opinion, the proceedings instituted at Palermo, which resulted in the sequestration of the freight of the British steam-ship "Thames," constituted a violation of the rights of Great Britain under the Treaty of Commerce and Navigation of 1883, under Articles XI and XII of which the subjects of Great Britain are entitled to the same privileges and immunities, and the Consuls of Great Britain to the same faculties and privileges, as are enjoyed by the subjects or Consuls of any other country.

**Further action necessary.**

In our opinion it is incumbent on Her Majesty's Government to make further representations to the Italian Government with the view of procuring the removal of the sequestration pronounced in the present case, and the acceptance of the rule laid down in the *procès-verbal* of the meeting of the Consular Body of the 20th August, 1888.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

| | | |
|---|---|---|
| Memorandum. Confidential No. 5720 .. | .. | November 12, 1888 |
| Ditto. Confidential No. 5812 | .. | May 18, 1889 |
| Treaty of Commerce between Great Britain and Italy. | No. 788 .. | June 15, 1883 |
| Board of Trade .. | .. | January 7, 1888 |
| Ditto .. | .. | February 3, „ |
| To Consul Stigand (Palermo) .. | (No. 1. Commercial) | February 10, „ |
| Consul Stigand .. | (No. 2. Commercial) | March 3, „ |
| Board of Trade .. | .. | March 31, „ |
| To Consul Stigand .. | (No. 2. Commercial) | April 7, „ |
| Ditto .. | (No. 4. Commercial) | July 26, „ |
| Consul Stigand .. | (No. 7. Commercial) | June 19, „ |
| Ditto .. | (No. 12. Commercial) | August 23, „ |
| Board of Trade .. | .. | October 9, „ |
| Consul Stigand .. | (No. 16. Commercial) | October 20, „ |
| To Lord Vivian .. | (No. 92. Commercial) | November 20, „ |
| Consul Stigand .. | (No. 2. Commercial) | January 9, 1889 |
| Ditto .. | (No. 3. Commercial) | January 11, „ |
| Lord Vivian .. | (No. 18. Commercial) | January 26, „ |
| Consul Stigand .. | (No. 4. Commercial) | February 7, „ |
| To Lord Vivian .. | (No. 14. Commercial) | February 22, „ |
| Lord Vivian .. | (No. 52. Commercial) | March 16, „ |
| To Consul Stigand .. | (No. 4. Commercial) | March 23, „ |
| To Lord Vivian .. | (No. 25. Commercial) | March 23, „ |
| Marquis of Dufferin .. | (No. 44. Commercial) | April 2, „ |
| Ditto .. | (No. 45. Commercial) | April 3, „ |
| Consul Stigand .. | (No. 7. Commercial) | April 6, „ |

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## JAPAN.

### No. 30.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received May* 14.)

*Royal Courts of Justice, May* 13, 1889.

My Lord,

Japanese Treaty revision.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 25th March last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to proposals recently made to Her Majesty's Government by that of Japan for the conclusion of a new Treaty of Amity, Commerce, and Navigation by means of separate negotiation.

That similar proposals had also been made to the Great European Powers and to the United States, and that the Treaty between the United States and Japan was reported to have been signed at Tôkiô on the 20th February last.

That the Articles of the proposed Treaty were given with Mr. Trench's despatch No. 2, Confidential, of the 1st January, 1889.

Question of m.-f.-n. treatment clauses.

That amongst other questions involved in the consideration of the draft Treaty was that of the most-favoured-nation treatment clauses (Articles VI, VII, X, XVIII, and XIX.)

That we should observe that in the last-named Article the most-favoured-nation treatment was to be conditional.

That some discussion on that subject appeared to have taken place between Her Majesty's Chargé d'Affaires and the Japanese Minister for Foreign Affairs, which resulted in the drafting of two alternative most-favoured-nation clauses, to either of which the Japanese were prepared to give their adhesion, but on the distinct understanding that the new Treaty proposals would in substance be accepted by Her Majesty's Government.

That there were also other points in the draft Treaty which would require careful consideration, and in regard to which Her Majesty's Government were in communication with the Governments of the Great Powers interested in the question of Treaty revision with Japan.

That in the meanwhile the Japanese Chargé d'Affaires in London had been informed that Her Majesty's Government wished it to be clearly understood that, whatever might be the result of the separate negotiations which his Government proposed to carry out with the other Treaty Powers, the existing rights of Great Britain under the most-favoured-nation clause of the Treaty of the 26th August, 1858 (Article XXIII) would be respected; and that the British Government and British subjects would be allowed free and equal participation in all privileges, immunities, and advantages that might be granted to the Government or subjects of any other Power.

Interpretation put by Japan on m.-f.-n. Article (XXIII) of Treaty of 1858.

That to that intimation Viscount Okabé had replied in a letter dated the 5th March, in which he stated, by direction of his Government, that they "cannot admit any interpretation of Article XXIII of the Treaty of the 26th August, 1858, between this country and Japan, that would secure to the former unconditional participation [in privileges] conditionally granted to a third Power."

That with the papers forwarded to us would be found a Confidential Memorandum, drawn up by Mr. H. Farnall, of the Foreign Office, on cases involving the interpretation of the most-favoured-nation and national treatment clauses in Commercial Treaties.

That the view taken of the most-favoured-nation clause by the Japanese Government apparently coincided with that which had been held by the Government of the United States, to the effect that favours granted to one nation in return for certain other favours might not be claimed by another nation under a most-favoured-nation clause (*vide* Memorandum, p. 33 (C)).

That in Article XXIII of the Treaty of the 26th August, 1858, between this country and Japan, it was laid down that "the British Government and its subjects will be allowed free and equal participation in all privileges, immunities, and advantages that may have been, or may be hereafter, granted by His Majesty the Tycoon of Japan to the Governments or subjects of any other nations."

That the special meaning which the Japanese Government appeared to be endeavouring to give to the word "equal" was under discussion between France and the United States in 1821, when the question arose as to the interpretation to be given to Article VIII of the Treaty between France and the United States of America of the 30th April, 1803, ceding Louisiana to the United States (see Memorandum of the 4th March, 1889, p. 37, and State Papers, vol. viii, p. 465).

That Sir Philip Currie was to request that we would take the papers transmitte with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the interpretation apparently sought to be put by the Japanese Government upon Article XXIII of the Treaty of the 26th August, 1858, between Japan and Great Britain, was one which could be admitted by Her Majesty's Government.

We were further honoured with a letter from Sir T. H. Sanderson, dated the 9th ultimo, stating that a despatch* had just been received from Her Majesty's Chargé d'Affaires at Tôkiô reporting that a Treaty had been concluded between Japan and Mexico, in which the first-named country did not concede to Mexico the extra-territorial rights in Japan which had hitherto always been granted to foreign Powers making Treaties with Japan.

That Sir T. H. Sanderson was to inclose a copy of the despatch from Mr. Trench, and to request that we would take it into our consideration in connection with the papers forwarded to us by Sir Philip Currie on the 25th March last.

We have taken the matter into our consideration, and in obedience to you Lordship's commands have the honour to

*Report*—

Interpretation put by Japan upon Article XXIII cannot be admitted.

That, in our opinion, the interpretation which is put by the Japanese Government upon Article XXIII of the Treaty of 1858 is not one which can be admitted by Her Majesty's Government.

Question whether Article XXIII has any relation to commerce and navigation apart from personal privileges or immunities.

We think it right to add that a grave question might be raised as to whether Article XXIII has any relation to commerce and navigation apart from personal privileges or immunities.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Mr. Trench, No. 29, February 26, 1889.

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*List of Papers.*

1. Confidential Print, 1889, Nos. 1 to 54.
2. Viscount Okabé, March 5, 1889.
3. Article XXIII, Treaty between Japan and Great Britain, August 26, 1858. Treaty No. 433.
4. Memorandum by Mr. Farnall on cases involving the interpretation of the most-favoured-nation treatment clauses in Commercial Treaties, March 4, 1889.

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## No. 31.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 5.)*

*Royal Courts of Justice, July 4, 1889.*

My Lord,

Interpretation of m.-f.-n. clauses of Treaties with Japan.

WE were honoured with your Lordship's commands signified in Sir T. H. Sanderson's letter of the 10th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the question of the interpretation of the most-favoured-nation clause in the Treaties between this country and Japan.

That a previous Report from us on the subject, dated the 13th May, 1889, would be found among the papers inclosed.

That the Treaty which at present governed the relations of the two countries was that of the 26th August, 1858 (Hertslet's Treaties, vol. xi, p. 396), Article XXIII of which dealt with most-favoured-nation treatment.

Japan declines to grant privileges under such clauses unconditionally.

That in reply to the statement made by Viscount Okabé, the Japanese Chargé d'Affaires, in a note dated the 5th March, to the effect that his Government could not admit any interpretation of the above-named Article that would secure to this country unconditional participation (in privileges) conditionally granted to a third Power, he was informed in your Lordship's note of the 24th May, that the doctrine laid down by the Japanese Government was not sufficiently developed to enable your Lordship to comment on it in detail, but that, in refraining from a discussion which would probably be premature, your Lordship must not be understood as making any admission in prejudice to the rights which Great Britain had always claimed under that Article.

Reservation of British rights.

Japanese Treaty with Mexico.

That we were aware that information had reached Her Majesty's Government of the conclusion of a Treaty between Japan and Mexico, in which Japan had not conceded to Mexico the extra-territorial rights which had hitherto been granted to Powers making Treaties with Japan, but which it was understood would confer upon the subjects of Mexico complete freedom of residence and travel in Japan (see Mr. Trench's No. 29 of the 26th February, 1889).

That Mr. Fraser, Her Majesty's Minister in Japan, had now reported that the Treaty between Japan and Mexico had been ratified on both sides, and that he had represented that its publication would bring forward the question of the interpretation of the most-favoured-nation clause in our Treaties with Japan (see Mr. Fraser's telegram No. 17 of the 3rd June, 1889).

That he had been informed, in reply, that by a note to the Japanese Chargé d'Affaires (the 26th February, 1889), Her Majesty's Government had already expressly reserved their rights under Article XXIII of the Treaty of 1858 (see telegram to Mr. Fraser No. 10 of the 5th June, 1889).

That Sir T. H. Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion whether the notes to Viscount Okabé of the 26th February and 24th May last contained a sufficient reservation of our rights under the most-favoured-nation clause of the Treaty of 1858, or whether, on the publication of the new Treaty between Japan and Mexico, Her Majesty's Government ought formally to claim the right for British subjects in Japan to travel freely and reside inland, and that applications to the Japanese authorities for passports should only be made under protest.

That your Lordship would also be glad to be furnished with any general observations we might have to offer on the subject.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Reservation of British rights sufficient.

That, in our opinion, the notes to Viscount Okabé of the 26th February and the 24th May do contain a sufficient reservation of the rights of Great Britain under the most-favoured-nation clause of the Treaty of 1858.

As to more formal intimation.

It may, however, be desirable, upon the publication of the Treaty with Mexico, to give a more formal intimation to the Government of Japan that Her Majesty's Government intends to insist upon the claim already made, and that passports will henceforward be asked for and accepted only under protest.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

1. Confidential Print 1889. Nos. 1–96.
2. Article XXIII of Treaty between Great Britain and Japan of August 26, 1858. No. 433.
3. Law Officers .. .. .. .. .. (No. 30) May 13, 1889.
4. To Viscount Okabé .. .. .. .. .. .. ,, 24, ,,
5. Mr. Fraser .. .. .. .. (No. 17. Telegraphic) June 3, ,,
6. Mr. Fraser .. .. .. .. (No. 10. Telegraphic) ,, 5, ,,

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## No. 32.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 25.)*

*Royal Courts of Justice, July 24, 1889.*

My Lord,

Protection of K. K. Kingdon, illegitimate son of N. P. Kingdon.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the draft of a letter which it was proposed, should we see no objection, to address to Mr. N. P. Kingdon, in reply to a communication which was received from that gentleman on the 12th instant.

That Mr. N. P. Kingdon, who was believed to be a natural-born British subject, requested, as would be seen, that his putative son, King Kiku Kingdon, now residing in Yokohama, Japan, might receive "protection as a British subject in Her Majesty's Consulate at Kanagawa" under the following circumstances.

N. P. Kingdon subsequently married the mother.

That Mr. King Kiku Kingdon was born at Yokohama on the 26th September, 1866. That at the time of his birth, Mr. N. P. Kingdon was not married to the child's mother, who was then a Japanese subject. That he had since, however, with the special permission of the Japanese Government, accorded on the application of Her Majesty's Consul, married the mother, who had thereby become a British subject both by Japanese and English law.

Antecedents of K. K. Kingdon, whom the Japanese authorities do not regard as of Japanese nationality.

That Mr. King Kiku Kingdon, the son, had from the age of 14 upwards been educated in England, and, as a member of the Queen's Westminster Rifle Volunteer Corps, had taken the oath of allegiance to Her Majesty.

That he only returned to Japan at the close of last year, after a residence in England of over seven years, for the purpose of pursuing his profession as a civil engineer.

That he had never been registered as a Japanese subject, and that it was stated that he was not regarded by the Japanese authorities as of Japanese nationality.

Circular of May 29, 1876

That in 1876 a Circular Instruction was issued by the then Secretary of State to Her Majesty's Consuls abroad, directing them not to enter in the registers of their Consulates the births of the illegitimate children of British parents. (See Circular of the 29th May, 1876.)

Case of Marie Gouder.

That on the 11th November, 1884, however, the then Law Officers and Dr. Deane, Q.C., reported, with reference to the case of the illegitimate infant daughter of one Marie Gouder, a British subject, resident in Switzerland, that although the child, having been born outside the British dominions, was not, strictly speaking, a British subject, there was no objection, in order to surmount the difficulties raised by the Swiss authorities in consequence of her having no recognized nationality, to include her name in the British passport given to her mother.

That Sir Thomas Sanderson was also to call our attention to the Mosenthal case (Law Officers' Reports for 1883, Nos. 48, 49, and 50), as presenting considerable analogy to that now under consideration.

Case of Mosenthal junior.

That with regard to Mr. Mosenthal, junior, the Law Officers and Dr. Deane were, as would be seen, of opinion that, if his birth in Germany did not, according to the Law of that Empire, make him a German subject, there was no objection to the registration of his birth at the British Vice-Consulate at Breslau (Nos. 48 and 49).

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That they were further of opinion that, although the mere fact of registration at a Consulate had no legal effect as regarded the status of the child that it was, in cases of doubt, more convenient that the question of nationality should be left open on the Register (No. 50).

Proposed reply to Mr. N. P. Kingdon.

That it had been suggested that, having regard to the peculiar circumstances of Mr. Kiku Kingdon's case, it might appropriately be treated in the manner indicated in the draft letter to his father, Mr. N. P. Kingdon, inclosed with the papers; but that before dispatching that letter or instructions in its sense to Her Majesty's Minister at Tôkiô, your Lordship would be glad if we would take the draft into our consideration in connection with the other papers transmitted with Sir Thomas Sanderson's letter, and would favour your Lordship with our opinion as to whether its terms were right and proper for the circumstances, or whether, and, if so, how, it was desirable that they should be altered or modified.

Question whether K. K. Kingdon would, on registration, come within the expression "British subject" as used in the Orders in Council.

That Sir Thomas Sanderson was to add that it was conceived that Mr. Kiku Kingdon would, if registered at the Consulate, become a "British-protected person" within the meaning of the "China, Japan, and Corea Order in Council, 1884," and would, as such, be included for jurisdiction purposes within the meaning of the expression "British subject" as used in the China and Japan Orders in Council; but that your Lordship would, at the same time, be glad to be favoured with our opinion on that point also.

Proposed limitation of the precedent to cases in which parents subsequently contracted a valid marriage.

That should we approve of the course which had been suggested in Mr. Kiku Kingdon's case, your Lordship would propose to confine the precedent which would thus be introduced for the registration at Her Majesty's Consulates in Japan of the illegitimate children of a British father and a Japanese mother strictly to cases in which the parents had, subsequently to the birth of such children, contracted a marriage valid by English law.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Approve draft despatch. K. K. Kingdon would come within the expression "British subject." Approve suggested limitation of the precedent.

That we approve the terms of the draft despatch as altered and initialled by us.

We are of opinion that Mr. Kiku Kingdon will, on registration, be included, for purposes of jurisdiction, within the meaning of the expression "British subject" as used in the China and Japan Orders in Council.

We approve the suggested limitation of the precedent in this case.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

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|---|---|---|---|---|---|
| 1. | Mr. N. P. Kingdon .. .. .. .. | | June | 11, 1889. | |
| 2. | Law Officers' Reports .. | (Switzerland, No. 85) | November | 11, 1884. | Confidential No. 5121. |
| 3. | Law Officers' Reports | (Germany, Nos. 48, 49, and 50) | —— | 1883. | " 4974. |
| 4. | Circular to Her Majesty's Consuls, No. 1270.. .. | | May 29, | 1876. | |
| 5. | China, Japan, and Corea Order in Council, 1884. | Confidential No. 5005. | | | |
| 6. | China and Japan Order in Council, 1865. | Confidential No. 1354. | | | |
| 7. | " " " 1869. | " " 5265. | | | |
| 8. | " " " 1877. | " " 3169. | | | |
| 9. | " " " 1878. | " " 3697. | | | |
| 10. | " " " 1881. | " " 4520.* | | | |
| 11. | Draft to Mr. Kingdon .. .. .. .. | | July | , 1889. | |

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## Annex.

*Draft of Letter to Mr. Kingdon.*

Sir,
*Foreign Office, July* , 1889.

I AM directed by the Marquis of Salisbury to acknowledge the receipt of your letter of the 11th ultimo relative to the status in Japan of your son, Mr. King Kiku Kingdon.

In reply, I am to inform you that illegitimate children born abroad of British parents are not British subjects, and that the only manner in which Mr. King Kiku Kingdon could [~~legally~~] acquire British nationality would be by obtaining naturalization [~~within Her Majesty's Dominions~~] *in the United Kingdom;* and that even so, his acquired British nationality would not avail him in Japan, if, under the circumstances of his birth, he were a Japanese subject according to Japanese law.

You state, however, that he is not recognized as a Japanese subject by the Japanese authorities; and if this be the case, he has, strictly speaking, no nationality at all. Under these circumstances, *it would be best for Mr. K. K. Kingdon to be naturalized in the United Kingdom, but if this course cannot be adopted,* as it appears that both his parents are now British subjects, Lord Salisbury is willing to instruct Her Majesty's Minister at Tôkiô to inquire officially whether the Japanese Government claim Mr. King Kiku Kingdon as a Japanese subject; and, if the reply should be in the negative, instruct Her Majesty's Consul at Kanagawa, under the peculiar circumstances of the case, to register him as a British subject for purposes of protection, making, however, an exact entry in the register of the circumstances under which British protection has been extended to him.

You must [~~however~~] distinctly understand [~~that registration at a British Consulate is not legal proof of British nationality. and~~] that such registration will have no effect to alter Mr. King Kiku Kingdon's present legal status as to nationality, whatever that status may be.

R. E. W.
E. C.

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## No. 33.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 9.)*

My Lord,
*Royal Courts of Justice, November* 9, 1889.

Draft Anglo-Japanese Treaty. Article XX, as to jurisdiction.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to an important question which had arisen for practical consideration in connection with the proposed wording of Article XX of the draft Treaty of Amity, Commerce, and Navigation, now in the course of negotiation between Her Majesty's Government and that of Japan.

Proposals as to— Judicial arrangements

That the Japanese Government had determined to institute a new judicial organization based upon European principles, and to enact codes of law framed upon European models, and prepared with the assistance of European jurists.

That as a further security for the proper administration of those codes, the Japanese Government were ready to give assurances that a certain number of properly qualified European jurists should hold appointments as Judges in the Supreme Court, and should be associated with the Japanese Judges in the trial of Appeals before that Court in which foreigners were interested.

Limitation and abolition of Consular jurisdiction.

That it was provided in the proposed Treaty that, from the time those arrangements came into force, Consular jurisdiction in Japan should be exercised only within the limits of the foreign Settlements established by Treaty, and should, at the end of a certain number of years, entirely cease.

That in return for that concession, the Japanese Government agreed to throw the whole country open to foreign travel and commerce.

Voluntary submission of individuals to Japanese jurisdiction by Article XX.

That Article XX of the Treaty was proposed by the Japanese Government with the object of permitting British subjects, who were desirous of doing so, to submit themselves at once and altogether to the jurisdiction of the new Japanese Tribunals, both in civil and criminal matters, to the exclusion of British ex-territorial jurisdiction.

That the Article was of some importance, inasmuch as it was made a condition to the appointment of the European Judges that they should so submit themselves to Japanese jurisdiction.

Article as proposed by Japanese.

That Article XX, in the form in which alone the Japanese Government were willing to accept it, provided that:—

"In case any British subjects should at any time, in advance of the final abolition of British Consular jurisdiction, desire to submit themselves exclusively to Japanese jurisdiction, they may do so by making and filing with their own proper Consular authorities, and with the proper local Japanese authorities, formal declarations to that effect; but no such submission shall deprive the British Consular Courts of jurisdiction over such subjects which they would otherwise have in connection with liabilities incurred prior to such submission."

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British amendments.

That in the counter-draft presented by the British negotiator, it was proposed to insert the word "civil" before the word "jurisdiction," and after the word "Japanese" in the early part of the Article, and thus to exclude criminal matters from its scope; but that that proposal had met with strong opposition from the Japanese Government, and that, for the reasons above stated, Her Majesty's Government did not desire to insist upon it, if they could, without serious objection on legal grounds, accept the Article as originally drafted.

Means for abandoning British jurisdiction.

That in that connection, a consideration of the means by, and limitations subject to, which Her Majesty could abandon, either wholly or in part, ex-territorial jurisdiction exercisable under the provisions of "The Foreign Jurisdiction Acts, 1843 to 1878," and Orders in Council passed thereunder, appeared to be involved: that doubt had been felt as to the power, or, at any rate, the advisability, of Her Majesty ceding such criminal jurisdiction when it had once been exercised, otherwise than by virtue of the provisions of a special-enabling Act of Parliament.

That it was, however, suggested that, having regard to the manner in which ex-territorial, as distinguished from territorial, jurisdiction, was acquired by and became vested in Her Majesty, as well as to the scope of the Foreign Jurisdiction Acts under which it was exercised and enjoyed, Her Majesty could abandon it, either wholly or in part, without any special or further Imperial Parliamentary legislation *ad id.* in each particular case, and could by Order in Council make such provisions, abolishing, suspending, or modifying its exercise, as to her from time to time might seem fit.

Precedents—Egypt, 1875;

That that view appeared to have been adopted in actual practice on previous occasions, and that in that connection Sir Thomas Sanderson was particularly to refer us to the Report of the then Law Officers of the Crown of the 15th October, 1875 (Law Officers, "Turkey No. 135 of 1875"), with reference to the means by which Her Majesty's Consular jurisdiction should be suspended upon the opening of the new Judicial Tribunals in Egypt, and also to the Order in Council of the 5th February, 1876, which was passed in accordance with the recommendations contained in that Report.

Tunis, 1884.

That that Order in Council merely *suspended* the jurisdiction of Her Majesty's Consular Courts in Egypt "until it should seem fit to Her Majesty the Queen, by and with the advice of her Privy Council, to otherwise order." But that the precedent then and thus established was, with the approval of the Law Officers of the Crown of the succeeding Administration (see their Report, "Tunis, No. 87, of the 1st January, 1884"), extended to a case in which it was desired not merely to suspend during pleasure, but to abolish Her Majesty's existing Consular jurisdiction so far as the particular place to be affected by the proposed Order in Council was concerned.

That accordingly, at the time of the abandonment of Her Majesty's Consular jurisdiction at Tunis in 1884, an Order in Council was passed abolishing the jurisdiction of Her Britannic Majesty's Court for that place, except as to pending cases (see Parliamentary Paper "Tunis No. 1 (1884)" and Order in Council of the 31st December, 1883), and that a similar course would suffice, no doubt, for carrying into execution the general arrangements of the proposed Treaty.

Present case not exactly similar.

But that the case which arose under Article XX differed from the precedent above referred to, in that it was not proposed by it at once to abolish Her Majesty's ex-territorial jurisdiction in Japan, or in any specific part of that country, but merely to authorize such British subjects as might desire to do so, at their option, to withdraw themselves from Her Majesty's jurisdiction, and to submit themselves exclusively to the Japanese Tribunals. That it was thought, however, that the distinction between the two cases was one of degree rather than of principle.

Questions as to—

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

1. Legal objections to Article XX;

1. Whether serious objection on grounds of law existed to the wording of Article XX as originally framed and quoted above;

2. Method of abandoning British jurisdiction;

2. Whether, if not, provision could effectively and properly be made by Her Majesty for carrying out the objects of that Article by an Order in Council passed under the provisions of the Foreign Jurisdiction Acts, without any further or special Parliamentary legislation; and

3. Irrevocability of voluntary submission.

3. Whether, if a British subject should submit himself exclusively to Japanese jurisdiction, under the provisions of Article XX, the effect of such submission on his part would be not only to withdraw him altogether from the ex-territorial jurisdiction of Her Majesty in Japan, but also to render such submission, when once made, irrevocable during the continuance of the temporary arrangement in contemplation of which the Article was framed.

That as the only point of importance now in controversy between the Governments of Great Britain and Japan upon the actual terms of the proposed Treaty was that indicated as still open with regard to Article XX (although certain other matters outside the Treaty still remained unsettled), and that as it was considered extremely desirable to conclude the negotiations at as early a date as possible, your Lordship would be greatly obliged if we would favour you with our opinion on the points now submitted at our earliest convenience.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

No objections to Article XX Order in Council sufficient.

That, in our opinion, no serious objections exist, on grounds of law, to the wording of Article XX as originally framed, and that an Order in Council will suffice without any further or special legislation.

Submission irrevocable during temporary arrangement.

In our opinion, the submission provided for in Article XX would be irrevocable during the continuance of the temporary arrangement in contemplation of which the Article is framed.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

Printed Correspondence respecting Japanese Treaty Revision. Confidential No. 5773.
Correspondence, Parliamentary Paper, "Tunis No. 1 (1884)." Parliamentary No. 2767.
Tunis Order in Council of December 31, 1883, abolishing Her Britannic Majesty's Consular Court in that Regency. Confidential No. 4905*.
Law Officers' Report, Tunis No. 87, January 1, 1884. Confidential No. 5121.
Law Officers' Report, Turkey No. 135, October 15, 1875. Confidential No. 4370.
Order in Council of February 5, 1876, suspending Her Majesty's Consular jurisdiction in Egypt on the establishment of the Egyptian Courts. Confidential No. 2755.

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# MADAGASCAR.

## No. 34.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 6.)*

My Lord, *Royal Courts of Justice, July* 6, 1889.

Pelicier Frères *v.* Consul Haggard.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* with reference to an action which was brought last year in the Supreme Court of the Mauritius by the firm of Pelicier Frères against Mr. Haggard, Her Majesty's then Consul at Tamatave, in respect of acts done by him in his judicial capacity as Judge of the Consular Court in Madagascar.

That the circumstances of the case were as follows.

That, in the month of May 1887, Messrs. Pelicier Frères, a Creole firm established at Tamatave, in Madagascar, entered a plaint in Her Majesty's Consular Court

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* Colonial Office, May 7, 1889; Consul Haggard, No. 99, August 29; ditto, No. 115, September 16; ditto, No. 139, October 20; ditto, No. 140, October 24; ditto, No. 186, December 31; Pelicier Frères, September 19; to Consul Haggard (Telegraphic), December 12, 1887; M. Robert, January 9; to Colonial Office, February 14, 1889.

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at that place against one Louis Mairs, the agent in a distant part of Madagascar for the British firm of Messrs. Proctor Brothers, established at Tamatave, from whom they claimed 35 dollars for goods sold; and that a summons was issued on the 7th May by the Consul, calling upon Mairs to appear before him to answer the claim of the plaintiffs.

That on the return day Mairs did not personally appear, but that Mr. Proctor, who was allowed by the Court to represent him, produced a receipt for the sum claimed.

That the plaintiff's attorney (Mr. Roberts) then asked to be allowed to prove that the defendant had obtained possession of the receipt by fraud; and that he applied for a summons calling upon Mairs to appear personally before the Court to give evidence.

That Mr. Haggard stated (*vide* his despatch No. 115 of the 16th September, 1887) that, when the case was called on, he saw that the intention of Pelicier Frères, in bringing the action, was to deliberately endeavour to injure Messrs. Proctors' trade by removing their agent, M. Mairs, from his place, and so causing them great expense. That, upon the production of the signed receipt, which was acknowledged by the plaintiff Pelicier to be the receipt for the goods in question, he determined to dismiss the case at once as vexatious, but ultimately adjourned it for a week. That, in the interval, he received a most improper letter from Pelicier Frères, threatening to bring an action against him in the Supreme Court of the Mauritius if he failed to comply with their wishes, and to compel Mairs to appear in person in the proceedings then pending in the Consular Court.

That that application was accordingly refused by Mr. Haggard, who declared that he had private information convincing him that the case was a vexatious one, and that when the case came finally into Court he was of opinion that it should be dismissed without further hearing, a receipt from the plaintiffs for the sum claimed having been produced on behalf of the defendant, which receipt was, moreover, acknowledged by the plaintiff to have been given in respect of the special sum claimed.

That judgment was accordingly recorded for the defendant with costs.

That applications were then made by Pelicier's attorney to have affidavits and other documents sworn before Consul Haggard, with the view of applying for a writ of *certiorari* against him from the Supreme Court of the Mauritius.

That those applications were, however, in view of the vexatious nature of the previous proceedings and the threatening attitude of the defendants, refused by Consul Haggard.

That the affidavits, &c., were in consequence taken to the American Consul and sworn before him.

Trial in respect of acts done by Consul Haggard as Judge of Consular Court.

That M. Pelicier and his attorney then repaired to Mauritius and instituted proceedings in the Supreme Court, in pursuance of which a summons was issued, ordering Mr. Haggard to appear and show cause why a writ of *certiorari* should not be issued against him in the case of "Pelicier Frères *v.* Mairs;" while a further summons was granted in an action for damages instituted against Mr. Haggard in regard to acts which were stated by the plaintiffs to have constituted a flagrant abuse of his judicial powers as Her Majesty's Consul, and a denial of justice on his part (*vide* Consul Haggard's No. 139 of the 20th October, 1887, and inclosed copies of affidavits and documents deposited in the Court).

That in conformity with the instructions of the Secretary of State, Mr. Haggard proceeded to Mauritius to defend those proceedings, and was represented at the hearing by the Law Officers of the Crown for the Colony.

That the Supreme Court gave, on the 29th May, 1888, an interlocutory Judgment overruling a plea to the jurisdiction of the Court which had been submitted on Mr. Haggard's behalf, and permitting the parties to amend their pleadings.

Judgment given against Consul Haggard.

That on the 11th December, 1888, final Judgment was delivered, whereby Mr. Haggard was held liable, and ordered to pay 200 rupees as damages, together, with costs, amounting to 945 rupees 85 c.

That a full report of the proceedings and Judgment of the Supreme Court, together with a Confidential Report on that Judgment by the Procureur-Général of Mauritius, would be found in the printed inclosures to the Colonial Office letter of the 7th May.

That from the Procureur-Général's Report it would be seen that, in his opinion, there was, for reasons which he clearly explained, good ground to doubt the correctness of the Judgment, and that he also considered an appeal to the Privy Council against that Judgment was desirable.

That Mr. Haggard was not, however, entitled as a matter of right to appeal against the Judgment of the Supreme Court to the Queen in Council, the matter in dispute being under 1,000*l.*—the appealable amount fixed in the Order in Council of the 13th April, 1831; but that the question arose whether, in view of the importance of the decision of the Supreme Court, which, if unreversed, might form a precedent enabling persons who had been unsuccessful in litigation before the Consular Court in Madagascar to sue Her Majesty's Consul for damages, an application might not be properly made for special leave to appeal.

1. Was Judgment erroneous?
2. Can he appeal?

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with an opinion as to (1) whether the Judgment of the Supreme Court of the Mauritius was erroneous, and, if so, in what respects; and (2) whether the case was one in which, having regard to all the circumstances, an appeal for special leave to appeal should be made to the Judicial Committee of the Privy Council.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report*—

Appeal desirable.

That while we do not desire to express a decided judgment with regard to the action of the Supreme Court of the Mauritius, we are of opinion that the importance of the question makes it desirable that an application for special leave to appeal should be made to the Judicial Committee.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## MEXICO.

### No. 35.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received April 3.)*

My Lord,
*Royal Courts of Justice, April 2,* 1889.

Mexican Claims Commission. Instructions to British Commissioner proposed by Sir S. St. John for settling questions still open.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 16th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to certain claims which had been submitted to the Mixed Commission now sitting, in pursuance of Article I of the Preliminary Agreement for the renewal of relations between Great Britain and Mexico of the 6th August, 1884, for the examination and liquidation of the outstanding claims of British subjects against the Federal Government of Mexico (see notification in "London Gazette" of the 3rd March, 1886, Print No. 5479, p. 4; Law Officers' Report, 20th August, 1887, print No. 5637, p. 34; and despatch No. 36 of the 1st September, 1887, to Sir Spenser St. John, Print No. 5637, pp. 36 and 37.).

That in the course of the examination of the various claims submitted to the Commission, the Mexican Commissioner found himself compelled, in obedience to precise instructions given him by his Government, to reject several claims on grounds which, in view of the instructions contained in your Lordship's despatch to Her Majesty's Legation No. 36 of the 1st September, 1887, the British Commissioner (to whom that despatch had been communicated) felt unable to admit.

That the claims in question might be divided, for convenience of classification, into six different groups; and that a short précis of each claim, or class of claims, and the grounds upon which the Mexican Commissioner considered them inadmissible, would be found in the various inclosures to Mr. Carden's No. 12 of the 27th September, 1888 (Print of January 1889, pp. 5-10).

That the Commission only awaited, in order to conclude its labours, an adjustment of the points now in controversy; and that, in those circumstances, Sir S.

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St. John was given authority to come to the assistance of the Commissioners, and to endeavour, in conjunction with Señor Mariscal, to effect, within the general lines laid down in the despatch No. 36 of the 1st September, 1887, already referred to, some settlement of the questions still remaining open.

That his views upon the various points involved would be found stated in his despatch No. 2 of the 19th January, in which he had inclosed a draft of the instructions, should they meet with your Lordship's approval, he would propose to give Mr. Carden in the circumstances.

That before, however, communicating further with Sir S. St. John on the subject, your Lordship would be glad to learn whether the terms of the draft instruction were such as were, in our opinion, right and proper; or, if not, in what respects they might, in our view, advantageously be modified.

That Sir P. Currie was, therefore, to request that we would take the draft instruction and other papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might have to offer on the case.

We have taken the matter into our consideration and, in obedience to your Lordship's commands, have the honour to

*Report—*

Approve the proposed instruction subject to certain amendments.

That in our opinion the draft instructions submitted to us are in substance correct; but we suggest the following amendments in the despatch:—

On p. 2, at the bottom of the page, we suggest the omission of the words "sudden...... England."

On p. 6, at line 8, we suggest the omission of the words "and has not profited by the plunder," and the substitution for them of the following words: "or by its neglect, or default, allowed them to be committed."

At p. 10 we suggest the omission of the reference to the case of neutral goods upon a belligerent vessel, and the substitution of the following sentence: "There is no principle of international law upon which this claim can be supported."

At the end of the despatch we suggest the addition of the words, "and cannot be considered as the acts of a Government accepted and obeyed by the people of Mexico, and by the public forces of that State."

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

- (A.) Confidential Print, No. 5109.
- (B.) Ditto, No. 5321.
- (C.) Ditto, No. 5479.
- (D.) Ditto, No. 5637.
- (E.) Ditto, No. 5895.
- (F.) Sir S. St. John, No. 2, January 19, 1889.

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## Annex.*

*Sir S. St. John to Consul Carden.*

*Mexico*, , 1889.

Sir,

I HAVE examined the six groups of claims on which you and General Berriozabal differ in opinion, and which were referred to Lord Salisbury in your despatch No. 5, Claims, of the 27th September, 1888.

Extra duty.

*Group I.* Consumo.—As the English merchants in the city of Mexico were aware, they would have to pay 30 per cent. extra duty if they removed their goods from Vera Cruz to the capital, and as this arrangement, promoted by the Diplomatic Corps, affected merchants of all nationalities alike, no claim can be founded on its being a sudden increase of duty, ~~sudden increases of duty being the usual practice in England~~.

Contributions and war taxes.

With regard to contributions on capital and so-called war-taxes, every foreigner domiciled in a country is subject to its laws, and if taxes are impartially levied, has

no right to expect exemption from payment. It appears to me that these claims should be rejected, and I advise their rejection.

T. Woolrich's claims:—

*Group II.*—The claims of Thomas Woolrich. There are three important ones:—

1. Sacking of house.

1. The sacking of his house by the Republican forces in 1866, when the town of Tehuantepec was taken by assault. Loss alleged, 57,721 dol. 20 c.

2. Destruction of goods.

2. In January 1867, when the same town was attacked by other forces and was almost completely burnt down, and Mr. Woolrich's goods stored in a Mexican's house, and premises were plundered and destroyed. Loss alleged, 112,780 dollars.

These alleged losses of goods occurred during the latter days of the Empire when the civil war was carried on in the most savage manner. I consider that these claims should be rejected under the rule laid down by M. Heinrich Geffcken:—"Pour les dommages soufferts en temps de guerre, ou de révolution, les étrangers n'ont aucun droit à des indemnités de la part de l'État où ils séjournent, ce serait réclamer pour de personnes établies dans un autre pays des avantages dont les nationaux eux-mêmes ne jouissent pas. Lorsqu'on s'établit dans un État étranger on est tenu d'en subir les conséquences." This doctrine appears to be the one accepted by the generality of nations, when a Government has not authorized the acts complained of, ~~and has not profited by the plunder~~, *or by its neglect or default allowed them to be committed.* These claims would be *de jure* against the Imperialist Government, and would, therefore, not be admitted by the Federal authorities.

3. Seizure of salt.

3. This claim is for a certain amount of salt transferred by the Imperial Government to Mr. Woolrich and to an American named Simonson. This claim was submitted by the latter to the Americo-Mexican Claims Commission, and the Arbitrator, Sir E. Thornton, decided that the Mexican authorities were justified in embargoing the salt. There appears no necessity to reopen this inquiry; and I agree with the decision arrived at by Sir Edward Thornton. Amount, 49,995 dollars.

4. Occupation and destruction of house.

4. If the statement made by Mr. Woolrich be correct, there appears to be some ground for this claim. The others are supported by no evidence. Amount, 5,650 dol. 25 c.

Murder of Vice-Consul Bodmer.

*Group III.* Murder of Mr. Bodmer, Vice-Consul at Tasco.—There appears to be no evidence whatever on which to substantiate any claim against the Mexican Government, though a compassionate allowance might be granted by the Mexican Government on the recommendation of the Commissioners.

Seizure of Mr. Lambley.

*Group IV.*—Mr. Lambley was held to ransom by a person calling himself Colonel Ugalde, and had to pay 1,300 dollars. As there is no proof that this person was other than a bandit, this claim cannot be supported. Amount paid, 1,300 dollars.

Seizure of Mr. Rabling.

2. That of Mr. Rabling appears to have more foundation, as there is some proof that Colonel Fragoso was employed by the Republican party then in arms against the Imperial Government.

Seizure of Messrs. Chabot's goods.

*Group V.*—Goods seized belonging to Messrs. Chabot, British merchants, whilst under convoy of French troops. ~~This may be considered a parallel case of neutral goods conveyed on board an armed belligerent vessel. The doctrine held by Sir William Scott was, that such goods were good prize. Under this rule, Messrs. Chabot have no legal claim, and in consequence it must be rejected.~~ *There is no principle of international law upon which this claim can be supported.*

*Group VI.*—Acts of the reactionary party in power. These include two cases of importance:—

Claim of T. Gillow;

1. That of T. Gillow for 16,469 dol. 76 c. T. Gillow is represented by his son, Mgr. Gillow, Bishop of Oaxaca. On it being explained to him that the Mexican Government entertained insuperable objections to admitting responsibility for the actions of those reactionary authorities who were in arms against General Juarez, he very generously withdrew his claim.

of A. W. Morphy;

2. The claim of Mr. A. W. Morphy is for money voluntarily advanced to the Head of one of the contending factions. The money was given at his own risk in the midst of civil war, and, therefore, is not of that class of claims into which the Commission was established to inquire. As Miramon's friends were in power during many after this event, Mr. Morphy had every opportunity of pressing his claim, and the system of advancing money to the Chiefs of contending parties, and then applying to Her Majesty's Government to collect the debt is not one to be encouraged or supported. It is not probable that so large a sum was really advanced, certainly not by Mr. Morphy. It is likely that he is lending his name to Mexican citizens. Amount claimed, 87,268 dol. 61 c.

and of G. Selby.

G. Selby's claim need not be supported, as he evidently brought upon himself whatever sufferings he endured.

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* The words eliminated by the Law Officers from the original draft are printed in erased type, and those added by them are printed in italics.

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Claims for exactions by parties.

The claims of A. Stephenson, 3,227 dol. 50 c.; W. Duncan, 555 dollars; Grant and Mitchell, 453 dol. 25 c.; and David Morn, 4,415 dol. 56 c. may be more or less substantiated, but they are the exactions of one party, for which the opposing party now in power decline to consider themselves responsible, *and cannot be considered as the acts of a Government accepted and obeyed by the people of Mexico, and by the public forces of that State.*

I am, &c.
(Signed) SPENSER ST. JOHN.

R. E. W.
E. C.

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## No. 36.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July 22.)*

My Lord, *Royal Courts of Justice, July* 20, 1889.

Mexican bonds. Perry *v.* Grant. Request of Mrs. Grant's solicitors for correspondence between Mr. Perry and the Foreign Office.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list, relative to an application from the solicitors of Mrs. Grant, the widow of Mr. Alexander Grant, a holder of Mexican Convention bonds.

That Mrs. Grant was being sued by Mr. Francis Perry for a sum of money as commission for negotiating the conversion of those bonds, and that her solicitors asked to be informed of the nature of certain communications between the Foreign Office and Mr. Perry upon which the latter partly bases his claim.

That copies of all the correspondence which had passed between the Foreign Office and Mr. Perry were forwarded to us.

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether, under the circumstances of the case, there was any objection to copies of the correspondence referred to being supplied to Mrs. Grant's solicitors, and also with any general observations we might have to offer in the matter.

That Sir Thomas Sanderson was to add that it was presumed that such information, if any, as was given to Messrs. Woodhouse, Trower, Freeling, and Parkins should be strictly limited to communications received from, or made to, Mr. Perry.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Nature of information which may be supplied.

That, in our opinion, there is no objection to copies of the correspondence referred to being supplied to Mrs. Grant's solicitors, provided that the information be strictly confined to communications made to, or received from, Mr. Perry.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

| | |
|---|---|
| (A.) Correspondence with Mr. Perry. | |
| (B.) Mrs. Grant .. .. .. .. .. .. | January 20, 1888. |
| (C.) To Glyn, Mills, and Co. .. .. .. .. .. | „ 28, „ |
| (D.) Glyn, Mills, and Co... .. .. .. .. .. | „ 30, „ |
| (E.) To Mrs. Grant .. .. .. .. .. .. | February 1, „ |
| (F.) Messrs. Woodhouse, Trower, Freeling, and Parkins .. .. | June 12, 1889. |
| (G.) To Messrs. Woodhouse, Trower, Freeling, and Parkins .. .. | „ 29, „ |

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# MOROCCO.

## No. 37.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 25.)*

My Lord, *Royal Courts of Justice, June* 24, 1889.

Protection in Morocco of Mr. Bensaude, a naturalized British subject, born of Moorish parents in Morocco.

WE were honoured with your Lordship's commands signified in Sir T. H. Sanderson's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to a claim which had been put forward by Mr. David Bensaude, a naturalized British subject of Moorish origin, to British protection within the dominions of the Sultan of Morocco.

That Mr. Bensaude was born at Mogador of Moorish parents, but that he subsequently resided in England, where, after attaining his majority, he obtained a certificate of naturalization as a British subject on the 5th September, 1878.

That "The Naturalization Act, 1870," 33 & 34 Vict., cap. 14, sec. 7, provided that "an alien . . . . . shall not, when within the limits of the foreign State of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or in pursuance of a Treaty to that effect."

That Mr. Bensaude had not, so far as was known, ceased to be a Moorish subject by virtue of any specific Municipal Law of Morocco in that regard, but that the Convention (to which Great Britain was a party) between the various European Powers and Morocco for the settlement of the rights of protection in that country, which was signed at Madrid on the 3rd July, 1880, contained a provision (see Article XV, last paragraph, of the French official text) to the following effect:—

Question as to Article XV of Treaty of 1880.

"La naturalisation étrangère acquise jusqu'à ce jour par des sujets Marocains suivant les règles établies par les lois de chaque pays, leur est maintenue pour tous ses effets, sans restriction aucune."

That the question appeared to turn upon the construction to be placed on the words "maintenue pour tous ses effets, sans restriction aucune;" and that with regard to that point it was suggested for our consideration whether those words were not to be read with reference solely to the law of the foreign State in which the particular Moorish subject concerned had become naturalized abroad, and whether, if so, they could confer any greater or further rights or privileges upon such subject than were specified by the law itself under which he was so naturalized abroad.

That in the present case it was expressly provided by the instrument under which his naturalization was effected that Mr. Bensaude should not be deemed to be a British subject in Morocco unless he had ceased to be a subject of the latter State, and that it seemed difficult to contend that the words of the Convention of the 3rd July, 1880, to which our attention had been called, had so modified his status in Moroco as to entitle him to British protection, notwithstanding the provisions of the 7th section of "The Naturalization Act, 1870."

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether Mr. Bensaude was, under the circumstances, entitled to British protection in Morocco or not

That your Lordship would be glad, at the same time, to be favoured with any general observations which he might have to offer on the case.

We have taken the matter into our consideration and, in obedience to your L ship's commands, have the honour to

*Report—*

Mr. Bensaude not entitled to such protection.

That in our opinion Mr. Bensaude is not entitled to British protection while in Morocco.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

| | | | | |
|---|---|---|---|---|
| Mr. Bensaude .. .. .. .. .. | | April | 8, | 1889. |
| To Mr. White, .. .. .. | No. 45 | „ | 12, | „ |
| Mr. White .. .. .. .. | No. 57 | „ | 23, | „ |
| „ „ .. .. .. .. | No. 62 | May | 13, | „ |
| To Mr. White .. .. .. .. | No. 56 | „ | 20, | „ |
| Convention (Morocco) .. .. .. | No. 633 | July | 3, | 1880. |
| Naturalization Act, 1870, 33 Vict., cap. 14. | | | | |

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## No. 38.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 5.)*

*Royal Courts of Justice, November* 2, 1889.

My Lord,

Ex-territorial jurisdiction. Draft Order in Council.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 6th July last, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council,[*] to be cited as "The Morocco Order in Council, 1889," which had been prepared by Mr. R. S. Wright, under your Lordship's instructions, for the purpose of further regulating the exercise of Her Majesty's ex-territorial jurisdiction within the dominions of the Sultan of Morocco and Fez.

That Her Majesty's power and jurisdiction in Morocco were at present exercised under the provisions of the two Orders in Council dated respectively the 27th August, 1857, and the 4th February, 1875, of which copies were inclosed.

Proposed repeal of former Orders.

That it was now proposed to repeal those Orders, and to substitute therefor an Order—in the terms of the accompanying draft—which was of a much more comprehensive nature, and contained—*mutatis mutandis*—all the various general provisions which had been inserted in the other Orders in Council lately issued under the Foreign Jurisdiction Acts, 1843 to 1878.

That it was believed that the proposed Order in Council contained no provisions which were without precedent in other similar legislation, and that its terms had already been considered and approved by the Home and Colonial Offices, and by the Treasury, in so far as those Departments were respectively concerned.

That it had been thought well, however, in case we should desire to refer to them, to inclose all the communications and correspondence which had passed upon the subject whilst the draft was in course of preparation.

That Sir Thomas Sanderson was to request that we would take the draft Order, and the other papers transmitted therewith, into our consideration, and that we would favour your Lordship with our opinion as to whether its terms were right and proper to be submitted to the Queen in Council for Her Majesty's approval.

Concurrent jurisdiction at Tangier.

We have also the honour to acknowledge the receipt of a Memorandum from Sir Thomas Sanderson, dated the 18th September last, inclosing certain correspondence relative to the proposed insertion in the draft Order of provisions for the establishment of concurrent jurisdiction at Tangier of the Vice-Admiralty Court of Gibraltar, and requesting that the further papers might be taken into consideration with those already submitted.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Approve draft Order.

That, in our opinion, the draft Order, as altered and initialled by us, may properly be submitted to the Queen in Council for Her Majesty's approval.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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[*] For Order in Council as issued, see Confidential No. 5862*.

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*List of Papers.*

| | | | | | |
|---|---|---|---|---|---|
| Report of Law Officers .. .. | (No. 164) | May | 31, | 1872. | Confidential 4098, p. 107. |
| Sir F. Reilly .. .. .. .. | | February | 24, | 1883. | |
| To Law Officers .. .. .. .. | | March | 20, | „ | |
| Law Officers .. .. .. | (No. 100) | July | 1, | 1884. | Confidential 5121, p. 127. |
| Sir P. Deane .. .. .. .. | | August | 23, | 1885. | |
| Sir J. D. Hay .. .. .. | (No. 30) | October | 20, | „ | |
| To Law Officers .. .. .. .. | | November | 2, | „ | |
| Law Officers .. .. .. | (No. 119) | „ | 20, | „ | Confidential 5246, p. 117. |
| Sir J. D. Hay .. .. .. .. | | „ | 4, | „ | |
| To Law Officers .. .. .. .. | | December | 17, | „ | |
| Law Officers .. .. .. | (No. 45) | January | 7, | 1886. | Confidential 5440, p. 64. |
| To Sir J. D. Hay .. .. .. | (No. 5) | April | 12, | „ | |
| Treasury .. .. .. .. .. | | May | 24, | „ | |
| Consul White .. .. .. | (No. 4) | „ | 31, | „ | |
| To Law Officers .. .. .. .. | | June | 12, | „ | |
| Consul White .. .. .. | (No. 5) | „ | 14, | „ | |
| Sir J. D. Hay .. .. .. | (No. 32) | „ | 21, | „ | |
| To Law Officers .. .. .. .. | | „ | 22, | „ | |
| Sir J. D. Hay .. .. .. | (No. 34) | „ | 23, | „ | |
| Consul White .. .. .. | (No. 7) | July | 5, | „ | |
| Law Officers .. .. .. | (No. 48) | „ | 9, | „ | Confidential 5440, p. 67. |
| Consul White .. .. .. | (No. 8) | „ | 27, | „ | |
| Sir J. D. Hay .. .. .. .. | | August | 12, | „ | |
| Mr. Wright .. .. .. .. | | „ | 13, | „ | |
| To Law Officers .. .. .. .. | | „ | 28, | „ | |
| Colonial Office .. .. .. .. | | September | 11, | „ | |
| To Mr. Wright .. .. .. .. | | „ | 15, | „ | |
| Mr. Wright .. .. .. .. | | October | 22, | „ | |
| Colonial Office .. .. .. .. | | „ | 23, | „ | |
| Mr. Wright .. .. .. .. | | November | 11, | „ | |
| Colonial Office .. .. .. .. | | „ | 25, | „ | |
| To Mr. Wright .. .. .. .. | | March | 22, | 1887. | |
| To Consul White .. .. .. .. | | August | 8, | „ | |
| Mr. Wright .. .. .. .. | | May | 4, | „ | |
| To Colonial Office .. .. .. .. | | August | 8, | „ | |
| Colonial Office .. .. .. .. | | „ | 19, | „ | |
| Consul White .. .. .. .. | | September | 24, | „ | |
| Colonial Office .. .. .. .. | | October | 4, | „ | |
| To Colonial Office .. .. .. .. | | „ | 18, | „ | |
| To Mr. Wright .. .. .. .. | | „ | 20, | „ | |
| Mr. Wright .. .. .. .. | | „ | 25, | „ | |
| Consul White .. .. .. .. | | November | 24, | „ | |
| Colonial Office .. .. .. .. | | „ | 30, | „ | |
| To Mr. Wright .. .. .. .. | | December | 10, | „ | |
| To Colonial Office .. .. .. .. | | „ | 10, | „ | |
| Mr. Wright .. .. .. .. | | „ | 16, | „ | |
| To Mr. Wright .. .. .. .. | | „ | 19, | „ | |
| Consul White .. .. .. | (No. 4) | February | 7, | 1888. | |
| Law Officers .. .. .. | (No. 36) | April | 17, | „ | Confidential 5785, p. 45 |
| To Consul White .. .. .. | (No. 2) | May | 1, | „ | |
| To Treasury .. .. .. .. | | „ | 8, | „ | |
| Consul White .. .. .. | (No. 8) | June | 2, | „ | |
| To Treasury .. .. .. .. | | „ | 25, | „ | |
| To Home Office .. .. .. .. | | August | 27, | „ | |
| Colonial Office .. .. .. .. | | December | 19, | „ | |
| Home Office .. .. .. .. | | November | 22, | „ | |
| Colonial Office .. .. .. .. | | „ | 16, | „ | |
| To Home Office .. .. .. .. | | January | 1, | 1889. | |
| Colonial Office .. .. .. .. | | „ | 15, | „ | |
| To Home Office .. .. .. .. | | May | 17, | „ | |
| Memorandum (H. G. B.) .. .. .. | | June | 4, | „ | |
| To Mr. Wright .. .. .. .. | | „ | 7, | „ | |
| To Colonial Office .. .. .. .. | | „ | 8, | „ | |
| Colonial Office .. .. .. .. | | „ | 18, | „ | |
| To Mr. Wright .. .. .. .. | | „ | 19, | | |
| Mr. Wright .. .. .. .. | | „ | 20 | „ | |

| | | | | |
|---|---|---|---|---|
| Treaty with Morocco .. .. .. | December | 9, | 1856. | No. 416. |
| „ „ .. .. .. | July | 3, | 1880. | No. 683. |
| Foreign Jurisdiction Acts, 1843 to 1878. | | | | |

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# NICARAGUA.

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## No. 39.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 5.)

[After quoting the terms of the reference printed below, dated the 28th February, 1889, they report as on page 75:—]

### *Foreign Office to the Law Officers of the Crown.*

*Foreign Office, February* 28, 1889.

Gentlemen,

Interpretation of Treaty of Managua of Jan. 28, 1860.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the papers noted in the accompanying list,* which relate to the interpretation to be given to certain provisions of the Treaty between Nicaragua and Great Britain, signed at Managua on the 28th January, 1860.

Complaint of Chief of Mosquito Indians against Nicaragua. Request for intervention of H. M.'s Govt.

In July last the Chief of the Mosquito Indians, with whose interests and territory the Treaty of Managua deals, made complaint to Her Majesty's Secretary of State for Foreign Affairs regarding certain proceedings of the authorities of the Nicaraguan Government, and requested the intervention of Her Majesty's Government as a party to the Treaty of Managua to see that its provisions should be strictly adhered to.

Arbitration of Emperor of Austria.

In consequence of a conflict of views as to the proper interpretation of certain Articles of that Treaty, Her Majesty's Government and the Government of Nicaragua agreed, in the year 1879, to refer the points at issue to the arbitration of the Emperor of Austria. His Majesty gave his Award on the 2nd July, 1881.

His Award.

For the purposes of the present reference to you, it is sufficient to quote the Articles of the Treaty concerning which issues are now raised, and to state the interpretation given to them by the Award of the Emperor of Austria.

Article I says:—

"On exchanging the ratifications of the present Treaty Her Britannic Majesty, subject to the conditions and engagements specified therein, and without prejudice to any question of boundary between the Republics of Nicaragua and Honduras, will recognize as belonging to and under the sovereignty of the Republic of Nicaragua the country hitherto occupied or claimed by the Mosquito Indians within the frontier of that Republic, whatever that frontier may be.

"The British Protectorate of that part of the Mosquito Territory shall cease three months after the exchange of the ratifications of the present Treaty, in order to enable Her Majesty's Government to give the necessary instructions for carrying out the stipulations of said Treaty."

Article II is as follows:—

"A district within the territory of the Republic of Nicaragua shall be assigned to the Mosquito Indians, which district shall remain, as above stipulated, under the sovereignty of the Republic of Nicaragua.

"Such district shall be comprised in a line which shall begin at the mouth of the River Rama in the Caribbean Sea; thence it shall run up the midcourse of that river to its source, and from such source proceed in a line due west to the meridian of 84° 15′ longitude west from Greenwich; thence due north up the said meridian until it strikes the River Hueso, and down the midcourse of that river to its mouth in the sea, as laid down in Baily's Map, at about latitude from 14° to 15° north, and longitude 83° west from the meridian of Greenwich, and thence southerly along the shore of the Caribbean Sea to the mouth of the River Rama, the point of commencement.

"But the district thus assigned to the Mosquito Indians may not be ceded by them to any foreign person or State, but shall be and remain under the sovereignty of the Republic of Nicaragua."

Article III states:—

"The Mosquito Indians, within the district designated in the preceding Article, shall enjoy the right of governing according to their own customs, and according to

any regulations which may from time to time be adopted by them, not inconsistent with the sovereign rights of the Republic of Nicaragua, themselves, and all persons residing within such district. Subject to the above-mentioned reserve, the Republic of Nicaragua agrees to respect and not to interfere with such customs and regulations so established, or to be established, within the said district."

Article IV says:—

"It is understood, however, that nothing in this Treaty shall be construed to prevent the Mosquito Indians, at any future time, from agreeing to absolute incorporation into the Republic of Nicaragua on the same footing as other citizens of the Republic, and from subjecting themselves to be governed by the general laws and regulations of the Republic, instead of by their own customs and regulations."

The following are the decisions of the Emperor of Austria in regard to the above-mentioned Articles:—

"1. The sovereignty of the Republic of Nicaragua which was recognized by Articles I and II of the Treaty of Managua of the 28th January, 1860, is not full and unlimited with regard to the territory assigned to the Mosquito Indians, but is limited by the self-government conceded to the Mosquito Indians in Article III of this Treaty.

"2. The Republic of Nicaragua, as a mark of its sovereignty, is entitled to hoist the flag of the Republic throughout the territory assigned to the Mosquito Indians.

"3. The Republic of Nicaragua is entitled to appoint a Commissioner for the protection of its sovereign rights throughout the territory assigned to the Mosquito Indians.

"4. The Mosquito Indians are also to be allowed to hoist their flag henceforward, but they must at the same time attach to it some emblem of the sovereignty of the Republic of Nicaragua.

"5. The Republic of Nicaragua is not entitled to grant Concessions for the acquisition of natural products in the territory assigned to the Mosquito Indians. That right belongs to the Mosquito Government.

"6. The Republic of Nicaragua is not entitled to regulate the trade of the Mosquito Indians, or to levy duties on goods imported into or exported from the territory reserved to the Mosquito Indians. That right belongs to the Mosquito Indians."

Legal opinion attached to Award.

The Award of the Emperor of Austria did not specifically refer to the rights of Great Britain under the Treaty of Managua, which is the point now in question, but the legal opinion attached to the Award, and on which it is based, states (p. 29, Parliamentary Paper, "Nicaragua No. 1, 1881"):—

"In regard, however, to the affairs of the Mosquito Indians, it is true that England, in the Treaty of Managua, has acknowledged the sovereignty of Nicaragua, and renounced the Protectorate, but this still only on condition, set forth in the Treaty, of certain political and pecuniary advantages for the Mosquitos ('subject to the conditions and engagements specified in the Treaty, Article I'). England has an interest of its own in the fulfilment of these conditions stipulated in favour of those who were formerly under its protection, and, therefore, also a right of its own to insist upon the fulfilment of those promises, as well as of all other clauses of the Treaty. The Government of Nicaragua is wrong in calling this an inadmissible 'intervention,' inasmuch as pressing for the fulfilment of engagements undertaken by Treaty on the part of a foreign State is not to be classified as intermeddling with the internal affairs of that State, which intermeddling has unquestionably been prohibited under penalty. No less unjustly does the Government of Nicaragua seek to qualify this insistance on Treaty claims as a continued exercise of the relinquished Protectorate, and on that ground wish to declare England's interposition inadmissible."

The legal Report or opinion goes on, and concludes as follows:—

"Finally, the Government of the Republic of Nicaragua also expresses the desire that the Award should declare that the Treaty of Managua, as having accomplished its purpose, is annulled in respect to Mosquitia, and that in future the parties concerned are bound in this respect to comply solely with the decisions adopted and enumerated in the Award. This desire militates against universal principles of law, and, therefore, cannot be acceded to. The interpretation of a Treaty can never supersede the Treaty interpreted, and the judicial decision creates no new right, but only affirms and establishes the existing right."

Instruction to Mr. Gastrell.

In consequence of the representations from the Chief of the Mosquito Indians referred to at the beginning of the present letter, Her Majesty's Minister accredited to the Republic of Nicaragua was on the 4th August last instructed to draw the

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* To Mr. Gastrell, No. 37, August 4; Mr. Gastrell, No. 110, September 11; Mr. Phelps, December 4, 1888; Treaty of Managua, January 28, 1860, Treaty No. 441; Arbitration: Mosquito Coast ("Nicaragua No. 1, 1881)," Parliamentary No. 2461; Clayton-Bulwer Treaty, April 19, 1850, Treaty No. 346.

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attention of the Nicaraguan Government to the wording of the Treaty of Managua, and to the interpretation given to it by the Award of the Emperor of Austria.

Mr. Gastrell was directed to remind the Nicaraguan Government of the provisions of the Treaty in regard to the boundaries of the Mosquito Reservation. He was also instucted to point out to that Government that the erection of forts, arsenals, or military posts, the establishment of Nicaraguan post-offices, the exercise of military or police authority by Nicaragua within the territory of the Reserve, would be inconsistent with the spirit of the Treaty of Managua as interpreted by the Arbitrator's Award.

The despatch to Mr. Gastrell, just described, recites the representations received from the Chief of the Mosquito Indians whereon the instructions given to Mr. Gastrell were based, and is transmitted herewith for your information.

Interference of the U.S.A.

On the 4th December last the United States' Minister at this Court forwarded to the Marquis of Salisbury a copy of a despatch (herein inclosed) which he had received from the United States' Secretary of State respecting the note which, in consequence of the instructions given by his Lordship to Mr. Gastrell in August last, that gentleman had addressed to to the Nicaraguan Minister for Foreign Affairs.

Appeal to Clayton-Bulwer Treaty of 1850.

Mr. Bayard prefaces his remarks on the matters to which he particularly desires to call attention by a review of the circumstances which led to the conclusion of the Clayton-Bulwer Treaty in 1850, and of the Convention between Great Britain and Nicaragua of 1860, and he observes that the latter Treaty was officially communicated to the Government of the United States, which, regarding it as a final withdrawal of British influence from the Mosquito country, expressed its satisfaction at a settlement that appeared to put an end to the disputes to which the Clayton-Bulwer Treaty had given rise. Mr. Bayard, however, after alluding to the differences between the Governments of Great Britain and Nicaragua as to the interpretation of the Treaty, and to the consequent reference of those differences to the arbitration of the Emperor of Austria, states that the United States' Government, not having been a party to this agreement of arbitration, "is not bound by the Award of the Arbitrator, nor committed in any way to an admission of the right of Great Britain to interfere in disputes between the Republic of Nicaragua and the Indians living within her borders," and he entirely dissents from the view as to Great Britain's rights of intervention expressed in the opinion or Report upon which the Award is based. Mr. Bayard further contends that "the stipulations of the Treaty of Managua relative to the privileges to be accorded to the Mosquito Indians were not for the benefit of Great Britain," and "are not enforceable by her." "They were," he says, "solely made for the benefit of those Indians who were regarded by the express language of the Treaty* as at liberty to accept or reject its stipulations. Through their Chief they did deliberately accept them, and on the withdrawal of British protection placed themselves under the sovereign power of the Republic of Nicaragua, and agreed to accept her public pledges as a sufficient guarantee that the agreements therein contained touching their right of self-government would be carried out in good faith," and thereupon the right of Great Britain to interfere was at an end; and he states that "the President cannot but regard the continued exercise of the claim on the part of Great Britain to interfere on behalf of these Indians as the assertion of a British Protectorate in another form, more especially when this effort is directed to prohibiting Nicaragua from exercising military jurisdiction in the immediate neighbourhood of the Atlantic mouth of the projected canal," and he says that "the course of Great Britain in assuming or exercising any dominion over the Mosquito Coast, or making use of any protection it may afford, or any alliance it may have to or with any people, for the purpose of assuming or exercising any dominion over that territory, would be a violation of the express stipulations of the Clayton-Bulwer Treaty."

On this point I am to refer you to the Ist Article of that Treaty, hereto annexed.

Mr. Bayard, apart from the consideration of the correctness of the Emperor's Award, holds that there is nothing in it or in the Treaty incompatible with the right of Nicaragua to establish post-offices, or to establish military posts for the common defence. Such a right is, he maintains, an essential incident of paramount sovereignty, and can properly be exercised by no other agency, and "it seems idle," he says, "to speak of a Government having the right to hoist a flag as the emblem of a sovereignty which it is not to be permitted to defend."

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* *Vide* Article VI:—

"Her Britannic Majesty engages to use her good offices with the Chief of the Mosquito Indians, so that he shall accept the stipulations which are contained in this Convention."

Mr. Bayard also points out that "to the United States, in common with all other Powers, it is important that Nicaraguan sovereignty should exist in fact as well as name within the Mosquito Reservation. With the Sovereign alone," he says, "can we maintain diplomatic relations, and we have a right to look to that Sovereign for redress in the event of wrongs being inflicted upon any of our citizens. If the Republic of Nicaragua is to be limited to the mere formal right of hoisting a flag and maintaining a Commissioner within the Reservation, how can it be called upon to perform any of its international obligations?"

Proposed reply to U. S. Govt.

The Marquis of Salisbury proposes to reply to Mr. Bayard's despatch by pointing out—

1. That the Award of the Emperor, to which the United States' Government take exception, was given more than seven years ago, and that no objection has till now been made to it by that Government.

2. That if the object contemplated by Her Majesty's Government had been an unconditional withdrawal of the Protectorate of Great Britain, no Convention would have been required or made; but that Nicaragua entered into a distinct Treaty arrangement with Great Britain to secure certain rights and privileges to the Mosquito Indians as soon as the British Protectorate should be withdrawn, and in the event—which has arisen—of the Mosquito Indians complaining that their rights are infringed by Nicaragua, Her Majesty's Government feel themselves in duty bound to bring the matter to the notice of the Nicaraguan Government.

Lord Salisbury proposes, however, to say that Mr. Bayard is under a misapprehension as to the extent of the intervention exercised by Her Majesty's Government, and that they do not claim "to intervene in every dispute between the Mosquito Indians and their Sovereign," but only within the limits of the Report annexed to the Emperor of Austria's Award quoted by Mr. Bayard. His Lordship proposes also to state that Her Majesty's Government have no desire to "assert a Protectorate" in substance or in form, or anything in the nature of a Protectorate, and to say that it would give them the greatest possible satisfaction if the Nicaraguan Government and the Indians would come to an amicable arrangement under Article IV of the Convention, and thus relieve this country from any further responsibility in regard to their affairs.

I inclose the draft of the proposed reply, and I am directed by Lord Salisbury to request that you will take all the papers herewith transmitted into your consideration, and that you will favour his Lordship with any suggestions that you may have to make in regard to the terms of the draft reply, and with your observations on such of the questions raised by Mr. Bayard as you may consider worthy of notice.

I am, &c.
(Signed) JULIAN PAUNCEFOTE.

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We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report*—

Approve reply.

That, in our opinion, the draft reply submitted to us is entirely appropriate to the occasion.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, March* 5, 1889.

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## Annex.

*Draft of Despatch from the Marquis of Salisbury to Her Majesty's Representative at Washington.*

(No. .)

*Foreign Office, March* , 1889.

Sir,

ON the 4th December last the United States' Minister at this Court transmitted to me a copy of a despatch which he had received from the Secretary of State respecting the Mosquito Reservation.

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In that despatch, of which a copy is inclosed herein,* Mr. Bayard draws attention to a note addressed by my direction to the Nicaraguan Minister for Foreign Affairs on the 10th September last, by Mr. Gastrell, Her Majesty's Minister accredited to the Republics of Central America.

Owing to a complaint made to Her Majesty's Government by the Chief of the Mosquito Reserve in regard to certain proceedings on the part of Nicaraguan authorities which he deemed to be inconsistent with the provisions of the Treaty of Managua of 1860, I had instructed Mr. Gastrell to make a friendly remonstrance to the Government of Nicaragua, and to draw their attention to the wording of the Treaty, and to the interpretation given to it by the Award of the Emperor of Austria.

For your information, I inclose a copy of my instructions to Mr. Gastrell.†

Mr. Bayard prefaces his remarks on the matters to which he particularly desires to call attention by a brief historical review of the circumstances which led to the conclusion of the Clayton-Bulwer Treaty and of the Convention between Great Britain and Nicaragua of 1860; but he observes that the latter was officially communicated to the Government of the United States, which, regarding it as a final withdrawal of British influence from the Mosquito country, expressed its satisfaction at a settlement that appeared to put an end to the disputes to which the Clayton-Bulwer Treaty had given rise.

I am therefore not called upon here to discuss any question other than the respective rights and duties of Great Britain and Nicaragua under the Convention referred to.

As Mr. Bayard observes, "differences arose between the Governments of Great Britain and Nicaragua in relation to the free port of Greytown, the payment of the annuity to the Mosquito Indians, and the precise extent of the rights of Nicaragua within the Indian Reservation. By an exchange of diplomatic notes between the Representatives of Great Britain and Nicaragua it was agreed that all of these questions should be submitted to the arbitration of the Emperor of Austria," whose decision was announced in July 1881.

Mr. Bayard, however, states that the United States' Government, not being a party to this agreement of arbitration, "is not bound by the Award of the Arbitrator, nor committed in any way to an admission of the right of Great Britain to interfere in disputes between the Republic of Nicaragua and the Indians living within her borders." And he entirely dissents from the view as to Great Britain's rights of intervention expressed in the opinion or Report upon which the Award is based.

Mr. Bayard contends that "the stipulations of the Treaty of Managua relative to the privileges to be accorded to the Mosquito Indians were not for the benefit of Great Britain, and "are not enforceable by her," and he states that "the President cannot but regard the continued exercise of the claim on the part of Great Britain to interfere on behalf of these Indians as the assertion of a British Protectorate in another form."

I may remark that the Award of the Emperor was given more than seven years ago, and no objection has till now been made to it by the United States' Government.

If the object contemplated by Her Majesty's Government had been an unconditional withdrawal of the Protectorate of Great Britain, no Convention would have been required or made; but Nicaragua entered into a distinct Treaty arrangement with this country to secure certain rights and privileges to the Mosquito Indians as soon as the British Protectorate should be withdrawn; and in the event, which has arisen, of the Mosquito Indians complaining that their rights are infringed by Nicaragua, by whom is remonstrance to be made to Nicaragua unless by Great Britain, with whom she has concluded the Convention in question?

Mr. Bayard quotes as analogous to the present issue the Treaties between the United States and France, Spain, and Russia for the cession respectively to the United States of Louisiana, Florida, and Alaska, and he states that although difficulties have at times arisen between the Federal Government and the inhabitants of Louisiana and Florida, neither France nor Spain ever pretended that the Treaty stipulations gave them a right to take part in the settlement of such disputes, and that were the Indians of Alaska to protest against alleged discriminations between the laws governing that Territory and the other Territories of the United States, the Emperor of Russia would not be authorized by the Treaty of 1867 to demand a different treatment of those Indians. Mr. Bayard does not, however, say whether such intervention was, as in the present case, invoked by the inhabitants concerned, or whether the differences to which he refers were of a kind provided for in the Treaties which he mentions.

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* Inclosure in Mr. Phelps' note of December 4, 1888.

† To Mr. Gastrell, No. 37, August 4, 1888.

Certain advantages were, by the Convention of 1860, secured to the Indians of the Mosquito Reserve, and Her Majesty's Government felt themselves in duty bound to bring to the notice of the Nicaraguan Government the cases specified in Mr. Gastrell's note. Mr. Bayard is, however, under a misapprehension as to the extent of the intervention exercised by Her Majesty's Government. They do not claim "to intervene in every dispute between the Mosquito Indians and their Sovereign," but only within the limits of the Report annexed to the Emperor of Austria's Award quoted by Mr. Bayard.

They have no desire to "assert a Protectorate" in substance or in form, or anything in the nature of a Protectorate, and it would give them the greatest possible satisfaction if the Nicaraguan Government and the Indians would come to an amicable arrangement under Article IV of the Convention, and thus relieve this country from any further responsibility in regard to their affairs.

I have to request that you will read this despatch to the Secretary of State, and leave a copy of it with him, and you may inform him that I have recently received from the Nicaraguan Minister at this Court a note giving explanations in reply to the representations made in Mr. Gastrell's note of the 10th September last.

I am, &c.
(Signed) SALISBURY.

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## PACIFIC ISLANDS.

### No. 40.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 26.)*

My Lord, *Royal Courts of Justice, February 23, 1889.*

Issue of licences to work unclaimed guano islands.

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 12th December last, stating that he had the honour to transmit to us, by your Lordship's direction, and in connection with our Report to your Lordship of the 10th April last* upon the same subject, a letter (and inclosures) which had been received from the Colonial Office† with reference to the form of licence granting to British subjects the right to work guano or other fertilizing substances in certain uninhabited islands situated chiefly in the Western Pacific Ocean.

Proposed alterations in forms of letters patent and licences.

That it would be seen that Lord Knutsford had proposed certain alterations (which were shown in italics in Inclosures Nos. 1, 2, and 3 respectively of the Colonial Office letter above referred to) in the original forms of letters patent and licences which had been in use up to the present time, in order to meet the cases not only of islands of which possession had already been taken at the date of the licence, but also cases in which possession, though then contemplated, had not actually taken place.

That other suggestions were also made with reference to the forms of the letters patent to be issued to the Governor of New South Wales, and to the High Commissioner of the Western Pacific, as well as of the warrant to the Secretary of State for the Colonies; and that certain alterations which were proposed in those documents would also be found indicated in italics in Inclosures Nos. 2 and 3 of the Colonial Office letter.

Licences for islands within and for those without British dominions. Distinction between.

That having regard to the fact that the grant of such leases in the case of islands already forming part of Her Majesty's dominions was a matter which did not, strictly speaking, concern the Foreign Office at all, but fell exclusively within the province of the Colonial Office, it had been suggested as preferable that the instruments authorizing such leases should be separate and distinct from those under which leases of islands not belonging, at the moment of the grant, either to Great Britain or any other civilized Power, were proposed to be effected by Her Majesty's Government.

That it was with the latter class of leases alone that the Foreign Office was concerned, and that the more convenient and simple course would, therefore, appear to be to issue letters patent under a separate form which should be applicable to those cases only.

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* Confidential No. 5785, p. 50.

† August 2, 1888. [1504 *e.*] Confidential No. 5784, p. 23.

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Forms (A) and (B) of letters patent.

That a form of letters patent (marked A) had accordingly been prepared, authorizing the Governor of New South Wales in all cases to grant leases of islands and places in the North and South Pacific Oceans not being within the jurisdiction of any civilized Power, and that the present form of licence had also been amended (as to which we were referred to document B) to meet the requirements of the case.

That those forms had been submitted for the approval of the Colonial Office, and that, subject to any alterations which our Report on the various other questions raised in their letter of the 2nd August might render necessary, had been accepted by that Department.

That at present the High Commissioner for the Western Pacific granted leases within certain geographical limits, and that the Governor of New South Wales acted in a similar capacity in regard to places in the Western Pacific beyond those geographical limits.

Governor of New South Wales to be sole issuer of licences.

That it was not proposed to displace the authority of the Governor of New South Wales as at present established in that regard, but that it had been suggested that it might, perhaps, be preferable to enlarge it, and to make him the sole issuer of licences to the supersession of the High Commissioner, as the latter was not nearly as accessible, being resident in Fiji, to persons desiring licences as the Governor was in New South Wales.

As to retention of recitals.

That it appeared, moreover, worthy of consideration whether all recitals (with the exception of a general one to the effect that the proposed licencee had applied for, and Her Majesty had been pleased to grant, a licence on the terms and conditions thereinafter contained) should not, at all events in that particular class of cases, be omitted in the forms of licence issued.

Proposed Order in Council as to jurisdiction of Australasian Courts.

That it was also pointed out in the Colonial Office letter of the 2nd August that practical difficulties were likely to arise in the application of the provisions of "The British Settlements Act, 1887," to those islands, and that it was suggested for our consideration and report whether they might not possibly be overcome by the issue of an Order in Council conferring jurisdiction generally upon the Courts of all the Colonies of Australasia in respect of offences committed on those islands, and thus rendering the offender justiciable wherever he might be found.

Previous mortgage a bar to issue of licence.

That Sir T. V. Lister was further to inquire whether, in our opinion, the fact that an applicant for a licence had previously mortgaged his property and interest in the island in question should be regarded as an objection to the issue of the licence; and that, in connection with that inquiry, he was to call our attention to the circumstance that there was in the licence a recital on the part of the licencee that no other person had, or claimed to have, on the ground of prior discovery, or otherwise, any right or interest to or in the said island, and a covenant that the licencee would not assign the licence, or any interest therein, without first obtaining the consent of the Secretary of State for the Colonies, or of the Governor of New South Wales.

That the papers which accompanied the reference from your Lordship's Department to ourselves of the 3rd March* last were inclosed for convenience of reference.

* List of Papers accompanying reference to Law Officers of March 3, 1888:—
Colonial Office, November 1, 1886.
Memorandum, November 5, 1886.
To Colonial Office, November 22, 1886.
Colonial Office, December 18, 1886.
To ditto, December 30, 1886.
Colonial Office, August 18, 1887. Confidential No. 5611, p. 22.
Ditto, August 19, 1887. Ditto, p. 24.
Memorandum, August 31, 1887. Ditto, p. 27.
Colonial Office, September 17, 1887. Ditto, p. 44.
To ditto, September 17, 1887. Ditto, p. 43.
Colonial Office, September 29, 1887. Ditto, p. 47.
Ditto, October 19, 1887. Ditto, p. 87.
To ditto (A), October 21, 1887. Ditto, p. 88.
To ditto (B), October 21, 1887. Ditto, p. 88.
To ditto, November 1, 1887. Ditto, p. 90.
Colonial Office, November 8, 1887. Ditto, p. 92.
Ditto, November 17, 1887. Ditto, p. 100.
Ditto, December 16, 1887.
Ditto, December 23, 1887. Ditto, p. 126.
"British Settlements Act, 1887;" 50 & 51 Vict., cap. 54.
Memorandum (with Map), January 19, 1888. Confidential No. 5043.
Colonial Office, January 26, 1888.
To ditto, January 30, 1888.
Law Officers, January 20, 1880. Confidential No. 4539, p. 49.

That Sir T. V. Lister was to request that we would take the Colonial Office letter of the 2nd August, and the several draft instruments and other papers transmitted with his letter, into our consideration, and that we would favour your Lordship with our opinion on the various questions involved, and with any observations which we might have to offer generally upon the matter.

In obedience to your Lordship's commands we have the honour to

*Report—*

Issue of letters patent by Foreign Office.

That, in our opinion, it is advisable that, in the event of letters patent being issued authorizing licences as to islands not already within the dominions of the Crown, such letters patent should be issued separately and by the Foreign Office.

Issue of licences by Governor.

We see no objection to the supersession of the High Commissioner in respect of the issuing of these licences.

Recitals to be retained.

The recitals contained in the forms of licence are appropriate and should not be omitted. It may be important to have a clear statement of the conditions upon which a licence has been granted.

Approve Order in Council as to jurisdiction.

We are of opinion that an Order in Council may properly be issued conferring general jurisdiction upon the Courts of the Australasian Colonies in respect of offences committed in the islands adjacent thereto.

Previous mortgage a bar to licence.

Mistake in Form (B).

Alterations as to labour regulations.

Approve forms as altered.

We are of opinion that no licence should be granted when the applicant has previously mortgaged his holding and interest in the island. Such a case is, in our judgment, properly excluded by the language of the second paragraph of the licence (B). We note that in this indenture the marginal titles are misplaced, and we have made the necessary correction. There is, moreover, an important matter which arises upon the third covenant on the part of the licencee. As framed, it might permit enforced labour and punishment, unless the Secretary of State had made an express prohibition: this clause must be altered. We should propose simply to excise the words struck through in black ink so as to make the prohibition absolute, but if there are likely to be any cases in which regulations as to labour may have to be made, the words underlined in red ink (printed in italics) can be inserted, but the prudence of inserting them must be carefully considered. Subject to this alteration, and the addition to the clause dealing with the termination of the licence [printed in brackets], we approve the forms submitted for our consideration.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## (A.)

## DESOLATE ISLANDS. (WESTERN PACIFIC.)

*Draft of Letters Patent passed under the Great Seal of the United Kingdom, authorizing the Governor of New South Wales to make Leases and other Dispositions of Islands and Places in the Northern and Southern Pacific Ocean, not being part of the British Dominions or within the Jurisdiction of any Civilized Power.*

*Letters Patent,*
*dated* , 18 .

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India. To Our Trusty and well-beloved Governor of our Colony of New South Wales: Greeting.

WHEREAS Our subjects may resort to and settle in islands and places situate in the Northern or Southern Pacific Ocean, but not within our dominions, nor within the jurisdiction of any civilized Power, and it may be expedient that Our subjects should be empowered to take and hold possession of such islands or places on Our behalf:

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Governor of New South Wales empowered to issue leases and licences of islands.

NOW KNOW YOU, that We do hereby authorize and empower you, Our Governor for the time being of Our Colony of New South Wales, by any instrument under your hand and seal, to make leases and other dispositions for a term or terms of years of any such islands and places as aforesaid, or of any part or parts thereof, and to issue licences authorizing the person or persons designated therein to take and hold possession of any such islands or places on Our behalf, and to display the British flag therein in proof of such possession, and to work minerals or to take guano or other fertilizing substances from the said islands or places, or to plant and cultivate therein and export the produce thereof, and to insert in such licences such conditions and stipulations as may seem to you advisable. Provided that, in the execution of the powers hereby conferred on you, you shall conform to such instructions as you may from time to time receive from Us under Our Signet and Sign Manual, or through one of Our Principal Secretaries of State.

Proviso. To conform to instructions.

In witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster the day of , in the year of Our reign.

By Warrant under the Queen's Sign Manual.
(Signed)

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## (B.)

### *Indenture.*

THIS INDENTURE, made the day of , 18 , between Her Most Gracious Majesty Queen Victoria of the one part and (who with his executors, administrators, and permitted assigns is hereinafter included in the term "licencee") of the other part.

Recitals.

Discovery of guano by licencee.

WHEREAS it has been represented to Her Majesty by the said licencee that he is now by himself, or his agents, in occupation of (*—or—he is desirous of occupying*) a certain island in the , called , lying in or about the degrees of latitude and longitude next mentioned (that is to say): , for the purpose of removing guano and other fertilizing substances therefrom (*or—of planting the same with cocoa-nuts, or—of digging minerals thereon, or as the case may be*), and that the said island is uninhabited (*except by the licencee and his agents*), and does not belong to any foreign State or Power, and that, so far as the licencee or any person through whom he claims is aware, no other person has, or claims to have, on the ground of prior discovery or otherwise, any right or interest to or in the said island, or to anything thereon.

Island uninhabited and unclaimed.

Application for licence.

AND WHEREAS the said licencee hath applied to Her Majesty to assume the Sovereignty over the said island, and to grant to him an exclusive licence to occupy the said island, and to hold the same for his own use for the purpose aforesaid.

Application granted upon specified conditions.

AND WHEREAS Her Majesty, on the faith of such representations, hath been pleased to accede to such application, subject to the covenants, conditions, agreements, and declarations hereinafter contained, and subject also to the payment by the licencee of the annual sum of pounds. And whereas the said licencee hath accordingly made the first annual payment of pounds to the Governor of New South Wales, for the use of Her Majesty, as is hereby admitted.

Grant of exclusive right to raise and export guano for three years.

NOW THIS INDENTURE WITNESSETH that, in consideration of the premises and of the covenants hereinafter specified to be performed on the part of the licencee, Her Majesty doth hereby authorize and empower the said licencee to take and hold possession of the said island on behalf of Her Majesty, and doth require and empower the said licencee to display the British flag, as occasion may require, in proof of such possession, and doth grant to the said licencee the exclusive right to occupy the said island for his own use during the term of years, to be computed from the day of now next ensuing, with permission to construct on the said island all such buildings, jetties, and other works as may be requisite for his operations on that behalf.

Covenants by the licencee.

AND THIS INDENTURE ALSO WITNESSETH that, in consideration of the premises, the said licencee, for himself, his heirs, executors, administrators, and assigns, doth hereby covenant with Her Majesty, her heirs and successors, in manner following, that is to say:

Not to assign or underlet.

1. That the licencee will not assign or underlet the present licence or any interest therein without having first obtained the consent thereto in writing of Her Majesty's Secretary of State for the Colonies (hereinafter called "the Secretary of State"), or of the Governor of New South Wales.

To make certain payments in second and third years.

2. That the licencee will, in the second and each subsequent year of the term hereby granted (that is to say) on the day of in each year, pay in advance to the Governor of New South Wales for the use of Her Majesty, or to some other person authorized by him to receive the same, the sum of pounds.

To maintain good order; properly treat the labourers.

3. That the licencee will, at his own expense, and to the satisfaction of the Secretary of State, maintain good order on the island, and will properly feed, support, and treat all labourers and others there employed by him, and will conform to and enforce all regulations (if any) from time to time established by the authority of such Secretary of State for maintaining good order on the island, and will not, *without the sanction in writing of such Sercetary of State*, inflict any punishment, or resort to any method of compulsory labour, ~~which shall be prohibited by such Secretary of State~~.

To plant trees and erect a conspicuous land-mark.

4. That for the purposes of land-marks, and so as to be visible to vessels approaching or passing near the island, the licencee will, within one year from the date hereof, plant and (during the continuance of this licence) maintain on at least two conspicuous spots on the island cocoa-nut trees, palms, or other quick-growing trees, and shall also build and maintain a substantial column or beacon of not less than 10 feet square at the base, nor less than 25 feet in height, and that it shall be lawful for the Commanding Officer of any vessel in Her Majesty's service to inspect the same, and, if dissatisfied with the mode in which, or the place at which, it shall have been erected, to require the licencee to alter the mode of its construction or to remove and erect the same upon some other part of the island, and that the licencee will forthwith do as he shall have been so required.

No guarantee of protection or compensation.

AND THIS INDENTURE FURTHER WITNESSETH that it is hereby declared and agreed that Her Majesty's Government do not undertake and shall not be called upon to maintain any establishment or any officer on the said island, or to make any compensation to the said licencee for any loss he may sustain by reason of the absence thereof, or by reason of Her Majesty not finding it expedient, from political or other considerations, to retain the Sovereignty of the said island, or convenient to protect the said licencee in the enjoyment of the exclusive privilege intended to be hereby granted.

Power to revoke licence in certain cases or on breach of any of the covenants.

AND THIS INDENTURE FURTHER WITNESSETH that, in case it shall appear to the Secretary of State that any of the above-recited representations is incorrect, or that any of the above covenants on the part of the licencee has been broken or left unfulfilled, or in case it shall appear to the Secretary of State to be expedient, on political grounds or otherwise, to revoke this licence, the Secretary of State, on behalf of Her Majesty, or the Governor of New South Wales, by direction of the Secretary of State, may, by notice under his hand addressed to the licencee at his last known place of abode or of business, and forwarded so addressed by post, declare that on a day named in such notice the licence hereby granted shall determine, and the same shall accordingly determine on that day. Provided that where it is sought to determine the licence on account of disorders, not, in the opinion of the Secretary of State, imputable to the licencee or his agents, the day named for such determination shall not be less than twelve calendar months after the date of such notice.

At termination of licence all property of licencee shall belong to the Crown.

AND IT IS HEREBY FURTHER WITNESSED AND AGREED that, on the termination of this licence from any cause, all property, machinery, buildings, and works placed or erected by the licencee on the said island, and then thereon, shall become, remain, and be the property of Her Majesty and her successors, [and no compensation whatever shall be payable in respect thereof].

Expenses to be paid by licencee.

AND IT IS HEREBY, LASTLY, AGREED that all expenses incurred in the preparation and execution of these presents shall be borne by the licencee.

IN WITNESS WHEREOF his Excellency the Governor of New South Wales, on behalf of Her Majesty, hath signed, sealed, and delivered this Indenture at the

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Government House, Sydney, in that Colony, the day and year first above written, and the licencee hath also signed, sealed and delivered the same on the day of , 18 .

(L.S.)
(L.S.)

Signed, sealed, and delivered by the said Governor in the presence of

And by the aforesaid licencee in the presence of

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[Colonial Office.]

### No. 40 A.

*Law Officers to Colonial Office.*

(*Transmitted by Colonial Office to Foreign Office in letter of November* 25, 1889.)

Power of High Commissioner of Western Pacific to deal with or quash decisions of a Deputy Commissioner.

My Lord, *Royal Courts of Justice, August* 12, 1889.

WE were honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us a copy of a despatch from Sir John Thurston, K.C.M.G., the High Commissioner for the Western Pacific (with its inclosures),* reporting the circumstances in which he had quashed the decision of the Deputy Commissioner in Samoa in the case of an action for libel brought by the German Consul against the proprietor of the "Samoan Times," and also a copy of a further despatch from Sir John Thurston reporting that he had quashed the Deputy Commissioner's decision in a second case, and requesting to be instructed whether, in the absence of any express provision in that behalf in the Western Pacific Orders in Council, he had, as he had been advised, the inherent jurisdiction, as High Commissioner, to control and rectify the actions of the inferior Tribunals acting under the Western Pacific Orders in Council.

That Sir Robert Herbert was to request that we would inform your Lordship whether we were of opinion that Sir John Thurston's action in the case of the Imperial German Consul *v.* Cusack, and in the further case referred to, was within his competence as High Commissioner, and generally whether he had the power to deal with the decisions of the Deputy Commissioners.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

He is not competent to quash a conviction.

That, in our opinion, the power of the High Commissioner to deal with convictions and sentences pronounced or inflicted by a Deputy Commissioner is limited by the Orders in Council to the mitigation or remission of punishment, and it is not competent for him to quash a conviction.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Sir J. Thurston, No. 11, May 21 (and Inclosure); ditto, No. 12, May 21, 1889 (and Inclosure); Orders in Council, 1877 and 1879, Confidential Nos. 3966 and 3958.

## PERSIA.

### No. 41.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 29.)*

Persia (Inland) Order in Council.

Draft of for approval.

My Lord, *Royal Courts of Justice, June* 28, 1889.

WE were honoured with your Lordship's commands signified in Sir T. H. Sanderson's letter of the 7th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying draft of an Order in Council to be known as "The Persia Order in Council, 1889," which had been prepared by Mr. R. S. Wright under instructions from the Foreign Office for the purpose of providing for the exercise of Her Majesty's exterritorial jurisdiction within the inland dominions (as defined in that Order) of His Majesty the Shah of Persia.

That another draft Order in Council* which was then under the consideration of the Secretary of State for India in Council in communication with the Foreign Office, and would shortly be submitted to us for approval, had been prepared by Mr. R. S. Wright, with the view of providing for the exercise of similar jurisdiction on the part of Her Majesty with regard to the coasts and islands of the Shah's dominions and territories.

That the ports and coasts of Persia with their adjacent islands were in close relation with the British-Indian Empire, and that it was therefore considered desirable that the law and procedure of British India should be applied to them.

But that between inland Persia and British India no such relation existed, and that it had been considered preferable to apply there a system similar to that in force in the Levant under the Ottoman Orders in Council, which had been found to work well in practice.

That the present draft closely followed the Ottoman Orders, although a few necessary modifications had been made, and some more modern clauses, the terms of which had been approved in other recent drafts of Orders in Council, had also been added.

That Sir T. H. Sanderson was to request that we would take the draft Order and the other papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether it might properly be laid before the Queen in Council for Her Majesty's approval, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to

*Report—*

Approve draft as altered.

That, in our opinion, the draft Order as amended and initialled by us may properly be laid before Her Majesty in Council, for Her Majesty's approval.†

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

| | | | |
|---|---|---|---|
| 1. To Mr. Thomson .. .. | (No. 6. Commercial) | June | 16, 1882. |
| 2. Mr. Thomson .. .. | (No. 8. Commercial) | July | 28, „ |
| 3. Sir H. Wolff.. .. .. | ..(No. 1. Consular) | April | 25, 1888. |
| 4. Ditto .. .. .. | (No. 62. Telegraphic) | May | 25, „ |
| 5. Ditto .. .. .. | ..(No. 5. Consular) | May | 23, „ |
| 6. To Treasury.. .. .. | .. .. .. | September | 27, „ |
| 7. Law Officers' Report. Confidential No. 1301 | .. .. | June | 23, 1862. |
| 8. Ditto. Confidential No. 1376 | .. .. .. | April | 10, 1863 |
| 9. Ottoman Order in Council. Confidential No. 2354. | | | |

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* Persian Coast and Islands Order in Council, Confidential No. 5865*.

† For Order in Council as issued, see Confidential No. 5864*.

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## No. 42.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received June* 29.)

*Royal Courts of Justice, June* 28, 1889.

My Lord,

Persian Coast and Islands Order in Council. Draft of, for approval.

WE were honoured with your Lordship's commands signified in Sir T. H. Sanderson's letter of the 20th ultimo, stating that, with reference to his letter of the 7th of last month, he was directed by your Lordship to transmit to us the accompanying draft of an Order in Council, to be known as "The Persia Coast and Islands Order in Council, 1889,"* which had been prepared by Mr. R. S. Wright under instructions from the Foreign Office for providing for the exercise of Her Majesty's exterritorial jurisdiction in that portion of the coast and islands of the Persian Gulf and Gulf of Oman which was within the dominions of the Shah of Persia, a matter which, for the reasons stated in Sir T. H. Sanderson's letter of the 7th ultimo, it was thought desirable should be regulated by a separate Order in Council.

That Sir Thomas Sanderson was to inclose a letter from the India Office,† stating that Viscount Cross had no objection to the draft as it then stood; and that he was to request that we would take that draft into our consideration, and that we would favour your Lordship with our opinion as to whether it might properly be laid before the Queen in Council for Her Majesty's approval, and with any general observations which we might have to offer.

In obedience to your Lordship's commands we have the honour to

*Report*—

Approve draft as amended.

That, in our opinion, the draft Order, as amended and initialled by us, may properly be laid before the Queen in Council, for Her Majesty's approval.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

[For List of Papers sent to the Law Officers on May 7, 1889, see No. 41.]

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## No. 43.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received December* 6.)

(Secret.)

*Royal Courts of Justice, December* 5, 1889.

My Lord,

Persian Investment Corporation for conducting lottery loans, &c.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 4th instant, stating that he was to transmit to us, by direction of your Lordship, a copy of the prospectus of the Persian Investment Corporation (Limited), together with the decyphers of three telegrams bearing upon its subject, and dated respectively the 25th, 26th, and 30th November last, which had been received from Her Majesty's Minister at Tehran.

Status of Corporation.

That it would be seen from the prospectus that most of the Directors of the Persian Investment Corporation were British subjects, and that the Company possessed an office in London; while, as appeared from paragraphs 2 *et seq.*, the principal object of the Corporation was to acquire and work a Concession granted by His Imperial Majesty the Shah of Persia, and dated the 20th July, 1889, conferring, for the period of seventy-five years, the exclusive privilege of conducting all operations in connection with lottery loans and other similar issues in Persia during the term of the Concession.

That it was believed that that Concession was, in the first instance, vested in a Mr. Cloeté; that it appeared subsequently to have been acquired from him by a Company entitled the Anglo-Asiatic Syndicate (Limited), of which a prospectus (anonymous) was also inclosed; and that, finally, the Concession seemed to have been transferred, through the medium of one Buzie de Caerdoel, to the Persian Investment Corporation.

Objections to scheme.

That Her Majesty's Minister at Tehran was of opinion that a scheme of the kind in question would, if carried out, be seriously detrimental to the interests of Persia, and had applied for instructions as to the legal position of the Corporation in so far as it might be amenable to English law, and also with regard to the liabilities of British subjects taking part in such an enterprise as was defined in the prospectus, whether as Directors or shareholders.

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* For Order in Council as issued, see Confidential No. 5865*.

† India Office, May 8, 1889.

Questions as to—

That Sir Philip Currie was therefore to request that we would take that prospectus and the other papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

1. Legality and liability of Corporation; 2. Liability of Directors;

1. Whether the objects of the Corporation as defined by the prospectus were in any, and, if so, what, respects illegal and punishable in English law.

2. Whether persons taking part, either as promoters or Directors, in the issue of such a Company in England for the establishment of a lottery abroad were punishable under the Lottery Acts, or whether they were indictable for a conspiracy at common law against public morality or in fraud of the public, or whether they were otherwise punishable, and how.

3. Enforcement of subscriptions;

3. Whether an action would lie at the suit of the Corporation to recover the balance of moneys subscribed, but not paid up, by shareholders to whom an allotment had been made under the terms of the prospectus.

4. Recovery of subscriptions.

4. Whether an action would lie by such shareholders to recover moneys already paid to the Corporation in respect of their shares, or whether, having regard to the terms of the prospectus, they might not be considered to stand *in pari delicto* with the promoters or Directors.

That your Lordship would also be glad, at the same time, to be favoured with any general observations which we might desire to offer upon the matter.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report*—

Corporation liable for "keeping a lottery."

That, in our opinion, it is very doubtful whether criminal proceedings against the persons responsible for the issuing of this prospectus would be successful. We, however, think it clear that the undertaking is within the mischief contemplated by the Laws relating to lotteries and gaming, and that persons receiving moneys for the purposes of this Company are in fact keeping a lottery within the meaning of those Statutes.

Secretary should be informed of illegality of Company, and liability of Directors, &c.

We advise that the Public Prosecutor should be instructed to write to the Secretary of the Company, saying that Her Majesty's Government are advised that the enterprise is unlawful, and that, if continued, the Directors and Secretary and other persons engaged therein will render themselves liable to proceedings; and that Sir H. Drummond Wolff should be informed of the sending of such letter.

Enforcement of subscriptions, and their recovery.

Assuming the undertaking to be unlawful, the Company cannot enforce the payment for shares subscribed, and shareholders who have already paid moneys could obtain the return of such moneys, or, at all events, prevent the Company from continuing its operations in respect of lotteries.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

| | | | |
|---|---|---|---|
| Sir H. Drummond Wolff .. | No. 162, | Secret and Confidential, Telegraphic | November 25, 1889. |
| " .. | No. 165, | " " | " 27, " |
| " .. | No. 167, | " " | " 30, " |
| To Sir H. Drummond Wolff .. | No. 84 | .. .. .. .. | " 26, " |

Prospectus of the Persian Investment Corporation.
Prospectus of the Anglo-Asiatic Syndicate. (This was inclosed in Sir H. Drummond Wolff's despatch of October 12 from Berlin.)

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# PERU.

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## No. 44.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received January* 26.)

My Lord, *Royal Courts of Justice, January* 25, 1889.

"Padron" case. Alleged breach of Customs Regulations, &c. Claim of the Pacific Steam Navigation Company (Limited) for losses incurred through proceedings of Peruvian authorities.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 16th November last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to the claim of the Pacific Steam Navigation Company (Limited) to be indemnified by the Peruvian Government in respect of losses sustained by that Company in consequence of certain alleged illegal proceedings and exactions on the part of the Peruvian authorities in relation to what might be shortly termed the "Padron" case.

That the nature and history of those claims would be found set out in the Statement of the case which had, at your Lordship's suggestion, been prepared by Messrs. Bateson, Bright, and Warr, the solicitors to the Company, while copies and translations of the more material documents referred to in support of the Company's contention were collected in the Annex to that Statement.

That the grounds upon which the Company submitted that they were entitled to the intervention of Her Majesty's Government were given at pp. 10 and 11 of the Statement, and were preceded by a short Memorandum as to the amount of compensation which the Company considered to be due to them, and which, as would be seen, they themselves assessed at 94,521*l.*

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether (1) the Company were entitled to the diplomatic intervention of Her Majesty's Government on all or any of the grounds suggested in their Statement, and (should our answer to that question be in the affirmative) (2) to what amount the pecuniary claim put forward by the Company might properly be supported by Her Majesty's Government.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report*—

Cannot express final opinion without further information.

That, without further information, we could not express any final opinion as to whether the servants of the Pacific Steam Navigation Company were guilty of any breach of the Commercial Code or Customs Regulations, though it seems very probable that some irregularities had been committed. But whatever may have been the exact state of affairs, or the particular penalties to which the Company became liable, the goods were, with the knowledge of the authorities, returned—the 119 packages to the "Onward," and the 50 to the "Naiad." Subsequently some proceedings were taken which terminated in favour of the Company, and thereafter a long interval elapsed.

Proceedings of Peruvian Government which justify remonstrance.

In our opinion, the action of the Government in afterwards instituting a suit for confiscation was unjustified and oppressive. Upon the proceeding in that suit, and especially on the decision of the Court allowing it to proceed notwithstanding the delay of fifteen months, we express no opinion; these matters were entirely within the competence of the Courts. But we think that to fix an arbitrary amount as the value of the packages, and treat them as confiscated when they had, in fact, been returned to the ships from which they came, was a course of proceeding so arbitrary and oppressive as to justify remonstrance.

To what extent Her Majesty's Government may interfere on behalf of the Company.

We are therefore of opinion that the Company may properly receive the diplomatic assistance of Her Majesty's Government in obtaining from the Peruvian Government a repayment of the amount so exacted, viz., 13,250 soles, or 2,000*l.*

Her Majesty's Government should decline to interfere in, or be in any way mixed up with, the claim suggested at p. 10 of the Memorandum of Messrs. Bateson, Bright, and Warr, which rests entirely on different considerations.

We have, &c.
(Signed) **RICHARD E. WEBSTER.**
**EDWARD CLARKE.**

*List of Papers.*

Statement of the Pacific Steam Navigation Company.
Other documents—

| | | | |
|---|---|---|---|
| Pacific Steam Navigation Company | | March | 1, 1888. |
| To Pacific Steam Navigation Company | | February | 24, „ |
| Memorandum by Mr. Farnall | | „ | 14, „ |
| Pacific Steam Navigation Company | | „ | 7, „ |
| To Pacific Steam Navigation Company | | October | 15, 1887. |
| To Sir C. Mansfield | (No. 7) | „ | 15, „ |
| „ „ | (No. 6) | „ | 14, „ |
| Pacific Steam Navigation Company | | „ | 10, „ |
| Sir J. Pauncefote | | „ | 7, „ |
| Pacific Steam Navigation Company | | „ | 4, „ |
| To Pacific Steam Navigation Company | | September | 30, „ |
| Pacific Steam Navigation Company | | „ | 27, „ |
| To Pacific Steam Navigation Company | | „ | 13, „ |
| Pacific Steam Navigation Company | | „ | 6, „ |
| To Pacific Steam Navigation Company | | August | 27, „ |
| Pacific Steam Navigation Company | | „ | 25, „ |
| To Pacific Steam Navigation Company | | May | 25, „ |
| Sir C. Mansfield | (No. 8) | March | 11, „ |
| Pacific Steam Navigation Company | | April | 27, „ |
| Colonel Mansfield | (No. 2) | January | 7, „ |
| To Pacific Steam Navigation Company | | „ | 14, „ |
| Pacific Steam Navigation Company | | „ | 11, „ |
| To Colonel Mansfield | (No. 1) | „ | 5, „ |
| Colonel Mansfield | (No. 51) | November | 19, 1886. |
| „ „ | (No. 50) | „ | 19, „ |
| To Colonel Mansfield | (No. 12) | „ | 22, „ |
| „ „ | (No. 11) | „ | 19, „ |
| Pacific Steam Navigation Company | | „ | 10, „ |
| „ „ „ | (Telegraphic) | „ | 10, „ |
| To Pacific Steam Navigation Company | | „ | 9, „ |
| Pacific Steam Navigation Company | | „ | 8, „ |
| To Pacific Steam Navigation Company | | October | 6, „ |
| Pacific Steam Navigation Company | | September | 27, „ |
| Pacific Steam Navigation Company | | December | 1, 1885. |
| To Pacific Steam Navigation Company | | November | 27, „ |
| Colonel Mansfield | (No. 8) | October | 7, „ |
| Pacific Steam Navigation Company | | August | 24, „ |
| To Colonel Mansfield | (No. 2) | „ | 18, „ |
| To Pacific Steam Navigation Company | | „ | 18, „ |
| Mr. W. Barrington | | „ | 10, „ |
| To Pacific Steam Navigation Company | | „ | 8, „ |
| Pacific Steam Navigation Company | | July | 28, „ |

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## No. 45.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received February* 15.)

My Lord, *Royal Courts of Justice, February* 13, 1889.

Seizure of the "Overdale" and "Kirkloch" in 1884 for breach of order closing Port of Mollendo.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the seizure of the British vessels "Kirkloch" and "Overdale" in the autumn of 1884 by the Peruvian authorities at the port of Mollendo.

That the seizures of those vessels had formed the subject of several Reports by the Law Officers of the Crown in 1885, of which, for convenience of reference, copies were inclosed, with the papers which had accompanied them, as noted in the margin.

That it would, however, probably be convenient for the present purpose shortly to recapitulate the circumstances of the two cases, which might be concisely stated as follows:—

That the "Kirkloch" cleared from Newcastle for the Peruvian port of Mollendo on the 20th September, 1884, with a cargo of coals for the Arequipa Railway

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Company, her clearance papers being signed by the Chilean Consul acting for Peru, and that she arrived at Mollendo on the evening of the 8th January, 1885, not having called at any intermediate port after her departure from England.

That the port of Mollendo was at the time in possession of forces in rebellion against the Peruvian Government, which, by Decree actually dated the 22nd August, but only communicated to the Consular Body at Mollendo early in September, had declared it as closed to commerce.

That the right thus claimed to close a port to commerce by Municipal Decree was disputed by Her Majesty's Government, who maintained that the port being in possession of the rebels could, according to international law, only be closed by an efficient blockade.

That that position, as would be seen from the annexed series of Law Officers' Reports, to which our especial attention was requested, had been consistently maintained during and ever since the American Civil War by successive Governments of Her Majesty acting under the advice of the Law Officers of the Crown for the time being.

That Sir Julian Pauncefote was also to call our attention to Wheaton's International Law by Dana, note 239 to section 523, on "Municipal Surveillance," and Lord John Russell's despatch to Lord Lyons of the 19th July, 1861, therein referred to and itself founded on the inclosed Report of the Law Officers of the Crown of the 25th June, 1861.

That the "Kirkloch" arrived off the port in ignorance of the Decree, and anchored without opposition. That the next morning the Captain of the Port, in the service of the rebels, came on board and offered all facilities for the discharge of the cargo. That it was not until later that the master of the vessel, on going ashore, first heard of the existence of the Decree.

That there was no blockade of the port, but that the Peruvian guardacosta, "Santa Rosa," charged with the execution of the Decree, appeared on the following day (the 10th January), and ordered the "Kirkloch" to sea. That the order was at once obeyed, the vessel being unmoored and hauled out to the buoys, where, however, she was compelled to remain till the next day for want of wind.

That during the time the vessel was in port no attempt was made to discharge the cargo, and that on the morning of the 11th January, there being sufficient wind, she put out to sea. That while on the high seas, about 20 miles from land, the "Kirkloch" was hailed by the "Santa Rosa" that a guard of three officers and eight armed men was put on board, and that she was forcibly taken to Callao, where she arrived on the 17th January.

That she was there detained under arrest, and that it was not until the 10th February following that the vessel was released on condition of the cargo being discharged at Callao or some other port under the authority of the national Government of Peru.

That the case of the "Overdale" differed from that of the "Kirkloch," inasmuch as she actually discharged part of her cargo at Mollendo, and was not seized on the high seas.

That the "Overdale" left Liverpool on the 5th September, 1884, bound for Mollendo, her clearance papers being signed by the Peruvian Consul at the former port, so that she started in ignorance of the notice by the Peruvian Government closing Mollendo to commerce.

That she called only at Falmouth, and reached her destination on the 18th December, when, on the invitation of the Captain of the Port in the service of the rebels, and with the concurrence of the British Vice-Consul, the Master immediately began to discharge his cargo of coals. That the Peruvian guardacosta, "Santa Rosa," arrived off Mollendo on the 24th December, boarded the "Overdale," stopped the further discharge of cargo, took possession of the vessel, and towed her to Callao, which she reached on the 29th. That the fine imposed on the Master for discharging cargo at Mollendo was paid under protest, and that the vessel was subsequently released on the 22nd March.

That, acting on the advice given by the Law Officers of the Crown, Her Majesty's Government had made reiterated applications for redress in the two cases in question, but had not succeeded in obtaining any satisfaction from the Peruvian Government in the case of the "Overdale."

That, at the close of the year 1887, the Peruvian Government at length admitted their liability to grant redress in the case of the "Kirkloch," and that the question of the amount of compensation to be made became the subject of discussion between Her Majesty's Minister at Lima and the Peruvian Minister for Foreign Affairs, which discussion was not yet concluded.

Peru admits liability in case of the "Kirkloch," but proposes to refer case of the "Overdale" to a Mixed Commission.

That, with regard to the "Overdale," the Peruvian Government now proposed that the claim should be submitted to the decision of a Mixed Commission, "in compliance with international usage;" but that Her Majesty's Government were not prepared, having regard to the nature of the question involved, to accept the proposition now made, unless we should be of opinion that such a course was, under all the circumstances, both justifiable and desirable.

That Sir Julian Pauncefote was therefore to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the above question, and with any general observations which we might have to offer on the case.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Question of liability should not be submitted to a Mixed Commission, but when liability is admitted, question of compensation might be dealt with by it.

That, in our opinion, it would not be proper to submit to a Mixed Commission the question of the liability of the Peruvian Government. There is, in our judgment, no question respecting such liability upon which Her Majesty's Government ought to admit that there is any doubt.

Upon the Peruvian Government admitting liability, as in the case of the "Kirkloch," the question of amount of compensation, failing agreement, might reasonably be dealt with by a Mixed Commission.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers sent to the Law Officers, January 22,* 1889, *on the case of the "Overdale."*

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| (A.) | Law Officers (with papers referred) | .. | January | 6, | 1885. | Confidential | No. 5246, | p. 124, No. 125 |
| (B.) | Ditto, | ditto .. | „ | 12, | „ | „ | „ | p. 125, No. 126. |
| (C.) | Ditto, | ditto .. | February | 3, | „ | „ | „ | p. 125, No. 127. |
| (D.) | Ditto, | ditto .. | „ | 11, | „ | „ | „ | p. 127, No. 129. |
| (E.) | Ditto, | ditto .. | , | 12, | „ | „ | „ | p. 128, No. 130. |
| (F.) | Ditto, | ditto .. | „ | 17, | „ | „ | „ | p. 129, No. 131. |
| (G.) | Ditto, | ditto .. | April | 10, | „ | „ | „ | p. 130, No. 132. |
| (H.) | Ditto, | ditto .. | August | 8, | „ | „ | „ | p. 134, No. 134. |
| | | | | | | | | |
| (I.) | Law Officers | .. .. .. | July | 15, | 1869. | Confidential | No. 2545, | p. 107, No. 284. |
| (J.) | Queen's Advocate | .. .. .. | „ | 1, | 1870. | „ | No. 3660, | p. 177, No. 62. |
| (K.) | Ditto | .. .. .. .. | August | 13, | „ | „ | „ | p. 62, No. 105. |
| (L.) | Law Officers | .. .. .. | May | 6, | 1876. | „ | No. 4028, | p. 41. No. 55. |
| (M.) | Ditto | .. .. .. .. | „ | 31, | 1878. | „ | No. 4280, | p. 24, No. 25. |
| (N.) | Ditto | .. .. .. .. | April | 18, | 1879. | „ | No. 4328, | p. 73, No. 78. |
| (O.) | Ditto | .. .. .. .. | „ | 18, | „ | „ | „ | p. 5, No. 6. |
| (P.) | Ditto | .. .. .. .. | July | 16, | 1883. | „ | No. 4974, | p. 15, No. 15. |
| (Q.) | Ditto | .. .. .. .. | December | 15, | „ | „ | „ | p. 75, No. 59. |
| | | | | | | | | |
| (R.) | Sir C. Mansfield | .. (No. 105) | December | 2, | 1888. | | | |
| (S.) | Law Officers | .. .. .. | June | 25, | 1861. | Confidential | No. 1123, | p. 132, No. 142. |
| (T.) | Lord J. Russell to Lord Lyons | .. | July | 19, | „ | | | |

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| | | | |
|---|---|---|---|
| To Colonel Mansfield | (No. 43) | August | 15, 1885. |
| Ditto | (No. 23) | July | 31, 1886. |
| Colonel Mansfield | (No. 39) | September | 22, „ |
| To Colonel Mansfield | (No. 31) | November | 10, „ |
| Colonel Mansfield | (No. 63) | December | 27, „ |
| To Colonel Mansfield | (No. 8) | February | 14, 1887. |
| Memorandum | | March | 3, „ |
| Colonel Mansfield | (No. 9) | January | 25, „ |
| Ditto | (No. 11) | February | 4, „ |
| To Colonel Mansfield | (No. 10) | March | 28, „ |
| Mr. Stokes | (No. 22) | May | 18, „ |
| Sir C. Mansfield | | July | 13, „ |
| To Mr. Stokes | (Telegraphic) | „ | 19, „ |
| Ditto | (No. 29) | „ | 27, „ |
| Mr. Stokes | (No. 30) | , | 20, „ |
| To Sir C. Mansfield | | September | 6, „ |
| Sir C. Mansfield | | „ | 7, „ |
| Ditto | (No. 61) | October | 19, „ |
| Ditto | (No. 73) | November | 5, „ |
| Ditto | (Telegraphic) | December | 14, „ |
| To Sir C. Mansfield | (No. 5. Telegraphic) | „ | 14, „ |
| Sir C. Mansfield | (Telegraphic) | „ | 15, „ |
| Ditto | (No. 76) | November | 14, „ |
| Ditto | | „ | 16, „ |
| Ditto | (No. 77) | „ | 28, „ |
| Ditto | (No. 82) | December | 2, „ |
| Ditto | (No. 83) | „ | 6, „ |
| Ditto | (No. 87) | „ | 16, „ |
| To Sir C. Mansfield | (No. 1. Telegraphic) | January | 24, 1888. |
| Doward, Dickson, and Co. | | February | 7, „ |
| To Doward, Dickson, and Co. | | „ | 14, „ |
| Sir C. Mansfield | (No. 9) | January | 25, „ |
| To Sir C. Mansfield | (No. 9) | March | 17, „ |
| To Doward, Dickson, and Co. | | „ | 17, „ |
| Doward, Dickson, and Co. | | „ | 19, „ |
| Ditto | | June | 25, „ |
| To Doward, Dickson, and Co. | | „ | 30, „ |
| Sir C. Mansfield | (No. 43) | May | 13, „ |
| Ditto | (No. 49) | June | 30, „ |
| To Sir C. Mansfield | (No. 43) | August | 9, „ |
| Ditto | (No. 56) | November | 3, „ |

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## No. 46.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 6.)*

My Lord, *Royal Courts of Justice, November* 5, 1889.

Seizure of the "Overdale."

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 18th ultimo, stating that he was directed to transmit to us a despatch* which had been received from Her Majesty's Minister in Lima, containing the reply of the Peruvian Government to a note which he had addressed to them on the 1st May last, in accordance with the opinion expressed in our Report of the 13th February last, to the effect that Her Majesty's Government could not agree to submit to a Mixed Commission the question of the liability of the Peruvian Government to pay compensation in the case of the British barque "Overdale."

Further Peruvian arguments.

That Sir Thomas Sanderson was to request that we would take that reply into our consideration, and favour your Lordship with our opinion as to whether the arguments used by the Peruvian Minister for Foreign Affairs in any way modified the view previously expressed by us, and, if so, to what extent.

That the various papers which accompanied Sir Julian Pauncefote's letter to us, with reference to the case in question, of the 22nd January last, were inclosed, in case we should desire again to refer to them.†

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Adhere to previous opinion.

That we see no reason to modify the opinion we have already expressed.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Sir C. Mansfield, No. 42, June 18, 1889.

† For a list of these papers, see Law Officers' Report of February 13, 1889, No. 45.

## No. 47.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 29.)*

My Lord, *Royal Courts of Justice, November* 29, 1889.

Seizure of the "Overdale."

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us the draft of a despatch which it was proposed to address to Her Majesty's Minister Resident and Consul-General at Lima with reference to the position taken up with regard to the "Overdale" case by the Peruvian Government in their reply, dated the 14th June last, to Sir Charles Mansfield's note of the 1st May, both of which documents were inclosed.*

That Sir Thomas Sanderson was to request that we would take the terms of that draft despatch into our consideration, and that we would favour your Lordship with our opinion as to whether they were right and proper in the circumstances, or whether they might, and, if so, how, advantageously be modified or altered.

That the other papers which accompanied the reference to us of the 18th ultimo† were again transmitted to us in case we should desire to refer to any of them.

In obedience to your Lordship's commands, we have the honour to

*Report—*

Approve draft instructions declining arbitration.

That, in our opinion, the despatch should be amended as shown by us upon the draft, and that with those amendments it may properly be sent.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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Annex.

*Draft of Despatch to Sir C. Mansfield.*

*(The words inclosed within brackets were struck out by the Law Officers.)*

(No. .)
Sir, *Foreign Office, November* , 1889.

I HAVE to acknowledge the receipt of your despatch No. 42 of the 18th June last, containing copies of your further correspondence with the Peruvian Government respecting the case of the "Overdale."

Her Majesty's Government have carefully considered, in consultation with the Law Officers of the Crown, the reply, dated the 14th June, of the Peruvian Minister for Foreign Affairs to your note of the 1st May, but can find nothing in his Excellency's arguments to alter the view which they have formed of the question.

The main reason why Her Majesty's Government have felt compelled to decline to submit to arbitration the liability of the Peruvian Government to make compensation in this case is that the liability flows as a natural result from a principle of international law which they have consistently maintained, and which they cannot admit to be open to question.

This principle is that when a port is in the *de facto* possession of forces in open rebellion against the recognized Government of the country, that Government cannot claim to close such port to commerce by Municipal Decree, but can only do so, according to international law, by means of an efficient blockade *jure gentium*, the existence of which in itself constitutes an admission on the part of the Government instituting it that a state of belligerency exists. It would seem, however, from Señor Irigoyen's note that he considers that a recognition of belligerent rights is a necessary preliminary before this principle becomes applicable, and that, until such recognition, the Central Government has the right to close or open the ports under its nominal rule to commerce at will by mere proclamation, however much it may be beyond their power at the time to enforce its observance.

This is a qualification of the doctrine which Her Majesty's Government cannot

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* See Sir C. Mansfield's No. 42 of June 18, 1889.

† See List of Papers annexed to Reports of February 13 and November 5, 1889, Nos. 45 and 46.

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accept. They consider that the question whether during the course of an armed insurrection certain ports can be closed by Municipal Decree, or only by an effectual blockade, depends in each particular instance upon the facts of the case, and that [~~the circumstances of the port of Mollendo at the time of the arrival of the "Overdale" were such as to put it without the category of ports which could be so closed~~].

There can [~~they believe~~] be no doubt that the port of Mollendo was entirely and effectually in possession of the insurgents, and was, for the time being, administered by authorities under their control [~~although they had not the command of the sea.~~

~~If, however, the Peruvian Government wish to dispute their liability to compensate the owners of the "Overdale" on other grounds, Her Majesty's Government would be ready to consider whether their arguments could be referred to arbitration without involving any abandonment of the principle above enunciated.~~]

In so far as that principle is concerned, Her Majesty's Government cannot, for the reasons above indicated, admit that there is matter for either doubt or discussion.

I am, &c.

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## PORTUGAL.

### No. 48.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received June* 22.)

[After quoting the terms of the reference printed below, dated the 14th June, 1889, they report as on page 95:—]

*Foreign Office to the Law Officers of the Crown.*

Gentlemen, *Foreign Office, June* 14, 1889.

Attitude of Portuguese Govt. towards Delagoa Bay Railway Co.

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the papers noted in the accompanying list with reference to the attitude taken up by the Portuguese Government towards the Delagoa Bay Railway Company under the following circumstances:—

On the 14th December, 1883, a Concession was granted by the Portuguese Government to Colonel McMurdo, an American citizen (recently deceased), for the construction of a railway through Portuguese territory from Delagoa Bay to the Transvaal frontier.

Among the most important provisions of that Concession are the following:—

Terms of Concession.

By Article 1 "the Company" is defined as "the original concessionnaires, and the Company they are bound to organize within the term of six months from the signature of the Contract." This latter Company is explained in Article 51 to be a "Société Anonyme, with its chief office in Lisbon, for the carrying out of the objects referred to in the said Contract, the Statutes of which must be approved by the Government. . . . . . *The Company shall be Portuguese to all intents and purposes.*"

Article 20 grants to the Company the exclusive right of constructing and working the railway, and by section 2 the Portuguese Government undertake not to concede within 100 kilom. (about 60 miles) on each side of the Company's line the right to make any other railway from the coast to the Transvaal frontier which could compete with the Company's line.

Articles 38 and 39 stipulate that the railway must be built on plans approved by the Portuguese Government.

By Article 42, if the plans be not completed within the specified time (three years from approval of plans, *i.e.*, the 28th December, 1885, subsequently extended to December 1887) the Government may declare the Contract annulled, and put the Concession up to auction, giving the Company the proceeds of the sale.

Article 50 makes the Company, its contractors, agents, and workmen, subject, in all matters connected with the Contract, to the Law and Tribunals of the Kingdom of Portugal.

Article 51 stipulates that the Concession shall be vested in a Portuguese Company, the Statutes of which shall be approved by Government, and by subsection 2 (which did not form part of the original Concession, but was added in 1885) the Company is given the unrestricted right of fixing Tariffs; and this right was confirmed by a Portaria, dated the 5th May, 1885, and by a Royal Decree dated the 7th January, 1886. (See Company's letter of the 20th May, 1889, and Inclosure in Mr. Petre's No. 45, Africa, of the 10th April, 1889.)

By Article 53 all questions arising between the Portuguese Government and the Company are to be decided by Arbitrators, of whom two are to be appointed by the Company and two by the Government.

All shares in hands of British Company.

It appears from the Company's letter of the 20th May, 1889, that "seeing that it was impossible to transfer the Concession to an English Company," the Delagoa Bay and East African Railway Company (Limited) was formed to acquire all the bonds and shares of the Portuguese Company in which the Concession was vested, and the British Company claims that it is "therefore in effect *the owner of the Concession.*"

Extension of line demanded by Portuguese Govt.

Concession to be cancelled if extension be not completed by June 24, 1889.

In the summer of 1887, while the railway was in course of construction, plans for an extension of the line to a point some 8 kilom. beyond the terminal point marked on the original plans as approved by Government were, on the ground that the point so marked was not in fact the Transvaal frontier, presented by the Government Engineer, and the Portuguese Government by an official Portaria of the 24th October, 1888, demanded that the Company should at once carry out this extension, and complete it by a date arbitrarily fixed as the 24th June, 1889. They threatened to rescind the Concession unless these terms were at once complied with, and endeavoured, by fear of rescission, to force the Company to abandon their right under the Concession of fixing their own Tariffs, and to adopt a fixed freight rate already determined between the Transvaal Government and the Dutch Company, who held the Contract for the continuation of the line from the Transvaal frontier to Pretoria.

The Company, however, contest the right of the Portuguese Government to fix an arbitrary terminal point for the line until the frontier be officially delimited, and decline to accept the point named as equivalent to the "frontier" mentioned in the Concession, which is admittedly still undefined.

They also claim that this is such a question as they are entitled to refer to arbitration under Article 53 of the Concession.

They further urge that the time limit is a subterfuge adopted with a view of annulling their Concession, as the wet season renders six out of the eight months allowed for completion valueless for practical work, which, it is stated, cannot be commenced till May, thus leaving less than two months for the completion of the work, which they hold to be absolutely insufficient (*cf.* Company's letters, October 10, November 8, and November 14, 1888).

They stated, however, that they were ready to undertake the work, but claimed compensation for the proposed extension.

The Portuguese Government, on the other hand, contend that the point fixed *is*, for all practical purposes, the frontier, and that the Company is bound at once to complete the extension without any claim to compensation (*cf.* the Portarias of October 24th and 29th, 1888, in Mr. Petre's No. 142, October 25, and No. 150, November 6, 1888).

The Company have, however, since informed the Portuguese Government that they are prepared to construct the extension demanded with all reasonable dispatch, leaving the question of compensation to be decided later by arbitration; and they state that the necessary materials have been prepared and shipped, and that some part has already arrived at Lourenço Marques (Company's letter, May 20, 1889).

At the commencement of this dispute the Trustees of the Bondholders of the Company, described as "a body of Englishmen who subscribed the funds," invoked the assistance of Her Majesty's Government, and Sir G. Bonham, Her Majesty's Chargé d'Affaires at Lisbon, was instructed, "if he saw no objection, to give the Company's agent at Lisbon his good offices so far as he properly could" (to Sir G. Bonham, telegram 13, October 3, 1888).

Sir G. Bonham reported that the Company was Portuguese, and the concessionnaire an American, but that he had used his influence unofficially for the protection of the interests of the British shareholders, and supported the representations made by the United States' Minister on Colonel McMurdo's behalf (Sir G. Bonham's No. 121, Africa, October 11, 1888).

Authority was subsequently given him to protest *officially* if necessary, but on the 19th October he reported that he had not done so, as there appeared no immediate

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danger of the Concession being withdrawn, but that he was in communication with the President of the Company, and would intervene if necessary (Sir G. Bonham's No. 130, Africa).

The result of these steps was communicated to the Company (to Delagoa Railway Company, October 15 and November 3, 1888).

Mr. Petre, Her Majesty's Minister, reported somewhat later, on his return to Lisbon, that the attitude of the Portuguese Government in regard to the Tariff question had been adopted at the pressure of Germany, and without full knowledge of the facts, and that they had now seen fit to abandon that claim (*cf.* Mr. Petre's No. 156, Africa, November 18, 1888). Mr. Petre stated, however, that they maintained the eight months' limit fixed for the completion of the line (Mr. Petre's No. 187 A, December 28), and had approved the plans for the new section (his No. 20, February 28).

The question has attracted considerable public attention in Portugal, and has formed the subject of warm discussion in the Portuguese Chambers (*cf.* Mr. Petre's Nos. 45 and 46, April 25 and 27, 1889), and the Government have adopted the position that, without any hostile intentions towards a Portuguese Company, they desire to keep up good relations with the Transvaal, because, unless the Lourenço Marques Railway reached Pretoria (*i.e.*, by connection with the Dutch line), it would be useless, and Lourenço Marques would itself be practically ruined. The present Cabinet have, moreover, admitted that they were bound to recognize the right granted to the Company by their predecessors of fixing their own Tariffs, but maintain that they are equally bound by the Agreement made in 1884 with the Transvaal Government, by which their predecessors undertook, in the event of the line not being completed within a certain time, or if the Portuguese and Dutch Companies were unable to come to an agreement as to railway rates, to grant a Concession to the Transvaal for the formation of a tramway from the frontier to Lourenço Marques, and they affirm the determination of the Government to adhere to the time limit of eight months already specified (*cf.* Mr. Petre's No. 50 A, April 30, and No. 53, May 2).

The English Company have now formally protested against the threatened action of the Portuguese Government, by either rescinding their Concession or granting the Boer Company the right to build the tramway. They contend that to concede the tramway would be a violation of their Concession, and of the declaration made to them by the Government that no such Concession, or promise to grant a Concession, existed.

It was, they state, on the faith of this declaration, and of the right to fix Tariffs, that the capital was subscribed in London. They therefore urge that pressure should be brought to bear upon the Government of Portugal to induce them to declare (Company's letter, May 20, 1889)—

1. That they recognize the Company's right of reference to arbitration as applicable to the extension demanded.

2. That they will not cancel nor confiscate the Concession on the 24th June, should that section of the line as to which a dispute has arisen not be completed.

3. That they will not grant a Concession for a tramway, or other means of communication, between Delagoa Bay and the frontier, in direct violation of their Concession.

As to diplomatic intervention of H. M.'s Govt.

In view of the near approach of the date fixed for completion of the line, and of the resolute attitude of the Portuguese Government, and also taking into consideration the large British interests involved, Lord Salisbury desires to ascertain how far, in your opinion, the status of the British Company (whose Memorandum of Articles of Association is annexed) justifies or demands the intervention of Her Majesty's Government to protect the interests of the British Company arising out of the Concession which was originally granted to an American citizen and to a Portuguese Company.

I am therefore to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion as to whether Her Majesty's Government are justified in intervening diplomatically with a view to inducing the Government of Portugal to make the declarations (or any of them) which are desired by the Company.

I am to add that his Lordship will be glad at the same time to be favoured with any general observations upon the matters involved which you may be good enough to offer.

I have, &c.
(Signed) T. H. SANDERSON.

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We have taken the papers which accompanied Sir Thomas Sanderson's letter of the 14th instant, and also those which were transmitted with his further letters, dated the 14th and 18th instant respectively, into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Portuguese Govt. have no right to cancel Concession or forfeit line.

That, in our opinion, the Portuguese Government have no right to cancel the Concession, or forfeit the line already constructed. The question of the non-completion of the 8 kilom. by the date named (the 24th June) should be dealt with as a question touching the execution of the Contract (Article 53), and dealt with thereunder subject to the other provisions of the Contract.

It would, however, be unusual and premature to call upon the Portuguese Government to make by anticipation any of the declarations suggested. There are, moreover, some difficulties in the way of diplomatic interference.

In the first place, by Articles 50 and 51, it is provided that the Company shall be a Portuguese Company, and subject in all matters to the Laws and Tribunals of Portugal. Further, there does not appear to be at present any distinct refusal to refer the question to arbitration.

It appears, however, that the money was subscribed by the English Company with the knowledge and approval of the Portuguese Government (see Print of documents relating to the Lourenço Marques and Transvaal Railway, and telegram of the 19th March, 1887).

Circumstances which would justify diplomatic intervention.

If, therefore, the Portuguese Government, in the present state of facts, decline to submit the questions to arbitration under the Contract, and take steps to cancel the Concession and forfeit the line, Her Majesty's Government would be justified in intervening diplomatically in order to prevent such action.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, June 22, 1889.*

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*List of Papers.*

| | | |
|---|---|---|
| To Sir G. Bonham | (Telegraphic) | October 3, 1888. |
| Sir G. Bonham | (No. 121) | October 10, ,, |
| Trustees of Delagoa Bay Railway | | October 10, ,, |
| To Sir G. Bonham | (Telegraphic) | October 14, ,, |
| Sir G. Bonham | (Telegraphic) | October 14, ,, |
| Ditto | (No. 124) | October 14, ,, |
| To the Chairman Delagoa Bay Railway Company | | October 15, ,, |
| To Sir G. Bonham | (Telegraphic) | October 16, ,, |
| Delagoa Bay Railway Trustees | | October 16, ,, |
| Sir G. Bonham | (No. 130) | October 19, ,, |
| Mr. Petre | (No. 142) | October 25, ,, |
| Ditto | (No. 135) | October 26, ,, |
| To Delagoa Bay Railway Company | | November 3, ,, |
| Mr. Petre | (No. 150) | November 6, ,, |
| Delagoa Bay Railway Company | | November 8, ,, |
| ,, ,, ,, | | November 14, ,, |
| To Mr. Petre | (No. 156) | November 14, ,, |
| Ditto | (No. 151) | November 15, ,, |
| Mr. Petre | (No. 187) | December 28, ,, |
| To Delagoa Bay Railway Company | | January 11, 1889. |
| Delagoa Bay Railway Company | | January 12, ,, |
| Mr. Petre | (No. 20) | February 28, ,, |
| Ditto | (No. 45) | April 25, ,, |
| Ditto | (No. 46) | April 27, ,, |
| Ditto | (No. 50) | April 30, ,, |
| Ditto | (No. 53) | May 2, ,, |
| To Lord Castletown | | May 13, ,, |
| Delagoa Bay Railway Company | | May 20, ,, |
| ,, ,, ,, | | June 15, ,, |

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## No. 49.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received August* 16.)

My Lord, *Royal Courts of Justice, August* 15, 1889.

**Claim of Delagoa Bay and E. African Railway Co. for losses through action of Portuguese Govt.**

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 10th instant, stating that, with reference to our Report of the 22nd June last,* he was directed by your Lordship to transmit to us a letter from the Delagoa Bay and East African Railway Company,† forwarding a Memorial in which a claim was advanced against the Portuguese Government for compensation in respect of the damage and loss inflicted upon the bond and share holders of the Company by the proceedings of that Government.

That the Memorial recited, in the first place, all the facts connected with the grant of the original Concession and its transfer to the English Company, facts which, for the most part, had been already laid before us in Sir Philip Currie's letter of the 16th June.

That it then proceeded to comment upon and reply to the successive paragraphs of the Decree of the Portuguese Government of the 25th June, which in violation, as the memorialists submitted, of the rights of the Company under the Concession, and also of the principles of justice, annulled the Concession and forcibly dispossessed the Company of their railway.

That the Portuguese Government had further, it would be seen, seized the rails, bridgework, and other materials of the Company.

**Propositions in Company's Memorial.**

That the memorialists then contended that the circumstances of the case, even as presented by the Portuguese Government themselves, clearly established the following propositions:—

1. That the Portuguese Government, in their negotiations and agreement with the Transvaal Government, and their denials of those negotiations and agreements, acted in direct violation of the Concession and in bad faith to the concessionnaire Company, and prevented it from raising funds to carry out its Concession (*vide* Appendix, pp. 69, 75, and 87).

2. That whatever the position of default of the Portuguese Company (and any default was denied), the Portuguese Government, by their communication to the English investors, waived such default in their favour.

3. That the Company, in fact, and for all practical purposes, completed the railway up to 81 kilom. by the 30th October, 1887, and in accordance with the plans approved by the Portuguese Government, although the Company had a right to claim another year under the Decree of the 28th December, 1885 (see paragraph 22 of Memorial and Appendix N).

4. That nothing in the Concession warranted the Portuguese Government in demanding without compensation the construction of any length of line additional to that indicated to the Company as the full length required of them under the Concession, still less authorized them to fix a time within which the extension should be completed; that the time fixed was not a "reasonable time," or a time fixed *after* the delimitation of the frontier, as promised by the Portuguese Government in their despatch of the 30th January, 1888), and accordingly that the fixing, on the 24th October, 1888, of a period of eight months for the completion of the 8 kilom., was not *intra vires* for the Portuguese Government, or in accordance with their promise of the 30th January, 1888, nor was it a reasonable time.

5. That the negotiations of 1888-89 above referred to (point 1) between the Portuguese and Transvaal Governments with respect to the fixing of rates, and the completion of its extension by the Portuguese Company, were, as regarded the former Government, in fraud of the admitted and established rights of the Portuguese Company.

6. That, in confiscating the line and seizing the materials of the English Company destined for the construction of the extension, and in seizing the line on which the debentures of the English Company were secured, the Portuguese Government were acting on the fear expressed in the Cortes by the Minister of Marine, "that the concession of liberty to fix tariffs endangered our Colony of Lourenço Marques," and, in so doing, were violating the rights of the Company.

7. That, in consequence, the Company were entitled to proper and adequate compensation.

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* No. 48.

† Delagoa Bay Railway Company, July 13, 1889.

That on those grounds the memorialists now prayed for the diplomatic intervention of Her Majesty's Government, as the only possible means of obtaining redress for the injuries inflicted on them, it being evident that no other remedy was now open to them; and submitted that, in consideration of the valuable rights and privileges conferred by the Concession, comprising the monopoly of railway traffic for ninety-nine years, working of telegraph and telephone lines, rights in respect of mines, minerals, and land, &c., the first point of indemnity should be the assumption by the Portuguese Government of the entire responsibility of the Company to the holders of the debentures of the Company amounting to 750,000*l.*; and secondly, that indemnity should be awarded to the holders of the shares in the English Company, the value of which, on the financial grounds and calculations quoted in the Memorial, they assessed at 1,000,000*l.*

**As to diplomatic intervention.**

That, in view, therefore, of the last paragraph of our previous Report, and of the condition precedent to the intervention of Her Majesty's Government, as therein contemplated, having arisen by the action of the Portuguese Government in cancelling the Concession and forfeiting the line, your Lordship desired to be made acquainted with our views at the earliest date possible on the following points:—

1. Whether the English Company had been damnified by the wrongful action of Portugal?

2. If so, whether (*a*) Her Majesty's Government were justified in assessing the damages, as proposed by the Company, at 1,000,000*l.*, or at what lower sum; (*b*) whether they were justified in supporting the claim of the Company that the Portuguese Government should assume entire responsibility for the debentures.

3. If the Portuguese Government refused the sum thus demanded, whether Her Majesty's Government should press for arbitration, or whether the case was clear enough to justify Her Majesty's Government in acting without arbitration.

That Sir Philip Currie was accordingly to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report*—

That, in our opinion, the action of the Portuguese Government has been wrongful, and has violated the clear rights, and injured the interests, of the English Company.

**Action of Portugal wrongful. H. M.'s Govt. should press for compensation.**

The case is, in our judgment, so clear that we consider Her Majesty's Government will be justified in pressing for compensation, and in declining to submit to arbitration the question of the right of the Portuguese Government to act in the manner complained of. We, however, think that the amount of compensation might reasonably be referred to arbitration, unless an agreement can be obtained by diplomatic means.

**Claim for 1,000,000*l.* not unreasonable; but guarantee for 7 p. c. on debentures cannot be required of Portuguese Govt.**

We think the claim of the Company that it should receive in respect of its share capital the sum of 1,000,000*l.* is not unreasonable, and may fairly be put forward on behalf of the Company by Her Majesty's Government; but we do not consider that Portugal could properly be called upon to give its Government guarantee for the payment of 7 per cent. interest upon the debentures, as such guarantee would put the debenture holders in a position of far greater advantage than they could have occupied as holders of the securities of the private Company.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## SIAM.

### No. 50.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received November 5.*)

My Lord, *Royal Courts of Justice, November 2, 1889.*

Exterritorial jurisdiction. Draft Order in Council.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 28th August last, stating that he was directed by your Lordship to transmit to us the draft of an Order in Council, to be known as "The Siam Order in Council, 1889,"* which had been prepared by Mr. R. S. Wright, under instructions from the Foreign Office, to provide for the exercise of Her Majesty's exterritorial jurisdiction within the dominions and territories of the King of Siam.

That Sir Thomas Sanderson was to inclose letters from the Home Office, Colonial Office, India Office, and the Treasury; and that he was to request that we would take the draft Order into our consideration, and favour your Lordship with our opinion as to whether it might properly be laid before the Queen in Council for Her Majesty's approval, and with any general observations which we might have to offer.

Proposed paragraph as to Supreme Court.

We have also the honour to acknowledge the receipt of a Memorandum from Sir Thomas Sanderson, dated the 2nd September, stating that he was directed by your Lordship to transmit to us a copy of a new paragraph which it was proposed to insert between the third and fourth paragraphs of Article 11 of the draft Order for Siam.

That the paragraph in question had been drafted by Mr. Wright, and had been inserted to meet certain complaints which had been made with reference to the action of the Consular Court.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Approve draft Order as altered.

That, in our opinion, the draft Order, as altered and initialled by us, may properly be laid before the Queen in Council for Her Majesty's approval.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

### Annex.

### SIAM.—DRAFT ORDER IN COUNCIL, 1889.

*Proposed new Paragraph.*

11.—(i.) The Supreme Court . . . . . . . or orders.

(ii.) The Supreme Court, on Petition presented to it in accordance with any rules to be made under this Order, or in such manner as the Supreme Court directs, and alleging that any order of a District Court or of the Consul-General has the effect of a refusal of justice to any suitor or complainant, may, after such inquiry (if any) as it thinks fit to direct, issue an order directing the proper Court to take cognizance of the matter, and may, if satisfied that such order has not been properly complied with, entertain and determine the matter of the suit or complaint, and shall certify its determination to the proper Court which shall give effect thereto.

(iii.) Except as . . . . . . . . . . or otherwise.

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* For Order in Council as issued, see Confidential No. 5860*.

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## SWITZERLAND.

### No. 51.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received July 5.*)

My Lord, *Royal Courts of Justice, July 4, 1889.*

Butler *v.* Butler. Request for certificate as to validity of Swiss sentence of divorce in Great Britain.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us the draft of a despatch (together with other papers relating to its subject), which it was proposed to address to Her Majesty's Chargé d'Affaires at Berne with reference to a matrimonial suit which was pending before the Swiss Federal Tribunals.

That the circumstances of the case were, so far as appeared material for the present purpose, shortly stated in the draft despatch, but that they were given in fuller detail in the inclosures to Mr. Leveson-Gower's No. 26 of the 11th May last.

That the provisions of the Swiss Law with regard to divorce would be found in Part E (Articles 43-57 inclusive) of the "Loi Fédérale" of the 24th December, 1874, of which a copy was annexed, and that it was believed that the facts of the case were in themselves such as would, subject to the observance of Article 56, induce the Swiss Tribunals to grant Mrs. Butler a divorce either under Article 46 (*c*), or under Article 47 of that Law.

Swiss domicil of parties doubtful.

That there appeared, however, to be some doubt whether at any rate in contemplation of English legal doctrine on the point, the marital domicil, of the parties could be regarded as Swiss.

That it would be remembered that in two former cases, which were of a much simpler character (*see* Law Officers' Reports, Switzerland, No. 59, of the 7th April, 1887, and Switzerland, No. 53, of the 14th November, 1888), Her Majesty's Government, after previous consultation with us, granted certificates of the kind now again sought for, but that the circumstances of the present case had led to a careful reconsideration, from a general point of view, of the policy involved in the grant of such certificates, and that the conclusions arrived at would be found in the draft despatch now submitted for our observations.

Submitting draft refusing such certificate.

That Sir T. V. Lister was to request that we would take that draft into our consideration in connection with the other papers transmitted with his letter, and that we would favour your Lordship with our opinion as to whether its terms were right and proper.

That your Lordship would be glad at the same time to be favoured with any modifications or additions which we might desire to suggest with regard to its language, and with any observations which we might have to offer upon the general questions involved.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Approve draft despatch.

That in our opinion the terms of the draft despatch are right and proper.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

| | | | | |
|---|---|---|---|---|
| Draft Despatch to Mr Leveson-Gower. | (Annexed.) | | | |
| Mr. Leveson-Gower. .. .. | No. 26 | May | 11, 1889. | |
| " " " .. .. | No. 80 | September | 22, 1888. | |
| Law Officers .. .. .. | No. 58 | " | 28, 1886. | Confidential No. 5440, p. 79. |
| " " .. .. .. | No. 59 | April | 7, 1887. | Confidential No. 5597, p. 88. |
| " " .. .. .. | No. 53 | November | 14, 1888. | Confidential No. 5785, p. 72. |

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## Annex.

*Draft of Despatch from the Marquis of Salisbury to Mr. Leveson-Gower.*

(No. .)

*Foreign Office, June* , 1889.

Sir,

I HAVE had under my consideration your despatch No. 26 of the 11th instant, and its inclosures, relative to the divorce suit of Butler *v.* Butler, which the petitioner, Mrs. Butler, intends to institute against her husband, a British subject, before the Swiss Tribunals at Berne.

From the papers inclosed in your despatch it appears that the respondent, Butler, was, on the 12th March last, condemned to ten days' imprisonment by the Juge de Police, at Berne, for deserting his family, and for leading an irregular life; that for some years past he has been addicted to drink; and that he has frequently threatened his wife.

On this state of facts the injured wife would not be entitled to obtain a divorce if she sued her husband in the matrimonial Courts of this country; but it is understood that, according to Swiss law, assuming the marital domicil to be Swiss, she would obtain a divorce provided that it was established to the satisfaction of the Tribunal, before which the suit was brought, that its decree would be recognized in Great Britain, of which country the parties are subjects.

It further appears that the Federal Government have requested you to submit the case to Her Majesty's Government with a view to ascertain whether, under the circumstances, they would be prepared, in order that the provisions of Article 56 of the Federal Law of 1874 may be satisfied, to furnish a declaration to the effect that a decree of divorce, if pronounced by a competent Swiss Tribunal in the present suit, will be recognized by the English Courts.

In reply, I have to request you to explain to the Federal Government that in the previous instances of Cunliffe-Owen *v.* Cunliffe-Owen, and of Lloyd *v.* Lloyd, the legal aspect of both of which cases was so exceedingly simple as to admit practically of no doubt, Her Majesty's Government have, out of courtesy to that Government, somewhat departed from their customary practice in such matters in order, if possible, to meet the difficulty which had arisen in consequence of the rather unusual provision in Article 56 of the Federal Law.

The circumstances of the present case, however, differ materially from those of the two cases above referred to, and raise points of considerable difficulty, which have led Her Majesty's Government very carefully to reconsider from a general aspect the questions which are involved in, and the risks which may arise from, the habitual grant of such certificates.

They feel that, having regard to the interests of British subjects which may be involved, they would not be justified in allowing the somewhat dangerous innovation which has been introduced by the two cases to which reference has already been made to become a general practice.

It is, having regard to the system of law and procedure prevailing in this country, practically impossible for Her Majesty's Government to do more than to furnish a foreign Government, in an exceptional case which may arise, with the opinion of the Law Advisers of the Crown for the time being on an abstract question of English Law.

You will, while informing the Swiss Government in this sense, be careful to add that such opinions given by the Law Officers have no judicial force, and are no more binding on the Tribunals of this country than are those of any other legal experts.

Her Majesty's Government can consequently in no case guarantee what the character or effect of any future decision of these Tribunals may be with regard to the matters involved in opinions thus expressed.

I am, &c.

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## No. 52.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 29.)*

My Lord,

*Royal Courts of Justice, November* 28, 1889.

**Marriages by a British Vice-Consul, of illegitimate son, born in Russia, of a British mother.**

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the draft of a despatch which it was proposed to address to Her Majesty's Minister at Berne, with reference to the case to which he called attention in his despatch No. 1, Consular, of the 7th October last, and as to which he therein requested your Lordship's instructions.

That it would be seen from that despatch (Mr. Scott's No. 1, Consular, of the 7th October, 1889) that the illegitimate son, born at St. Petersburgh, of an English mother, had applied to the British Vice-Consul at Lausanne, within whose Vice-Consular district he was then residing, with a view to being married at that Vice-Consulate;

That your Lordship possessed no definite information as to whether the lady to whom the applicant proposed to be married was, or was not, a British subject; but that, under the circumstances, the nationality of that lady appeared to have a most important bearing on the case;

That that question had, therefore, been treated in such a manner in the draft which was submitted to us as would, it was thought, enable Mr. Scott, on ascertaining the lady's nationality, to deal at once with the whole matter;

**Draft instructions.**

That Sir T. V. Lister was to request that we would take the draft despatch into our consideration in connection with the other papers which accompanied it,[*] and that we would favour your Lordship with our opinion as to whether its terms were such as were right and proper, having regard to all the circumstances of the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

**Approve draft as amended (as to nationality of the man and effect of that of bride).**

That, with the amendments which we have made, the draft despatch may properly be sent.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

## Annex.

*Draft of Despatch to Mr. Scott.*

(*The parts inclosed within brackets were struck out of the original draft by the Law Officers.*)

(No. . Consular.)

*Foreign Office,* , 1889.

Sir,

Your despatch No. 1 of the 7th October, requesting instructions in regard to the proposed marriage of the illegitimate son, born at St. Petersburgh of a mother of British nationality, with a lady whose nationality is not stated, at the British Vice-Consulate at Lausanne, has received my careful consideration.

In reply, I have to state that in this case it is quite clear, as pointed out in your despatch, that the man is not a British subject; while, as regards English law, he is a person either [~~of no nationality at all or~~] of Russian nationality or of no nationality at all. It appears, however, from your despatch that in Russia, for purposes of Russian law, he [~~may~~] might be considered to follow the nationality (*i.e.*, British) of his mother.

If the intended bride be not a British subject, it follows that neither of the parties to this intended marriage is of British nationality, and it cannot therefore be celebrated at one of Her Majesty's Legations or Consulates.

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[*] "Consular Marriages Act, 1849," 12 & 13 Vict., cap. 68; Circular of November 23, 1872, Foreign Office No. 1016, Annex 18 to Consular Instructions of 1879, pp. 123 and 124; Circular, May 29, 1876, Foreign Office No. 1270.

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If, on the other hand, the woman be a British subject, the marriage can be celebrated at either Legation or Consulate, inasmuch as in that case one of the intending parties thereto is a British subject. [~~But it would be well that she should be warned that, according to English law, the national status previously possessed by a woman becomes, upon her marriage, merged in that of her husband, and that she therefore, if she marries a person who, in contemplation of English law, possesses no nationality, she will also herself be regarded in England as devoid of national status.~~]

If the Vice-Consul performs the marriage he should, in registering it, enter either "Russian" or "no nationality" opposite the name of the husband, and thus comply with the terms of the General Instruction to which you have referred in your despatch now under reply.

You should make a communication in this sense to Vice-Consul Galland, for his guidance.

I am, &c.

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## TURKEY.

### No. 53.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received March* 27.)

Haïdar-Pacha and Ismidt Railway. Pending legal proceedings.

My Lord, *Royal Courts of Justice, March* 27, 1889.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to certain proceedings now pending before the Ottoman Tribunals at the suit of the Sublime Porte against the lessees of the Haïdar-Pacha and Ismidt Railway.

That the lessees in question, who now consisted of Colonel Alt, a British, and M. Seefelder, an Austrian, subject, obtained in 1880 a Convention from the Porte for the lease of the line (Document A).

Terms of Convention for lease of line.

That the stipulations of this instrument, which were important for the consideration of the present question, were contained in Articles IX and XI of the Convention and Article 49 of the "Cahier des Charges" annexed to it. That they were as follows:—

"Article IX. A toute époque de la location le Gouvernement Impérial aura le droit d'en effectuer le rachat, moyennant le paiement:—

"1. De toutes les dépenses résultant, pour les locataires, des obligations par eux prises, aux termes de l'Article V ci-dessus, sans autre intérêt et déduction faite de la partie du capital déjà amorti;

"Plus une indemnité de 100,000 fr.

"Le Gouvernement reconnaît, par contre, aux locataires le droit de préférence, à conditions égales, sur toute autre Société pour toute extension de la présente ligne.

"La ligne et l'embranchement de Phéner-Baghdjé seront remis au Gouvernement contre le paiement des sommes ci-indiquées.

"La remise du chemin de fer et la reprise des objets devront être faites dans ce cas comme il est indiqué au Cahier des Charges, mais le Gouvernement devra acheter à dire d'experts tous les approvisionnements. La dite remise sera faite dans le mois d'Octobre qui suivra la demande de rachat.

"Article XI. Toute contestation qui pourra s'élever entre le Gouvernement Impérial et les locataires, au sujet de l'interprétation ou de l'exécution des stipulations du présent Acte et du Cahier des Charges annexé, sera jugée par les Tribunaux ordinaires, en Première et en Seconde Instance et en Cassation, comme il est procédé à l'égard des sujets Ottomans."

Article 49 of the "Cahier des Charges":—

"En cas de reprise de la ligne par le Gouvernement avant l'expiration de la location, notification devra en être faite aux locataires au moins quatre mois à l'avance."

That it was unnecessary to go into the questions which had arisen between the lessees and the Turkish Government, and upon the merits of which it would be impossible to pronounce an opinion.

Claim of Porte on lessees.

That the complaint of the Porte was that the lessees had failed to execute the conditions of the lease, and that in particular, on a balance of accounts, they owed, for arrears of rent and stores supplied to them, a sum of over 50,000*l.* (see Rustem Pasha, 10th January, 1889, Document B).

Counter-claims of lessees.

That the lessees, on the other hand, contended that it was owing to obstruction on the part of the Turkish Government and officials that the Convention had not been executed; and they produced an abstract of account to show that the Porte owed to them, for money spent upon the line and advances, with interest, a sum of no less than 260,000*l.* (see Documents C and D).

Turkish Agreement for sale of line to the Deutsche Bank.

That in September last the Turkish Government concluded a fresh Agreement with the representatives of the Deutsche Bank of Berlin, agreeing to hand over the railway, free of all charges and impediments, in exchange for a sum of 6,000,000 fr. (say 240,000*l.*), and further giving to the new concessionnaires the right of making extensions of the line in Asia Minor (which had been given to the lessees by Article IX of the Convention quoted above).

Notice of termination of lease.

That the Porte, in pursuance of this new Agreement, gave notice on the 15th (27th) September last of the termination of the lease under Article IX of the Convention (Zihni Pasha to M. Seefelder, 15th (27th) September, 1888 (Annex 2 to Document C).

Claims of lessees as to notice.

That the lessees maintained that, under Article IX of the Convention, coupled with Article 49 of the "Cahier des Charges," they were entitled to four months' notice, and were only required to surrender the line in the month of October following the expiration of that period.

Their rights as to extension of line.

That they further contended that the right of preference in making extensions of the line given them in Article IX was independent of the possession of the railway, and remained with them even after the Porte had resumed the line.

Seizure of line by the Porte.

That in face of the protest of the lessees and the remonstrances of Her Majesty's Government, the Turkish authorities took forcible possession of the railway on the 7th January last without any form of legal process or judicial decision.

Deposits, and offer to discuss matter made by Porte.

That the Turkish Ambassador made a communication on the 11th January in explanation of this proceeding (Document E), in the course of which he stated that, notwithstanding the large sum which was owing to the Turkish Government by the lessees, the Porte had deposited 100,000 fr., representing the price of the repurchase of the line, and a further sum of 1,000,000 fr. as a guarantee for any claims or indemnity to which the lessees might be found to be entitled after an examination of the accounts, and he also gave an assurance that the Porte was prepared to discuss with the lessees their reciprocal claims, either amicably or before the Tribunals.

Arbitration proposed.

That the efforts of Her Majesty's Embassy at Constantinople had since that date been directed to obtaining the consent of the Porte to a reference of the whole of the questions in dispute to impartial arbitration.

That the Porte had shown a disposition to shelter itself behind Article XI of the Convention (quoted at the beginning of this Memorandum), which provided that all disputes as to the interpretation or execution of the stipulations of that instrument, and of the "Cahier des Charges," should be decided by the Turkish Courts.

That Her Majesty's Ambassador had contended that the Porte, having seized the line without reference to these Courts, had violated the Convention, and could no longer appeal to it, and this view had been approved by Her Majesty's Government (Documents F and G).

Advice given to lessees as to legal proceedings.

That the lessees had now received a citation to appear before the Civil Court of First Instance at Pera at the suit of the Porte. They had been advised by Sir W. White to put in an appearance, and to plead that the Court has no jurisdiction. But their legal advisers were opposed to this course, and urged that Her Majesty's Ambassador should be instructed to announce to the Porte that he would not allow the British subjects concerned to present themselves, and that he should insist on reference of the case to arbitration (Document H).

That they had been informed that, in Lord Salisbury's opinion, the proper course would be that the defendants should at once enter a protest to the jurisdiction, and appear, under protest, to argue the point, so as to prevent Judgment going by default. That that, however, appeared to be a question for the consideration of the lessees themselves (Document I).

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Article XI *ultra vires.*

That, inasmuch as no British subject had a right to deprive himself by contract with a foreign Government of the protection of his own Government (see on this point Law Officers' Reports, 14th February, 1865, 15th June, 1867, 24th December, 1881, 14th May, 1884) (Document K), it was suggested that Colonel Alt's assent to the XIth Article of the Convention was (in so far as that Article purported to have the effect of withdrawing him from British protection, or of depriving him of the benefits secured by Treaty to all British subjects, without distinction, in the Ottoman dominions) *ultra vires* on his part.

That two letters from Colonel Alt were also inclosed (Documents L and M), the first containing notes on the whole case, the latter forwarding a copy of the citation served on M. Seefelder.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to—

(1.) Whether Her Majesty's Government were justified in taking exception, diplomatically, to the jurisdiction of the Ottoman Tribunals in the case, and, if so, on what grounds such exception might most properly be based, and what action should be taken by Her Majesty's Ambassador for that purpose.

(2.) Whether Her Majesty's Government were justified in insisting, and should insist, that the matters in dispute between the parties should be submitted to impartial arbitration.

That his Lordship would, at the same time, be glad to be favoured with any general observations which we might have to offer on the case.

We were also favoured with a Memorandum from Sir P. Currie, dated the 9th instant, covering a further despatch from Sir W. White (No. 90 of the 2nd March, 1889) on the same subject.

Porte insist on statement of amount of claims prior to arbitration.

We were further honoured with a letter from Sir P. Currie, dated the 14th instant, stating that he was directed by your Lordship to transmit to us a telegram* from Her Majesty's Ambassador at Constantinople, reporting that the Grand Vizier, before admitting the principle of arbitration in the case in question, insisted that the lessees should state the maximum amount at which they assessed their various claims, while the agents of the lessees refused to give that information until they received the assurance that the Porte had irrevocably accepted arbitration.

Question as to supporting lessees.

That it would be seen from the correspondence with Colonel Alt, also inclosed,† that he considered that precaution a necessary one, in order to avoid fresh issues being raised as an excuse for interminable delay. That he also pressed to be informed of the decision of Her Majesty's Government, after receiving our opinion, as to the extent to which the lessees should be supported in refusing the jurisdiction of the Turkish Courts.

That Sir P. Currie was to request that we would take these papers into our consideration in connexion with those already forwarded to us in his letter of the 8th instant, and that, in reporting on the questions raised in that letter, we would, at the same time, favour your Lordship with our opinion as to whether the condition insisted upon by the Grand Vizier as a precedent to arbitration in this case was one which Her Majesty's Government could reasonably and properly press upon the acceptance of the agents of the lessees.

We have taken all the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Jurisdiction of Courts as to Convention.

That, in our opinion, Her Majesty's Government are not justified in taking exception diplomatically to the jurisdiction of the Ottoman Tribunals upon questions relating to the interpretation or carrying out of the Convention of the 8th April, 1880.

The matter is one of contract between the Ottoman Government and certain persons, one of whom is a British subject.

Article XI not *ultra vires.*

We see no ground for the contention that Article XI is *ultra vires:* it only creates a mode of adjustment of disputes between the Contracting Parties.

Jurisdiction of Courts as to money claims.

The money claims of the Ottoman Government included in the citation of the 30th January, 1889, are, in our opinion, clearly within Article XI, and the jurisdiction of the Ottoman Tribunals could not be successfully contested.

Jurisdiction of Courts as to seizure of line.

As regards the question of wrongful turning out the point is not clear, but as the

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* Sir W. White, No. 15, Telegraphic, March 13, 1889.

† To Colonel Alt, March 12; Colonel Alt, March 13, 1889.

Ottoman Government have purported to act under the powers of Article IX of the Convention, we think it would be difficult to contend successfully that the Ottoman Courts had no jurisdiction to decide the question.

Arbitration desirable.

If the Ottoman Courts find that the action of the Ottoman Government in taking possession was in no way justified by the contract, they would, in our opinion, have no further jurisdiction. It is, therefore, very desirable that, if possible, all matters should be dealt with by arbitration.

It appears that the Ottoman Government is inclined to accept the principle of arbitration upon all matters, but requires that the lessees should, in the first instance, specify the total amount of their claim.

Specification of amount of claim not unreasonable.

Unless there is substantial ground for suggesting that the requisition is not *bonâ fide,* it is not, in our opinion, unreasonable, and we think its acceptance should be pressed upon the agents of the lessees.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

(A.) Convention et Cahier des Charges. (Inclosure in Sir E. Thornton's No. 103 of March 2, 1886.)
(B.) Rustem Pasha, January 10, 1889.
(C.) Memorandum communicated by Colonel Alt, dated October 16, 1888.
(D.) Approximate Statement *vis-à-vis* of the Turkish Government of outlay in connection with the Haïdar-Pacha-Ismidt Railway, from April 1880 to September 1888 and October 1888.
(E.) To Sir W. White, No. 15, January 11, 1889.
(F.) Sir W. White, No. 54, February 4, 1889.
(G.) To Sir W. White, No. 52, February 13, 1889.
(H.) Colonel Alt, February 26, 1889.
(I.) To Colonel Alt, March 1, 1889.
(K.) Law Officers' Report, February 14, 1865. Confidential No. 1489, p. 150.
„ „ „ June 15, 1867. Confidential No. 1745, p. 116.
„ „ „ December 24, 1881. Confidential No. 4637, p. 81.
„ „ „ May 14, 1884. Confidential No. 5121, p. 60.
(L.) Colonel Alt, March 1, 1889.
(M.) „ „ „ 2, 1889.

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## No. 54.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July* 13.)

*Royal Courts of Justice, July* 11, 1889.

My Lord,

Disputes as to payment of rent.

Turkish claim to exclusive jurisdiction of Turkish Courts.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 18th May last, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* with reference to a claim of exclusive competency which had been asserted on behalf of the native Turkish Tribunals in all cases of dispute arising within the Ottoman dominions between landlord and tenant in relation to rent, even although the parties to such disputes should be the subjects of a foreign State, or States, to which ex-territorial jurisdiction had been granted by the Sublime Porte.

Claim based on Protocol of 1868.

That the claim was based, in so far as British subjects were concerned, upon the Protocol relative to the admission of British subjects in Turkey to the right of holding real property, which was signed at Constantinople on the 28th July, 1868, and by Article II of which it was provided that "foreigners who are proprietors of real property, urban or rural, are in consequence assimilated to Ottoman subjects in all that concerns their real property.

"Such assimilation has for its legal effect—

"1. . . . . . . .
"2. . . . . . . .

"3. To render them directly amenable to the Ottoman Civil Courts in regard to all questions relative to landed property ('propriété foncière'), and to all real actions ('actions réelles'), both as plaintiffs and defendants, even when both parties are foreign

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* Protocol, July 28, 1868, Treaty No. 510; Sir W. White, No. 13, Consular, February 14; to the Earl of Lytton, No. 106, March 8; Earl of Lytton, No. 209, April 21, 1889, inclosing M. Clunet's Report.

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subjects, the whole on the same footing, under the same conditions and in the same forms as Ottoman proprietors, and without the power of availing themselves in such matters of their personal nationality, but under the reservation of the immunities attaching to their persons and their personal property according to the terms of Treaties."

That the question seemed practically to turn upon whether an action for rent was either a "question relative à la propriété foncière," or an "action réelle," within the ordinary signification of those expressions, and that as the determination of that point involved technical considerations of foreign rather than of English law, it was thought advisable to refer the papers, in the first instance, to the eminent French jurist, M. Clunet, who advises Her Majesty's Ambassador at Paris on such matters, and from whom an elaborate Report had now been received, and was inclosed for our assistance.

M. Clunet's opinion opposed to Turkish claim.

That it would be seen that in M. Clunet's view the Turkish contention could not be supported, and that the decision of disputes of the nature in question between foreign subjects was amongst the exclusive attributions of the suitable Consular Court in each particular case.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion upon the validity or otherwise of the claim put forward on behalf of the Turkish Tribunals in so far as British subjects were concerned, and with any general observations which we might have to offer on the matter.

In obedience to your Lordship's commands we have the honour to

*Report—*

Claim cannot be admitted with regard to personal actions for rent.

That, in our opinion, the claim of exclusive competency made on behalf of the native Turkish Tribunals cannot be admitted so far as it relates to merely personal actions for rent, or damages arising out of contract, when such actions do not involve, in their determination, any question as to the title to the land itself, or the right to possession or occupation.

Questions of title or possession excluded from Consular jurisdiction. Recommend joint action.

When, however, the action does involve such question, it is, in our opinion, excluded from the jurisdiction of the Consular Court by the Law and Protocol to which Great Britain has assented. As other Governments have also accepted that Law, we think that any representation which it may be deemed advisable to make to the Porte should be made in concert with such Powers, or at all events after ascertaining their views.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 55.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received July* 18.)

[In reply to the following reference the Law Officers reported as below on the 17th July, 1889.]

Gentlemen,

*Foreign Office, June* 15, 1889.

Cyphered telegrams between—(1) Consuls in Turkey; (2) Consuls in Turkey and those in Egypt.

I HAVE the honour to transmit to you, by direction of the Marquis of Salisbury, the papers noted in the accompanying list, which relate to the question of whether the Porte is entitled either to suspend temporarily or to entirely stop telegraphic inter-communication in cypher (1) generally between British Consular officers in various parts of the Ottoman Empire; and (2) particularly between such officers in places of that Empire directly under the authority of the Porte and similar officers in Egypt and its dependencies.

Stipulations of Convention of 1875.

By the International Telegraphic Convention signed at St. Petersburgh on the 22nd July, 1875, to which Turkey was a party and to which, under the provisions of its XVIIIth Article, England acceded on the 7th of the following January, it was stipulated as follows:—

### "ARTICLE V.

"Les télégrammes sont classés en trois catégories:—

"1. Télégrammes d'État: ceux qui émanent du Chef de l'État, des Ministres, des Commandants-en-chef de terre et de mer, et des Agents Diplomatiques ou Consulaires des Gouvernements Contractants, ainsi que les réponses à ces mêmes télégrammes.

"2. Télégrammes de Service: ceux qui émanent des Administrations Télégraphiques des États Contractantes et qui sont relatifs, soit au service de la télégraphie internationale, soit à des objets d'intérêt public déterminés de concert par les dites Administrations.

"3. Télégrammes privés. Dans la transmission les télégrammes d'État jouissent de la priorité sur les autres télégrammes.

### "ARTICLE VI.

"Les télégrammes d'État et de service peuvent être émis en langage secret dans toutes les relations.

"Les télégrammes privés peuvent être échangés en langage secret entre deux États qui admettent ce mode de correspondance.

"Les États qui n'admettent pas les télégrammes privés en langage secret au départ et à l'arrivée, doivent les laisser circuler en transit sauf le cas de suspension défini à l'Article VIII.

### "ARTICLE VII.

"Les Hautes Parties Contractantes se réservent la faculté d'arrêter la transmission de tout télégramme privé qui paraîtrait dangereux pour la sécurité de l'État, ou qui serait contraire aux lois du pays, à l'ordre public, ou aux bonnes mœurs.

### "ARTICLE VIII.

"Chaque Government se réserve aussi la faculté de suspendre le service de la télégraphie internationale pour un temps indéterminé s'il le juge nécessaire, soit d'une manière générale, soit seulement sur certaines lignes et pour certaines natures de correspondance à charge par lui d'en aviser immédiatement chacun des autres Gouvernements Contractants."

Cases of telegrams detained.

In March last a telegram in cypher, addressed by the British Consul at Jeddah to the British Acting Consul at Suakin (Egyptian territory), was detained by the Turkish Telegraph authorities established at Suakin, on the ground, as stated four days later in reply to inquiries as to its non-delivery, that, "according to Ottoman Regulations, private messages cannot be sent in a secret language or in cypher in Ottoman territory."

Further, a cypher telegram which the Consul at Jeddah addressed to Her Majesty's Agent and Consul-General in Egypt in explanation of these circumstances, was detained at Jeddah on the same ground, though the Turkish authorities, it is stated, allowed cypher messages to pass between a merchant at Jeddah and a merchant at Suakin (Sir E. Baring, No. 159, 24th March, 1889).

Communications with the Porte.

To the remonstrances which were addressed to the Porte by Her Majesty's Government, it was at first objected (see Sir W. White's No. 122 of the 27th March) that telegraphic communications in cypher between Consuls are not permitted, such prohibition being authorized by, and exercised under, the provisions of the International Telegraphic Convention, Articles V, VI, and VIII.

Subsequently, the Porte refused to allow such cypher communications, on the ground, as stated in the *note verbale* inclosed in Sir W. White's despatch No. 147, of the 14th April, that "par mesure générale les Consulats étrangers dans l'Empire ne pouvant correspondre entre eux par télégrammes chiffrés, le Ministère Impérial regrette vivement de ne pouvoir donner suite à la demande qui fait l'objet du 'takrir' précité."

Under instructions from the Marquis of Salisbury, Her Majesty's Ambassador thereupon addressed a note to the Turkish Minister for Foreign Affairs (Inclosure in Sir W. White's No. 161 of the 27th April), inquiring on what Article of the Convention the Porte relies in justification of its refusal to allow Her Majesty's Consuls at Jeddah and Suakin to exchange cypher and code telegraphic messages, and stating that Her Majesty's Government must insist on the right of such communication being admitted.

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To this last-named representation the Porte has replied (Inclosure in Sir W. White's No. 178 of the 15th May) that the Convention has reference only to international telegraphic correspondence, and that, moreover, its VIIIth Article gives to the Parties to it the faculty to prohibit certain kinds of correspondence, and that the Porte considers that it has, *à fortiori*, the right to make such a Regulation for internal telegrams ("pour le service intérieur"); that the maintenance of the prohibition, which is general, being necessary, the Porte can make no exception in favour of Her Majesty's Government.

Several questions arise in regard to the contentions put forward by the Porte:—

Questions as to:—

(1) Rights of Consuls under Convention;

1. Does the International Telegraphic Convention permit Consuls in a foreign State to communicate with each other in cypher or conventional language (Articles V and VI)?

(2) Effect of Convention on telegrams to Egypt.

2. In the present case, Turkey having been a party to the Convention itself, and Egypt having only acceded to it subsequently, are telegrams between Consuls in Turkey and Consuls in Egypt to be considered as subject to internal Regulations, and, therefore, outside the Convention, or as coming under its stipulations?

(3) Right of Porte to stop telegrams without reason or notice.

3. If such communications should be held to come under the terms of the Convention, is the Porte justified in taking advantage of the faculty given under Article VIII to suspend certain telegraphic correspondence in cypher without assigning sufficient reason, and without due notice to all the other parties to the international arrangement?

Right of Khedive to conclude non-political Treaties.

With regard to the second point above mentioned, I am to remind you that by Firmans of dates anterior to the International Telegraphic Convention of 1876 (see printed collection of Firmans, 1841 to 1879 herewith) the Khedive was authorized to enter into Conventions of a non-political character with foreign Powers; and I am to suggest, for your consideration, whether the fact of Egypt having acceded to the Convention by a Decree dated the 21st December, 1876 (see Hertslet's Commercial Treaties, vol. xv, p. 580), which was some time after the signature of the Convention by Turkey, and without protest from the Porte, it may not be assumed that the Convention would not, without such accession, have been applicable to Egypt, and that, therefore, Egypt, as regards the question of telegraphic communications, is not subject to any internal Regulations made by the Porte.

As to power of Porte to stop telegrams between Consuls and Embassy.

I am also to point out that, though the Porte has not as yet claimed to interfere with telegraphic communications in cypher between British Consular officers in Turkey and Her Majesty's Embassy at Constantinople, such communications, according to what appears to be the view of the Turkish Government, are matter for internal regulation, and might at any time be stopped if Her Majesty's Government admit that it is open to the Porte at all times to stop telegraphic communication in cypher between Her Majesty's Consuls in various parts of the Ottoman Empire.

I am to request that you will take the papers transmitted herewith into your consideration, and that you will favour Lord Salisbury with your opinion on the questions submitted in this letter and with any general observations which you may have to offer on the case.

I have, &c.
(Signed) T. H. SANDERSON.

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We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Convention does not affect internal telegrams.

That, in our opinion, the contention of the Porte that telegrams "pour le service intérieur" are altogether unaffected by the International Convention is correct, and that Her Majesty's Government cannot claim that British Consuls in Turkey have the right to communicate with each other in cypher.

Porte bound to give notice of suspension of cyphered telegrams to Egypt.

We are, however, of opinion that telegrams between Consuls in Turkey and Consuls in Egypt are international telegrams within the Convention, and that the Porte is not entitled to suspend cypher correspondence between such Consuls without immediately notifying the fact and the extent of such suspension to each of the other Governments which are parties to the Convention.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, July* 17, 1889.

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*List of Papers.*

International Telegraph Convention (in Parliamentary Paper "Miscellaneous No. 2, 1876"). Treaty No. 591.
Sir E. Baring, Nos. 64 and 67 (Telegraphic), March 15 and 18, 1889.
To Sir E. Baring, No. 42 (Telegraphic), March 15, 1889.
To Sir W. White, Nos. 18, 21, and 23 (Telegraphic), March 19, 1889.
Sir E. Baring, No. 159, March 24, 1889.
Sir W. White, Nos. 122, 147, 161, and 178, of 1889.
Collection of Firmans: 1841–1879. Confidential No. 4747.

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## No. 56.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received August* 17.)

My Lord, *Royal Courts of Justice, August* 16, 1889.

Bonds of the original Ottoman External Debt cancelled by the Turkish Government.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list with reference to the position of certain holders of bonds of the original Ottoman External Debt, which had been declared to be forfeited, and had been cancelled by the Turkish Government under the following circumstances:—

That some short time since complaints reached Her Majesty's Government that a large number of bonds of the original Turkish Debt—some 800,000*l.* to 900,000*l.* worth, it was said—had been cancelled, on the ground that they were not presented in proper time for conversion; and that it was contended, on behalf of certain holders of those bonds, that the notice given of the intended conversion was altogether inadequate, and that great and unwarrantable hardship had thus been inflicted.

That the question was referred to Her Majesty's Ambassador at Constantinople, and that from his Report it would appear that the matter had been already brought to his notice, but that he was unable to suggest any remedy, as, on the one hand, the Ottoman Government considered that they discharged all their previous liabilities by the arrangement come to in 1881 with the Delegates of the Foreign Bondholders, and, on the other, the Council of Administration of the Ottoman Debt regarded those bonds as cancelled and of no value.

That the particulars of the arrangement come to between the Porte and the bondholders in 1881 would be found at pp. 73 to 84 of the accompanying Parliamentary Paper ("Turkey No. 2, 1882").

Decree of 1881 requiring bonds to be registered.

That the Treasury, whose opinion had also been taken on the subject, pointed out that the Decree of 1881 required, no doubt, that the bond should be registered, but that it did not provide that failure to register would entail forfeiture.

Notice of 1888 respecting forfeiture of bonds.

That the Council of Administration of the Ottoman Debt, however, published a Notice, dated Constantinople, 10th April, 1888, declaring that all bonds not presented at the Imperial Ottoman Bank at Constantinople for registration or conversion by the 13th May, 1888, would be forfeited.

Was Notice sufficient to justify forfeiture?

That it was a question whether that Notice was sufficient to justify the Turkish Government in treating bonds not presented within the time specified as forfeited.

That apart, however, from the question of the sufficiency of the Notice, and even assuming its sufficiency, the Board of Treasury did not consider that the circumstances of the case justified the attachment of so severe a penalty as the forfeiture of the bonds.

That your Lordship was, in those circumstances, desirous of being advised whether any, and, if so, what remedies were open to such of the aggrieved bondholders as were British subjects, and whether, in our opinion, any grounds existed which called for the intervention of Her Majesty's Government on their behalf.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to

*Report—*

Council of Administration entitled

That we are of opinion that the Council of Administration was entitled to make reasonable regulations to provide for the registration of bonds, and thereby fix a time

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to limit time for registration of bonds, but Her Majesty's Government may represent that period allowed was unreasonably short.

after which the obligation to pay an unregistered bond would not be recognized, and, in considering the validity of the Notice of the 10th April, 1888, it must be remembered that a considerable period, namely, from the 20th December, 1881, to the 1st (13th) February, 1885, was permitted for registration. Still, having regard to the fact that no step was taken or Notice issued until April 1888, we think that the period allowed, viz., up to the 13th May, before forfeiture, unreasonably short, and that a representation may properly be made by Her Majesty's Government to the Council of Administration on behalf of British subjects holding bonds which have been declared forfeited pursuant to such Notice.

Doubt whether Mr. Maclean has any legal claim.

It is right, however, that we should add that we doubt whether Mr. Maclean has any legal claim, and there are not, in our opinion, any legal proceedings by which he can enforce any supposed claim.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

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| 1. | Parliamentary Paper, "Turkey No. 2 (1882)." | | Foreign Office No. 2456. |
| 2. | Messrs. Matheson and Co. .. .. .. .. | | March 28, 1889. |
| 3. | To Sir W. White .. .. .. .. | (No. 114) | April 1, " |
| 4. | Sir W. White .. .. .. .. | (No. 159) | April 26, " |
| 5. | To Treasury .. .. .. .. .. | | May 9, " |
| 6. | Treasury .. .. .. .. .. .. | | May 30, " |
| 7. | Messrs. Matheson and Co. .. .. .. .. | | June 21, " |

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## No. 57.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received August 23.)*

*Royal Courts of Justice, August 21, 1889.*

My Lord,

Proposed transfer of coal depôts in Constantinople to Beicos.

Levy of duty to cover cost.

Question of a monopoly, &c.

WE were honoured with your Lordship's commands signified in Sir T. V. Lister's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin* relative to a Circular *note verbale* which Her Majesty's Ambassador at Constantinople had received from the Sublime Porte, and in which it was proposed to transfer all the depôts for the sale of coal in that city and its suburbs to a spot near Beicos on the Bosphorus about 10 miles distant, and, in order to cover the cost of the construction and maintenance of that establishment, to levy upon each ton of coal deposited half a shilling as a duty on disembarkation, and a shilling as a duty for deposit and delivery (droit de dépôt et de sortie).

That we should observe that Sir W. White had obtained the opinion of the Chamber of Commerce of Constantinople, and a Memorandum on the subject from the coal merchants affected by the proposal; and, further, that his Excellency forwarded copy of a despatch from Mr. Consul Wrench, who stated that the measure would not only constitute a breach of faith, but that it was in direct contravention to the unexpired Treaties of 1861 and 1862, and who drew special attention to Article VI of the Treaty of Commerce between Austria and Turkey.

That we should also perceive that Her Majesty's Ambassador, in acknowledging the *note verbale*, stated that the question had been referred to Her Majesty's Government, but that, without waiting for instructions, Her Majesty's Embassy made objection to the proposed plan, on the ground that large vested interests of British subjects would be seriously affected thereby, and also a serious impediment be opposed to that freedom of trade and navigation which was guaranteed to Great Britain by ancient and modern Treaties.

That the inclosed Memorandum, prepared in the Foreign Office, explained the various aspects of the question, and quoted the clause upon which Mr. Consul Wrench relied, of Article VI of the Austrian Treaty of 1862, the benefits of which Great Britain enjoyed in virtue of the Capitulations of 1675 (see Law Officers' Report of the 18th May, 1883).

That Sir T. V. Lister was, accordingly, to inquire whether, in our opinion, Her Majesty's Government had any right, under the Capitulations or under Treaties between Turkey and other foreign Powers, all the advantages of which were secured to Great Britain by the said Capitulations, to raise objection to the scheme for removing the coal depôts in question to the place above indicated, and for levying dues in the manner and for the purpose stated, on the ground either that a monopoly was thereby created, or that the said dues were in the nature of a tax, or that an impediment was thus opposed to the freedom of trade and navigation.

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* Law Officers, May 18, 1883 (Confidential No. 4974, No. 105); Capitulations, &c.; Sir W. White, No. 68, July 8; Memorandum, July 24, 1889.

That Sir T. V. Lister was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

No Treaty right to object.

That, in our opinion, Her Majesty's Government has not any Treaty right to raise objection to the removal of the coal depôts in question.

Compensation may be asked for individual losses, &c.

If the carrying out of the order were to involve the confiscation of, or injury to, the property of particular British subjects, there might be ground for representations to the Porte in favour of the grant of compensation to persons so injured, but we do not gather, from the papers before us, that any such case can be maintained.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 58.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received November 29.)*

[In reply to the following letter from the Foreign Office, the Law Officers report as on p. 114:—]

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*Foreign Office to the Law Officers of the Crown.*

*Foreign Office, September 18, 1889.*

Gentlemen,

Treaty rights in Turkey on termination of Treaty of 1861.

I HAVE the honour, by direction of the Marquis of Salisbury, to transmit to you the accompanying copy in print of a despatch from Her Majesty's Ambassador at Constantinople,* inclosing a Memorandum by Mr. Fane, Secretary of Her Majesty's Embassy, on the Treaty rights of Her Majesty's subjects in the Ottoman Empire. This important question was submitted to the consideration of your predecessors in office, whose Report thereon, dated the 18th May, 1883,† is herewith inclosed, together with all the papers referred to therein.‡ In that Report your predecessors stated that, on consideration of the information before them, they were of opinion that it was open to contention that Article I of the Treaty of 1861 granted most-favoured-nation treatment for all time, and was not extinguished by the said Treaty of 1861 having terminated; they did not, however, think that this view could be insisted on as clearly sound, and suggested that the sounder view probably was that British subjects would, after the termination of the Treaty of 1861, become entitled to the benefit of all Capitulations and Treaties *prior to the Treaty of* 1838.

Opinion of Law Officers of May 18, 1883:—

This opinion was assumed to involve the following positions:—

1. English Capitulations and future favours granted to other nations.

1. That the English Capitulations did not grant the enjoyment of favours granted *in the future* to other nations; but that all such favours granted up to the date of the Treaty of 1838 were confirmed *for ever* to British subjects by the Ist Article of that Treaty, and that such grant was not effected by the two facts that the Treaty of 1861, repeating such grant, had replaced that of 1838, and that the Treaty of 1861 had itself terminated.

2. Revival of Capitulations on expiration of Treaties modifying them.

2. That the stipulations contained in the Ottoman Capitulations were of such a nature that, although they might be modified by subsequent Treaties, they revived on the termination of the Treaties modifying them.

3. Treaty of 1838 did not revive on termination of

3. That the stipulations contained in the Treaty of 1838 did not share this

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* Sir W. White, No. 76, Commercial, July 19, 1889.

† Law Officers, May 18 (Confidential No. 4974, No. 105),

‡ Memorandum (E. H.), February 7, 1883, Confidential No. 4736; "Treaties on Trade with Turkey" (Hertslet), pp. 41–52; Memorandum (E. H.), April 11, 1883.

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Treaty of 1861.

function with those in the Capitulations, and did not revive on the termination of the Treaty of 1861.

Memorandum by Mr. Fane.

Mr. Fane has collected and set forth in his Memorandum certain evidence bearing on these points, which it will perhaps be convenient for you to consider *seriatim* and favour Lord Salisbury with your opinion as to its value on each point, and as to the question whether it is of such a nature as would lead you to form an opinion other than that expressed by your predecessors in office, and whether the three positions stated above are correct and ought to be maintained.

With regard to the *first position*, namely, that the English Capitulations do not include the grant of favours accorded in the future to other nations, it appears that the XIth Article of the Treaty of Belgrade concedes to Austrian subjects the "privilège dont ont joui jusqu'à présent dans les États de l'Empire Ottoman les autres Chrétiens exempts de tribut, les nations même les plus amies, et principalement les Français, les Anglais, et les Hollandais." These words appear as little intended to convey future favours as the following, which constitute the corresponding portion of the English Capitulations:—

"All the Capitulations, privileges, and Articles granted to the French, Venetian and other Princes . . . . . having been in like manner . . . . . granted to the English, . . . . . the same shall be always observed . . . . ."

The meaning assigned to the words quoted above from the Austrian Treaty of 1739, known as the "Treaty of Belgrade," was, however, made clear from the Vth Article of the Treaty of 1784, the preamble of which states that one of the purposes of the Treaty was to explain the XIth Article of the Treaty of Belgrade. The explanatory Article is as follows:—

"The Sublime Porte declares, further, that under the Treaties of Belgrade and Passarowitz,* and in view of the good understanding existing between the two Courts, the Imperial and Royal Court is entitled to claim for its subjects, without exception, the same liberties, advantages, and favours which other Frankish nations, and in particular the French, the English, the Dutch, and the Russians, or any other more favoured nation enjoys, *or may hereafter enjoy*."

Mr. Fane states that in more recent times the Porte has repeatedly admitted that the Capitulations conveyed future privileges, and cites an extreme case which happened in 1839 when Austria claimed the right to such parts of the Anglo-Turkish Treaty of 1838 as suited her, while rejecting those parts which did not suit her. The Porte gave full satisfaction to the claim thus made.

Mr. Fane also observes that the preamble to the Treaty of 1840 between the Netherlands and Turkey shows that the Porte understood the Netherlands Capitulations as entitling the Low Countries to the advantages of the British and French Treaties of 1838, although the Dutch Capitulations are as silent as the English and Austrian Capitulations with regard to the grant of future favours.

I am therefore to inquire whether the additional information now adduced is such as to lead you to the opinion that British subjects are entitled under the English Capitulations, as apart from the stipulation in Article I of the Treaty of 1838, to the enjoyment of the favours granted by the Porte *at any time* to the subjects of any other foreign Power.

With regard to the *second position*, namely, that the stipulations of the Capitulations revive on the termination of a Treaty suspending or modifying them, I am to state that a special jurisprudence seems to have arisen on this point in the case of the Ottoman Capitulations. Otherwise, it would certainly appear that where a terminable Treaty takes the place of a perpetual Treaty, and the terminable Treaty does actually terminate, such termination could not revive the older Treaty; for the duration Article in the new Treaty—making the conventional relations between the Contracting Parties to be of limited duration—must presumably be taken as having been advisedly substituted for the *corresponding* Article, *i.e.*, the duration Article in the old Treaty by which the conventional relations had been declared perpetual.

But, as concerns the Ottoman Capitulations, Sir E. Hertslet, in a Memorandum of the 9th ultimo, herewith transmitted to you,† states that—

"Her Majesty's Government have hitherto maintained that the Capitulations are *perpetual* in their nature and character, though temporarily suspended from time to time by the provisions of Treaties of limited duration, dealing with particular matters; and that in the event of such Treaties not being renewed, the operations of the Capitulations revives as regards matters dealt with by the lapsed Treaties."

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* This Treaty (1718) does not appear, any more than that of Belgrade, to convey *future* favours.

† Sir E. Hertslet, August 9, 1889, Confidential No. 5905, p. 30.

A Russian diplomatic note, quoted by Mr. Fane, maintains the same doctrine. It is as follows:—

"Les Traités subséquents n'ont fait que confirmer et consacrer à nouveau les Capitulations. Si certaines clauses de ces dernières, ayant trait principalement aux relations commerciales, ont été modifiées par des Conventions conclues pour des termes limités, du moment où les termes de ces Conventions viennent à expirer, les modifications susdites perdent leur vigueur et les clauses des Capitulations, toujours virtuellement existantes, reprennent toute leur force et valeur."

Lord Salisbury would be glad to learn whether, in your opinion, the practice of the Porte with regard to the modification of the Capitulations by terminable Treaties would be sufficient, if shown to be constant, to establish, in respect to the former Instruments, the position that they revive on the termination of Treaties modifying them, even though such latter Treaties would, in the case of conventional Agreements with other countries, be held to have abrogated entirely and for ever the portions of the earlier Treaties of which they had taken the place.

The *third position* is that the Treaty of 1838, unlike the Capitulations, did not revive on the lapse of a Treaty, that, namely, of 1861, by which it was replaced.

Mr. Fane points out that the Treaty of 1838 is styled a "Convention *appended to* the Capitulations granted to Great Britain . . . . ," and argues that it is one of the "existing Capitulations and Treaties" referred to in the Ist Article of the Treaty of 1861, and must therefore be taken to be an integral part of the Capitulations incapable of being abrogated by a terminable Agreement. Other important arguments in favour of this view are the following:—

"Although several Powers copied the example of the British Treaty of 1861, and introduced into their corresponding Treaties Articles stating that their respective Treaties of 1861 were *substituted* for those of 1838, certain other Powers did not do so. Thus the French Treaty, far from containing any Article abrogating the Treaty of 1838, is described in the preamble as being "intended" to give, "by a special and *additional* Act, a fresh extension to the relations . . . . established . . . . by the Treaty of Commerce of 1838."*

Again, in Articles II and III of the Austrian Treaty corresponding to the British Treaty of 1861, the British and French Treaties of 1838 are referred to as being still in force. The Articles in question are as follows:—

"Article II. Il reste expressément entendu que les sujets de l'Autriche continueront à jouir comme par le passé, sauf les modifications apportées par la présente Convention, de tous les droits qui leur ont été conférés et garantis par l'accession de l'Autriche aux Traités de Commerce conclus par la Sublime Porte en 1838 avec l'Angleterre et avec la France.

"Article III. La Sublime Porte s'étant, en vertu de l'Article II des Traités conclus en 1838 avec l'Angleterre et avec la France (dont les stipulations, comme il a été dit à l'Article précédent, *sont* en vigueur *aussi* pour le commerce de l'Autriche) formellement engagée à abolir tous les monopoles ainsi que les 'teskérés.' . . . ."

Now the British Treaty of 1861 was "substituted for" the Treaty of 1838 on its ratification (see Article XX), namely, on the 9th July, 1861; but the Articles quoted above from the Austrian Treaty, which speak of the British Treaty as being *also* in force for Austrian commerce, and therefore *still* in force for British commerce, are from the Austrian Treaty bearing the date of the 22nd May, 1862, *i.e.*, nearly a year after the British Treaty of 1838, would be assumed to have been abrogated.

Article II of the British Treaty of 1861 seems to allude to the Treaty of 1838 as being still in force. It says that "the Sublime Porte having, in virtue of the IInd Article of the Convention of 1838, formally engaged to abolish all monopolies as well as 'teskérés,' any attempt to compel British subjects to receive such 'teskérés' shall be considered as an infraction *of Treaties*."† This provision neither stipulates a new abolition of monopolies and "teskérés," nor renews a former abolition: it merely recites the previous abolition, and refers to the Treaty containing it as a separate Instrument still in force.

With regard to the Treaties concluded between the Sublime Porte and other Powers in 1861 and subsequent years, it may be noted that those with France (27th April, 1861), Portugal (23rd February, 1868), and Russia (3rd February, 1862), are silent as to any substitution thereof for the Treaties corresponding to the British Treaty of 1838; that certain others, namely, Hanse Towns (27th September, 1862), Netherlands (25th February, 1862), Portugal, Prussia (20th March, 1862), merely

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* Mr. Fane's Memorandum, July 1889.

† This appears as "an infraction of *the Treaties*" in the other corresponding Treaties.

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state that monopolies have been abolished without stating how or when; and that in the Russian Treaty the Porte "*engages anew*" to abolish monopolies.

Sir E. Hertslet, in the Memorandum already inclosed, expresses the opinion that the Treaty of 1838 was nevertheless abrogated by that of 1861. It appears from the accompanying Memorandum, prepared in this Office,* that the British Government originally intended merely to improve some of the provisions of the Treaty of 1838, but finally decided that the new Instrument was to "supersede" that Treaty. But it is, of course, possible that the word "supersede" was used in a limited sense with regard to the Treaty of 1838, as indeed it might have been used with regard to the Capitulations themselves, and merely meant that the Treaty of 1861 was to "supersede, *during its continuance*, the Treaty of 1838."

I am to inquire whether the information now submitted for your consideration enables you to form a definite opinion as to whether or not the Treaty of 1838 between Great Britain and Turkey was in fact extinguished by that of 1861, or whether it should be considered as an integral part of the Capitulations, and, as such, should be held to have revived on the termination of the Treaty of 1861.

I have, &c.
(Signed) T. V. LISTER.

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We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report*—

Capitulations entitle British subjects to enjoy favours granted to other nations.

That, in our opinion, the true construction of the Capitulations is that they do entitle British subjects (apart from the stipulation in Article I of the Treaty of 1838) to the enjoyment of favours granted by the Porte *at any time* to the subjects of any other foreign Power.

Capitulations revive on termination of Treaties modifying them.

Treaty of 1838 revived on termination of Treaty of 1861.

We are further of opinion that the practice of the Porte with regard to the modification of the Capitulations by terminable Treaties would be sufficient, if shown to be constant, to establish the position that the Capitulations revive on the termination of Treaties modifying them, even though a different conclusion might be come to in the case of ordinary Treaties with other countries. And we think that the Treaty of 1838 should be held to have revived on the termination of the Treaty of 1861.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*Royal Courts of Justice, November 28, 1889.*

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## UNITED STATES.

### No. 59.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received April 3.*)

My Lord, *Royal Courts of Justice, April 2, 1889.*

Seizure of the "Admired" off the coast of Florida, and imposition of fine upon her master (for fishing). Claim of Messrs. Young and Higgs.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 5th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the seizure of the British schooner "Admired" last June off the coast of Florida by the United States' Revenue cutter "Crawford," and the imposition of a fine upon her master by the United States' authorities at Key West.

That the circumstances under which the seizure was alleged by the owners of the vessels to have taken place were to be found in their Memorial of the 10th September, 1888.

That from a despatch addressed to Her Majesty's Secretary of State for the Colonies by the Officer administering the Government of the Bahamas it would appear that the British Vice-Consul at Key West had advised the owners to pay the fine, and that application should be made by the master to the authorities at Washington for its remission, but that those authorities had refused to remit the penalty.

That instructions were then sent out to Her Majesty's Minister at Washington to ascertain from the United States' Government the grounds on which the seizure had taken place, and the reasons for which the United States' authorities had declined to remit the fine.

That the reply of the United States' Government would be found in Mr. Herbert's despatch No. 379 of the 28th December, 1888.

That in his note dated the 18th December Mr. Bayard stated that the proceedings of the United States' authorities at Key West had been found to be correct, and forwarded certain documents intended to refute the allegation of the master of the "Admired," as to the circumstances under which the vessel was seized and the fine imposed.

Jurisdiction of United States within a league of the Fowey Rock involved.

That among the documents was a letter from the Custom-house Collector at Key West to the Commissioner of Navigation at Washington, dated the 17th November, 1888, and a letter from the Commander of the United States' Revenue steamer "Crawford" to the Collector of Customs at Key West, dated the 15th November, which seemed to involve a claim on the part of the United States' authorities to maritime jurisdiction beyond the generally recognized limit of a marine league from the mainland coast-line, and directly raised the question as to whether the rock or cay upon which the lighthouse known as the Fowey Light was erected, and within 3 miles of which the vessel was arrested, could properly be considered as a "natural appendage" of the coast of Florida within the meaning of Lord Stowell's Judgment in the case of the "Anna" (Christopher Robinson's Reports, vol. v, p. 373, A.D. 1805).

That it appeared from the Admiralty Chart annexed that the rock in question was between 5 and 6 nautical miles distant from Cape Florida on Cay Biscayne, about 6 miles from the nearest point of Sands Cay, and upwards of 10 miles from the nearest mainland on the coast of Florida.

That in the case of the "Anna" above alluded to the distance from the main shore at the mouth of the Mississippi of the mud-banks involved was not stated, and that it was not clear whether any of them were at a distance of more than a marine league from that shore or from each other, a matter which it was suggested might not be without some bearing on the general question.

That it was, however, pretty clear that the rock in the present case was one capable of being used by an enemy for some of the offensive purposes enumerated in Lord Stowell's Judgment, although it was presumed that the mere fact of the erection of a lighthouse upon it would not of itself afford a foundation for any claim to treat it as a natural appendage of the shores under the dominion of the State which erected such lighthouse.

That a Memorandum had been prepared in the Foreign Office bearing on the question as to whether maritime jurisdiction of States should be reckoned from the mainland or from the adjoining islands (see Sir E. Hertslet's Memorandum of the 2nd February, 1889).

That no action had yet been taken on Mr. Herbert's despatch, nor had the views of Her Majesty's Government on the representations received from Messrs. Young and Higgs yet been communicated to them.

That the circumstances of the case itself were of comparatively trifling importance, and were perhaps not such as would raise much sympathy with the master of the "Admired;" but that the grounds upon which the United States' authorities arrived at a decision adverse to that vessel appeared to import a claim on the part of the United States' Government to exclusive jurisdiction over the waters within a radius of a marine league from the Fowey Rock.

That a question of principle of grave importance was thus involved, and that the admission of such a claim in the present case might possibly, in the future, be used as a precedent against Her Majesty's Government of rather far-reaching extent.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the exclusive maritime jurisdiction of the United States within a radius of 3 miles from the Fowey Rock might safely be admitted; or, if not, whether

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* Mr. Streatfeild, August 22, 1889.

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a representation should be made to the United States' Government on behalf of the owners of the "Admired," and, if so, in what terms such representation, having regard to all the circumstances of the case, might most advantageously be couched.

We have taken the matter into our consideration, and in obedience to your Lordship's commands have the honour to

*Report*—

Opposed to admission of United States' jurisdiction.

That, in the present state of our information as to the character of the Fowey Rock, and the neighbouring rocks and reefs, we could not advise the admission that the territorial jurisdiction of the United States extends 3 miles seaward of that rock.

Refusal to press claim not such an admission.

In the present case Her Majesty's Government will not, by declining to press the claim of Messrs Young and Higgs, make such an admission, as it is clearly stated by Captain Keene that, at the time when the vessel was captured, she was within 3 miles of the coast-line of the Cay Biscayne, which would bring her clearly within the jurisdiction of the United States.

No reason for further representation.

The matter appears to have been dealt with in due course of law, and we see no reason to believe that the decision of the Collector was wrong. We, therefore, do not advise the making of any further representation on behalf of the claimants.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

1. Memorial, Messrs. Young and Higgs, September 10, 1888, and Inclosure.
2. Colonial Office, October 6, 1888, and Inclosure.
3. To Lord Sackville, No. 239, October 11, 1888.
4. Mr. Herbert, No. 379, December 28, 1888, and Inclosure.
5. "Nautical Magazine," April 1878, vol. xlvii, No. IV.
6. Admiralty Chart of Coast of Florida. Map America, 77 A.
7. Memorandum, Maritime Jurisdiction, Sir E. Hertslet, February 2, 1889. Confidential No. 5813.

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## No. 60.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received June* 29.)

*Royal Courts of Justice, June* 28, 1889.

My Lord,

Assessment of light dues in Great Britain.

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 8th April last stating that he had the honour, by direction of your Lordship, and with special reference to our Report of the 16th January, 1889, to transmit to us the papers, noted in the accompanying list, relative to the basis on which light dues were assessed in the United Kingdom.

That the inquiry made in the note of the 19th June, 1888, from the United States' Chargé d'Affaires, appeared to raise a very important question as to the general interpretation of the most-favoured-nation and national treatment clauses in Commercial Treaties, namely, whether exceptions might be made under those clauses other than such as were specifically expressed in the Treaties themselves.

That the inquiry made by Mr. Henry White would, in point of fact, appear to be practically as follows:—

Question as to admissibility of geographical discrimination.

"Is not the discrimination observed in the assessment of light dues in the United Kingdom treated by Her Majesty's Government as not falling within the most-favoured-nation clauses in British Treaties, and is it not so treated for the reason that it is based on the principle of discrimination by geographical situation and not by nationality?"

That it was suggested that the most-favoured-nation and national treatment clauses contained no words, on the face of them, which would serve to prevent the geographical discrimination, if once admitted, from being liable to be cited as a precedent for any discrimination not strictly based on the principle of nationality, and that it therefore became necessary further to consider whether a geographical discrimination was admissible, and, if so, how far the admission of a discrimination based on the principle of geographical situation might not necessarily involve the admissibility of other discriminations not based exclusively on the principle of nationality.

That in order to facilitate the consideration of that and other questions affecting the most-favoured-nation and national treatment clauses, a Memorandum (copy of which was inclosed) had been prepared in the Foreign Office. That in it would be found discussed a number of cases in which attempts had been made to establish discriminations of various kinds.

That Sir James Fergusson was to call particular attention to the extracts from diplomatic notes, which would be found at pp. 3 and 4 of that Memorandum, defining the object, extent, and effect of the clauses in question, and stating the intentions of the Governments of Great Britain and of the United States in negotiating the Treaty of 1815, which would appear to be one of the earliest Treaties containing those clauses in their modern form. That he was also to submit for consideration the observations at pp. 4 to 8 of the Memorandum regarding the interpretations of which the clauses were susceptible, as well as the paragraph headed "principle of the clauses" in which it was suggested that the most-favoured-nation and national treatment clauses, being similar in principle, precedents applying to the one, might be used, *mutatis mutandis*, for illustrating the other; and that, finally, he was to submit for consideration the cases involving geographical discrimination with regard to place of origin, discussed under heading (A) of the Memorandum.

Dangers of such admission.

That with reference to the observation contained in the second paragraph of our Report of the 16th January last, that the discrimination alluded to by Mr. Henry White had no reference to nationality, Sir James Fergusson was to inquire whether, in view of the cases now placed before us, and of the considerations submitted in the Memorandum, we were of opinion that that circumstance might safely and properly be alleged in justification of such discrimination; whether there was danger that a geographical discrimination, if once admitted, might constitute a precedent for discriminations similar in nature, but more extensive in effect, and for discriminations, other than geographical, which might in the end be destructive of the provisions of the Treaties.

That in that connection Sir James Fergusson was to observe that the second paragraph of the passage (quoted at page 17 of of the Memorandum) from the despatch No. 6, Commercial, of the 21st November, 1882, to Colonel Mansfield, which was submitted to and approved by our predecessors in office, was, it was believed, prompted by an analogous apprehension.

That in the second paragraph of our above-mentioned Report, we pointed out that consideration should be given to the fact of the scale of charges being framed in good faith, and with reference to the value to the undertaking of the benefit received, in respect of which the dues were charged; that in regard to that position Sir James Fergusson was to submit, for our consideration, that from one standpoint at any rate the length of the voyage appeared to have no reference to the benefit received by the ship from the lights she passed; that it was possible that the paragraphs at page 6 of the inclosed Memorandum, headed "safe and other discriminations," might be of use in considering that point.

That Sir James Fergusson was also to submit that although the discrimination involved in the assessment of light dues in the United Kingdom was doubtless made in good faith, it would probably be alleged by any Government making use of that discrimination as a precedent for other discriminations which might perchance be more open to objection, that the latter also were made in good faith, and that it would be difficult in practice to controvert such an allegation.

That it seemed, therefore, to be open to question, from the practical point of view, whether the length of the voyage was a proper and safe basis of assessment for navigation dues; and whether it might not be one which was likely to produce inequality of treatment between vessels, and should, for that reason, be, where possible, avoided.

That in connection with the fact that many of the schedules of dock and harbour dues authorized by Parliament contained differential charges varying in amount according to the length and nature of the voyage and the ports from which the vessels had traded, Sir James Fergusson was to submit the observations at p. 6 of the inclosed Memorandum, headed "Origin of False Interpretations," and the paragraph next after. Sir James Fergusson was to suggest that it was possible that a discrimination, which was none the less inadmissible under the Treaties, might exist for many years without remonstrance and even without being noticed.

That, with particular reference to the last suggestion, Sir James Fergusson was to call attention to the case No. 3 of heading (A) in the inclosed Memorandum, wherein

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it would be seen that a certain discrimination, which was held to be in violation of the Treaties, and on account of which Her Majesty's Government had to refund 88,000*l.* improperly levied, was, nevertheless, in harmony with the constant practice of Parliament.

That the most-favoured-nation clauses and national treatment clauses were of the greatest possible value to the trade of this country, and that in view of the fact that there was, at the present time, a marked tendency on the part of many Governments to pursue an illiberal and exclusive policy in regard to the trade and navigation of foreign countries, your Lordship was anxious that Her Majesty's Government should carefully abstain from defending any interpretations of those clauses, which might be the least open to doubt, and might hereafter be made use of as precedents for restricting the benefit derived from them by the trade and navigation of Great Britain.

That Sir James Fergusson was, therefore, to inquire whether, in our opinion, Her Majesty's Government should consider the advisability of removing, so far as this country was concerned, the geographical element from the assessment of navigation and other dues on foreign trade and shipping.

That, in the event of our opinion being unfavourable, on general grounds, to the admissibility of a geographical discrimination, Sir James Fergusson was to inquire whether, in view of the precedents, and as a general rule, apart from particular stipulations, we would advise that Her Majesty's Government should contest the proposition that most-favoured-nation and national treatment clauses might be taken as admitting of any discrimination other than a discrimination by nationality: and whether, on the contrary, the clauses in question ought to be construed as meaning that no conditions other than those actually expressed in the Treaties might be demanded before the particular treatment stipulated for was conceded.

That our Report of the 16th January last, together with the papers therein referred to, was returned to us for convenience of reference.

That Sir James Fergusson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might desire to offer.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

*Report—*

Adhere to opinion of 16th January.

That we have carefully reconsidered the terms of our Report of the 16th January last, and do not desire to alter or to qualify the opinion we then expressed; but we are sensible of the difficulty of discussing the question of good faith when examining Customs Regulations made by another Power.

Moreover, cases might arise in which a differential duty, varying with the place or port from which a ship has come, would operate so as to impose upon the produce of some country a burden which would, in effect, indirectly infringe the spirit of the most-favoured-nation clauses.

It is, therefore, a matter worthy of the gravest consideration whether it is expedient to maintain any discrimination of duties based on the principle of geographical situation.

National treatment clauses have no bearing on case.

We do not consider that national treatment clauses have any bearing upon this question, or that the precedents in the interpretation of such clauses can be considered as relevant. A national treatment clause—and we have no other with the United States—only entitles the foreign ship to the same treatment as the national ship, and no regulation which applies to both classes is a violation of this clause. But the most-favoured-nation clause is an undertaking that, when the foreign ship comes into port or the foreign goods are brought on shore, the lowest dues shall be charged which are according to the existing Tariff payable by such ship or such goods, whencesoever they may come. To allow geographical discrimination might give an indirect but none the less a real advantage to the ships and goods of one nation as against the other; but, in our opinion, no country would have the right to complain of the differential duty unless that country could show that the duty had the effect to its disadvantage to which we have referred.

When objections, under m.-f.-n. clauses, may be made to differential dues.

Opposed to maintenance of discriminating duties.

While, therefore, referring to our previous Report as stating the main argument upon which, in our view, such discrimination could be defended, we are of opinion that it is not advisable to maintain that principle, or to allow our own practice to be quoted in its support.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

*List of Papers.*

| | |
|---|---|
| Mr. Henry White .. .. .. .. .. .. | June 19, 1888. |
| To Board of Trade .. .. .. .. .. .. | June 22, „ |
| Board of Trade .. .. .. .. .. .. | July 9, „ |
| Memorandum by Sir E. Hertslet .. .. .. .. .. | July 20, „ |
| "National Republican" .. .. .. .. .. .. | Mar. 24, 1886 |
| Return of Treaties containing most-favoured-nation clauses. "Commercial No. 11 (1888)." Foreign Office No. 3267. | |
| Return of Treaties containing national treatment clauses. "Commercial No. 13 (1887)," and "Commercial No. 9 (1888)." Foreign Office Nos. 3203 and 3216. | |
| Law Officers' Report (see General No. 18) .. .. .. .. | Jan. 16, 1889. |
| Mr. Farnall's Memorandum .. .. .. .. .. | Mar. 4, „ |

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## No. 61.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received June 29.)*

*Royal Courts of Justice, June* 28, 1889.

My Lord,

Tonnage dues in United States.

WE were honoured with your Lordship's commands signified in Sir James Fergusson's letter of the 8th April last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list* with reference to the assessment of tonnage dues in respect of vessels arriving in United States' ports, a subject upon which we were good enough to favour your Lordship with a Report on the 7th May, 1888.

Right to claim rates under Act of 1884.

That it was gathered from the second paragraph of that Report that Her Majesty's Government had, in our opinion, the right to claim the benefit of the lower rates provided by the American Statute of the 26th June, 1884, for all British ships entering United States' ports from whatever port they might have sailed.

That before, however, availing himself of the language of that Report as the basis upon which to found any diplomatic claim, your Lordship would be obliged if we would further consider that question in connection with the very analogous point dealt with in our Report of the 16th January last respecting the assessment of light dues in the United Kingdom.

That it was thought that it might be convenient to us to consider both those questions at the same time, and that the precedents and considerations set out in the inclosed Memorandum might be equally of use to us in dealing with the question now at issue between Her Majesty's Government and that of the United States of America, as with reference to the assessment of British light dues which formed the subject of Sir James Fergusson's other letter to us of the 8th April last. That a notice of the United States' case would be found at p. 19 of that Memorandum.

View of United States' Government as to allowing discriminating treatment under m.-f.-n., &c., clauses.

That the manner in which the case was put before the Attorney-General of the United States, and the Report of the latter, seemed to show that the view now advanced by the United States would, if admitted, create a precedent for maintaining that any discrimination was allowable under the most-favoured-nation and national treatment clauses, provided it were not made strictly on the basis of nationality, and that even that restricted interpretation of those clauses was liable to be brought within yet narrower limits by the claim to make exceptions on account of geographical propinquity and "in the interests of good neighbourhood."

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* Treaty. United States and Great Britain, July 3, 1815. Hertslet's Treaties, vol. ii, p. 386.
United States' Statute, June 26, 1886, chap. 121.
United States' Statutes at large, vol. xxiii, p. 53.
United States' Statute, June 19, 1886, chap. 421.
United States' Statutes at large, vol. xxiv, p. 79.
Sir L. West, No. 101, Commercial, April 8, 1886.
Sir L. West, No. 40, Commercial, February 3, 1888.
Law Officers' Report, May 7, 1888. Confidential No. 5785, No. 61, p. 83.
Mr. Farnall, Memorandum, March 4, 1889.

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That with regard to the latter point, Sir James Fergusson was to submit the "general considerations" put forward at p. 23 of the inclosed Memorandum.

That in defence of the view now put forward by the United States, the reference to the Attorney-General appeals to the Treaty between the United States and Hawaii, to the German Customs Union, and to the so-called Canadian Reciprocity Treaty.

That should we think it necessary to consider that point, Sir James Fergusson was to submit the observations at pp. 40 and 45 of the inclosed Memorandum.

That with regard to the claims made by other countries for the extension to their ships of the lower rates of dues, Sir James Fergusson was to state that your Lordship had no information of a later date than that contained in Sir L. West's despatch No. 101, Commercial, of the 8th April, 1886.

That in the event of the interpretation which had, in the early part of Sir James Fergusson's letter, been placed upon the second paragraph of our Report of the 7th May, 1888, being correct, and should we, on consideration of the precedents now brought to our notice, be of opinion that the view of the most-favoured-nation and national treatment clauses put forward by the United States was erroneous, Sir James Fergusson was to request that we would favour your Lordship with an indication of the arguments which should be used in support of the claim that the lower rate of duties should be extended to all British ships, irrespective of the ports whence they might have sailed.

That our Report of the 7th May, 1888, and the papers therein referred to, were returned to us for convenience of reference.

That Sir James Fergusson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted therein, and with any general observations which we might have to offer on the case.

We have taken the matter into our consideration, and in obedience to your Lordship's commands have the honour to

*Report—*

United States' interpretation of Treaty of 1815 should be contested. Grounds for doing so.

Probable results of admitting United States' views.

That, in our opinion, the interpretation placed by the United States' Government upon the clause of the Treaty of 1815, which grants national treatment to the ships of the two countries respectively, should be contested upon the ground that the duties, or charges to be imposed in any port, are so imposed in respect of the service rendered to the ship by its reception and shelter in the port, and by its obtaining facilities thereby for the discharge of cargo, and that such charges must in principle be assessed with reference to the tonnage of the vessel, time in dock, value of the benefit received by, or service rendered to, the vessel, or similar considerations. Differential duties might be suggested depending upon the mode of construction of the vessel, and character of its equipment, or even the nationality of its crew, which might be contended to have no direct reference to the nationality of the vessel, but which might practically deprive British ships of the advantage which the Treaty was intended to secure. And if the narrow and technical interpretation of the Treaty which would admit of geographical distinctions were accepted, it would be possible to contend that a Regulation imposing special duties upon all ships, whether British or American, coming from the port of London, would not in strictness be a violation of the Treaty. Such a Regulation would, however, destroy the whole value of the clause, and we think the rule should be accepted and maintained that port authorities have nothing to do with the questions whence a vessel comes or whither it is going, and that a British ship is entitled to enter a United States' port on the most favourable terms of charge or of exemption which are enjoyed by any ship of the United States of like tonnage.

Necessity for consideration of question of dues.

We think it right to add that in view of the growing importance of this question in regard to recent legislation in the United States, and the fact that the difficulty of maintaining this position is increased by the circumstance that the practice of Great Britain has not been in complete accordance with it, it is very desirable that the question of the levying of harbour and other dues varying according to the geographical position of the place from which vessels have come should be carefully considered, and that negotiation with the United States should be entered upon in order to avoid the risk of serious controversy.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 62.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received October 1.)*

*Royal Courts of Justice, October 1, 1889.*

My Lord,

Seizure of Canadian sealers "Black Diamond" and "Triumph" in Behring's Sea by the United States' ship "Rush."

WE were honoured with your Lordship's commands signified in Sir T. Sanderson's letter of the 20th ultimo, stating that, by your Lordship's direction, he had to transmit to us the inclosed draft of a despatch which it was proposed to address to Her Majesty's Chargé d'Affaires at Washington with reference to the seizure of the Canadian vessels "Black Diamond" and "Triumph," in the Behring's Sea, by the United States' Revenue-cruizer "Rush."

That those seizures were, as would be seen from the accompanying papers,* similar in character to those of the ships "Caroline," "Onward," and "Thornton," which took place outside territorial waters in the summer of 1887, and which formed the subject of a Report to your Lordship from ourselves (of which a copy was also inclosed) on the 20th August of that year.

That Her Majesty's Government then protested against the proceedings in question, which appeared to be wholly unjustified by international law, but the United States' Government had hitherto abstained from offering any explanation of the grounds upon which those violent measures were adopted.

Submitting draft despatch.

That in view of that circumstance, and also of the unexpected renewal of the seizures of which Her Majesty's Government had already complained, your Lordship had considered it advisable that some further communication should now be made through Her Majesty's Chargé d'Affaires to the United States' Government; but, before transmitting to the former the despatch, of which the draft was inclosed, your Lordship desired to be favoured with our opinion as to whether its terms were such as were in the circumstances right and proper.

That Sir T. Sanderson was therefore to request that we would take the draft into our consideration, in connection with the other papers also transmitted therewith, and that we would favour your Lordship, at our earliest convenience, with any observations which we might have to offer upon its terms and subject.

In obedience to your Lordship's commands we have the honour to

*Report—*

Approve despatch as altered.

Importance of more decided protest.

That, having regard to the communications which have passed between Mr. Edwardes and the Secretary of State for the United States, and the fact that it is proposed that Sir Julian Pauncefote shall, on his return, enter into the whole question, we are of opinion that (subject to the omission of the passage in brackets) the terms of the draft despatch are such as are right and proper. But we think it right to add that, in the absence of satisfactory arrangement or undertaking, it is from a legal point of view of importance that some more definite and decided protest should be made, or steps taken to prevent the recurrence of such seizures.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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### Annex.

[*Draft to Mr. Edwardes as originally sent to Law Officers, and showing omission suggested and subsequent modification by Lord Salisbury into two Despatches, Nos.* 205 *and* 206 *of October* 2, 1889.]

(No. .)

*Foreign Office, October* , 1889.

Sir,

IN my despatch No. 176 of the 17th ultimo I furnished you with copies of a correspondence which had passed between this Department and the Colonial Office on the subject of the seizure of the Canadian vessels "Black Diamond" and "Triumph," in the Behring's Sea, by the United States' Revenue-cutter "Rush."

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* Colonial Office, September 10, 1889; Law Officers, August 20, 1887, Confidential No. 5597, p. 97.

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I have now received, and transmit herewith, copies of a despatch from the Governor-General of Canada to the Secretary of State for the Colonies, which incloses copies of the instructions given to the special officer placed on board the "Black Diamond" by the officer commanding the "Rush," and of a letter from the Collector of Customs at Victoria, together with the sworn affidavits of the masters of the two Canadian vessels.

It is apparent from these affidavits that the vessels were seized at a distance from land far in excess of the limit of maritime jurisdiction which any nation can claim by international law.

The cases are similar in this respect to those of the ships "Caroline," "Onward," and "Thornton," which were seized by a vessel of the United States outside territorial waters in the summer of 1887. In a despatch to Sir L. West, which was communicated to Mr. Bayard, dated the 10th September, 1887, I drew the attention of the Government of the United States to the illegality of these proceedings, and expressed a hope that due compensation would be awarded to the subjects of Her Majesty who had suffered from them. I have not since that time received from the Government of the United States any intimation of their intentions in this respect, or any explanation of the grounds upon which this interference with British vessels had been authorized. Mr. Bayard did, indeed, communicate to me unofficially an assurance that no further seizures of this character should take place pending the discussion of the questions involved between the two Governments. Her Majesty's Government much regret to find that this understanding has not been carried forward into the present year, and that instructions have been issued to cruizers of the United States to seize British vessels fishing for seals in Behring's Sea outside the limit of territorial waters. The grounds upon which these violent measures have been taken have not been communicated to Her Majesty's Government, and remain still unexplained.

[~~I will not anticipate the result of the legal proceedings now pending before the Supreme Court of the United States, and, until they are concluded, will refrain from discussing the claims for compensation which have been acquired by those whose property has been taken and whose industry has been arrested~~; ~~but~~]

In view of the unexpected renewal of the seizures of which Her Majesty's Government have previously complained, it is my duty to protest against them, and to state that, in the opinion of Her Majesty's Government, they are wholly unjustified by international law.

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### [*Second Despatch.*]

At the time when the seizures of 1886 and 1887 were the subjects of discussion, the Minister of the United States made certain overtures to Her Majesty's Government with respect to the institution of a close time for the seal fishery, for the purpose of preventing the extirpation of the species in that part of the world. Without in any way admitting that considerations of this order could justify the seizure of vessels which were transgressing no rule of international law, Her Majesty's Government were very ready to agree that the subject was one deserving of the gravest attention on the parts of all the Governments interested in those waters. The Russian Government were disposed to join in the proposed negotiations; but they were suspended for a time in consequence of objections raised by the Dominion of Canada, and of doubts thrown on the physical data on which any restrictive legislation must have been based. Her Majesty's Government are fully sensible of the importance of this question, and of the great value which will attach to an international agreement in respect to it; and Her Majesty's Representative will be furnished with the requisite instructions in case the Secretary of State should be willing to enter upon the discussion.

You will read this despatch and my despatch No. of this day's date to the Secretary of State, and, if he should desire it, you are authorized to give him copies of them.

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## VENEZUELA.

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### No. 63.

*The Law Officers of the Crown to the Marquis of Salisbury.*—(*Received October* 2.)

*Royal Courts of Justice, September* 30, 1889.

My Lord,

Claim of "The Venezuela-Panamá Gold Mine Co." on account of loss caused by illegal action of the President.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 4th instant, stating that, by direction of your Lordship, he transmitted to us the papers noted in the accompanying list, which related to the confiscation, by a Decree of the Venezuelan Courts, of the property of a Company formed in the month of December 1882, under the name of "The Venezuela-Panamá Gold Mine Company (Limited)."

That the circumstances of the case were explained to us in Sir Villiers Lister's letter of the 14th November, 1887, and that, in our reply, dated the 28th of that month (Print, p. 190), we expressed the opinion "that as the legal questions arising in this matter have been considered and dealt with by Courts of competent jurisdiction, there is not, in the absence of sufficient evidence of corruption or misconduct on the part of such Courts, any ground for diplomatic intervention."

Further correspondence as to.

That a further representation had been received from Mr. Grigg, late Secretary, and now a liquidator of the Company, renewing the previous application of the Company for the intervention of Her Majesty's Government to procure restitution of the property. (Mr. Grigg, August 27, 1889.)

Does it modify previous opinion?

That Sir Thomas Sanderson was to request that we would take the papers transmitted therewith into our consideration, and that we would favour your Lordship with our opinion, whether the statement contained in Mr. Grigg's letter of the 27th ultimo altered our previous opinion contained in our letter of the 28th November, 1887, or whether the parties interested should be informed that they must have recourse to the legal remedies which it would appear, from Mr. Grigg's letter, were still open to them.

That your Lordship would be glad also to be favoured with any general observations which we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to

*Report*—

Adhere to opinion against intervention.

That the statements contained in Mr. Grigg's letter of the 27th August do not alter our previous opinion that the circumstances of the case do not afford any sufficient ground for diplomatic intervention.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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*List of Papers.*

| | | | |
|---|---|---|---|
| Panamá Gold Mining Company (pamphlet). | Confidential No. 5576, | p. 190 | October 31, 1887 |
| Mr. St. John | ,, ,, | p. 197 | November 6, ,, |
| Law Officers | ,, ,, | p. 211 | November 28, ,, |
| To Mr. Grigg | ,, ,, | p. 213 | December 7, ,, |
| Mr. Grigg | .. | .. | August 27, 1889 |

N.B.—See also Law Officers' Report, Venezuela, No. 69, 1887. Confidential No. 5597 p 100

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# ZANZIBAR.

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## No. 64.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 4.)*

*Royal Courts of Justice, February* 4, 1889.

My Lord,

Zanzibar blockade. Points of law raised by France as to:

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 11th ultimo, stating that he was directed by your Lordship to transmit to us a note from the French Ambassador and other papers (as marked in the margin)* relating to the blockade established on the coast of the continental dominions of His Highness the Sultan of Zanzibar, referred to in his letter of the 8th December last respecting the Zanzibar Prize Court Order in Council.

That we would observe that in his note M. Waddington stated that the French Government held—

1. Valid notice.

1. That a French vessel would not be considered as having valid notice of the blockade unless an individual notice had been given in each case, and noted upon the ship's papers by an officer of the blockading force; and

2. Right of search for contraband of war.

2. That the right of search for contraband of war must be exercised by an officer, and only within the limits of the blockade (" zône du blocus ").

That the blockade was officially notified to the French Government, and that it was believed that the above rules differed from those followed by Great Britain in the case of a belligerent blockade by Her Majesty's naval forces, and from the practice of the United States and some other nations (see Sir Travers Twiss' " Law of Nations in Time of War," section 104, p. 201, and Hall's " International Law," p. 612).

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to the reply which should be returned to the French Ambassador upon the particular points of maritime law thus raised, and with any general observations which we might have to offer on the subject.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

### *Report—*

Her Majesty's Government should not accept rule as to necessity of individual notice;

1. That, in our opinion, Her Majesty's Government should, in replying to M. Waddington's letter, decline to accept the rule that individual notice of the blockade is required before vessels can be seized for its infraction.

It is, in each case, a question of fact whether a vessel attempting to enter a blockaded port is to be considered, having regard to the length and direction of her voyage, the date of the institution of the blockade, and the steps which have been taken to give public notice of it, as having received such notice. If she can reasonably be supposed to have received no such notice she is then entitled, on being warned, to renounce her voyage. The question cannot arise with regard to vessels seeking to leave blockaded ports; they will, of course, be liable to seizure.

or as to limitation of right of search to zone of blockade.

2. Nor is it possible to admit the rule suggested by M. Waddington, that the belligerent right of search for contraband of war can only be exercised within the zone of blockade. It is a right which may be exercised at the will of the belligerent wherever (except in the territorial waters of neutral Powers), he may find a vessel which he suspects of carrying contraband of war to his enemy. But the institution of a blockade creates a fresh right, that of preventing the ingress or egress of vessels to or from the blockaded port.

No right to search vessels under French flag for slaves.

We understand that it is the practice to hand over to French cruizers any vessels, rightfully carrying the French flag, which are discovered to be engaged in the Slave Trade, and while we are of opinion that when the French nationality of the vessel is established no right exists to search for slaves, we cannot doubt, having regard to the joint action taken by both countries for the suppression of the Slave Trade in the year

1845, that France would willingly acquiesce in steps taken in good faith to ascertain if her flag was used to cover this Traffic.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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* Confidential Print No. 5770; to the Earl of Lytton, No. 207, December 4, 1888; Gazette Notice ("London Gazette," December 4, 1888, Confidential No. 5696*); M. Waddington, December 23, 1888.

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## No. 65.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 22.)*

My Lord, *Royal Courts of Justice, February* 22, 1889.

Intended Proclamation of martial law by Germany in parts of Zanzibar territories.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us the inclosed communication* which had been received through the German Ambassador at the Court of St. James', with reference to the intention of the Imperial German Government to "proclaim martial law in the districts of Dar-es-Salaam and Bagamoyo."

Scope of Proclamation not clear.

That the exact extent of country which it was proposed to embrace under the above words, and to subject, consequently, to " martial law," was not at present quite clear; that it was possible that the operation of the Proclamation was intended to be confined to the ports of Dar-es-Salaam and Bagamoyo, with their immediate environs, but that, on the other hand, it might be in contemplation to give it a much more extensive scope.

That the ports in question were both situate in that portion of the dominions of the Sultan of Zanzibar which was within the German sphere of influence, and that the German East Africa Company had a trading establishment at either place.

That both towns were practically besieged by a number of insurgent Arabs and other tribesmen, who were encamped in their vicinity, and that it had been found necessary for the protection of the agents and servants of the Company against their attacks, and for the preservation of the Company's property, to maintain a German ship of war off either port, and to land sailors and marines from time to time to assist the Company in garrisoning their establishment.

Martial law, its meaning

That it was presumed that the expression " martial law," in Count Leyden's note, was employed in the strict sense of that term, as understood by continental nations, and that the German Imperial Government intended thereby to denote the conditions of military law and usage which were incident to that state intermediate between peace and war, called by continental jurists a " state of siege," and that the result of its proclamation over a particular district would be to supersede and suspend all civil law and authority for the time being, and to establish in substitution therefor, within such district, military law and the customs of war. [See Halleck's " International Law, Ed. of 1878, vol. i, p. 499; " Manual of Military Law," published by the War Office in 1887; " Dicey's Law of the Constitution," (2nd Ed.), pp. 296, 297, and 300-301, and other authorities there quoted.]

and administration.

That it was assumed that such "martial law" could only be administered by regularly constituted military authorities, and required for its efficient conduct a more or less complete military occupation of the district over which it was proclaimed, and that it appeared doubtful whether the state of affairs which had been described as at present existing at Dar-es-Salaam and Bagamoyo, could be held to amount to a military occupation of those districts by the German forces.

Necessity for Sultan's authority.

That, moreover, Count Leyden's note seemed to contemplate a Proclamation which should be issued by the German Imperial Government "*mero motu*," and without reference apparently to the Sultan of Zanzibar, in whose name alone, as *de jure* Sovereign over the districts involved, could, as was suggested, such a Proclamation be issued, although (as in the case of the blockade of the Sultan's coasts which was lately established by the British and German Governments in alliance with the Sultan, but which was being carried out entirely by the fleets of the two former nations) the " martial law," when thus proclaimed, might doubtless be carried out by the German Imperial forces acting as allies of the Sultan.

That, having regard also to the numbers of British Indian subjects and protected persons who were probably still more or less frequenting those districts, and to the state of feeling amongst them with reference to the German operations, some

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* Count Leyden, February 12, 1889.

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misgivings were entertained as to whether the strict administration of such a system as was now suggested by the German Government might not lead to inconvenient and embarrassing complications between Her Majesty's Government and that of Germany.

That your Lordship, therefore, desired before replying to Count Leyden's communication to be favoured with our opinion (1) as to whether the assent of Her Majesty's Government to the proposed measure (which had been invited by the German Government) could properly be given, or should be withheld until more precise information on the subject had been supplied; and (2) as to whether the proposed proclamation of martial law, if made, should not, by whomsoever eventually enforced, in any case be promulgated in the name of the Sultan of Zanzibar.

That Sir Julian Pauncefote was, in those circumstances, to request that we would take the inclosed note into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in his letter, and with any general observations which we might have to offer on the matter.

In obedience to your Lordship's commands we have the honour to

*Report—*

Clearer information necessary before assenting to proposal.

That in our opinion the assent of Her Majesty's Government to the proposed proclamation of martial law in the districts mentioned should be withheld until some clearer statement is obtained as to the measures it is proposed to take, and the extent of territory to which such proclamation shall apply.

Definition of martial law.

Martial law is the assumption by a commanding officer of absolute power in territories which at the time are in possession of the Sovereign whom he represents, and in which, for military reasons, the ordinary course of law is suspended. (See Bluntschli, Articles 539–547.)

We doubt whether this is what is really contemplated so far as we can judge from Count Leyden's letter.

Authority of the Sultan necessary.

2. Under the circumstances stated to us it appears that martial law can only be proclaimed, if at all, by the authority of the Sultan of Zanzibar.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 66.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received February 25.)*

*Royal Courts of Justice, February* 25, 1889.

My Lord,

Slave labour. Proclamation of Consul-General.

WE were honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 5th instant, stating that he was to transmit to us, by direction of your Lordship, and together with other papers bearing thereon,[*] the inclosed copy of a Proclamation which was issued by Her Majesty's Agent and Consul-General at Zanzibar on the 9th November last under circumstances which would be found concisely explained in the accompanying Memorandum.

That it would be seen that the Proclamation in question "gives warning that, under section 370 of the Indian Penal Code, any British subject who makes a contract with the owner of a slave for the labour of such slave commits an offence which, under that section, is punishable with imprisonment which may extend to seven years and be accompanied by a fine."

That the section (section 370) of the Indian Penal Code alluded to was incorporated by schedule in the Imperial Act 39 & 40 Vict., cap. 46 ("The Slave Trade Offences (India) Act"), which applied to Zanzibar, and provided that, "whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment . . . . . for a term which may extend to seven years, and shall also be liable to a fine."

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[*] Memorandum by Mr. Davidson, January 31, 1889; Colonel Euan-Smith, No. 144, June 19; Sir J. Kirk, September 6; to Colonel Euan-Smith, No. 125, September 14; Colonel Euan-Smith, No. 346, November 20; Colonel Euan-Smith, No. 374, December 15, 1888.

Doubts as to its correctness.

That doubt was felt as to whether the language of the Proclamation referred to was justified by the terms of the section upon which it purported to be founded, and that, having regard also to the fact that its issue had aroused considerable excitement and opposition amongst British and British Indian traders resident at Zanzibar (see Petition of Mr. G. S. Mackenzie and others inclosed in Colonel Euan-Smith's No. 374 of the 15th December, 1888), the question arose as to whether, under all the circumstances, it might not be advisable to withdraw it

Proposed withdrawal of Proclamation.

That your Lordship would therefore desire to be favoured with our opinion as to the propriety of adopting that course; and that, should we consider that it was desirable to withdraw the Proclamation, your Lordship would be glad to be further favoured with our opinion as to whether the withdrawal might not advantageously be effected by the substitution of another Proclamation, merely reciting the precise words of the section of the Indian Penal Code to which Her Majesty's Agent and Consul-General desired to draw attention.

That Sir Julian Pauncefote was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations which we might have to offer on the matter.

In obedience to your Lordship's commands, we have taken the papers into our consideration, and have the honour to

*Report—*

Desirable to withdraw Proclamation and issue a substitute, and to inform Consul-General of its incorrectness.

That, in our opinion, it will be desirable to withdraw the Proclamation by substituting another in which the terms of section 370 of the Indian Penal Code are set out.

It is important that the Consul-General should be clearly informed that the second, third, and fourth sentences of his Proclamation do not correctly represent the law.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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## No. 67.

*The Law Officers of the Crown to the Marquis of Salisbury.—(Received March 16.)*

*Royal Courts of Justice, March* 14, 1889.

My Lord,

British vessel hired as tender to German blockading squadron.

WE were honoured with your Lordship's commands signified in Sir Philip Currie's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,[*] with reference to a question which had arisen as to whether a British steamer, hired by the Admiral in command of the German squadron now engaged in the blockade of the Zanzibar coast for the purpose of acting as a tender to his fleet, should be permitted to fly the German ensign, with badge for chartered vessels, during the period of her service under charter.

That the vessel, which was hired at Bombay, had proceeded to Zanzibar, where, although retaining her British crew as part of her complement, she had been placed by the German Admiral under the command of an officer in the German Imperial navy.

That the Admiral had, however, stated, in answer to inquiries addressed to him upon the subject by Her Majesty's Agent and Consul-General at Zanzibar, that the tender would not form part of the German fleet, and that such of the members of her crew as were British subjects would not be considered amenable to German military law.

That by section 105 of "The Merchant Shipping Act, 1854" (17 & 18 Vict., cap. 104), it was made an offence for any British ship to fly "any colours resembling those of Her Majesty, *or any distinctive national colours*," without a warrant for so doing from Her Majesty, or from the Admiralty, but that it seemed doubtful how far the wording of that section was to be considered applicable to a case of this kind.

That it was presumed that, as the assumption of the flag in question in the present case could not, if made, be said to be done either "with intent to conceal the British character of such ship from any person entitled by British law to inquire into the same, or to assume a foreign character," &c., and that therefore section 103, sub-section (2) of the above-mentioned Statute had no application.

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[*] Colonel Euan-Smith, Telegraphic, February 5; Admiralty, February 7; to Colonel Euan-Smith, Telegraphic, February 15; Colonel Euan-Smith, Telegraphic, February 19; to Colonel Euan-Smith, Telegraphic, February 22; Colonel Euan-Smith, March 4, 1889.

That Sir Philip Currie was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the vessel in question might, having regard to all the circumstances, be safely permitted to fly the German ensign, with badge for chartered vessels, during such time as her employment under charter by the German Government might continue, and, at the same time, to add any general observations which we might desire to offer on the case.

We have taken the matter into our consideration, and in obedience to your Lordship's commands have the honour to

*Report—*

She may fly German ensign, &c., subject to grant of a formal warrant by Admiralty.

That, in our opinion, having regard to all the circumstances of the case, there is no objection to the ship being permitted to carry the German colours, with badge for chartered vessels, but we think a formal warrant, under section 105 of "The Merchant Shipping Act, 1854," granting this permission, should be given by the Admiralty.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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